

ANNEXURE A**FORMS****REGULATIONS ON SERVICES FOR VICTIMS OF SEXUAL OFFENCES AND COMPULSORY HIV TESTING OF ALLEGED SEX OFFENDERS AND NATIONAL REGISTER FOR SEX OFFENDERS****CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT ACT, 2007
(ACT NO. 32 OF 2007)****PART I OF REGULATIONS: SERVICES FOR VICTIMS OF SEXUAL OFFENCES AND COMPULSORY HIV TESTING OF ALLEGED OFFENDERS**

Form 1	Notice of services available to victim
Form 2	Application for HIV testing of alleged offender by victim or interested person
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FORM 1

[Regulation 2(2)]

NOTICE OF SERVICES AVAILABLE TO VICTIM

Section 28(3) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)(the Act)

(To be handed to a victim of an alleged sexual offence or an interested person by the police official to whom the charge is made or by the medical practitioner or nurse to whom the incident is reported)

This information sheet will provide you with information, and give you details on the services available to a victim of an alleged sexual offence regarding the receiving of Post Exposure Prophylaxis (PEP) for possible HIV infection (Part 1 of this sheet) and for the testing of the alleged sex offender for HIV (Part 2 of this sheet).

PLEASE NOTE THE FOLLOWING:**Note:** Who is an interested person?

In terms of section 27 of the Act, an interested person is any person who has a material interest in the well-being of a victim, including

- a spouse;
 - a parent;
 - a family member;
 - a curator;
 - a medical practitioner;
 - a social worker;
 - a teacher;
 - a same sex or heterosexual permanent life partner;
 - a guardian;
 - a care giver;
 - a counsellor;
 - a health service provider;
- of such victim.*

PART 1: ACCESS TO POST EXPOSURE PROPHYLAXIS**What is HIV infection?**

HIV refers to infection with the human immuno-deficiency virus. HIV destroys important cells which control and support the immune system. As a result the body's natural defence mechanisms cannot offer any resistance against illnesses. Most people infected with HIV ultimately develop AIDS and die as their bodies can no longer offer any resistance to illnesses such as TB, pneumonia and meningitis. Infection with HIV therefore has serious consequences for you as an individual. There is currently no cure for HIV/AIDS.

How is HIV transmitted?

HIV is transmitted in three ways: via sexual intercourse; when HIV infected blood is passed directly into the body; and from mother to child during pregnancy, childbirth or whilst breast feeding.

Can I be exposed to HIV during a sexual offence?

Yes you can if the alleged offender's blood, semen or vaginal fluid entered your body through a cut or abrasion on your skin, or for example, if you have been raped vaginally or anally and the alleged offender's semen entered your body and he or she is infected with HIV.

What is PEP?

PEP is an anti-viral therapy designed to reduce the possibility of an individual becoming infected with HIV after a known exposure to the virus. The treatment usually involves the administration of a group of drugs (or certain medicine on its own) which act against HIV.

It is therefore important that PEP be administered to you as soon as possible after the sexual offence has taken place, but at the latest within 72 hours after the alleged sexual offence has taken place. PEP does not work anymore if started more than 72 hours after exposure to the HIV virus. It will therefore only be given to you within this time frame. PEP is administered at a public health establishment which has been designated by the Minister of Health. It is also done at State expense. A list of the designated health establishments within reasonable distance from the police station where the complaint is laid or from the public health establishment where the incident is reported, is attached to this notice. You will be given free medical advice surrounding the administering of PEP, prior to the administering thereof. It is important to remember that PEP will not be given to you without your consent.

Can I put other people at risk of HIV infection because of my possible exposure to HIV?

You cannot transmit HIV through daily contact with other people. HIV is not transmitted through hugging, shaking hands, and sharing food, water or utensils. However, because HIV is, among others, transmitted through sexual intercourse, you may have become infected through the alleged sexual offence and may in turn infect your sexual partner with whom you have sex after the sexual offence has been committed against you. You should practice safe sex until you have established with certainty that you have not been infected. If you are pregnant, there is a possibility that you could transmit HIV to your unborn child. If you are breast feeding there is also a possibility that your child may be at risk of contracting HIV infection. ***You must obtain expert advice (which may include advice from one of the service providers mentioned on the last page of this sheet) to deal with the implications of the risk of infection for yourself, your sexual partner and others.***

What about other sexually transmitted infections?

If there is a possibility that you may have been exposed to the blood, semen or vaginal fluids of the alleged offender, you may also be at risk of infection with other sexually transmitted infections. It is in your own interest to obtain medical advice and, where necessary, medical assistance regarding your possible exposure to other sexually transmitted infections.

PART 2: COMPULSORY HIV TESTING OF ALLEGED SEX OFFENDER

How could I deal with my possible exposure to HIV during the alleged sexual offence?

You can apply to a magistrate to have the alleged offender tested for HIV, and the results disclosed to you.

Knowing the HIV status of the alleged sex offender may place you in a better position to—

- determine whether you were exposed to the risk of HIV infection when the alleged sexual offence was committed against you; and
- make decisions regarding the protection of your sexual partner and others against HIV infection.

However, you must obtain expert advice to deal with the implications of the risk of infection for yourself, your sexual partner and others. The test result from a compulsory HIV test may not be reliable because the alleged

sexual offender may be in the window period while he or she is tested for HIV. This means that the test result may show that the alleged sexual offender is negative although he or she is, in fact, HIV positive. You must therefore talk to an expert before you make any medical or lifestyle decisions based on the test result. Furthermore, please take into account that an HIV positive test result does not mean that the virus was necessarily transmitted to you during the sexual offence.

It is in your own best interest to have yourself tested for HIV when you feel ready to do so. In the meanwhile, make sure that you practice safer sex.

How can I apply for HIV testing of the alleged sex offender?

- Lay a charge at the police station nearest to where the offence took place.
- The charge will be investigated by the police, but you may immediately apply for the HIV testing of the alleged sex offender.
- Inform the investigating officer that you wish to apply for HIV testing of the alleged offender.
- Complete an application form obtainable from the investigating officer for an order for HIV testing with the assistance of the investigating officer.
- Hand the completed and signed application to the investigating officer.

Who will consider my application?

The investigating officer will submit your completed application to a magistrate who will consider the application during court hours in his or her office. The magistrate may, however, request further evidence, either orally or by affidavit and may also question the alleged offender. The Act requires that the investigating officer must inform you of the decision of the magistrate who considered your application.

What will happen if the magistrate has ordered that the alleged offender must be tested for HIV?

The investigating officer will ensure that two blood specimens are on the same occasion taken from the alleged offender and tested for HIV.

Who will pay for the HIV testing?

The State.

How will I be informed about the HIV test result?

The investigating officer will as soon as possible ensure that you receive a sealed envelope containing the HIV test result, as well as information on where you can get help in dealing with the test results and the implications thereof.

May I disclose the alleged offender's HIV test result to other people?

In terms of the Act the HIV test results may only be disclosed to the victim or the interested person who initiated the application for the compulsory HIV testing of the alleged offender, the alleged offender, the investigating officer, and

where applicable a prosecutor or any other person who needs to know the test results for purposes of any civil proceedings or an order of a court.

Cut-off period for bringing an application

A limited period of time is allowed for HIV testing of an alleged sex offender. You must apply for such testing within 90 days after the alleged sexual offence has taken place (the 90 days is called a window period, namely, the period within which the test result from a compulsory HIV test may not be reliable because the alleged sexual offender may be in the window period while he or she is tested for HIV. This means that the test result may show that the alleged sexual offender is negative although he or she is, in fact, HIV positive). It is therefore advised that if you decide to apply for having the alleged sex offender tested for HIV, you do it as soon as possible after the alleged offence. However, it is in your own best interest to have yourself tested for HIV.

Service organisations which can provide counselling and support

Expert assistance in dealing with the implications of HIV test results is available at a number of different service providers. These include:

- Private medical and social facilities (eg a general medical practitioner or psychologist).
- Public medical and social facilities, including—
 - Life Line
 - Child Line
 - Child protection organizations
 - Local State Hospitals and Clinics
 - Rape Crisis
 - FAMSA
 - Regional Departments of Social Welfare
 - Local AIDS Service Organisations

Contact details of the above service providers are available in the telephone directory and from the investigating officer.

FORM 2

[Regulation 3(1)]

APPLICATION FOR HIV TESTING OF ALLEGED OFFENDER BY VICTIM OR INTERESTED PERSON

Section 30 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)(the Act)

PLEASE READ THE NOTES BEFORE COMPLETING THE APPLICATION FORM

Note 1: *The investigating officer must assist the victim or interested person with the completion of the Form.*

Note 2: *If the application is brought by an interested person, this application must be brought with the written consent of the victim, unless the victim is—*

- *under the age of 14 years;*

- a person who is mentally disabled;
- unconscious;
- a person in respect of whom a curator has been appointed in terms of an order of court;
- a person whom the magistrate is satisfied is unable to provide the required consent.

The written consent must be attached to this application form.

Note 3: Who is an interested person?

In terms of section 27 of the Act, an interested person is any person who has a material interest in the well-being of a victim, including—

- a spouse;
- a parent;
- a family member;
- a curator;
- a medical practitioner;
- a social worker;
- of such victim.
- a same sex or heterosexual permanent life partner;
- a guardian;
- a care giver;
- a counsellor;
- a health service provider;
- a teacher,

Note 4: Misuse and abuse of this procedure

The procedure to establish an alleged offender's HIV status without obtaining his or her consent for HIV testing has been created strictly for the purpose of assisting victims of sexual offences. If you have not been the victim of a sexual offence, or act on behalf of someone who has not been the victim of a sexual offence, and abuse this procedure to establish another person's HIV status with malicious intent (for example, to disclose such person's HIV status to another person), you may be prosecuted and convicted of an offence and sentenced to a fine or to imprisonment for a period not exceeding three years.

Note 5: *If you maliciously or grossly negligently disclose the alleged sexual offender's HIV status, you may be convicted of an offence and sentenced to a fine or to imprisonment for a period not exceeding three years.*

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF

HELD AT

CASE NO.....

1. APPLICATION

To the clerk of the court,

Take notice that(the *victim/*interested person) makes application in terms of section 30 of the Act to this Court for an order –

- (a) *that the alleged sex offender, described below, be tested for HIV; and
- (b) that the HIV test results be disclosed to (the *victim/ *interested person) and to the alleged offender; or
- (c) *that the test results of the alleged offender, which has already been obtained on application by an investigating officer as contemplated in section 32 of the Act, be disclosed to (the *victim/ * interested person).

* Delete whichever is not applicable

**PART A: DECLARATION BY VICTIM OR INTERESTED PERSON
ACTING ON BEHALF OF VICTIM**

2. PARTICULARS OF VICTIM:

Full names and surname:

Any other surnames:
 Date of birth:
 Age:
 Identity number/ passport number:

3. PARTICULARS OF INTERESTED PERSON, IF APPLICABLE

Name:
 Date of birth:
 Identity number/ passport number:
 Relationship with victim (eg parent):

If interested person is not the spouse, same sex or heterosexual permanent life partner or parent of the victim, state the reason why application is made on behalf of victim:

4. WRITTEN CONSENT OF VICTIM IF APPLICATION IS BROUGHT BY INTERESTED PERSON

*(a) Written consent has been obtained and is attached: Yes/No.....

*(b) Written consent is not necessary since the victim is—

- under the age of 14 years;
 - a person who is mentally disabled;
 - unconscious;
 - a person in respect of whom a curator has been appointed in terms of an order of court;
 - unable to provide consent because:
-

** Delete whichever is not applicable*

5. PARTICULARS OF ALLEGED SEXUAL OFFENCE AND POSSIBLE EXPOSURE TO OFFENDER'S BODY FLUID

(To be completed by the victim or the interested person acting on his or her behalf or by the investigating officer)

(a) A sexual offence was committed against the victim by the alleged offender, of which the particulars are as follows:

- (i) Date, place and time of alleged offence:
-
- (ii) Description of alleged offence:
-

(b) The victim may have been exposed to the risk of being infected with HIV as a result of the alleged sexual offence, because the victim was exposed to body fluids (semen, blood, vaginal fluid) of the alleged sex offender.

(Attach copy of J88 or medical report if available):

.....
.....

- (c) The alleged offence has been reported to the South African Police Service.
- (d) Less than 90 days have elapsed from the date on which it is alleged that the offence took place.

***6. PARTICULARS OF APPLICATION ALREADY BROUGHT BY INVESTIGATING OFFICER IN TERMS OF SECTION 32 OF THE ACT**

Reference number:

Date of application:

Name of Magistrate's Office where application was granted:

Where is extra test result kept?

** Delete if not applicable*

.....
SIGNATURE/ THUMB PRINT/ MARK OF VICTIM OR INTERESTED PERSON

.....

DATE

.....

PLACE

7. AFFIDAVIT/ SOLEMN DECLARATION BY VICTIM OR INTERESTED PERSON ACTING ON HIS OR HER BEHALF

(To be completed by a Justice of the Peace or Commissioner of Oaths)

I,

(the* victim/*interested person), declare under oath or solemn declaration that the particulars and information given in this application are to the best of my knowledge true and correct.

.....
SIGNATURE/ THUMB PRINT/ MARK OF VICTIM OR INTERESTED PERSON

.....

DATE

.....

PLACE

I hereby certify that before administering the*oath/taking the affirmation I asked the deponent the following questions and noted *his/her answers in *his/her presence as indicated below:-

(a) Do you know and understand the contents of the above declaration?

Answer—

(b) Do you have any objection to taking the prescribed oath?

Answer—

(c) Do you consider the prescribed oath to be binding on your conscience?

Answer—

I hereby certify that the deponent has acknowledged that *he/she knows and understands the contents of this declaration which was sworn to/affirmed before me, and the deponent's *signature/thumb print/mark was placed thereafter in my presence.

Dated at..... this day of..... 20.....

SIGNED: Justice of the Peace/ Commissioner of Oaths

Full names:
Designation:
Area for which appointed:
Business address:

**Delete whichever is not applicable*

PART B: ALLEGED OFFENDER

1. PARTICULARS OF ALLEGED OFFENDER CHARGED WITH COMMITTING ALLEGED SEXUAL OFFENCE

(To be completed by the investigating officer)

A charge in respect of an alleged sexual offence has been laid against the alleged sex offender whose particulars appear below by the victim whose particulars appear in PART A.

Name:
Date of birth:
Age:
Identity number/ passport number.....
Home address/ temporary address:
.....
Telephone number:
Cell number:
Case No (or SAPS reference no):
Offence charged with:

In custody/On bail ;(Delete if not applicable)

- **If in custody: Place:**
- **On bail: Bail conditions:**

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

.....
SIGNATURE OF INVESTIGATING OFFICER

.....
DATE

.....
PLACE

2. AFFIDAVIT/ SOLEMN DECLARATION BY INVESTIGATING OFFICER

I,, (investigating officer) with force number, hereby declare that the above information is to the best of my knowledge true and correct.

.....
SIGNATURE OF INVESTIGATING OFFICER

.....
DATE

.....
PLACE

(To be completed by a Justice of the Peace or Commissioner of Oaths)

I hereby certify that before administering the*oath/taking the affirmation I asked the deponent the following questions and noted *his/her answers in *his/her presence as indicated below:—

(a) Do you know and understand the contents of the above declaration?
Answer—

(b) Do you have any objection to taking the prescribed oath?
Answer—

(c) Do you consider the prescribed oath to be binding on your conscience?
Answer—

I hereby certify that the deponent has acknowledged that *he/she knows and understands the contents of this declaration which was sworn to/affirmed before me, and the deponent's signature was placed thereafter in my presence.

Dated at..... this day
of..... 20.....

SIGNED: Justice of the Peace/ Commissioner of Oaths

Full names:

Designation:

Area for which appointed:

Business address:

**Delete whichever is not applicable*

FORM 3

[Regulation 5(1)]

**ORDER BY MAGISTRATE FOR HIV TESTING OF ALLEGED OFFENDER
ON APPLICATION BY VICTIM OR INTERESTED PERSON**

Section 31 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) (The Act)

(To be completed by the magistrate considering the application)

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF HELD AT:

CASE NO:

DATE APPLICATION CONSIDERED:

PART A: VICTIM

1. PARTICULARS OF VICTIM

Initials and surname:

Any other surnames:

Date of birth:

Age:

2. PARTICULARS OF INTERESTED PERSON ACTING ON BEHALF OF VICTIM (IF APPLICABLE)

Initials and surname:

Any other surnames:

Date of birth:

Age:

PART B: ALLEGED OFFENDER**1. PARTICULARS OF ALLEGED OFFENDER CHARGED WITH COMMITTING SEXUAL OFFENCE**

Full names and surname:

Any other surnames:

Date of birth:

Age:

Identity number/ passport number:

Home address/ temporary address:

.....

PART C: ORDER BY THE COURT

After consideration of the application in terms of section 30 of the Act by the victim or interested person acting on behalf of the victim, I am *satisfied/*not satisfied that there is *prima facie* evidence that—

- (a) a sexual offence has been committed against the victim by the alleged offender;
- (b) the victim may have been exposed to the body fluids of the alleged offender; and
- (c) no more than 90 calendar days have lapsed from the date on which it is alleged that the offence took place, for purposes of an HIV test to be conducted in respect of the alleged offender.

**Delete whichever is not applicable*

THEREFORE THE FOLLOWING ORDER IS MADE:

*(a) The application is dismissed.

*(b) The application is granted for—

- (i) the collection on the same occasion from the alleged offender of two blood specimens;
- (ii) the performance on the blood specimens of one or more HIV tests as are reasonably necessary to determine the presence or absence of HIV infection; and
- (iii) the disclosure of the HIV test results in the manner prescribed in regulation 5(4)(a) of the Regulations, to—
 - (aa) the victim or the interested person acting on his or her behalf; and
 - (bb) the alleged offender.

(c) The investigating officer must *as soon as is reasonably practicable/ *within day(s) after this order has been granted notify the offender of the order on the prescribed form.

*(d) The HIV test results obtained from the offender as a result of an application by an investigating officer in terms of section 32 of the Act must—

- (i) be disclosed to the victim or interested person in the manner prescribed in regulation 5(4)(b) of the Regulations; and
- (ii) be handed to the victim or interested person *as soon as is reasonable practicable/*within days after this order has been granted.

**Delete whichever is not applicable*

OFFICIAL STAMP

.....
SIGNATURE OF MAGISTRATE

.....
DATE

FORM 4

[Regulations 5(4)(a)(i) and 6(8)(a)(i)]

NOTICE TO OFFENDER REGARDING ORDER FOR HIV TESTING

Section 31(5)(b) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)(the Act)

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF

HELD AT

CASE NO.:.....

(To be handed to the alleged offender by the investigating officer)

To:

(alleged offender) charged with the offence of

.....

against (the victim).

The purpose of this notice is to provide you with information about an order of court which has been obtained to have you tested for HIV without your consent, and for your HIV status to be disclosed to your alleged victim or an interested person acting on behalf of the alleged victim or to an investigating officer, and, where applicable, to the prosecutor who needs to know the results for purposes of the prosecution of the matter in question or any other court proceedings.

What is HIV infection?

HIV refers to infection with the human immuno-deficiency virus. HIV destroys important cells which control and support the immune system. As a result the body's natural defence mechanisms cannot offer any resistance against illnesses. Most people infected with HIV ultimately develop AIDS and die as their bodies can no longer offer any resistance to illnesses such as TB, pneumonia and meningitis. Infection with HIV therefore has serious consequences for you as an individual. There is currently no cure for HIV/AIDS.

How is HIV transmitted?

HIV is transmitted in three ways: via sexual intercourse; when HIV infected blood is passed directly into the body; and from mother to child during pregnancy, childbirth or whilst breast feeding.

Can HIV be transmitted during a sexual offence?

Yes. If there has been any exposure to HIV infected blood, semen or vaginal fluid during the alleged offence, HIV may have been transmitted.

Why should I be tested for HIV?

You may have exposed the victim to HIV during the alleged sexual offence or offence as defined in section 27 of the Act with which you are charged. (Section 27 of the Act defines a "sexual offence" as a sexual offence in terms of which the victim may have been exposed to body fluids of the alleged offender, and an "offence" is defined as any offence, other than a sexual offence, in which the HIV status of the alleged offender may be relevant for purposes of investigation or prosecution). In the light of the serious consequences of HIV infection and victims' fear of becoming infected with HIV, they have been granted a right to apply for the HIV testing of their alleged offenders and for the disclosure of the test results. Furthermore, investigating officers may also apply to have alleged offenders tested for HIV.

How will knowledge about my HIV status help the alleged victim?

The information may help him or her—

- to decide whether to submit himself or herself to medical treatment which is costly and has serious side effects but could prevent him or her contracting the virus;
- to take measures to prevent the virus from being further transmitted from himself or herself to other people (eg to the victim's sexual partner, or to her baby if she is pregnant or breast-feeding);
- to provide the victim with peace of mind regarding his or her possible exposure to HIV during the sexual offence.

Who has granted the order that I be tested for HIV?

A magistrate from the magistrate's office in the district in which you allegedly committed the sexual offence or offence has granted the order.

On what basis has the court order been granted?

The magistrate has granted the order after considering evidence on oath by the person who applied to have you tested for HIV and by the investigating officer. The magistrate is satisfied on a *prima facie* basis—

- that you committed a sexual offence or offence against the victim who applied, or on whose behalf it was applied, to have you tested for HIV;
- that in the course of such offence the victim may have been exposed to your body fluids (semen, blood or vaginal fluid); and
- that no more than 90 calendar days have lapsed from the date on which it is alleged that the offence in question took place.

You must note that the existence of *prima facie* evidence against you does not mean that if the criminal case against you went to trial you would be convicted of the crime. The State will still have to prove beyond reasonable doubt that you committed the offence you were charged with. *Prima facie* evidence is being used only for the application to have you tested for HIV without your consent.

May I refuse to have body specimen tested for HIV?

No. It is an order of court. The magistrate may also issue a warrant of arrest if there is reason to believe that you may avoid compliance with such order or if you have avoided compliance with the order. If you fail or refuse to comply with or avoid compliance with a court order that you be tested for HIV, you are guilty of an offence and may be liable on conviction to a fine or to imprisonment for a period not exceeding three years.

How will I be tested for HIV?

The investigating officer will take you to a registered medical practitioner or nurse who will on the same occasion take two blood specimens from you. The investigating officer will take the properly identified specimens to a designated public health establishment where they will be tested for HIV.

Who will pay for the HIV test?

The State.

Will I be informed about the result of the HIV test?

Yes. The investigating officer will ensure that you receive the HIV test result and information on where you can get help with understanding the implications of the result.

What if the charge against me is a false charge?

Any person who, with malicious intent lays a charge with the South African Police Service in respect of an alleged sexual offence and makes an application in terms of section 30(1), with the intention of ascertaining the HIV status of any person, is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding three years.

Will the test result be disclosed to other people?

In terms of the Act the HIV test results may only be disclosed to the victim or the interested person who initiated the application for the compulsory HIV testing of the alleged offender, yourself (the alleged offender), the investigating officer, and where applicable a prosecutor or any other person who needs to know the test results for purposes of any civil proceedings or an order of a court.

Will the test result be used in the trial against me?

Yes. Section 34 of the Act provides that the results of an HIV test may be used as evidence in any ensuing civil proceedings as a result of the sexual offence in question or to enable the investigating officer to gather information with the view to using it as evidence in criminal proceedings.

How does my HIV status affect others?

Your HIV status does not only have serious implications for your alleged victim, but also for your own health and the health of others (eg your sexual partner or baby). Every person has a responsibility to ensure that they don't put others

at risk of HIV infection. It is important that you get expert advice, assistance and information on treatment if you are HIV positive and how to protect yourself and others against infection with HIV.

Service organisations which can provide counselling and support

Expert assistance in dealing with the implications of HIV test results is available at a number of different service providers. These include:

- Private medical and social facilities (eg a general medical practitioner or psychologist).
- Public medical and social facilities, including—
 - Life Line
 - Child Line
 - Child protection organisations
 - Local State Hospitals and Clinics
 - Rape Crisis
 - FAMSA
 - Regional Departments of Social Welfare
 - Local AIDS Service Organisations

Contact details of the above service providers are available in the telephone directory, from the investigating officer, and from the prison authorities.

FORM 5

[Regulation 6(1)]

APPLICATION FOR HIV TESTING OF ALLEGED OFFENDER

BY INVESTIGATING OFFICER

**Section 32 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007
(Act No. 32 of 2007)(the Act)**

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF

HELD AT

CASE NO.:

1. APPLICATION

To the clerk of the court,

Take notice that(the investigating officer) makes application in terms of section 32 of the Act to this Court for an order—

- (a) that the alleged sex offender, described below, be tested for HIV; or
- (b) that the HIV test results in respect of the alleged offender, already obtained on application by a victim or interested person on behalf of a victim as contemplated in section 30 of the Act, be made available—
 - (i) to(the investigating officer); and/or
 - (ii) to

(the prosecutor who needs to know the results for purposes of the prosecution of the matter in question or any other court proceedings, contemplated in section 32(1)(b) of the Act.)

2. PARTICULARS OF VICTIM:

Full names and surname:
Any other surnames:
Date of birth:
Age:
Identity number/ passport number:

3. PARTICULARS OF ALLEGED OFFENDER CHARGED WITH COMMITTING SEXUAL OFFENCE OR OFFENCE AS DEFINED IN SECTION 27 OF THE ACT

Full names and surname:
Any other surnames:
Date of birth:
Age:
Identity number/passport number:

4. GROUNDS FOR APPLICATION

On the strength of information taken on oath or by way of solemn declaration, in which it is alleged that a sexual offence or offence as defined in section 27 of the Act was committed by the alleged offender, the application is based on the following grounds:.....
.....
.....
.....

***5. PARTICULARS OF APPLICATION ALREADY BROUGHT BY VICTIM OR INTERESTED PERSON IN TERMS OF SECTION 30 OF THE ACT**

Date of application:
Magistrate's Office where application was granted:
Where is test result kept?

** Delete if not applicable*

6. AFFIDAVIT/SOLEMN DECLARATION BY INVESTIGATING OFFICER

I,..... (the investigating officer) with force number..... hereby declare that the above information is to the best of my knowledge true and correct.

.....

SIGNATURE OF INVESTIGATING OFFICER

.....

PLACE

.....

DATE

(To be completed by a Justice of the Peace/Commissioner of Oaths)

I hereby certify that before administering the*oath/taking the affirmation I asked the deponent the following questions and noted *his/her answers in *his/her presence as indicated below:—

(a) Do you know and understand the contents of the above declaration?

Answer—

(b) Do you have any objection to taking the prescribed oath?

Answer—

(c) Do you consider the prescribed oath to be binding on your conscience?

Answer—

I hereby certify that the deponent has acknowledged that *he/she knows and understands the contents of this declaration which was sworn to/affirmed before me, and the deponent's signature was placed thereafter in my presence.

Dated at..... this day
of..... 20.....

.....

SIGNED: Justice of the Peace/ Commissioner of Oaths

Full names:

Designation:

Area for which appointed:

Business address:

.....

**Delete whichever is not applicable*

FORM 6

[Regulation 6(5)]

ORDER BY MAGISTRATE FOR HIV TESTING OF ALLEGED OFFENDER ON APPLICATION BY INVESTIGATING OFFICER

Section 32 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) (the Act)

(To be completed by the magistrate considering the application)

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF HELD AT:

.....

CASE NO:

DATE APPLICATION CONSIDERED:

1. PARTICULARS OF VICTIM

Initials and surname:

Any other surnames:.....

Date of birth:

Age:

2. PARTICULARS OF ALLEGED OFFENDER CHARGED WITH COMMITTING SEXUAL OFFENCE OR OFFENCE AS DEFINED IN SECTION 27 OF THE ACT

Full names and surname:

Any other surnames:

Date of birth:.....

Age:

Identity number/ passport number:

3. ORDER BY THE COURT

After consideration of the application in terms of section 32 of the Act by the investigating officer, I am *satisfied/*not satisfied that there is *prima facie* evidence that—

- (a) a sexual offence or offence as defined in section 27 of the Act has been committed by the offender; and
- (b) HIV testing would appear to be necessary for purposes of investigating or prosecuting the offence.

**Delete whichever is not applicable*

THEREFORE THE FOLLOWING ORDER IS MADE:

*(a) The application is dismissed.

*(b) The application is granted for—

- (i) the collection on the same occasion from the alleged offender of two blood specimens;
- (ii) the performance on the blood specimens of one or more HIV tests as are reasonably necessary to determine the presence or absence of HIV infection in the alleged offender; and
- (iii) the disclosure of the HIV test results—
 - (aa) by the health establishment to the investigating officer in the manner prescribed in regulation 8 of the Regulations; or
 - (bb) by the investigating officer to the prosecutor who needs to know the results for purposes of the prosecution of the matter in question or any other court proceedings as contemplated in section 32 read with section 66 of the Act; and

(cc) by the investigating officer to the alleged offender, if the results have not already been made available to him or her as contemplated in section 30(1)(a)(i) of the Act in the manner prescribed in regulation 6(8)(a)(iii) of the Regulations.

*(c) The HIV test results of the alleged offender obtained as a result of an application by a victim or interested person in terms of section 30 of the Act must be disclosed to the investigating officer.

*Delete whichever is not applicable

OFFICIAL STAMP

SIGNATURE OF MAGISTRATE

DATE

FORM 7

[Regulation 8(1)]

RECORDING OF HIV TEST RESULTS OBTAINED IN TERMS OF AN ORDER BY MAGISTRATE

Section 33(1)(d)(ii) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)(the Act)

(To be completed by the head of a public health establishment designated in terms of section 29 of the Act or by a person designated in writing by the head of such establishment)

Name of Health Facility:.....

OFFICIAL STAMP OF HEALTH ESTABLISHMENT

Case No:

Date test performed:20.....

PART A: PARTICULARS OF ALLEGED OFFENDER

Full names:

Date of birth:.....

Age:

Identity number/ passport number:

Home address/ temporary address:

.....

PART B: PARTICULARS OF HIV TESTS PERFORMED

Type of HIV tests performed:

PART C: RESULTS OF HIV TESTS*(Mark relevant block with a cross)***Positive** **Negative**

Remarks:

**PART D: PARTICULARS OF DESIGNATED HEALTH ESTABLISHMENT
PERFORMING HIV TESTS AND WHERE EXTRA TEST RESULT WILL BE KEPT:**

Address:

.....

Telephone No:

Name of person who performed the tests:.....

Signature of person who performed the tests:.....

FORM 8**[Regulations 5(4) and 6(8)]****NOTICE CONTAINING INFORMATION ON CONFIDENTIALITY OF AND HOW TO DEAL WITH HIV TEST
RESULTS****Section 33(1)(e) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007
(Act No. 32 of 2007)(the Act)***(To be handed to:(a)The victim or interested person acting on his or her behalf who applied to have the alleged
offender tested for HIV; and (b)the alleged offender who has been tested for HIV)*

The purpose of this information sheet is to provide a victim or interested person acting on his or her behalf, and the alleged offender with information on the confidentiality and how to deal with receiving information about the outcome of a compulsory HIV test.

How will I be told about the HIV Test Results?

The results will be made available to you in a sealed envelope, marked "Confidential/Vertroulik".

What will be contained within the sealed envelope?

The sealed envelope will contain a document completed by a person attached to the health establishment who performed the HIV testing on the blood specimens of the alleged offender. The form will state whether the HIV test result was positive or negative.

If I am the victim, may I disclose the alleged offender's HIV status to other people?

In terms of the Act the HIV test results may only be disclosed to the victim or the interested person who initiated the application for the compulsory HIV testing of the alleged offender, the alleged offender, the investigating officer, and where applicable a prosecutor or any other person who needs to know the test results for purposes of any civil proceedings or an order of a court.

What should I do with the HIV test result?

Every person receiving an HIV test result should get expert assistance in understanding and dealing with it regardless of whether the test result was positive or negative. Expert assistance will help you to—

- understand the test result;
- deal with immediate emotional reactions and concerns;
- understand how the result will affect your future health and the health of others (eg your sexual partner);
- identify the need for social and medical care; and
- understand the legal implications regarding the disclosure of the test result to others.

Service organisations which can provide counselling and support

Expert assistance in dealing with the implications of HIV test results is available at a number of different service providers. These include:

- Private medical and social facilities (eg a general medical practitioner or psychologist).
- Public medical and social facilities, including—

● Life Line	● Rape Crisis
● Child Line	● FAMSA
● Child protection organisations	● Regional Departments of Social Welfare
● Local State Hospitals and Clinics	● Local AIDS Service Organisations

Contact details of the above service providers are available in the telephone directory, or from the investigating officer.

If, after reading this notice, there is anything you do not understand, ask the investigating officer, one of the service providers cited above or the Department of Correctional Services' Social Worker for assistance.

FORM 9**[Regulation 10(3)]****APPLICATION FOR WARRANT OF ARREST**

Section 33(3) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)(the Act)

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OFHELD

AT

CASE NO.

1. APPLICATION

I,, (the investigating officer), hereby make application to the Magistrate,, in terms of section 33(3) of the Act to issue a warrant of arrest of the alleged offender as described below as—

*(a) there is reason to believe that he or she may avoid compliance with an order contemplated in section 31(3) or section 32(3) of the Act; or

*(b) he or she has avoided compliance with an order contemplated in section 31(3) or section 32(3) of the Act.

2. PARTICULARS OF ALLEGED OFFENDER CHARGED WITH COMMITTING SEXUAL OFFENCE OR OFFENCE

Full names and surname:

Any other surnames:

Date of birth:

Age:

Identity number/ passport number:

Home address/ temporary address:

.....

*The offender has not been arrested for the alleged sexual offence or offence.

* The offender is out on bail. Bail conditions:

.....

** Delete whichever is not applicable*

3. ORDER CONTEMPLATED IN SECTION 31(3) OR SECTION 32(3) OF THE ACT

The order contemplated in section 31(3) or section 32(3) of the Act—

*(a) was granted on..... A copy of such order is attached hereto.

*(b) is being applied for simultaneously with this application.

** Delete whichever is not applicable*

4. GROUNDS FOR APPLICATION

The application is brought on the following grounds:

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

5. OATH/SOLEMN DECLARATION BY INVESTIGATING OFFICER

I, (the investigating officer) with force number..... hereby declare that the above information is to the best of my knowledge true and correct.

.....
SIGNATURE OF INVESTIGATING OFFICER

.....
PLACE

.....
DATE

(To be completed by a Justice of the Peace/ Commissioner of Oaths)

I hereby certify that before administering the*oath/taking the affirmation I asked the deponent the following questions and noted *his/her answers in *his/her presence as indicated below:—

(a) Do you know and understand the contents of the above declaration?

Answer—

(b) Do you have any objection to taking the prescribed oath?

Answer -

(c) Do you consider the prescribed oath to be binding on your conscience?

Answer—

I hereby certify that the deponent has acknowledged that *he/she knows and understands the contents of this declaration which was sworn to/affirmed before me, and the deponent's signature was placed thereafter in my presence.

Dated at..... this day of..... 20.....

.....
SIGNED: Justice of the Peace/ Commissioner of Oaths

Full names:

Designation:

Area for which appointed:

Business address:

.....
**Delete whichever is not applicable*

[Regulation 10(4)]

WARRANT OF ARREST

Section 33(3) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)(the Act)

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF.....HELD AT

CASE NO.

To the investigating officer,

You are hereby commanded to arrest (the alleged offender) who—

- *(a) it is believed may avoid compliance with an order that he or she be tested for HIV in terms of section 31 or section 32 of the Act; or
- *(b) has avoided compliance with an order that he or she be tested for HIV in terms of section 31 or section 32 of the Act,

and to take him or her without any delay after arrest to any medical practitioner or nurse to take the prescribed blood specimens for HIV testing as ordered by this Court on

* Delete whichever is not applicable

Dated at on this day of20.....

.....
Magistrate Date
Magistrate's Court

