

NATIONAL INSTRUCTION 2 OF 2010

CHILDREN IN CONFLICT WITH THE LAW

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1. Background

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

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

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

2. Purpose

This Instruction is intended to provide clear direction to a member on how to deal with a child in conflict with the law and in order to comply with the obligations imposed upon him or her in terms of the *Act*.

3. Scope

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

4. Regulatory framework

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

- (a) Child Justice Act, 2008 Act No. 75 of 2008);
- (b) Children's Act, 2005 (Act No. 38 of 2005);
- (c) Constitution of the Republic of South Africa, 1996;
- (d) Criminal Law (Forensic Procedure) Amendment Act, 2010 (Act No. 6 of 2010);
- (e) Criminal Law (Forensic Procedures) Act, Amendment Act, 2013 (Act No. 37 of 2013);
- (f) Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (g) Forensic DNA Regulations issued in terms of the Criminal Law (Forensic Procedures) Act, Amendment Act, 2013 (Act No. 37 of 2013);
- (h) National Instruction 1 of 2007 (Identification parades);
- (i) National Instruction 3 of 2010 (The care and protection of children in terms of the Children's Act);
- (j) National Instruction 2 of 2012 (Victim Empowerment);
- (k) National Instruction 2 of 2013 (The management of fingerprints, body-prints and photographic images);
- (l) National Instruction 1 of 2016 (Use of force in effecting an arrest);

- (m) National Instruction 3 of 2016 (Bail and the release of persons);
- (n) National Instruction 8 of 2016 (Medical treatment and hospitalisation of a person in custody);
- (o) National Instruction 13 of 2017 (Case docket management);
- (p) National Instruction 11 of 2019: Arrest, treatment and transportation of an arrested person;
- (q) National Instruction 12 of 2019: Arrest and treatment of illegal foreigners;
- (r) National Instruction 13 of 2019: Management of persons in custody of the South African Police Service;
- (s) South African Police Service Act, 1995 (Act No. 68 of 1995); and
- (t) South African Police Service Discipline Regulations, 2016.

5. Definitions

In this instruction, unless the context otherwise indicates, —

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

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

- (q) “**temporary safe care**”, means the care of a *child* in any place where the *child* is accommodated pending a decision or court order concerning the placement of that *child*;
- (r) “**the Act**” means the Child Justice Act, 2008 (Act No. 75 of 2008); and
- (s) “**working days**” excludes Saturdays, Sundays and public holidays.

6. Treatment of children

(1) Background

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

- (e) A *member* must always treat a *child* in a manner which is in the best interest of the *child* as set out in paragraph 2(3) of the National Instruction on the Care and Protection of Children in terms of the Children's Act.

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

- (a) During the first contact with a *child* suspected of having committed an offence, the *member* must, if circumstances permit, introduce himself or herself to the *child* and, if a parent, *guardian* or an *appropriate person* is present, to such person.
- (b) The *member* must explain to the *child* that he or she is being suspected of having committed the offence. The *member* must explain this to the *child* in a language that he or she understands, preferably in the mother tongue of the *child*, using plain and simple vocabulary to assist the *child* to have a better understanding of the child justice system and the procedure that will be followed in his or her case. The *child* must understand that this is a very serious matter.
- (c) The *member* must realise that the *child* may be overwhelmed and scared in the presence of the Police and must therefore patiently explain the nature of the offence and the procedure that will be followed in his or her case. The *member* must give enough detail about the matters and allow sufficient time so that the *child* can absorb the information. The *member* must encourage the *child* to ask questions and respond to the questions and satisfy himself or herself that the *child* understands the information and explanation given. The *member* may elicit responses from the *child* by asking questions in order to ensure that he or she understands the information.
- (d) A *member* must not humiliate or intimidate a *child* and must at all times treat and communicate with the *child* in a manner which is appropriate to the age, maturity and stage of development of the *child*. The younger the *child*, the more patient and understanding the *member* must be while communicating with the *child*. The educational level, age and maturity of the *child* are also relevant when considering what would be an appropriate manner in which to treat and communicate with the *child*.

- (e) The *member* must take steps to protect the privacy and dignity of the *child* and must ensure that discussions with the *child* and his or her parent or *guardian* or an *appropriate person* (whether at the police station or at the crime scene) take place in private, out of sight and hearing of other persons.
- (f) A *member* who explains to a *child* and his or her parent, *guardian* or an *appropriate person*, the contents of a notice or procedure must take into account the background of the *child*, the parent, *guardian* or *appropriate person* and the fact that they may not be conversant with the functioning of the courts and court procedures. The *member* must explain the contents of the notice or procedure in simple, understandable language and give sufficient details to the *child* and parent, *guardian* or *appropriate person*. The *member* must also encourage the *child*, parent, *guardian* or *appropriate person* to ask questions without interrupting him or her.

(3) Language of communication

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

conveyed in a language that is understood by the *child* and parent, *guardian* or *appropriate person*.

(4) Arrest and detention of children

- (a) A *child* should only be *arrested* as a last resort and, if *arrested*, should only be detained for the shortest possible time.
- (b) A *member*, who is authorised to *arrest* a *child* in terms of *the Act* and this Instruction, may decide not to *arrest* the *child*, but rather to have the investigation completed and the docket referred to the prosecutor to decide whether the *child* should be prosecuted or not, and if so, to have a summons issued to secure the attendance of the *child* at a *preliminary inquiry*.
- (c) In considering whether the *child* should be *arrested* or whether the investigation should be completed and the docket referred to the prosecutor to decide whether the *child* should be prosecuted and to have a summons issued, a *member* may consider any information that may be contained in the Diversion Register. The Diversion Register is maintained by the Department of Social Development and contains information of children's criminal cases that have been diverted. This information may assist the *member* to decide whether it would be appropriate in the circumstances, bearing in mind the information obtained from the Diversion Register, to *arrest* the *child* or to rather follow the summons route.
- (d) A *member* must ensure that —
- (i) a *child* is detained separately from adults and boys separately from girls;
 - (ii) a *child* is detained in conditions which take into account his or her particular vulnerability and which will reduce the risk of harm to the *child*, including the risk of harm emanating from other *children*;
 - (iii) the *child* may be visited by parents, *appropriate persons*, *guardians*, legal representatives, registered social workers, *probation officers*, assistant probation officers, health workers, religious counsellors and any other person who, in terms of any law, is entitled to visit the *child*; and
 - (iv) the *child* is cared for in a manner consistent with the special needs of *children*, including the provision of —
 - (aa) immediate and appropriate health care in the event of any illness, injury or severe psychological trauma

in accordance with the procedure set out in National Instruction 8 of 2016: Medical treatment and hospitalization of a person in custody;

- (bb) adequate food, water, blankets, bedding; and
- (cc) sanitary towels (if required by girl *children*).

(5) Application of the Criminal Procedure Act

- (a) Section 4(3)(a) of *the Act* provides that, unless *the Act* provides for amended, additional or different provisions or procedures in respect of a *child in conflict with the law*, the provisions and procedures as set out in the *Criminal Procedure Act* apply with the necessary changes, to any *child* who is alleged to have committed an offence.

- (b) Therefore, if *the Act* or this National Instruction is silent on a provision or procedure relating to a *child in conflict with the law*, the provisions or procedures set out in the *Criminal Procedure Act*, as well as other National Instructions dealing with such aspects, must be complied with in respect of a *child in conflict with the law*. This includes matters such as the searching of such a *child*, the seizure of articles in accordance with section 20 of the *Criminal Procedure Act*, the taking of fingerprints, body-prints, buccal samples or photographic images relating to a *child in conflict with the law* and the confinement of the *child* when he or she has been *arrested*.

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

- (1) The Divisional Commissioner: Visible Policing and Operations must obtain from the Department of Social Development the —
 - (a) contact particulars of every *designated probation officer* in every province and any changes thereto; and
 - (b) information concerning the location, amenities, features and level of security offered by every *child and youth care centre* in every province.

- (2) The Divisional Commissioner: Visible Policing and Operations must compile a list containing the information referred to in subparagraph (1) in respect of each province and provide every Provincial Commissioner with a copy of the list relating to his or her province.

- (3) A Provincial Commissioner must provide a copy of the list to every station commander in his or her province.
- (4) Every station commander must ensure that the information received from the Provincial Commissioner referred to in subparagraph (3), is at all times available in the community service centre of his or her station and is updated as new information is received from the Provincial Commissioner.
- (5) Every station commander must liaise with the *designated probation officer*, and, if another *probation officer* is designated, the newly *designated probation officer*, to reach agreement on —
 - (a) how he or she should be notified of the *arrest* of a *child* or be provided with a copy of an Information Notice or Written Notice issued to or in respect of a *child* (ie by handing over a copy of the Notice, or by faxing it to a particular number and telephonically notifying the *designated probation officer* of the fax); and
 - (b) the procedure to be followed in the event of a *member* being unable to establish contact with the *designated probation officer* to notify him or her or provide a copy of a Notice as set out in subparagraph (a) to him or her.
- (6) The station commander must set out the information agreed upon with the *designated probation officer* as contemplated in subparagraph (5) in writing.
- (7) The station commander must ensure that a copy of —
 - (a) *the Act*;
 - (b) the Regulations promulgated in terms thereof;
 - (c) this National Instruction;
 - (d) the station orders issued by him or her in terms of subparagraph (8); and
 - (e) a document containing the information referred to in subparagraph (6);are at all times available in the Community Service Centre.
- (8) The station commander must, taking into account the unique circumstances prevailing in his or her specific station area, the agreement reached with the *designated probation officer*, the available resources, etc., issue station orders —
 - (a) requiring a *member* under his or her command to follow the approach agreed upon as contemplated in subparagraph (6); and

- (b) in general, instructing *members* under his or her command on any other matter relating to the treatment of *children in conflict with the law* which he or she deems necessary to determine in respect of his or her specific station area.
- (9) Where a police station area forms part of a larger area consisting of more than one police station area and a radio control unit has been established to patrol and attend to complaints in such larger area, every station commander of a station in such larger area must, for information purposes, provide the commander of such radio control unit with a copy of the station orders issued in accordance with subparagraph (8) and, if he or she amends the orders, a copy of the updated version thereof.
- (10) The station commander must see to it that all functional *members* at his or her station receive in-service training (also at station meetings) on *the Act*, the Regulations, this Instruction and the station orders issued by him or her.

8. Criminal offences reported to the Police

- (1) If a member of the public reports the alleged commission of an offence to a police official, the member of the public will normally not know who had allegedly committed the offence. In such a case, the police official must take an affidavit, open a docket and have it registered on the CAS. The same applies if the member of the public suspects that the offence was committed by a particular person whose age is unknown to the member of the public, but he or she believes that person to be an adult or at least older than 12 years.
- (2) The detective designated as the investigating officer must, if he or she establishes, during the course of the investigation of the offence, that the person who had allegedly committed the offence, is a *child*, deal with the *child* in accordance with this Instruction.
- (3) If a member of the public reports the alleged commission of an offence to a police official and the member of the public knows that the person who had allegedly committed the offence, is younger than 12 years and acted alone (ie was not used by an adult to commit the offence), the member of the public must be informed that a *child* below the age of 12 years lacks criminal capacity and cannot be arrested, prosecuted or convicted of an offence. In such a case, the *member* must —
 - (a) take the particulars of the person reporting the alleged commission of the offence as well as the particulars of the alleged offence;

- (b) determine from the member of the public how he or she knows that the *child* who had allegedly committed the offence is younger than 12 years and acted alone (was not used by an adult to commit the alleged offence);
 - (c) determine from the member of the public, the particulars of the *child* (name and residential address), as well as any information that the member of the public may have that will assist in determining whether the *child* is a child in need of care and protection and in need of immediate emergency protection as set out in the National Instruction on the Care and Protection of Children;
 - (d) make a comprehensive entry in the Occurrence Book (OB) setting out the particulars of the alleged offence, the person who reported it and the information (referred to in subparagraph (c)) that was provided by the member of the public; and
 - (e) provide the member of the public with the reference number of the OB entry.
- (4) The Community Service Centre Commander must satisfy himself or herself that the incident that was reported by the member of the public did in fact occur, that the *child* is likely to have been responsible for the incident and is below the age of 12 years and, if so, act in accordance with paragraph 10(4) of this Instruction.

9. Conduct of a member at a crime scene

- (1) If a *member* —
- (a) is present while an offence is being committed; or
 - (b) arrives at the scene after the commission of the offence and while the perpetrator is still at the crime scene,
- the *member* must do whatever may be reasonably necessary to ensure the safety of any person at the crime scene, to stop the alleged perpetrator of the offence and to secure the crime scene, irrespective of the age of the person who has allegedly committed the offence.
- (2) If the person who is alleged to have committed the offence is, according to the knowledge of the *member*, a *child* of a particular age, the *member* must deal with the *child* in accordance with this Instruction insofar as it relates to a *child* of that age that has allegedly committed such an offence.

- (3) If the *member* is uncertain whether the person who allegedly committed the offence, is an adult or a *child* and, if a *child*, what the age of the *child* is, the *member* must gather any information which may be available at the crime scene which will satisfy him or her that the person is a *child* or an adult and, if a *child*, what the age of the *child* is. Such information may include information that may be available from witnesses or other persons (such as a parent or friend of the *child*) that may be present at the crime scene or any documentation (such as a birth certificate, an identity document or driver's licence).
- (4) If the *member* is satisfied that the person who allegedly committed the offence, is an adult, this Instruction will not be applicable.
- (5) If the *member* is satisfied that the person who allegedly committed the offence, is a *child* of a certain age, the *member* must deal with the *child* in accordance with this Instruction insofar as it relates to a *child* of that age.
- (6) If the *member* is satisfied that the person who allegedly committed the offence, is a *child*, but he or she remains uncertain about how old the *child* really is, the *member* must consider the youngest age that the *child* may possibly be and deal with the *child* in accordance with this Instruction insofar as it relates to a *child* of that age.

10. Dealing with a child younger than 12 years who is alleged to have committed any offence

- (1) If a *member* suspects that a *child* has committed an offence but that the *child* is younger than 12 years, the *member* **MUST NOT** arrest the *child*.
- (2) If the parent or *guardian* of the *child* is present, the *member* must —
 - (a) if a SAPS 583(a) (Information Notice to person to whom a child younger than 12 years is handed) is available at the scene, —
 - (i) complete the information notice and explain to the parent or *guardian* the contents of the notice;
 - (ii) hand the original Information Notice to the parent or *guardian* and request the parent or *guardian* to sign on the first duplicate original Information Notice to acknowledge receipt of the Notice;
 - (iii) hand over the *child* to the parent or *guardian*; and
 - (iv) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that the Information Notice was received by the *designated probation officer*;

- (b) if a SAPS 583(a) (Information Notice to person to whom a child younger than 12 years is handed) is not available at the scene, but the parent or *guardian* of the *child* is willing and able to bring the *child* to the police station, arrange with the parent or *guardian* of the *child* to bring the *child* to the police station and act in accordance with subparagraph (a)(i)-(iv);
 - (c) if a SAPS 583(a) (Information Notice to person to whom a child younger than 12 years is handed) is not available at the scene and the parent or *guardian* of the *child* is not willing or able to bring the *child* to the police station, but arrangements can be made for an information notice to be brought to the scene, arrange for the information notice to be brought to the scene and keep the *child* and the parent or *guardian* until the information notice arrives at the scene, where after the *member* must act in accordance with subparagraph (a)(i)-(iv);
 - (d) if a SAPS 583(a) (Information Notice to person to whom a child younger than 12 years is handed) is not available at the scene and —
 - (aa) the parent or *guardian* of the *child* is not willing or able to bring the *child* to the police station; and
 - (bb) arrangements cannot be made for an Information Notice to be brought to the scene within a reasonable time, take the *child* and the parent or *guardian* to the police station and act in accordance with subparagraph (a)(i)-(iv).
- (3) If the parent or *guardian* of the *child* is not present, the *member* must establish whether an *appropriate person* is present and, if so, apply the provisions of subparagraph (2) (replacing “parent or *guardian*” with “*appropriate person*”).
- (4) If neither the parent or *guardian* of the *child* nor an *appropriate person* is present, the *member* must take such steps as may be reasonable in the circumstances to contact the parent or *guardian* of the *child* or an *appropriate person* and, —
- (a) if successful, request the parent or *guardian* of the *child* or the *appropriate person* to collect the *child* from the police station. When the parent or *guardian* of the *child* or the *appropriate person* collects the *child*, the *member* must act in accordance with subparagraph (2)(a)(i)-(iv); or
 - (b) if unsuccessful, take the *child* to a *child and youth care centre* and —
 - (i) complete a SAPS 583(a) (Information Notice to a person to whom child younger than 12 years is handed) and

- explain to the person receiving the *child*, the contents of the notice;
- (ii) hand the original Information Notice to the person receiving the *child* and request that person to sign on the first duplicate original Information Notice to acknowledge receipt of the notice;
 - (iii) hand over the *child* to that person; and
 - (iv) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that the Information Notice was received by the *designated probation officer*.
- (5) If, in exceptional circumstances, the parent or *guardian* of the *child* or the *appropriate person* is present or comes to collect the *child*, but the *member* is satisfied that it will not be in the best interest of the *child*, as set out in paragraph 2(3) of the National Instruction on the Care and Protection of Children in terms of the Children's Act, to hand over the *child* to such a person, the *member* must act in accordance with subparagraph (4)(b).

11. Dealing with a child who is 12 years or older and who is alleged to have committed an offence referred to in Schedule 1 of the Act

- (1) If a *member* suspects that a *child*, who is 12 years or older, has committed an offence, the *member* must satisfy himself or herself whether the offence is an offence referred to in Schedule 1 of *the Act* (attached hereto as Annexure A).
- (2) If the offence concerned is an offence referred to in Schedule 1 of *the Act*, the *member* **MUST NOT** arrest the *child* **UNLESS** there are **COMPELLING REASONS JUSTIFYING THE ARREST OF THE CHILD** as outlined in paragraph (3).
- (3) Compelling reasons that will justify the *arrest* of a *child* who is 12 years or older in respect of an offence referred to in Schedule 1 are —
- (a) where the *member* has reason to believe that the *child* —
 - (i) does not have a fixed residential address;
 - (ii) has absconded from foster care, a *child and youth care centre* or *temporary safe care*;
 - (iii) is likely to continue to commit offences, unless he or she is *arrested*;
 - (iv) will pose a danger to any person (including himself or herself) unless *arrested*;

- (v) is likely to destroy or tamper with evidential material relating to the offence;
 - (vi) is likely to interfere with the investigation into the offence unless *arrested*; or
- (b) where the offence is in progress and is not yet completed.

12. Dealing with a child who is 12 years or older and who is alleged to have committed an offence referred to in Schedule 1 of the Act if there are no compelling reason to arrest the child

- (1) If there are no compelling reason to *arrest* the *child* who is 12 years or older and who is alleged to have committed an offence referred to in Schedule 1 of *the Act*, the *member* may not *arrest* the *child*.
- (2) If the parent or *guardian* of the *child* is present, the *member* must —
- (a) if a SAPS 583(b) (Written Notice to Appear at a Preliminary Inquiry) is available at the scene, —
 - (i) complete the Written Notice and set the date of the *preliminary inquiry* to be the fifth (5th) working day after the date of the issuing of the Written Notice;
 - (ii) explain to the *child* and the parent or *guardian* the contents of the Written Notice;
 - (iii) hand the original Written Notice to the *child* and request the *child* and the parent or *guardian* to sign on the first duplicate original Written Notice to acknowledge receipt of the notice;
 - (iv) hand over the *child* to the parent or *guardian*;
 - (v) provide the first duplicate original Written Notice to the *designated probation officer* within 24 hours after the Written Notice was handed to the *child* and retain proof that it was received by the *designated probation officer*; and
 - (vi) make a copy of the Written Notice and file the copy under “B” in the docket opened in respect of the offence which the *child* is alleged to have committed;
 - (b) if a SAPS 583(b) (Written Notice to Appear at a Preliminary Inquiry) is not available at the scene, but the parent or *guardian* of the *child* is willing and able to bring the *child* to the police station, arrange with the parent or *guardian* of the *child* to bring the *child* to the police station and act in accordance with subparagraph (a)(i)-(vi);
 - (c) if a SAPS 583(b) (Written Notice to Appear at a Preliminary Inquiry) is not available at the scene and the parent or *guardian* of the *child* is not willing or able to bring the *child* to the police station, but arrangements can be made for a Written Notice to be

- brought to the scene, arrange for the Written Notice to be brought to the scene and keep the *child* and the parent or *guardian* until the Written Notice arrives at the scene and, upon its arrival, act in accordance with subparagraph (a)(i)-(vi);
- (d) if a SAPS 583(b) (Written Notice to Appear at a Preliminary Inquiry) is not available at the scene and —
- (aa) the parent or *guardian* of the *child* is not willing or able to bring the *child* to the police station; and
- (bb) arrangements cannot be made for a Written Notice to be brought to the scene within a reasonable time,
- take the *child* and the parent or *guardian* to the police station and act in accordance with subparagraph (a)(i)-(vi).
- (3) If the parent or *guardian* of the *child* is not present, the *member* must establish whether an *appropriate person* is present and, if so, apply the provisions of paragraph (2) (replacing “parent or *guardian*” with “*appropriate person*”).
- (4) If the parent or *guardian* of the *child* or an *appropriate person* is not present, the *member* must take such steps as may be reasonable in the circumstances to contact the parent or *guardian* of the *child* or an *appropriate person* and, —
- (a) if successful, request the parent or *guardian* of the *child* or the *appropriate person* to collect the *child* from the police station. When the parent or *guardian* of the *child* or the *appropriate person* collects the *child*, the *member* must act in accordance with subparagraph (2)(a)(i)-(vi); or
- (b) if unsuccessful, the *child* must be regarded as a *child* in need of care and protection and in need of immediate emergency protection and must be dealt with in accordance with paragraphs 12 and 11 of the National Instruction on the Care and Protection of Children in terms of the Children’s Act. In such a case, the person with whom the *child* is placed in *temporary safe care*, (such as the person in charge of a *child and youth care centre*, if the *child* is placed in a *child and youth care centre*) becomes an *appropriate person* in whose presence the Written Notice must be handed to the *child* in accordance with subparagraph (3) (read with subparagraph (2)). A copy of the Written Notice must be handed to the person in whose *temporary safe care* the *child* is placed.

13. Dealing with a child who is 12 years or older and who is alleged to have committed an offence referred to in Schedule 1 of the Act if there are compelling reasons to arrest the child

- (1) If there are compelling reasons to *arrest* a *child* who is 12 years or older and who is alleged to have committed an offence referred to in Schedule 1 of *the Act*, the *member* may *arrest* the *child*.
- (2) Upon the *arrest* of such a *child*, the *member* must inform the *child*—
 - (a) of his or her constitutional rights as provided for in paragraph 10(4) of National Instruction 11 of 2019 (Arrest, treatment and transportation of an arrested person); and
 - (b) that he or she will be assessed by a *probation officer* who will explain to him or her the procedure that will be followed thereafter.
- (3) Once a *child* of 12 years or older has been *arrested*, the *child* must be taken to a police station. The *member* who effected the *arrest* must record in the Arrest Statement the compelling reason (set out in paragraph 11(3)) that persuaded him or her to effect the *arrest*. The *member* must also state whether there is any reason (stating the reason) to believe that the *child* will pose a danger to any person (including himself or herself) if released.
- (4) The Community Service Centre Commander must consider the Arrest Statement and any other information at his or her disposal to satisfy himself or herself whether the *child* will pose a danger to any person (including himself or herself) if released.
- (5) If the Community Service Centre Commander is satisfied that the *child* will pose a danger to any person (including himself or herself) if released and that the *child* can therefore not be released, the Community Service Centre Commander must ensure that the *child* remains in *detention* and—
 - (a) inform the parent, *guardian* or an *appropriate person* of the *arrest* of the *child*;
 - (b) complete a SAPS 583(j) (Information Notice upon the arrest of a child) and explain to the parent or *guardian* the contents of the notice and set the date of the *preliminary inquiry* as a date that will ensure that the *child* appears at the *preliminary inquiry* within 48 hours (as extended by the Criminal Procedure Act) from the time of the arrest of the *child*;
 - (c) provide the Information Notice to the parent, *guardian* or *appropriate person* and retain proof that the parent, *guardian* or *appropriate person* received the Information Notice (if it is

- possible to hand the Information Notice to the parent, *guardian* or *appropriate person*, the parent, *guardian* or *appropriate person* must be requested to sign on the first duplicate original of the Information Notice to acknowledge receipt of the Information Notice);
- (d) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that it was received by the *designated probation officer*; and
 - (e) make two copies of the Information Notice if the *child* will be detained at a *child and youth care centre* (or one copy if the *child* will be detained in a *police cell* (in which case the copy must be filed under “B” in the docket opened in respect of the case for which the *child* was *arrested*)).
- (6) The Community Service Centre Commander must —
- (a) if a *child and youth care centre* is available within a reasonable distance from the police station and there is a vacancy in the centre, —
 - (i) ensure that the *child* is transported to the *child and youth care centre* and is handed over to the person in charge of the centre;
 - (ii) instruct the *member*, who will be transporting the *child* to the *child and youth care centre*, to hand the two copies of the SAPS 583(j) (Information Notice upon the arrest of a child) (referred to in subparagraph (5)(e) above) to the person receiving the *child* at the *child and youth care centre* and request that person to sign one copy as proof of having received the *child*;
 - (iii) file the copy of the SAPS 583(j) (Information Notice upon the arrest of a child) (referred to in subparagraph (ii)) signed by the person receiving the *child* at the *child and youth care centre* under “B” in the docket opened in respect of the case for which the *child* was *arrested*;
 - (iv) complete a SAPS 583(c) (Written Report on detention of child arrested for Schedule 1 Offence before appearing at Preliminary Inquiry form) and file the report under “B” in the docket opened in respect of the case for which the *child* was *arrested*; and
 - (v) provide the first duplicate original SAPS 583(j) (Information Notice upon the arrest of a child) to the *designated probation officer* and retain proof that it was received by the *designated probation officer*;

- (b) if a *child and youth care centre* is not available within a reasonable distance from the police station or there is no vacancy in the centre, the *child* must be detained in police custody and —
 - (i) if the police station where the *child* has been detained, has the necessary facilities available, the *child* must be detained separate from adults and separate from *children* of the opposite sex;
 - (ii) if the police station where the *child* has been detained, does not have the necessary facilities available to detain the *child* separate from adults and separate from *children* of the opposite sex, the *child* must be transported to and be detained at another police station where such facilities are available;
 - (iii) the Community Service Centre Commander of the police station where the *child* was originally detained, must complete the SAPS 583(c) (Written Report on detention of child arrested for Schedule 1 Offence before appearing at Preliminary Inquiry form) and file the report under “B” in the docket opened in respect of the case for which the *child* was *arrested*;
 - (iv) the Community Service Centre Commander must, if he or she was unable to provide the SAPS 583(j) (Information Notice upon the arrest of a child), to the parent, *guardian* or *appropriate person*, —
 - (aa) complete the SAPS 583(j) (Information Notice upon the arrest of a child);
 - (bb) provide the Information Notice to the *designated probation officer* within 24 hours after the *arrest*;
 - (cc) file proof that the Information Notice was received by the *designated probation officer* under “B” in the docket opened in respect of the case for which the *child* was *arrested*; and
 - (dd) file the first duplicate original Information Notice under “B” in the docket opened in respect of the case for which the *child* was *arrested*.
- (7) If the Community Service Centre Commander of the police station, where the *child* was originally detained, is unable to —
 - (a) inform the parent, *guardian* or an *appropriate person* of the *arrest* of the *child*, he or she must complete a SAPS 583(d) (Written Report on failure to notify the parent, guardian or appropriate person of arrest of child) setting out the steps taken to notify the parent, *guardian* or an *appropriate person* of the *arrest* of the *child*

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

14. Releasing a child who is 12 years or older and who has been arrested for an offence referred to in Schedule 1 of the Act

- (1) If the Community Service Centre Commander is satisfied that the *child* will not pose a danger to any person (including himself or herself) if released, the Community Service Centre Commander may instruct a *member* to approach the Department of Social Development to establish whether a previous criminal case, in which the *child* was an accused, has been diverted (as recorded in the Diversion Register). If the Department of Social Development is approached and the information is obtained, this fact must be recorded in the Investigation Diary (SAPS 5) of the docket. This information must be taken into account to decide whether, bearing in mind the information obtained from the Diversion Register, it would be appropriate in the circumstances, to release the *child* on a Written Notice.
- (2) If the Community Service Centre Commander is satisfied that the *child* may be released, he or she must —
- (a) if the parent or *guardian* of the *child* or an *appropriate person* is present, —
- (i) complete the SAPS 583(b) (Written Notice to Appear at a Preliminary Inquiry and set the date of the *preliminary inquiry* to be the fifth (5th) working day after the date of the issuing of the Written Notice;
 - (ii) explain to the *child* and the parent, *guardian* or *appropriate person* the contents of the Written Notice;
 - (iii) hand the original Written Notice to the *child* and request the *child* and parent, *guardian* or *appropriate person* to sign on the first duplicate original Written Notice to acknowledge receipt of the Written Notice;
 - (iv) hand over the *child* to the parent, *guardian* or *appropriate person*; and

- (v) provide the first duplicate original Written Notice to the *designated probation officer* and retain proof that it was received by the *designated probation officer*.
 - (b) if the parent or *guardian* of the *child* or an *appropriate person* is not present, take such steps as may be reasonable in the circumstances to contact the parent or *guardian* of the *child* or an *appropriate person* and, —
 - (i) if successful, request the parent or *guardian* of the *child* or the *appropriate person* to collect the *child* from the police station. When the parent or *guardian* of the *child* or the *appropriate person* collects the *child*, the *member* must act in accordance with subparagraph (1)(a)-(e); or
 - (ii) if unsuccessful, —
 - (aa) the *child* must be regarded as a *child* in need of care and protection and in need of immediate emergency protection and must be dealt with in accordance with paragraphs 12 and 11 of the National Instruction on the Care and Protection of Children in terms of the Children’s Act. In such a case, the person with whom the *child* is placed in *temporary safe care*, becomes an *appropriate person* in whose presence the Written Notice must be handed to the *child* in accordance with subparagraph (3) (read with subparagraph (2)); and
 - (bb) the Community Service Centre Commander must complete the SAPS 583(d) (Written Report on failure to notify the parent, guardian or appropriate person of the arrest of the child) which must be filed under “B” in the docket opened in respect of the case for which the *child* was *arrested* and which must be submitted to the prosecutor, who will be present at the *preliminary inquiry*, and who must be requested to hand the report to the presiding officer at the *preliminary inquiry*.
- (3) The *member* designated as the investigating officer of the case, must ensure that, at least one (1) day before the *preliminary inquiry*, the docket, opened in respect of the case for which the *child* was *arrested*, is presented to the prosecutor that will be present during the *preliminary inquiry*.

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

- (1) A *member* may *arrest* a *child* who is 12 years or older and who he or she has reasonable grounds to believe that the *child* has committed an offence referred to in Schedule 2 of *the Act* (attached hereto as Annexure B).
- (2) In considering whether or not to *arrest* the *child*, the *member* must take into account whether the *child* —
 - (a) has a fixed residential address;
 - (b) has absconded from foster care, a *child and youth care centre* or *temporary safe care*;
 - (c) is likely to continue to commit offences, unless he or she is *arrested*;
 - (d) will pose a danger to any person (including himself or herself) unless *arrested*;
 - (e) is likely to destroy or tamper with evidential material relating to the offence;
 - (f) is likely to interfere with the investigation into the offence unless *arrested*; or
 - (g) is busy committing the offence (the offence is in progress) or whether it has been completed.
- (3) If the *member* decides not to *arrest* the *child*, the *member* must —
 - (a) record the full particulars of the *child* (including his or her name, occupation (if any), work address (if he or she is a learner, the name and address of the school he or she attends) and his or her fixed residential address, contact particulars, etc.) in his or her pocketbook; and
 - (b) upon arrival at the police station and after the docket in respect of the offence allegedly committed by the *child*, has been opened, make an affidavit containing the particulars referred to in subparagraph (a) and file the affidavit under “A” in the said docket.
- (4) If the *member* decides to *arrest* the *child*, the *member* must, upon the *arrest* of the *child*, inform the *child* —
 - (a) of his or her constitutional rights as provided for in paragraph 10(4) of National Instruction 11 of 2019 (Arrest, treatment and transportation of an arrested person); and
 - (b) that he or she will be assessed by a *probation officer* who will explain to him or her the procedure that will be followed thereafter.

- (5) If the *child* or a parent or *guardian* of the *child* or a legal representative on behalf of the *child* requests that the *child* be released on bail, the Community Service Centre Commander must contact the prosecutor on standby, who is authorised to consider a bail application, and request him or her to come to the police station to consider the bail application in terms of section 21(2)(b) of *the Act*.
- (6) If the prosecutor authorises the release of the *child* on bail, the normal processes applicable to the release of a suspect on bail by an authorised prosecutor, must be followed: Provided that the *child* may only be released into the care of a parent, *guardian* or an *appropriate person*. This paragraph must be read together with paragraph 13 of National Instruction 3 of 2016 (Bail and the release of persons).
- (7) If the *child* will remain in custody and the parent or *guardian* of the *child* or an *appropriate person* is present, the Community Service Centre Commander must —
- (a) complete the SAPS 583(j) (Information Notice upon the arrest of a child) and explain to the parent, *guardian* or *appropriate person* the contents of the notice;
 - (b) hand the original notice to the parent, *guardian* or *appropriate person* and request the parent, *guardian* or *appropriate person* to sign on the first duplicate original Information Notice to acknowledge receipt of the notice; and
 - (c) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that the Information Notice was received by the *designated probation officer*.
- (8) If the *child* will remain in custody and neither the parent nor *guardian* of the *child* is present, the Community Service Centre Commander must take such steps as may be reasonable in the circumstances to contact the parent or *guardian* of the *child* or an *appropriate person* and, if successful, request the parent or *guardian* of the *child* or the *appropriate person* to come to the police station. When the parent or *guardian* of the *child* or *appropriate person* arrives at the police station, the Community Service Centre Commander must act in accordance with subparagraph (7)(a)-(c).
- (9) If the *child* will remain in custody and neither the parent nor *guardian* of the *child* is present and cannot be contacted, the *child* or a parent or *guardian* of the *child* or a legal representative on behalf of the *child* does not request that the *child* be released on bail or the prosecutor refuses

to grant bail to the *child*, the Community Service Centre Commander must —

- (a) if a *child and youth care centre* is available within a reasonable distance from the police station and there is a vacancy in the centre, —
 - (i) complete a SAPS 583(j) (Information Notice upon the arrest of a child) and explain to the person receiving the *child*, the contents of the notice;
 - (ii) hand the original notice to the person receiving the *child* and request that person to sign on the first duplicate original information notice to acknowledge receipt of the notice;
 - (iii) hand over the *child* to that person;
 - (iv) provide the first duplicate original information notice to the *designated probation officer* and retain proof that the information notice was received by the *designated probation officer*; and
 - (v) make a copy of the information notice and file it under “B” in the docket opened in respect of the case for which the *child* was *arrested*;

- (b) if a *child and youth care centre* is not available within a reasonable distance from the police station or there is no vacancy in the centre, the *child* must be detained in police custody and —
 - (i) if the police station where the *child* has been detained, has the necessary facilities available, the *child* must be detained separate from adults and separate from *children* of the opposite sex;
 - (ii) if the police station where the *child* has been detained, does not have the necessary facilities available to detain the *child* separate from adults and separate from *children* of the opposite sex, the *child* must be transported to and be detained at another police station where such facilities are available;
 - (iii) complete a SAPS 583(j) (Information Notice upon the arrest of a child), provide the notice to the *designated probation officer* and file proof that it was received by the *designated probation officer* under “B” in the docket opened in respect of the case for which the *child* was *arrested*; and
 - (iv) file the first duplicate original SAPS 583(j) (Information Notice upon the arrest of a child) under “B” in the docket

opened in respect of the case for which the *child* was *arrested*.

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

16. Dealing with a child who is 12 years or older but younger than 14 years and who is alleged to have committed an offence referred to in Schedule 3 of the Act

- (1) A *member* may *arrest* a *child* who is 12 years or older but younger than 14 years and who he or she has reasonable grounds to believe that the *child* has committed an offence referred to in Schedule 3 of *the Act* (attached hereto as Annexure C).
- (2) In considering whether or not to *arrest* the *child*, the *member* must take into account whether the *child* —
- (a) has a fixed residential address;
 - (b) has absconded from foster care, a *child and youth care centre* or *temporary safe care*;
 - (c) is likely to continue to commit offences, unless he or she is *arrested*;
 - (d) will pose a danger to any person (including himself or herself) unless *arrested*;
 - (e) is likely to destroy or tamper with evidential material relating to the offence;
 - (f) is likely to interfere with the investigation into the offence unless *arrested*; or

- (g) is busy committing the offence (the offence is in progress) or whether it has been completed.
- (3) If the *member* decides not to *arrest* the *child*, the *member* must —
- (a) record the full particulars of the *child* (including his or her name, occupation (if any), work address (if he or she is a learner, the name and address of the school he or she attends) and his or her fixed residential address, contact particulars, etc) in his or her pocketbook; and
 - (b) upon arrival at the police station and after the docket in respect of the offence allegedly committed by the *child*, has been opened, make an affidavit containing the particulars referred to in subparagraph (a) and file the affidavit under “A” in the said docket.
- (4) If the *member* decides to *arrest* the *child*, the *member* must, upon the *arrest* of the *child*, inform the *child* —
- (a) of his or her constitutional rights as provided for in paragraph 10(4) of National Instruction 11 of 2019 (Arrest, treatment and transportation of an arrested person); and
 - (b) that he or she will be assessed by a *probation officer* who will explain to him or her the procedure that will be followed thereafter.
- (5) If the parent or *guardian* of the *child* or an *appropriate person* is present, the Community Service Centre Commander must —
- (a) complete the SAPS 583(j) (Information Notice upon the arrest of a child) and explain to the parent, *guardian* or *appropriate person* the contents of the notice;
 - (b) hand the original notice to the parent, *guardian* or *appropriate person* and request the parent, *guardian* or *appropriate person* to sign on the first duplicate original Information Notice to acknowledge receipt of the notice; and
 - (c) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that the Information Notice was received by the *designated probation officer*.
- (6) If the *child* will remain in custody and neither the parent nor *guardian* of the *child* is present, the Community Service Centre Commander must take such steps as may be reasonable in the circumstances to contact the parent or *guardian* of the *child* or an *appropriate person* and, if successful, request the parent or *guardian* of the *child* or the *appropriate person* to come to the police station. When the parent or *guardian* of the *child* or *appropriate person* arrives at the police station, the

Community Service Centre Commander must act in accordance with subparagraph (5)(a)-(c).

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

- (iv) file the first duplicate original SAPS 583(j) (Information Notice upon the arrest of a child) under “B” in the docket opened in respect of the case for which the *child* was *arrested*.
- (8) If the Community Service Centre Commander of the police station, where the *child* was originally detained, is unable to —
- (a) inform the parent, *guardian* or an *appropriate person* of the *arrest* of the *child*, he or she must complete a SAPS 583(d) (Written Report on failure to notify the parent, guardian or appropriate person of arrest of child) setting out the steps taken to notify the parent, *guardian* or an *appropriate person* of the *arrest* of the *child* and the reason why he or she was unable to notify the parent, *guardian* or an *appropriate person* of the *arrest* of the *child*; or
 - (b) notify the *designated probation officer* of the *arrest* of the *child*, he or she must complete a SAPS 583(e) (Written Report on failure to notify the Probation Officer of the arrest of a child) setting out the steps taken to notify the *probation officer* and the reason why he or she was unable to notify the *probation officer*, and file it under “B” in the docket, which must be submitted to the prosecutor, who will be present at the *preliminary inquiry*, and who must be requested to hand the report to the presiding officer at the *preliminary inquiry*.
- (9) This paragraph must be read together with paragraph 13 of National Instruction 3 of 2016 (Bail and the release of persons).

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

- (1) A *member* may *arrest* a *child* who is 14 years or older and who he or she has reasonable grounds to believe that the *child* has committed an offence referred to in Schedule 3 of *the Act* (attached hereto as Annexure C).
- (2) In considering whether or not to *arrest* the *child*, the *member* must take into account whether the *child* —
 - (a) has a fixed residential address;
 - (b) has absconded from foster care, a *child and youth care centre* or *temporary safe care*;
 - (c) is likely to continue to commit offences, unless he or she is *arrested*;

- (d) will pose a danger to any person (including himself or herself) unless *arrested*;
 - (e) is likely to destroy or tamper with evidential material relating to the offence;
 - (f) is likely to interfere with the investigation into the offence unless *arrested*; or
 - (g) is busy committing the offence (the offence is in progress) or whether it has been completed.
- (3) If the *member* decides not to *arrest* the *child*, the *member* must —
- (a) record the full particulars of the *child* (including his or her name, occupation (if any), work address (if he or she is a learner, the name and address of the school he or she attends) and his or her fixed residential address, contact particulars, etc) in his or her pocketbook; and
 - (b) upon arrival at the police station and after the docket in respect of the offence allegedly committed by the *child*, has been opened, make an affidavit containing the particulars referred to in subparagraph (a) and file the affidavit under “A” in the said docket.
- (4) If the *member* decides to *arrest* the *child*, the *member* must, upon the *arrest* of the *child*, inform the *child* —
- (a) of his or her constitutional rights as provided for in paragraph 10(4) of National Instruction 11 of 2019 (Arrest, treatment and transportation of an arrested person); and
 - (b) that he or she will be assessed by a *probation officer* who will explain to him or her the procedure that will be followed thereafter.
- (5) If the parent or *guardian* of the *child* or an *appropriate person* is present, the Community Service Centre Commander must —
- (a) complete the SAPS 583(j) (Information Notice upon the arrest of a child) and explain to the parent, *guardian* or *appropriate person* the contents of the Information Notice;
 - (b) hand the original notice to the parent, *guardian* or *appropriate person* and request the parent, *guardian* or *appropriate person* to sign on the first duplicate original Information Notice to acknowledge receipt of the notice; and
 - (c) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that the Information Notice was received by the *designated probation officer*.

- (6) If the *child* will remain in custody and neither the parent nor *guardian* of the *child* is present, the Community Service Centre Commander must take such steps as may be reasonable in the circumstances to contact the parent or *guardian* of the *child* or an *appropriate person* and, if successful, request the parent or *guardian* of the *child* or the *appropriate person* to come to the police station. When the parent or *guardian* of the *child* or *appropriate person* arrives at the police station, the Community Service Centre Commander must act in accordance with subparagraph (5)(a)-(c).
- (7) If the parent or *guardian* of the *child* or the *appropriate person* is not present and cannot be contacted, the Community Service Centre Commander must —
- (a) if the police station where the *child* has been detained, has the necessary facilities available, the *child* must be detained separate from adults and separate from *children* of the opposite sex;
 - (b) if the police station where the *child* has been detained, does not have the necessary facilities available to detain the *child* separate from adults and separate from *children* of the opposite sex, the *child* must be transported to and be detained at another police station where such facilities are available;
 - (c) complete a SAPS 583(j) (Information Notice upon the arrest of a child), provide the Information Notice to the *designated probation officer* and file proof that it was received by the *designated probation officer* under “B” in the docket opened in respect of the case for which the *child* was *arrested*; and
 - (d) file the first duplicate original SAPS 583(j) (Information Notice upon the arrest of a child) under “B” in the docket opened in respect of the case for which the *child* was *arrested*.
- (8) If the Community Service Centre Commander of the police station, where the *child* was originally detained, is unable to —
- (a) inform the parent, *guardian* or an *appropriate person* of the *arrest* of the *child*, he or she must complete a SAPS 583(d) (Written Report on failure to notify the parent, guardian or appropriate person of arrest of child) setting out the steps taken to notify the parent, *guardian* or an *appropriate person* of the *arrest* of the *child* and the reason why he or she was unable to notify the parent, *guardian* or an *appropriate person* of the *arrest* of the *child*; or
 - (b) notify the *designated probation officer* of the *arrest* of the *child*, he or she must complete a SAPS 583(e) (Written Report on failure to notify the Probation Officer of the arrest of a child) setting out

the steps taken to notify the *probation officer* and the reason why he or she was unable to notify the *probation officer*, and file it under “B” in the docket, which must be submitted to the prosecutor, who will be present at the *preliminary inquiry*, and who must be requested to hand the report to the presiding officer at the *preliminary inquiry*.

- (9) This paragraph must be read together with paragraph 13 of National Instruction 3 of 2016 (Bail and the release of persons).

18. Transportation of a child

- (1) If it is necessary for a *child*, who is alleged to have committed an offence, to be transported in a police vehicle, the *child* must, as far as reasonably possible, be transported —
- (a) in an unmarked police vehicle. If this is not possible, and the *child* has to be transported in a marked police vehicle, the *child* must —
- (i) preferably be transported in a sedan police vehicle; and
- (ii) if the *child* has to be transported in a marked police van, the *child* must be transported in the cabin of the van and not in the back of the van; and
- (b) separately from adults.
- (2) Restraining measures, as provided for in paragraph 11 of National Instruction 13 of 2019, may be applied to a *child* during the transportation of the *child*, where this is necessary and appropriate, in order to ensure the safety of the *child*, other *children* and *members* accompanying him or her and to prevent the escape of the *child*.
- (3) If it is not possible to transport a *child* separately from adults to or from a *preliminary inquiry* or other hearing before a *child justice court*, the *member* who is the driver of the police vehicle, or other *member* who authorised the transport of the *child* together with the adult, must —
- (a) complete a SAPS 583(g) (Written Report on transportation of child with adults);
- (b) within 48 hours after the transport has been undertaken, hand the original SAPS 583(g) (Written Report on transportation of child with adults) to the clerk of the court where the *preliminary inquiry* or hearing before a *child justice court* will be or has been held and request that the Written Report be handed to the judicial officer who presided or will preside over the *preliminary inquiry* or other hearing;

- (c) request the clerk of the court to sign on the first duplicate original copy of the Written Report to acknowledge receipt; and
 - (d) file the first duplicate original copy of the Written Report under “B” in the docket opened in respect of the offence allegedly committed by the *child*.
- (4) If, for whatever reason, it was not possible to hand the SAPS 583(g) (Written Report on transportation of child with adults) to the clerk of the court within 48 hours after the transport had been undertaken, the responsible *member* must —
- (a) make an affidavit setting out the reasons why it was not possible to do so;
 - (b) make a copy of the affidavit;
 - (c) attach the original affidavit to the original Written Report, which is handed to the clerk of the court;
 - (d) request the clerk of the court to sign on the copy of the affidavit to acknowledge receipt; and
 - (e) file the copy of the affidavit, signed by the clerk of the court, together with the first duplicate original copy of the Written Report under “B” in the docket opened in respect of the offence allegedly committed by the *child*.

19. Access to Custody Register

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

- (3) A person, other than a person referred to in subparagraph (2), who wishes to examine the register must —
 - (a) submit a SAPS 583(h) (Application for Access to Custody Register) to the station commander or the person designated in writing by the station commander; and
 - (b) identify himself or herself and provide documentary proof of his or her capacity, if requested to do so by the station commander or designated person.

- (4) The station commander or designated person must consider the application and, if he or she —
 - (a) is satisfied that the applicant has a *bona fide* reason for examining the register and has no reason to believe that allowing him or her to examine the register will detrimentally affect any *child* or other detainee whose name and particulars appear in the register, he or she may authorise the applicant to examine the register; or
 - (b) is not so satisfied, he or she must decline the application, record his or her reasons for declining the application on the application and provide the applicant with a copy of the declined application.

- (5) A *member* must remain present while a person examines the register to protect the privacy of persons in police custody who are not the subject of an investigation involving the *child*.

20. Summons

- (1) If a summons is received which is to be served on a *child* who allegedly committed an offence, the investigating officer must contact a parent or *guardian* of the *child* or an *appropriate person* and make arrangements that will enable him or her to serve the summons in the presence of a parent or *guardian* of the *child* or an *appropriate person* at least 12 (ten) *working days* before the date of the *preliminary inquiry* or other hearing in respect of which the *child* is summoned.

- (2) When the summons is served, the *member* serving the summons must —
 - (a) explain the contents of the summons to the *child* and the parent, *guardian* or *appropriate person*;
 - (b) hand the original summons to the *child* in the presence of the parent, *guardian* or *appropriate person* and request the *child* and parent, *guardian* or *appropriate person* to sign the Return of Service to acknowledge receipt of the summons; and
 - (c) make two copies of the summons and the Return of Service and —

- (i) provide the first copy of the summons and the Return of Service to the *designated probation officer* within 24 hours after the summons was handed to the *child*; and
 - (ii) file proof that it was received by the *designated probation officer* together with the second copy of the summons and the Return of Service under “B” in the docket opened in respect of the case for which the *child* was summoned.
- (3) If the investigating officer is unable to make arrangements that will enable him or her to serve the summons at least 12 (ten) *working days* before the date of the *preliminary inquiry* or other hearing in respect of which the *child* is summoned, the investigating officer must make an appropriate entry in the investigation diary of the docket and submit the docket to the prosecutor with a request to have a new summons issued.

21. Assessment of a child

- (1) The station commander and Community Service Centre Commander must render full support to a *probation officer* to enable the *probation officer* to conduct an *assessment* of a *child* in police custody.
- (2) A station commander and Community Service Centre Commander must, if requested thereto by a *probation officer*, take all reasonable steps (including phoning the parent or *guardian* of the *child* or an *appropriate person* or visiting the last known address of the parent or *guardian* of the *child* or an *appropriate person* (if within a reasonable distance)) in order to assist the *probation officer* to locate a parent or *guardian* of the *child* or an *appropriate person*.
- (3) The station commander must make a room, other than a *police cell*, available for the *probation officer* in which to conduct the *assessment*. Such a room must enable the *probation officer* to conduct the *assessment* in private.
- (4) (a) If the station commander, Community Service Centre Commander or any other *member* is of the opinion that —
 - (i) the *child* poses a danger to the *probation officer* or any other person; or
 - (ii) there is a risk that the *child* may escape during the *assessment*,the *member* must inform the *probation officer* of the basis for his or her opinion.

- (b) If the *probation officer* requests that a *member* be present during the *assessment*, the station commander or Community Service Centre Commander must make a *member*, other than the investigating officer, available for this purpose.
- (5) If a *member* is present while an *assessment* is conducted, such *member* may not disclose any information that came to his or her knowledge during the *assessment*, except if requested thereto by the presiding officer at a *preliminary inquiry* or other court proceeding.

22. Error regarding placement

- (1) In terms of *the Act*, no presiding officer (whether at a preliminary enquiry or at a *child justice court*) may remand a *child* to police custody pending the *child's* next appearance in court. Accordingly, if a court issues a warrant for the further *detention* of a *child* and the warrant states that the *child* must be detained in police custody until the date, stated in the warrant, when he or she must again appear in court, this amounts to an error on the part of the presiding officer and the matter must be dealt with as set out in subparagraph (2).
- (2) The Community Service Centre Commander must —
 - (a) accept the *child* into police custody and perform the normal duties relating to the *detention* of a *child* in police custody;
 - (b) make an entry in the Occurrence Book (OB) recording the fact that the warrant for the *detention* of the *child* in police custody was erroneously issued by the presiding officer;
 - (c) complete the SAPS 583(i) (Notification of Error regarding Placement form);
 - (d) make a copy of the warrant for the *detention* of the *child* at the police station and attach the copy to the SAPS 583(i) (Notification of Error regarding Placement form); and
 - (e) ensure that —
 - (i) if the *child* is received at the police station at a time when it is still possible for the *child* to be returned to the presiding officer before the end of the court session for that day, the *child* is returned to the presiding officer immediately together with the SAPS 583(i) (Notification of Error regarding Placement form) to which the copy of the warrant for the *detention* of the *child* is attached; or
 - (ii) if the *child* is received at the police station at a time when it is no longer possible for the *child* to be returned to the presiding officer before the end of the court session for that day, the *child* must be detained in police custody until the

next court day and, at the beginning of the next court day, be returned to the presiding officer together with the SAPS 583(i) (Notification of Error regarding Placement form) to which the copy of the warrant for the *detention* of the *child* is attached.

- (3) If a *child* is erroneously placed in a *child and youth care centre* and a request is received from the *child and youth care centre* to return the *child* to the presiding officer for the error to be corrected, the station commander must instruct the investigating officer of the case in respect of which the *child* is in *detention*, if he or she is available, and, if not, another *member*, to, —
- (a) if the request is received by the station commander at a time when it is still possible for the *child* to be returned to the presiding officer before the end of the court session for that day, collect the *child* and return the *child* to the presiding officer immediately together with the Written Referral by the *child and youth care centre* to which the copy of the court order for the *detention* of the *child* at the *child and youth care centre* is attached; or
 - (b) if the request is received by the station commander at a time when it is no longer possible for the *child* to be returned to the presiding officer before the end of the court session for that day, collect the *child* at the beginning of the next court date and return the *child* to the presiding officer, together with the Written Referral by the *child and youth care centre* to which the copy of the court order for the *detention* of the *child* at the *child and youth care centre* is attached.

23. Taking of fingerprints, body-prints, photographic images and buccal sample of a child in conflict with the law

- (1) The taking, storing and use of fingerprints, body-prints or a photographic image of persons is regulated by National Instruction 2 of 2013 (The management of fingerprints, body-prints and photographic images).
- (2) The instructions set out in National Instruction 2 of 2013 (The management of fingerprints, body-prints and photographic images) also apply in respect of a *child in conflict with the law* and must accordingly be complied with. In this regard, *members* must, in particular, comply with paragraph 3 of that Instruction insofar as it provides specific instructions relating to a *child in conflict with the law*.

- (3) The taking of buccal samples from a *child in conflict with the law* must be done in accordance with the Forensic DNA Regulations issued in terms of the Criminal Law (Forensic Procedures) Amendment Act, 2013 (Act No. 37 of 2013).

24. Confession by a child in conflict with the law

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

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

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

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

- (1) If a *child* indicates to a *member* that he or she is willing to make a pointing-out, the *member* must inform the *child* that he or she —
- (a) will be taken to a magistrate or a police officer (whoever is applicable), that the pointing-out will be recorded and may be used as evidence against him or her in court;

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

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

26. Admission by a child in conflict with the law

- (1) If a *child* makes an admission, the *member* must inform the *child* that he or she is entitled to —
- (a) remain silent and does not have to make any statement or answer any question and that anything that he or she says may be written down and may be used as evidence against him or her in court;
 - (b) consult with a legal representative before making any statement or answering any question; and
 - (c) be assisted by his or her parent, *guardian* or an *appropriate person* before making any statement or answering any question.
- (2) If the *child* indicates that he or she wishes to consult with his or her legal representative before making any statement or answering any question, the *member* must —
- (a) establish who the legal representative is;
 - (b) contact the legal representative and inform him or her that the *child* wishes to consult with him or her before making any

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

the *child* has indicated that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate person* present before making any statement or answering any question;

- (ii) request the *child* to sign the entry to confirm the correctness of the entry; and
- (iii) take any statement made by the *child* by properly completing Form SAPS 3M(m).

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

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

- (2) If the *child* indicates that he or she wishes to have his or her legal representative present while the identification parade is held, the investigating officer must —
 - (a) establish who the legal representative is;
 - (b) contact the legal representative and inform him or her that the *child* wishes to have him or her present while the identification parade is held and of the time when and place where the identification parade will be held to enable him or her to attend the identification parade; and
 - (c) record in the Occurrence Book (OB) the steps that he or she has taken to inform the legal representative as set out in subparagraph (b).

- (3) If the *child* indicates that he or she wishes to have his or her parent, *guardian* or an *appropriate person* present to assist him or her during the identification parade, the *member* must —

- (a) establish the whereabouts of the parent, *guardian* or the *appropriate person*;
 - (b) contact the parent, *guardian* or the *appropriate person* and inform him or her —
 - (i) that the *child* wishes to have him or her present during the identification parade and of the time when and place where the identification parade will be held to enable him or her to attend and assist the *child* during the identification parade; and
 - (ii) that he or she is entitled to attend the identification parade and may assist the *child* during the identification parade; and
 - (c) record in the Occurrence Book (OB) the steps that he or she has taken to inform the parent, *guardian* or the *appropriate person* as set out in subparagraph (b).
- (4) If the *child* indicates that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate person* present to assist him or her during the identification parade, the *member* must —
- (a) make an entry in the Occurrence Book (OB) stating that the *child* was informed as set out in subparagraph (1) but that the *child* has indicated that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate person* present to assist him or her during the identification parade;
 - (b) request the *child* to sign the entry to confirm the correctness of the entry; and
 - (c) if requested thereto by the *member* in charge of the identification parade, provide him or her with the contact particulars of the legal representative, parent, *guardian* or *appropriate person*.
- (5) The *member* in charge of an identification parade must, before the commencement of the parade, inform every *child* who will be required to appear as a suspect on the parade of the following:
- (a) the nature of the allegations against him or her;
 - (b) the purpose of the identification parade;
 - (c) his or her right to legal representation and afford him or her a reasonable opportunity and assist him or her to contact his or her legal representative or to secure legal representation;
 - (d) his or her right to be assisted by his or her parent, *guardian* or an *appropriate person* during the parade and assist him or her to contact his or her parent, *guardian* or an *appropriate person* to

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

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

- (1) In terms of section 141(1)(d) read with section 305(1)(c) of the *Children's Act*, any adult person who uses, procures or offers a *child* for the commission of any offence listed in Schedules 1 or 2 of the *Criminal Procedure Act*, or attempts to do so, is guilty of an offence.
- (2) In terms of section 92 of *the Act*, a court official or *probation officer* must, if it comes to his or her attention that a *child* has been used by an adult

to commit an offence referred to in Schedule 1 or 2 of the *Criminal Procedure Act*, report the information at his or her disposal in this regard, to a police official.

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

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

- (1) The Head: Criminal Record Centre may, in writing, authorise any *member* attached to the Criminal Record Centre of or above the rank of

Brigadier, to expunge the criminal record of a person who was convicted of an offence while that person was a *child*, upon the receipt of a certificate of expungement issued by —

- (a) the Director General of the Department of Justice and Constitutional Development; or
 - (b) the Minister of Justice and Correctional Services.
- (2) The Head: Criminal Record Centre must file every certificate referred to in subparagraph (1) and keep record of the date of the receipt of the certificate, the date upon which the record of the conviction and sentence was removed and the official who removed it.
- (3) The Head: Criminal Record Centre must, upon receipt of a written request from any person whose criminal record has been expunged in accordance with this paragraph, in writing confirm that the criminal record of the *child* has been expunged.

ANNEXURE A**SCHEDULE 1**

1. Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen or theft by false pretences, where the amount involved does not exceed R 2 500.
2. Fraud, extortion, forgery and uttering or an offence referred to in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), where the amount involved does not exceed R 1 500.
3. Malicious injury to property, where the amount involved does not exceed R 1 500.
4. Common assault where grievous bodily harm has not been inflicted.
5. Perjury.
6. Contempt of court.
7. Blasphemy.
8. Compounding.
9. Crimen iniuria.
12. Defamation.
11. Trespass.
12. Public Indecency.
13. Engaging sexual services of persons 18 years or older, referred to in section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007).
14. Bestiality, referred to in section 13 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
15. Acts of consensual sexual penetration with certain children (statutory rape) and acts of consensual sexual violation with certain children (statutory sexual assault), referred to in and subject to sections 15 and 16 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
16. Any offence under any law relating to the illicit possession of dependence-producing drugs, other than any offence referred to in Item 17 of this Schedule, where the quantity involved does not exceed R 500 in value.
17. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period of no longer than three months or a fine for that period, calculated in accordance with the Adjustment of Fines Act, 1991 (Act No. 121 of 1991).
18. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

ANNEXURE B**SCHEDULE 2**

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

21. Any offence relating to criminal gang activities referred to in Chapter 4 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).
22. Any contravention of section 2 of the Animals Protection Act, 1962 (Act No. 71 of 1962).
23. Any offence under any law relating to the illicit possession of dependence-producing drugs, other than any offence referred to in Item 24 of this Schedule, where the quantity involved exceeds R 500 but does not exceed R 5 000 in value.
24. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding three months but less than five years or a fine for that period, calculated in accordance with the Adjustment of Fines Act, 1991 (Act No. 121 of 1991).
25. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.
26. Any offence contemplated in—
 - (a) section 2, 3 or 4 of the Cybercrimes Act, 2020;
 - (b) section 5, 6, 7 or 11(1) of the Cybercrimes Act, 2020, where the damage caused does not exceed an amount of R5000;
 - (c) section 14, 15 or 16 of the Cybercrimes Act, 2020; or
 - (d) section 8, 9 or 10 of the Cybercrimes Act, 2020, where the amount involved does not exceed R1500.
27. An offence contemplated in section 11A(1) and (2) of Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

ANNEXURE C

SCHEDULE 3

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

- Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
13. Any offence provided for in sections 4, 5, 6, or 7 or involvement in these offences as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2013.
 14. Any offence referred to in Parts 1, 2 and 3 of Chapter 2 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004).
 15. Any offence relating to—
 - (a) racketeering activities referred to in Chapter 2; or
 - (b) the proceeds of unlawful activities referred to in Chapter 3, of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).
 16. The crimes of genocide, crimes against humanity and war crimes referred to in the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002).
 17. Any offence under any law relating to—
 - (a) the dealing in or smuggling of ammunition, firearms, explosives or armament;
 - (b) the possession of firearms, explosives or armament.
 18. Any offence referred to in section 13(f) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992).
 19. Any offence of a serious nature if it is alleged that the offence was committed by a person, group of persons, syndicate or any enterprise, acting in the execution or furtherance of a common purpose or conspiracy.
 20. Any offence under any law relating to the illicit possession of dependence producing drugs, other than an offence referred to in Item 21 of this Schedule, where the quantity involved exceeds R 5 000 in value.
 21. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding five years or a fine for that period, calculated in accordance with the Adjustment of Fines Act, 1991 (Act No. 121 of 1991).
 22. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.
 23. Any offence contemplated in —
 - (a) section 5, 6, 7 or 11(1) of the Cybercrimes Act, 2020, where the damage caused exceeds an amount of R 5000;
 - (b) section 8, 9 or 10 of the Cybercrimes Act, 2020, where the amount involved exceeds R 1 500; or
 - (c) section 11(2) of the Cybercrimes Act, 2020.
 24. An offence contemplated in section 11A(3) of Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.