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GOVERNMENT NOTICE

DEPARTMENT OF CORRECTIONAL SERVICES

No. R. 323 **25 April 2012**

CORRECTIONAL SERVICES ACT, 1998 as amended

PROMULGATION OF CORRECTIONAL SERVICES REGULATIONS WITH AMENDMENTS INCORPORATED

The Minister of Correctional Services has under Section 134 of the Correctional Services Act, 1998 (Act No. 111 of 1998) made amendments on 1 March 2012 as promulgated in Government Gazette no. 35032 dated 27 February 2012 to the Correctional Services Regulations 2004 promulgated in the Government Gazette no. 26626 dated 30 July 2004 and is this Government Notice the Correctional Services Regulations with the amendments incorporated

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CORRECTIONAL SERVICES REGULATIONS

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REGULATIONS

The Regulations in terms of Section 134 of the Correctional Services Act, 1998 (Act No. 111 of 1998), as amended for the Administration of the Department of Correctional Services of the Republic of South Africa.

CHAPTER I

DEFINITIONS

1. Definitions

In these regulations, unless inconsistent with the context, an expression defined in the Act has the same meaning as in the Act and –

"Area Commissioner" means a correctional official, appointed by the National Commissioner, in charge of all correctional officials who are on the establishment of a management area or office or who have been attached for duty;

[Definition of "Area Commissioner" inserted by clause 2(a) of Government Gazette No. 35032 of 27 February 2012]

"Cared-for child" means the child that a female inmate is permitted, in terms of Section 20 of the Act to have with her in Correctional Centre;

"Clinical trials" means an investigation destined to discover or verify the clinical pharmacological or other pharmacodynamic effects of an investigational product on persons or to identify any adverse reactions in persons to an investigational product or to study absorption, distribution, metabolism and

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excretion of an investigational product with the object of ascertaining its safety or efficiency;

"Correctional health facility" means a facility where primary healthcare services are provided and this includes a primary healthcare clinic or in-patient facility;

[Definition of "Correctional health facility" inserted by clause 2(b) of Gazette No. 35032 of 27 February 2012]

"Correctional Services canteen" means a canteen established in terms of Section 132(1) of the Act;

"Correction supervision official" means a correctional official in control of one or more monitoring officials referred to in Regulation 27;

"Disability" means a long-term or recurring physical or mental impairment which substantially limits a person's ability to perform an activity in the manner or within a range considered normal for a human being;

"Healthcare provider" means a Correctional Medical Practitioner, medical practitioner, registered nurse or professional as defined in Section 1 of the Act and "healthcare worker" has a corresponding meaning;

"Emergency Support Team" means a team of correctional officials who are specially trained for utilisation during emergency situations to ensure a safe and secure environment within the Department;

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"Health status" means the assessment of the health of a person in terms of the absence of disease or disability and also of personal health habits, family history, occupational and environmental conditions and influences or a combination thereof which affect long-term health;

"International instrument" means international agreements, treaties, conventions, guidelines and protocols of the United Nations and other Regional institutions, to which the Republic of South Africa is signatory;

[Definition of "International instrument" inserted by clause 2(c) of Government Gazette No. 35032 of 27 February 2012]

"Primary health services" means universally accessible, first-level contact, clinic-based health services essential to enable the inmate population to acquire, maintain and promote health.

"Prison hospital" .....

[The definition of "Prison hospital" was deleted by clause 2(d) of Government Gazette No. 35032 of 27 February 2012]

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CHAPTER II

CUSTODY OF ALL INMATES UNDER CONDITIONS OF HUMAN DIGNITY

2. Admission to Correctional Centre

(1) (a) The Head of the Correctional Centre or any correctional official authorised by him or her must take into safekeeping the money, valuables and any other articles in the possession of an inmate on admission to the Correctional Centre or during the period of incarceration.

(b) The National Commissioner may prescribe by the Order the conditions for and circumstances under which taking into safekeeping, release or disposal of such money, valuables or other articles may take place.

(2) Every inmate who is admitted to a Correctional Centre must bath or shower as soon as possible after admission, as prescribed by the Order.

(3) (a) Every inmate and every cared-for child must, within twenty-four hours after admission and before being allowed to mix with the general inmate population, undergo a health status examination by either a correctional medical practitioner or registered nurse, who must record the health status of such inmate or child and confirm such person's medical history if necessary.

[Para (a) substituted by clause 3(a) of Gazette No. 35032 of 27 February 2012]

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(b) If a registered nurse has conducted such a medical examination, he or she must refer the case of the inmate or cared-for child to the Correctional Medical Practitioner as soon as reasonably possible if any of the following conditions are identified:

(i) the inmate or cared-for child who, upon admission to the Correctional Centre had been injured, was ill or has complained that he or she is injured or ill;

(ii) the inmate or cared-for child is using prescribed medication or receives medical treatment;

(iii) the inmate or cared-for child is receiving continued or ancillary medical treatment;

(iv) the inmate is pregnant; or

(v) there exists any other condition with regard to the inmate or cared-for child which the registered nurse on reasonable grounds believes requires the Correctional Medical Practitioner to issue the admission report.

(c) The Correctional Medical Practitioner or registered nurse must screen all inmates admitted to the Correctional Centre for communicable, contagious or obscure diseases and record the presence thereof, as prescribed by the Order.

(d) The Head of the Correctional Centre must facilitate the process of proper placement of a child who has been admitted with a female inmate and the Department of Social Development must immediately be informed of such female inmate as contemplated in Section 20(1A) of the Act.

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(e) Treatment of inmates must at all times be in accordance with binding, international instruments relating to their treatment.

[Second paragraph (b) of principal text as per Government Gazette 26626 of 30 July 2004 renumbered to (c) and paragraphs (c) and (d) inserted by clause 3(b) of Gazette No. 35032 of 27 February 2012 renumbered to (d) and (e)]

(4) (a) The registered nurse must upon admission record any medical assistance device in possession of an inmate.

(b) Such device may not be removed without the written instruction of the attending medical practitioner.

(5) Any medicine in possession of an inmate must be recorded and handed to the registered nurse who must deal with it as prescribed by the Order.

(6) (a) The possession of an emergency identification locket or bracelet by an inmate or cared-for child and the condition identified by it must be recorded by the registered nurse.

(b) Such a locket or bracelet may be worn by the inmate unless it constitutes a security risk.

(7) An inmate may only mix with the general inmate population after being medically assessed.

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3. Accommodation

(1) In every Correctional Centre provision must be made for general sleeping and in-patient hospital accommodation, consisting of single or communal cells or both.

(2) (a) All cell accommodation must have sufficient floor and cubic capacity space to enable the inmate to move freely and sleep comfortably within the confines of the cell.

(b) All accommodation must be ventilated in accordance with the National Building Regulations SABS 0400 of 1990 issued in terms of Section 16 of the Standards Act, 1993 (Act No. 29 of 1993).

(c) Any cell utilised for the housing of inmates must be sufficiently lighted by natural and artificial lighting so as to enable an inmate to read and write.

(d) (i) In every Correctional Centre there must be sufficient, accessible ablution facilities that must be available to all inmates at all times.

(ii) Such facilities include access to hot and cold water for washing purposes.

(iii) In communal sleeping accommodation ablution facilities must be partitioned off.

(e) (i) Every inmate must be provided with a separate bed and with bedding which provides adequate warmth for the climatic conditions and which complies with hygienic requirements as prescribed by the Order.

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(ii) In equipping a Correctional Centre hospital, provision must be made for a standard range of hospital beds, bedding and clothing that specifically suit the needs for effective patient care.

(f) Whenever separate Correctional Centres for males and females are established on the same site or on separate sites, but in proximity of each other, or whenever separate sections of a Correctional Centre are available for the reception of male and female inmates, the following requirements must be observed:

(i) The locks of the doors and gates of the Correctional Centre or section for males and those of the Correctional Centre or section for females must not correspond.

(ii) The keys of a Correctional Centre or section for females must be permanently in the possession of a female correctional official.

(iii) Any male person visiting a Correctional Centre or section for females must be accompanied by a female correctional official during the full period of such visit.

(g) Inmates of a particular security classification must be detained separately from inmates with a different security classification.

(h) Inmates between the ages of 18 and 21 years must be detained separately from inmates who are over the age of 21 years.

(i) Inmates suffering from mental or chronic illness or whose health status will be affected detrimentally or whose health status poses a threat to other inmates if detained in a communal cell, must be detained separately on request of the Correctional Medical Practitioner or registered nurse.

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4. Nutrition

(1) Each sentenced offender must be provided with a diet consisting of a minimum protein and energy content of:

(a) 2 000 kilo calories per day for adult females;

(b) 2 500 kilo calories per day for adult males; and

(c) 2 800 kilo calories per day for children, between the ages of 13 and 18 years of which at least 0.8 grams per kilogram of bodyweight per day must be from the protein group.

(2) The diet must provide for a balanced distribution of food items according to the following food groups, namely:

(a) grain;

(b) fruits and vegetables;

(c) dairy;

(d) meat and protein; and

(e) fats, oils and sugar.

[Sub-regulation (2) inserted by clause 4 of Gazette No. 35032 of 27 February 2012]

(3) Food must be stored, prepared, cooked and served in compliance with the provisions of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972) and the principles of good hygiene.

5. Clothing and Bedding

(1) On admission to a Correctional Centre, a sentenced offender must be provided with a complete outfit of clothing and bedding as prescribed by the Order and only the clothing issued may be worn, except when otherwise determined by the National Commissioner.

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(2) .....

[Sub-regulation (2) deleted by clause 5 of Gazette No. 35032 of 27 February 2012]

(3) An inmate may be allowed to wear for religious or cultural purposes such attire as prescribed by the Order.

[Erratum: The words "and sub-regulation (3) to be renumbered (2)" in clause 5 of Gazette No. 35032 of 27 February 2012 to be deleted in order to reflect the correct order of numbering]

6. Exercise

(1) The Correctional Medical Practitioner must certify whether the following categories of inmates are fit to exercise:

(a) an inmate who is injured, ill or complains that he or she is injured or ill;

(b) an inmate who receives any prescribed medicines and/or medical treatment;

(c) an inmate who receives continued or additional medical treatment; and

(d) an inmate who is pregnant.

(2) In respect of each inmate other than an inmate mentioned in sub-regulation (1), a Correctional Medical Practitioner or registered nurse must issue a certificate stating whether or not the inmate is fit for exercise.

(3) If a registered nurse in considering whether an inmate is fit for exercise, is of the opinion that the inmate is subject to any condition which should be evaluated by a Correctional Medical Practitioner, the registered nurse

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must refer the inmate to the Correctional Medical Practitioner for a decision as to whether the inmate concerned is fit for exercise.

7. Healthcare

(1) (a) Primary healthcare must be available in a Correctional Centre at least on the same level as that rendered by the State to members of the community.

(b) When a Correctional Centre is built, specifications must set for that part of the facility which will be utilised for the purposes of healthcare.

(2) The services of a Correctional Medical Practitioner and a dental practitioner must be available at every Correctional Centre.

(3) The Correctional Centre's Correctional Medical Practitioner is responsible for the general medical treatment of inmates and must treat an inmate referred to him or her as often as may be necessary.

(4) A registered nurse must attend to all sick sentenced offenders and remand detainees, which shall include pregnant women and the mentally ill, as often as is necessary, but at least once a day.

[Sub-regulation (4) substituted by clause 6 (a) of Gazette No. 35032 of 27 February 2012]

(5) If an inmate is attended to by his or her own medical practitioner of choice, such medical practitioner must provide written reports to the Correctional Medical Practitioner made pursuant to the findings of any special examination, diagnoses, proposed treatment, interventions and treatment regimes that may be prescribed by the medical practitioner.

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(6) Upon the illness of or injury to an inmate, resulting in the inmate's hospitalisation or his or her removal to an institution for treatment of a mental affliction, the Head of the Correctional Centre must inform the inmate's spouse, partner or next of kin accordingly.

(7) (a) An inmate may not, even with his or her consent, be subjected to any medical, scientific experimentation or research.

(b) An inmate may not participate in clinical trials, except with the National Commissioner's approval given on application made by the inmate.

(8) (a) A request from an inmate to donate or receive an organ or tissue by donation, in accordance with the provisions of the Human Tissue Act, 1983 (Act No. 65 of 1983) must be approved by the National Commissioner.

(b) A request from a person to receive any form of artificial fertilization in terms of the provisions of the Human Tissue Act, 1983 (Act No. 65 of 1983) from an inmate must be approved by the National Commissioner. An inmate may not receive any form of artificial fertilisation.

(9) (a) An inmate may not be sterilised at State expense unless the procedure is required for medical reasons as certified by the Correctional Medical Practitioner.

(b) The National Commissioner may approve an abortion at State expense only in the circumstances contemplated in Sections

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2(1)(b)(i), (ii) or (iii) and 2(1)(c) of the Termination of Pregnancy Act, 1996 (Act No. 92 of 1996).

(10) (a) The provision of medical assistance devices, but not including surgical implants, to inmates at State expense must be prescribed by the Order.

(b) All medical assistance devices issued to or received by an inmate from outside the Correctional Centre must be recorded.

(11) The Correctional Medical Practitioner, environmental health officer or registered nurse must inspect the Correctional Centre at least once a month and report as prescribed by the Order to the National Commissioner on problems concerning environmental health conditions and health related issues.

(12) (a) After release or placement under community corrections an injured inmate is entitled to medical treatment at departmental expense for an injury sustained in Correctional Centre until the injury is healed.

(b) Such a person may be required to report to a Correctional Centre for further treatment after release or placement under community corrections.

(c) A person injured after release or placement under community corrections is not entitled to treatment at Departmental expense.

(13) (a) An offender who is certified in terms of Chapter VII of the Mental Healthcare Act, 2002 (Act No. 17 of 2002), may not be detained in a

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Correctional Centre and must be transferred to a designated health establishment as defined in Section 1 of that Act.

[Sub-regulation 13(a) substituted by clause 6 (b) of Gazette No. 35032 of 27 February 2012]

(b) Before the transfer of such an inmate, the inmate must be placed under the special care of the Correctional Medical Practitioner.

(c) A person who is directed by a court in terms of Sections 77 or 78 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) to be detained pending the decision of a Judge in Chambers in terms of Section 47 of the Mental Healthcare Act, 2002 (Act No. 17 of 2002), must be transferred as soon as possible to a designated health establishment in terms of Section 42 of that Act.

[Sub-regulation 13(c) inserted by clause 6 (c) of Gazette No. 35032 of 27 February 2012]

8. Contact with Community

(1) The Head of the Correctional Centre must give special attention to the development and maintenance of good family relationships between inmates and their family members and other relatives.

(2) The Head of the Correctional Centre must convey any important information regarding an inmate's family, relatives or friends that may come to his or her attention, to the inmate as soon as practicable.

(3) On admission to a Correctional Centre or when an inmate is transferred, subject to the provision of Regulation 25(1)(b), the Head of the

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Correctional Centre must, allow the inmate to notify his or her spouse, partner or next of kin in the manner prescribed by the Order, unless otherwise requested in writing by the inmate.

(4) The Head of the Correctional Centre may authorise a correctional official, in writing, that communications between an inmate and a member of the public, including letters and communications, including electronic communications, in the course of a visit, be opened, read, listened to or otherwise intercepted with the assistance of an agency mandated by legislation, or blocked if not a subject of a legal privilege, by a correctional official, mechanical device, or electronic device, where the Head of the Correctional Centre believes on reasonable grounds -

(a) that the communications contain or will contain evidence of -

(i) an act that will jeopardise the security of the Correctional Centre or the safety of any person; or

(ii) a criminal offence or a plan to commit a criminal offence; and

[Sub-regulation (4) (a) substituted by clause 7 (a) of Gazette No. 35032 of 27 February 2012]

(b) that the interception of such communication is the least restrictive measure available in the circumstances.

(5) Where a communication is intercepted under sub-regulation (4), the Head of the Correctional Centre or the correctional official designated by him or her must as soon as reasonably practicable after such interception inform the inmate, in writing, of the reasons for the interception and give the inmate an opportunity to make representations with respect thereto, unless the information would adversely affect an ongoing investigation, in

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which case the inmate must be informed of the reasons and given an opportunity to make representations with respect thereto on completion of the investigation.

[Sub-regulation (5) substituted by clause 7 (b) of Gazette No. 35032 of 27 February 2012]

9. Death in Correctional Centre

(1) (a) The Head of the Correctional Centre must keep a record and report all deaths in Correctional Centre, such record and report must reflect all the particulars required by the Order.

(b) A deceased inmate must be buried by the Head of the Correctional Centre at a burial place in the magisterial district where he or she was detained, but the National Commissioner may, upon written request of the spouse, partner or next of kin allow them to remove and bury the deceased at their own expense.

(c) The National Commissioner may for humanitarian reasons at the written request of the spouse, partner or next of kin, allow the body of the deceased inmate to be transported at State expense to another magisterial district. The cost of the burial is to be borne by the person requesting the transportation as prescribed by the Order.

[Para (c) substituted by clause 8 of Government Gazette No. 35032 of 27 February 2012]

10. Correction, Development and Care Programmes and Services

[Heading substituted by clause 9 (a) of Government Gazette No. 35032 of 27 February 2012]

(1) (a) Social work services must be rendered to sentenced offenders and persons under community corrections who have a need for such

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services by a social worker duly registered as such in terms of the Social Work Act, 1978 (Act No. 110 of 1978).

[Para (a) substituted by clause 9(b) of Government Gazette No. 35032 of 27 February 2012]

(b) If the need for social work services arises at a Correctional Centre or community corrections office where those services are not available, the relevant Head of the Correctional Centre or Head of Community Corrections, as the case may be, must take the necessary steps to ensure that those services are made available as soon as possible to cater for that need.

(2) (a) Education and training services must be rendered to sentenced offenders who have a need for such services, subject to paragraph (b), those services will be rendered in accordance with education and training programmes.

(b) The education of sentenced offenders must be in accordance with the educational system of the country.

(c) A qualified educator or technical educator registered with the South African Council of Educators established in terms of Section 4 of South Africa Council for Educators Act, 2000 (Act No. 31 of 2000), must render those services.

[Para (c) substituted by clause 9(c) of Government Gazette No. 35032 of 27 February 2012]

(d) .....

[Para (d) deleted by clause 9(d) of Government Gazette No. 35032 of 27 February 2012]

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(e) If such a qualified educator or qualified correctional official is not available, the National Commissioner may appoint a temporary educator or voluntary worker with educational or technical qualifications and registered with the South African Council of Educators.

[Para (e) substituted by clause 9(e) of Government Gazette No. 35032 of 27 February 2012]

(f) All sentenced offenders who have not obtained the ninth grade as contemplated in Section (3)(1) of the South African Schools Act, 1996 (Act No. 84 of 1996), must attend educational programmes until such offender reaches the age of 25 years or the ninth grade or adult education and training level 4, as registered on the national qualifications framework contemplated in the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), whichever occurs first. The Department must, within its available resources, ensure that such offenders are provided with the necessary resources to enable them to comply with this requirement.

[Sub-regulation 10(2)(g) inserted by clause 9(f) of Government Gazette No. 35032 of 27 February 2012 renumbered to (f).]

(3) (a) Psychological services must be available to all sentenced offenders and persons under community corrections who have a need for such services. Psychologists and psychometrics who are to be trained as counsellors must be registered in terms of the Health Professions Act, 1974 (Act No. 56 of 1974).

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(b) If such psychologists and psychometrists are not available at a Correctional Centre and the need for such services arise, the Head of the Correctional Centre must take the necessary steps to ensure that such services are available. An inmate may also utilise his or her psychologist of choice, but at own expense.

11. Recreation

Recreational activities as prescribed by the Order must be provided in all Correctional Centres for the benefit of the mental and physical health of inmates.

12. Access to Legal Advice

(1) An inmate may consult with his or her legal practitioner in connection with legal matters subject to the conditions determined by the National Commissioner.

(2) A consultation contemplated in sub-regulation (1) is subject to the following:

(a) A legal practitioner must lodge proof of his or her identity and status as legal practitioner at the request of the Head of the Correctional Centre;

(b) Such a consultation must take place only between 08h00 and 15h30 unless the Head of the Correctional Centre, due to the existence of urgent or exceptional circumstances has given his or her prior permission;

(c) The consultation must take place in sight, but out of earshot of a correctional official;

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(d) The legal practitioner may be allowed to utilise his or her own interpreter, secretary or typist; and

(e) If a particular legal practitioner is refused access to the inmate, the inmate may request to consult with another legal practitioner.

13. Reading Material

(1) A properly organised library containing literature of constructive and educational value, as prescribed by the Order, must as far as reasonably practicable, be established and maintained at every Correctional Centre.

(2) An inmate may receive reading material from outside the Correctional Centre in the manner as prescribed by the Order.

(3) A correctional official may inspect an envelope or package sent or received by an inmate to the extent necessary to determine whether the envelope or package contains any article that may pose a danger to the security of the Correctional Centre or the safety of any person, but the correctional official may not read the contents of the envelope or package, except in the circumstances contemplated in Regulation 8(4).

(4) The Head of the Correctional Centre or a correctional official designated by him or her may prohibit:

(a) the entry into the Correctional Centre or the circulation within the Correctional Centre of any publication, video or audio material, film or computer program that he or she believes on reasonable grounds would jeopardise the security of the Correctional Centre or the safety of any person; and

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(b) the use by an inmate, including the display of, any publication video or audio material, film or computer program that he or she believes on reasonable grounds –

(i) would likely be viewed by other persons; and

(ii) would undermine a person's sense of personal dignity by demeaning the person or causing personal humiliation or embarrassment to a person, on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth.

(5) (a) Documents and correspondence between inmates and their legal practitioners may not be censored if they relate to legal matters.

(b) Documents and correspondence between inmates and their legal practitioners that purport to relate to legal matters may be examined only to determine whether in fact they do relate to such matters.

14. Discipline of Inmates

[Heading substituted by clause 10 of Government Gazette No. 35032 of 27 February 2012]

(1) (a) The disciplinary hearing must be conducted as soon as possible, and if practicable within 14 days from the date the accused inmate was informed of the charge against him or her, such notification may not be less than 7 days before the hearing.

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(b) At every disciplinary hearing conducted by a disciplinary official, a correctional official, herein called the case presenter, will be appointed to arrange and co-ordinate the proceedings.

(c) At such a hearing the rules of the law of evidence will apply and evidence to prove or disprove any fact in issue, may be submitted in writing or orally.

(d) The disciplinary official must keep a full record of the proceedings, and it must be signed by him or her on conclusion of the proceedings.

(e) Every person testifying in such a hearing must take the prescribed oath or affirmation.

(f) The case presenter and the accused inmate or the legal practitioner representing the accused inmate, if any, may address the disciplinary official on the merits of the case.

(g) The disciplinary official must make a finding of guilty or not guilty on a balance of probabilities.

(h) If the disciplinary official makes a finding of guilty, the case presenter and the accused inmate or the legal practitioner, if any, may address him or her on the appropriate penalty.

(2) (a) The disciplinary official may decide who will be allowed to attend the hearing.

(b) If a disciplinary official is of the opinion that the accused inmate is not mentally capable of understanding the proceedings he or she must refer the accused inmate to a psychologist who must report on the ability of the inmate to stand the hearing.

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(c) (i) The case presenter must make arrangements for the attendance at the disciplinary hearing of the witnesses and the accused inmate, including witnesses the accused inmate may request to give evidence.

(ii) The case presenter may issue a subpoena, in the Order prescribed form, to any person to attend the hearing, to give evidence or produce any document or article in support of the charge or in defence of the accused inmate.

(d) A subpoena served on a person required to give evidence or to produce any book, record, document or article at the hearing must be signed by the disciplinary official and the service thereof will be subject to the rules of court applicable to the service of such process in a summary trial on a criminal charge in a Magistrates Court.

(e) Any person summoned as a witness at a disciplinary hearing to give evidence or to produce any document or article, who fails to attend such hearing or to produce any document or article or to answer any question put to him or her is guilty of an offence and is liable for a period of incarceration not exceeding 6 months or to such incarceration without the option of a fine or both.

(f) If a witness makes a false statement under oath or affirmation knowing the same to be false, he or she is guilty of an offence and is liable on conviction for a period of incarceration not exceeding 6 months or to such incarceration without the option of a fine or both.

15. Safe Custody

(1) The National Commissioner determines the security measures applicable at Correctional Centres.

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(2) (a) An inmate who is removed temporarily from a Correctional Centre must at all times be in the safe custody of a correctional official subject to paragraph (b).

(b) Where an inmate temporarily removed from a Correctional Centre is to appear before a Court, or for purposes of a criminal investigation he or she may be placed in the safe custody of a member of the South African Police Services instead.

(3) If an inmate is temporarily removed from a Correctional Centre, all necessary precautions must be taken to protect him or her from public abuse or curiosity.

16. Searches

(1) A search contemplated in Section 27(2) (b), (c), (d) and (e) of the Act:

(a) must be undertaken in the Correctional Centre hospital, clinic or public hospital depending on the procedure necessary to conduct the search;

(b) will not include the administering of vomitories or enemas; and

(c) must at all times be witnessed by a correctional official of the same gender as the inmate, who must record the outcome of the search.

(d) Searches of inmates that require medical technology, as well as body cavity searches, must be referred to a health establishment as defined in the National Health Act, 2003 (Act No. 61 of 2003) with the required resources.

(e) If it is found that the foreign body that was swallowed or inserted in a bodily orifice is not excreted by normal bodily processes, the inmate

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must be interviewed to determine the type of foreign body swallowed or inserted and be referred to the nearest private or public health establishment as defined in the National Health Act, 2003 (Act No. 61 of 2003) in consultation with a healthcare professional for assessment and removal thereof.

[Paragraphs (c) and (d) of sub-regulation (1) inserted by clause 11 of Government Gazette No. 35032 of 27 February 2012 renumbered to (d) and (e)]

(2) (a) Any inmate detained for the purposes of a search contemplated in terms of Section 27(2)(e) of the Act must be detained in a single cell.

(b) Every such inmate must be visited at least once a day by the Head of the Correctional Centre, and his or her health status assessed at least once every four hours by a registered nurse.

17. Identification

(1) The name, age, height, mass, full address, distinctive marks of an inmate and other particulars as may be required must be recorded in the manner prescribed by the Order.

(2) The fingerprints, photographs and biometric data of an inmate must be taken, as prescribed by the Order;

[Sub-regulation (2) substituted by clause 12(a) of Government Gazette No. 35032 of 27 February 2012]

(3) (a) Where necessary an inmate may be taken to a medical practitioner to ascertain his or her age as contemplated in Section 28(1)(e) of the Act.

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(b) In the case of a person serving a life sentence and it is disputed whether such a person has reached the age of 65, the Head of the Correctional Centre must refer the person to a medical practitioner and if the assessment of the medical practitioner is different from what the age on any document professes to be, the National Commissioner must make a determination.

[Sub-regulation (3) inserted by clause 12(b) of Government Gazette No. 35032 of 27 February 2012]

18. Mechanical Restraints

(1) If an inmate is restrained by means of mechanical restraints a correctional official may only use one or more of the following mechanical restraints:

(a) handcuffs;

(b) leg-irons and-cuffs;

(c) belly chains;

(d) plastic cable ties;

(e) electronically activated high-security transport stun belts; or

(f) patient restraints, where applicable.

(2) An electronically activated high security transport stun belt may only be used for the purpose of restraining an inmate when outside a cell.

19. Non-lethal Incapacitating Devices

(1) The only non-lethal incapacitating devices that may be used by trained correctional officials are the following:

(a) Chemical agents;

(b) Electronically activated devices; or

(c) Rubber missiles.

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[Sub-regulation (1) substituted by clause 13(a) of Government Gazette No. 35032 of 27 February 2012]

(2) (a) An inmate may under no circumstances be allowed to handle any type of chemical agent used for incapacitating inmates.

(b) Gas masks must be issued to correctional officials who are involved in a situation in which chemical agents are used.

(c) The Head of the Correctional Centre or the Head of Community Corrections must decide when chemical agents in the form of either cartridges or grenades must be used.

(d) The Head of the Correctional Centre or the Head of Community Corrections must decide to which correctional officials chemical agents or spray-cans may be issued in the performance of their custodial duties.

(e) The seal of the chemical agent canister may only be broken if it is to be used.

(f) Chemical agent grenades may only be used in the open air, in buildings chemical agent cartridges and chemical agent canisters must be used.

(g) If chemical agents are used, measures must be applied, if necessary, to provide inmates with first aid or medical treatment.

[Sub-regulation (2) substituted by clause 13(b) of Government Gazette No. 35032 of 27 February 2012]

20. Firearms

(1) Whenever a firearm is fired, except for the purpose of training, the correctional official must report the incident and the action taken, in the

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manner prescribed by the Order, to the Head of the Correctional Centre, or the Head of Community Corrections as soon as practicable.

(2) When correctional officials armed with firearms report for duty they must load their firearms according to the prescribed firearm training instructions. The same procedure must be followed with the unloading of firearms after completion of duty.

(3) When correctional officials handle firearms they must adhere to the general safety measures in the manner prescribed by the Order and training manuals.

21. Other Weapons

(1) Other weapons that may be used are:

(a) Baton-type equipment; and

(b) Pyrotechnical equipment.

(2) The use of such weapons is restricted to the purposes described in Sections 33(3) and 34(3) of the Act.

(3) (a) Batons may only be used by correctional officials trained in the specific techniques for the use of batons.

(b) Such training must be done by qualified trainers and correctional officials must receive refresher training at least once every six months.

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(c) The Head of the Correctional Centre or the Head of Community Corrections decides to which correctional officials batons may be issued.

(4) If batons are issued it must be recorded in a register and the use thereof be dealt with as prescribed by the Order.

(5) (a) Pyrotechnical equipment may only be issued to trained correctional officials appointed by the National Commissioner as members of Emergency Support Teams and then only for purpose of training or during emergency situations.

(b) Pyrotechnical equipment may only be used on the direct instructions of the Emergency Support Team leader.

(c) The issuing of pyrotechnical equipment must be recorded in a register.

(d) Such equipment must be used according to the procedures prescribed in the Orders.

(e) (i) Apart from the initial training correctional officials authorised to use pyrotechnical equipment must receive refresher training at least on quarterly basis.

(ii) All training must be done by a qualified person.

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CHAPTER III

SENTENCED OFFENDERS

22. Classification of Sentenced Offenders

(1) Subject to the provisions of Sections 7(3), 29, and 39 of the Act, a sentenced offender must be classified according to the security risk he or she poses, taking into account his or her suitability for treatment and training at a Correctional Centre.

(2) The National Commissioner determines the classification in accordance with the following principles:

(a) individual classification in so far as the period of sentence permits and an analysis and assessment of the offender's previous record, aptitude, qualification or previous training, ability and other personal factors;

(b) the maintenance of regular contact with, spouse, partner and next of kin; and

(c) insofar as the duration of sentence permits, the application of progressive and flexible reclassification.

23. Labour of Sentenced Offenders

(1) Sentenced offenders must, in accordance with the prevailing conditions, at the workplace, at all times be issued with the necessary protective clothing, footwear and other items that may be necessary to protect their health and safety.

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(2) (a) The National Commissioner may contract with any institution or person for the utilisation of the labour or service of sentenced offenders upon such terms and conditions as may be agreed between the parties.

(b) The products of the labour or service in a Correctional Centre may be sold to any person on such conditions as may be determined by the National Commissioner.

(3) (a) Every sentenced offender must, subject to the provisions of the Act, and also subject to any order of the court, be utilised and trained in such manner as the National Commissioner may determine.

(b) Such a sentenced offender must at all times perform labour, tasks and other duties as may be assigned to him or her for the purpose of such utilisation or training or for any other purpose connected with such Correctional Centre.

(4) A sentenced offender may not work more than 8 hours a day, unless the National Commissioner, in terms of a classification scheme or course of treatment or otherwise, order that a sentenced offender be exempted from work on any day during any period.

(5) A sentenced offender may not perform work for another sentenced offender, a correctional official or a private person or body without the approval of the National Commissioner.

(6) (a) On Sundays or other religious days of rest, with reference to the faith to which a sentenced offender adheres to, a sentenced

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offender may only perform that work which is prescribed by the Order and which is essential for cleanliness and hygiene in and around the Correctional Centre where he or she is detained, and work which is essential to provide for the basic needs of the Correctional Centre population and for the purposes of animal production.

[Para (a) substituted by clause 14(a) of Government Gazette No. 35032 of 27 February 2012]

(b) .....

[Para (b) deleted by clause 14(b) of Government Gazette No. 35032 of 27 February 2012]

(c) A sentenced offender may on the days referred to in paragraph (a) be allowed to perform other work as prescribed by the Order.

(d) A sentenced offender must be exempted from one day of compulsory work for each day's work as described in paragraph (a), (b) and (c) above or be compensated in such other way as prescribed by the Order.

(7) If the nature of a specific place of work is in conflict with the religion or culture of a sentenced offender an alternative workplace must be allocated to the sentenced offender.

24. Case Management Committee

(1) (a) A Case Management Committee consists of at least three correctional officials, one of whom is designated by the National Commissioner as chairperson of that Committee.

(b) .....

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[Para (b) deleted by clause 15(a) of Government Gazette No. 35032 of 27 February 2012]

(2) The chairperson must, as often as the National Commissioner may determine, convene a meeting of the Committee.

(3) The chairperson together with at least two other members of the Committee constitutes a quorum.

(4) The chairperson must determine the agenda and procedure of meetings of the Committee.

(5) (a) A decision of the majority of members present at a meeting constitutes a resolution of the Committee.

(b) In the case of an equality of votes on any matter, the chairperson has a casting vote in addition to a deliberative vote.

(6) (a) In compiling the report contemplated in Section 42 (2)(d) of the Act the Committee is subject to the guidelines provided for in the Order to ensure uniformity in applying departmental policy.

(b) A summary of the reasons for a recommendation on a sentenced offender's conditional placement or release must be provided to the National Commissioner, Correctional Supervision and Parole Board or the Minister, as the case may be, who decides on the placement or release of an offender.

[Para (b) substituted by clause 15(b) of Government Gazette No. 35032 of 27 February 2012]

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25. Location and Transfer of Inmates

(1) (a) When an inmate is transferred the Head of the Correctional Centre or a correctional official authorised by him or her must, subject to paragraph (b) convey the reason for the proposed transfer to the inmate and allow the offender to make a representation in this regard, which must recorded in writing, where after the Head of the Correctional Centre or the authorised official may take a decision on the proposed transfer.

(b) If the transfer is for security reasons the Head of the Correctional Centre or the authorised official need not inform the inmate of the proposed transfer, but the inmate must be informed of the reasons as soon as practicable after his or her admission to the place where he or she is transferred to and must be allowed an opportunity to make a representation in this regard as well as an opportunity to notify his or her spouse, partner or next of kin in the manner prescribed by the Order.

(2) If an inmate or cared-for child is being transferred, his or her medical history file and any prescribed medication must be transferred with him or her.

(3) The correctional official in charge of education and training must be consulted when the transfer of an inmate, who is a learner and involved in an education or training programme or who is involved in a final examination, is being considered.

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25A. Register for Sex Offenders

(1) The National Commissioner must in terms of Section 50(5)(a) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) provide, in the prescribed manner particulars as required in terms of Section 49, of the said Act, to the Registrar of the National Register for Sex Offenders.

(2) The National Commissioner must inform each offender of the implications thereof in the manner prescribed by that Act.

[Regulation 25 A inserted by clause 16 of Government Gazette No. 35032 of 27 February 2012]

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CHAPTER IV

MANAGEMENT, SAFE CUSTODY AND WELL BEING OF REMAND DETAINEES

26. Other Categories of Remand Detainees

Any person committed to a Remand Detention Facility or a Correctional Centre, as the case may be, in terms of Section 30 of the Magistrates Courts Act, 1944 (Act No. 32 of 1944), Section 10 of the Supreme Court Act, 1959 (Act No. 59 of 1959) or Section 185 of the Criminal Procedure Act, 1997 (Act No. 51 of 1977) must be afforded the same rights and privileges and is subject to the same obligations and limitations as a remand detainee.

26A Food and Drink

(1) (a) Remand detainees may only receive food or drink sent or brought to them for consumption at the following meal and such food or drink must be appropriately wrapped or sealed.

(b) No article of food or drink which is not clean or free from contamination will be allowed and the Head of the Remand Detention Facility or Correctional Centre, as the case may be, or a correctional official authorised by him or her may examine or test such food or drink. Food or drink may only be delivered or sent during official visiting hours.

(2) Food that needs preparation is not allowed and preserved or canned food may not be brought into the Remand Detention Facility or the Correctional Centre, as the case may be.

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(3) A remand detainee shall have the right to be informed of the identity of the sender of the food or drink and retains the right not to accept it, in which case the Head of the Remand Detention Facility or Correctional Centre, as the case may be, may dispose of such food or drink as he or she deems fit.

26B Amenities

(1) Access of a remand detainee to amenities may be limited as prescribed by the Order as is necessary for the maintenance of security and good order.

(2) In a case where no specific provision is made for access to or the limitation of amenities, the Head of the Remand Detention Facility or Correctional Centre, as the case may be, may allow or limit such, taking into account the maintenance of security and good order.

26C Clothing and Bedding

(1) On admission to a Remand Detention Facility or Correctional Centre, as the case may be, a remand detainee must be provided with a complete outfit of clothing and bedding as prescribed by the Order.

(2) When a remand detainee is to appear in any court proceedings, he or she must appear in private clothing and if a remand detainee does not have adequate or proper clothing, the Department must provide such clothing as prescribed by the Order.

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26D Pregnant Women

(1) Pregnant women in remand detention must have access to pre-, intra and postnatal services.

(2) If the medical practitioner or registered midwife prescribes any form of medication or treatment additional to what is normally recommended, the Head of the Remand Detention Facility or Correctional Centre or an official authorised by him or her, as the case may be, must arrange to provide such.

(3) The Head of the Remand Detention Centre or Correctional Centre, as the case may be, or a correctional official authorised by him or her must inform the investigating officer and prosecutor of the pregnancy of a remand detainee.

(4) The Head of the Remand Detention Facility or Correctional Centre or an official authorised by him or her, as the case may be, must inform the next of kin of the pregnancy of the detainee, if so requested by the pregnant remand detainee.

(5) The pregnant remand detainee may request additional visits with the alleged biological father, next of kin or other supportive persons over and above the normal visits allowed.

(6) Pregnant and lactating remand detainees must be provided with food items according to their nutritional needs as prescribed in the Department of Health's Maternal Health Guidelines as well as the Departmental ration

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scales and Therapeutic Diet Manual, taking into consideration religious or cultural beliefs.

26E Labour of Remand Detainees

A remand detainee must perform such duties as may be necessary to maintain the good order and cleanliness of any cell, room or other place occupied by him or her and may be permitted to perform other labour.

26F Safekeeping of Information and Records

All warrants of detention and related documentation must be kept at the Remand Detention Facility for a period of five years from the date of the last court appearance as a remand detainee, after which period it must be forwarded to a Departmental archive if the remand detainee is not sentenced to incarceration. Such records must be transferred to an archives repository after 20 years as contemplated in Section 11 of the National Archives and Record Service of South Africa Act, 1996 (Act No. 43 of 1996). If the remand detainee is sentenced to incarceration, the warrant or warrants of detention must be kept with the sentenced warrant or warrants.

26G Referral of Terminally Ill or Severely Incapacitated Remand Detainee to Court

(1) In assessing whether a remand detainee must be referred to court as contemplated in Section 49E of the Act, the medical practitioner must establish whether the remand detainee is suffering from any condition contemplated in Regulation 29A(5).

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(2) The report of the medical practitioner shall be in writing and must include, *inter alia* –

(a) a complete medical diagnosis and prognosis of the terminal illness or physical incapacity from which the sentenced offender suffers;

(b) a statement by the medical practitioner indicating whether the remand detainee is so physically incapacitated as to severely limit daily activity or self-care;

(c) the care and treatment required by the remand detainee;

(d) whether the particular Remand Detention Facility is able to provide adequate care for the detainee; and

(e) if the facility is unable to provide adequate care, reasons as to why the release of the remand detainee should be considered.

(3) The Head of the remand detainee facility or Correctional Centre, as the case may be, may refer the report to the Medical Parole Advisory Board established in terms of Section 79(3)(a) of the Correctional Services Act, to provide an independent medical report in order to assist the Head to form an opinion as required by Section 49E(1).

(4) Prior to the referral of the remand detainee to court, the Head of the Remand Detention Facility or Correctional Centre, as the case may be, must determine whether there are other Remand Detention Facilities –

(a) able to provide adequate care for the remand detainee; and

(b) serve the court where the remand detainee is due to appear.

(5) The written report of the medical practitioner and any report of the Medical Parole Advisory Board, must accompany the sworn statement or

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affirmation by the Head of the Remand Detention Facility or correctional facility concerned.

(6) An application must be brought with the informed consent of the remand detainee or a person acting on his or her behalf if such remand detainee is too ill or incapacitated to provide such consent.

26H Release under Supervision of South African Police Service

(1) The investigating officer requesting the release of the remand detainee, must produce his or her original identity document and appointment card to the Head of the Correctional Centre or the Remand Detention Facility or to a correctional official authorised by him or her, as the case may be, and the original authorisation to request the temporary release of a remand detainee.

(2) The authorisation document, the authenticity and validity of which must be confirmed as prescribed by the Order, should indicate where the remand detainee will be accommodated whilst in Police custody.

(3) Any remand detainee so released in the custody of the South African Police Service, should be returned to the Remand Detention Facility or Correctional Centre, as the case may be, 48 hours prior to his or her appearance in court.

(4) In the event of failure to return a remand detainee within such period, the Head of the Remand Detention Facility or the Correctional Centre, as the case may be, must inform the National Commissioner in order to take

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appropriate steps to ensure the appearance of the remand detainee at court.

26I Maximum Incarceration Period

(1) The period as contemplated in Section 49G of the Act commences from the date of admission in a Remand Detention Facility for an uninterrupted period which period will be deemed not to be interrupted by court appearances, temporary releases in terms of Section 49F, temporary releases to be treated in a medical facility or designated health establishment in terms of Section 42 of the Mental Healthcare Act, 2002 (Act No. 17 of 2002) outside a Correctional Centre or Remand Detention Facility, as the case may be.

(2) If the remand detainee is admitted with more than 1 warrant of detention on the same date, the calculation must be done for each individual warrant to establish the period as contemplated in Section 49F of the Act.

(3) If a remand detainee who is already detained under a warrant receives a further warrant or warrants, the calculation must be done for each individual warrant or warrants.

(4) If the remand detainee is not readmitted on the same day, except where he or she was admitted into the custody of the South African Police Service or to a designated health establishment in terms of Section 42 of the Mental Healthcare Act, 2002 (Act No. 17 of 2002), the period will be regarded as being interrupted and on readmission for the same case the

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period of incarceration will be calculated afresh as from the date of such readmission.

(5) When a sentenced offender's sentence expires, but such offender must be detained under a warrant for a further change, such remand detainee must be admitted to a Remand Detention Facility, and the calculation of the period will commence on the date of admission to such facility.

[Chapter IV is substituted by clause 17 of Government Gazette No. 35032 of 27 February 2012]

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CHAPTER V

COMMUNITY CORRECTIONS

27. Supervision Committee

The Supervision Committee established at every community corrections office consists of the following:

(a) the correctional supervision official; and

(b) monitoring official who is responsible for the monitoring of the offender and at the discretion of the chairperson, a social worker or psychologist if necessary and, if practicable, a person from the community who is an expert in behavioural sciences.

28. Monitoring

(1) Electronic monitoring devices must be compact, un-obstructive and allow persons under community corrections, as far as possible, to carry out their normal daily activities.

(2) The electronic monitoring device must be fitted to the ankle or wrist without causing a risk to the person's health.

(3) Electronic monitoring equipment may be installed in the residence and workplace of the person under community corrections or the victim.

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CHAPTER VI

RELEASE FROM CORRECTIONAL CENTRE AND PLACEMENT UNDER CORRECTIONAL SUPERVISION AND ON DAY PAROLE AND PAROLE

29. Length and Form of Sentence

(1) A person sentenced to periodical incarceration, in terms of Section 285 of the Criminal Procedure Act, must serve the sentence in uninterrupted periods of not less than 24 hours and not more than 96 hours at a time as determined, with due regard to such person's employment, by the Head of the Correctional Centre, at which the person surrenders him or herself to undergo such incarceration.

(2) Subject to the provision of sub-regulation (2) the Head of the Correctional Centre must determine the periods of incarceration with due regard with the circumstances of the person serving periodical incarceration.

(3) A period of less than 24 hours may be ordered if –

(a) on the strength of the written application of the employer of the person serving periodical incarceration, the Head of the Correctional Centre decides that in the special circumstances of such person's employment a shorter period is justified; or

(b) any unexpired portion of the remainder of the sentence of periodical incarceration is less than 24 hours.

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(4) Where a person serving a sentence of periodical incarceration is released pending his or her return to Correctional Centre to serve one or more further periods of periodical incarceration in completion of that sentence, the Head of the Correctional Centre must serve a notice on such person stipulating –

(a) particulars of the sentence of periodical incarceration;

(b) the period already served;

(c) the period still to be served; and

(d) particulars of where and when the person must report to serve the next period and containing any other instruction that reasonably may be regarded as necessary for that purpose.

(5) Whenever a person's period of periodical incarceration expires at any time after 15h00 on any day and before 06h00 of the following day, the person's release may be postponed with his or her written consent.

(6) Reasonable steps must be taken to prevent a sentenced offender serving periodical incarceration from associating with other categories of offenders.

29A Medical Parole

(1) If it is established by the health status examination as contemplated in Section 6(5) of the Act or any subsequent health status examination that a sentenced offender is suffering from a condition of which the prognosis indicate a condition listed in sub-regulation (5), such facts must be recorded in the prescribed register.

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(2) An application for medical parole in terms of Section 79(2) of the Act, shall be initiated by the completion of the applicable form as contained in Schedule B.

(3) When a Head of a Correctional Centre receives an application for medical parole, he or she must refer the application to the correctional medical practitioner who must make an evaluation of the application in accordance with the provisions of Section 79 of the Act and make a recommendation in this regard.

(4) The recommendation must be submitted to the Medical Parole Advisory Board who must make a recommendation to the National Commissioner, Supervision and Parole Board or Minister, as the case may be.

(5) In the assessment by the Medical Parole Advisory Board, the Board must consider whether the offender is suffering from:

(a) Infectious conditions –

(i) World Health Organisation Stage IV of Acquired immune deficiency syndrome despite good compliance and optimal treatment with antiretroviral therapy;

(ii) Severe cerebral malaria;

(iii) Methicilin resistance staph aurias despite optimal treatment;

(iv) MDR or XDR tuberculosis despite optimal treatment; or

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(b) Non-infectious conditions -

(i) Malignant cancer stage IV with metastasis being inoperable or with both radiotherapy and chemotherapy failure;

(ii) Ischaemic heart disease with more than two ischaemic events in a period of one year with proven cardiac enzyme abnormalities;

(iii) Chronic obstructive airway disease grade III to IV dyspnoea;

(iv) Cor-pulmonale;

(v) Cardiac disease with multiple organ failure;

(vi) Diabetes mellitus with end organ failure;

(vii) Pancytopenia;

(viii) End stage renal failure;

(ix) Liver cirrhosis with evidence of liver failure;

(x) Space occupying lesion in the brain;

(xi) Severe head injury with altered level of consciousness;

(xii) Multisystem organ failure;

(xiii) Chronic inflammatory demyelinating Poliradiculoneuropathy;

(xiv) Neurological sequelae of infectious diseases with a Karnofky score of 30 percent and less;

(xv) Tetanus;

(xvi) Dementia; and

(xvii) Severe disabling rheumatoid arthritis, and whether such condition constitutes a terminal disease or condition or the offender is rendered physically incapacitated as result of injury, disease or illness so as to severely limit daily activity or inmate self-care.

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(6) The Medical Parole Advisory Board may consider any other condition not listed in sub-regulation (5)(a) and (b) if it complies with the principles contained in Section 79 of the Act.

(7) The Medical Parole Advisory Board must make a recommendation to the National Commissioner, the Correctional Supervision and Parole Board or the Minister, as the case may be, on the appropriateness to grant medical parole in accordance with Section 79(1)(a) of the Act. If the recommendation of the Medical Advisory Board is positive, then the National Commissioner, the Correctional Supervision and Parole Board or the Minister, as the case may be, must consider whether the conditions stipulated in Section 79(1)(b) and (c) are present.

29B Appointment and Composition of the Medical Parole Advisory Board

(1) The Minister must appoint a Medical Parole Advisory Board comprising of:

(a) A chairperson with permanent sitting on the Board or a *secundus* in his or her absence;

(b) A vice chairperson with permanent sitting on the Board or a *secundus* in his or her absence;

(c) At least one member per province, who will be a non- permanent member of the Board to be co-opted to the Board by direction of the chairperson, when necessary, for the functioning of the Board.

(2) (a) Members appointed to the Board hold office for such period as the Minister determines at the time of their appointment.

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(b) If there are valid grounds for doing so, the Minister may terminate the appointment of a member.

(3) Members appointed to the Board must be medical practitioners registered as such under the Health Professions Act, 1974 (Act No. 56 of 1974).

(4) The Board will meet at least once per month at such place as determined by the chairperson.

(5) A meeting of the Board will be properly constituted, if the chairperson, vice-chairperson of their *secundi* and three co-opted members are present.

(6) A decision of the majority of the members of the Board present shall be a decision of the Board and in the event of an equality of votes, the member presiding shall have both a deliberative and a casting vote.

(7) A member of the Board who is not in the service of the State may receive such allowances as may be determined by the Minister in consultation with the Minister of Finance.

(8) (a) A member of the Board may examine any sentenced offender applying for medical parole under Section 79 of the Act.

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(b) The allowances determined under sub-regulation (7) must make provision for the reimbursement of members of the Board for expenses incurred as a result of travelling necessitated under subparagraph (a).

(c) Members of the Board shall, as far as possible, only examine sentenced offenders for the purpose of subparagraph (a) within the region wherein they are appointed.

[Regulations 29A and 29B inserted by clause 18 of Government Gazette No. 35032 of 27 February 2012]

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CHAPTER VII

COMPLIANCE MANAGEMENT

[The heading of chapter VII substituted by clause 19 of Government Gazette No. 35032 of 27 February 2012]

30. Departmental Inspectors, Investigators and Auditors

(1) (a) The National Commissioner must appoint correctional officials as departmental inspectors, investigators and auditors to perform the functions as set out in Section 95 of the Act.

(b) An inspector, investigator or auditor may be appointed to perform those functions within the Republic as a whole, or a particular province or area.

(c) Officials appointed as inspectors, investigators and auditors will be issued with a certificate or letter of appointment and an identity card to that effect.

(2) In order to fulfil the functions as set out in Section 95 of the Act, the departmental inspectors, investigators and auditors may enter any departmental premises and also have access to, or search and seize any Departmental record or document.

(3) Any person who hinders or obstructs or refuses to comply with the lawful instructions of Departmental inspectors, investigators and auditors is guilty of an offence and is liable on conviction to a fine, or in default of payment, to incarceration for a period not exceeding one year or to such incarceration without the option of a fine or both.

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CHAPTER VIII

HUMAN RESOURCES- AND WORK ORGANISATION MATTERS

31. Work Facilities

The National Commissioner may allocate official residential accommodation to a correctional official for occupation for such period and under such conditions as he or she may determine.

32. Work Hours

The National Commissioner determines the hours of work for correctional officials.

33. Discipline

(1) Correctional officials at post levels 2 to 12 are subject to the Disciplinary Code and Procedure as provided for in resolution 1 of 2006 of the Departmental Bargaining Chamber, as ratified in the relevant Sectoral Bargaining Council as reflected in **Schedule A** hereto.

(2) Correctional officials who are appointed in the Senior Management Service of the Public Service are subject to the Disciplinary Code and Procedure contained in the Senior Management Service Handbook.

[Regulation 33 substituted by clause 20 of Government Gazette No. 35032 of 27 February 2012]

34. Emergency Work

In an emergency, the National Commissioner may require from a correctional official to perform work outside his or her normal hours of work.

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35. Medical Examination

(1) (a) Any report received by the department from a medical practitioner and which is to the effect that a correctional official has become or is likely to become medically unfit to remain in the service of the Department must be submitted to the National Commissioner without delay.

(b) Upon receipt of such a report, the National Commissioner –

(i) may require the correctional official concerned to undergo a further medical examination as a prerequisite to convening Medical Board proceedings in terms of regulation 37; and

(ii) may, if so satisfied, convene such proceedings. However, nothing in this paragraph precludes such a correctional official from being granted sick leave in the interim.

36. Medical Board Proceedings

(1) The National Commissioner must convene a Medical Board to consider and determine whether any correctional official who allegedly has become on medical grounds unfit to remain in the service of the Department, and is in fact medically unfit for that purpose.

(2) A correctional official whose case is considered by a Medical Board may, at his or her own expense arrange for a medical practitioner of his or her own choice and a trade union representative to be present at the proceedings of the Medical Board.

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(3) (a) The Medical Board must consist of medical practitioners designated by the National Commissioner.

(b) The proceedings of the Medical Board must be recorded and must duly reflect all documentary and oral evidence and representations by that Board including those tendered or made by or on behalf of the correctional official concerned and all medical and other reports, and must include the Board's findings, recommendations and report.

(c) The record must be duly signed by the members of that Board.

(4) The National Commissioner may determine the form in which the report of a Medical Board must be submitted.

(5) The National Commissioner, may with due regard to the findings and recommendations of a Medical Board and if consistent therewith –

(a) grant further sick leave to the correctional official concerned;

(b) discharge the correctional official due to medical unfitness for duty; or

(c) instruct the correctional official to resume duty.

(6) For the purposes of this regulation and regulation 36, medical unfitness means any physical or mental illness or disability which renders a correctional official unfit for his or her duties or to perform efficiently.

37. Leave and Abscondment

(1) Leave of absence may be granted to correctional officials as determined in the "Determination on Leave of Absence in the Public Service" issued by the Minister of the Public Service and Administration in terms of Section

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3(3)(c) of the Public Service Act, 1994 and special leave as determined in resolution 2 of 2010 of the Departmental Bargaining Council.

(2) (a) A correctional official who absents himself or herself for 30 consecutive calendar days without permission or without notifying the National Commissioner shall be summarily dismissed.

(b) Before dismissing the correctional official, the National Commissioner must endeavour to establish the whereabouts of such official and record such endeavours.

(c) If the correctional official reports for duty after the period of absence without permission or without having notified the National Commissioner and being dismissed, the correctional official will not be automatically reinstated, but the correctional official may submit a written representation to the National Commissioner within five working days from his or her reporting at work as to why he or she should be reinstated or re-employed.

(d) The National Commissioner may after considering the written representation, reinstate or re-employ the correctional official in his or her former post or any other post. In the case of reinstatement the period of absence from official duty shall be deemed to be absence on vacation leave without pay or leave on such conditions as the National Commissioner may determine.

[Regulation 37 substituted by clause 21 of Government Gazette No. 35032 of 27 February 2012]

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38. Establishment of Correctional Services Facilities Fund

(1) A Correctional Services Facilities Fund was established in terms of the provisions of the Correctional Services Act, 1959 and continues to exist in terms of Section 134(1)(jj) of the Act.

(2) (a) The administration and control of the Fund is vested in a Board of Trustees with the powers, functions and duties as prescribed by the Order.

(b) The Board consists of –

(i) The National Commissioner as chairperson;

(ii) The Chief Deputy Commissioner Corporate Services as deputy chairperson;

(iii) The Director Facilities Fund as Fund Executive;

(iv) Three Board Members elected by the members of the fund on a three yearly basis at the Annual General Meeting; and

(v) Three Non-Executive Members appointed by the National Commissioner for a term of three years with specialised knowledge in legal and/or financial aspects.

(c) Upon expiry of a term of office for an appointed member of the Board, he or she may be nominated again for a further term: Provided that no member may serve office for a period of more than two terms.

(d) If a nominated member of the Board dies or vacates his or her office for any other reason, before the expiry of his or her term of office, the National Commissioner must appoint another person in his or her place and the person appointed thus remains in the post as an

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appointed member of the Board for the unexpired part of the term of office of the member who died or vacated office.

(e) An appointed member of the Board evacuates his or her office:

(i) if he or she becomes mentally or physically unfit to perform his or her duties;

(ii) if he or she retires, resigns or is dismissed from the Department.

(iii) if he or she dies; or

(iv) if his or her appointment to the Board is revoked by the National Commissioner for any other reason.

[Regulation 38(2) substituted by clause 22 (a) of Government Gazette No. 35032 of 27 February 2012]

(3) The purpose of the Fund is to, in the interest of the Department, make provision for grants or loans:

(a) to Correctional Services clubs for the promotion of sport and recreation;

(b) for the establishment and maintenance of holiday resorts where necessary;

(c) to correctional officials for the purpose of study or research;

(d) for any other purpose which, in the opinion of the Board Trustees, is meritorious and in the interest of the Department.

[Regulation 38(3)(b) substituted by clause 22 (c) of Government Gazette No. 35032 of 27 February 2012]

(4) The assets of the fund consist of:

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(a) monies, assets and investments, together with accrued interest or dividends which, with the approval of the Board, have been paid or transferred by any existing Correctional Services Benefit Fund or association of the Fund, for its sole benefit and ownership;

[Regulation 38 (4) (a) substituted by clause 22 (d) of Government Gazette No. 35032 of 27 February 2012]

(b) any grants made by the State; and

(c) any other donations to the Fund, interest or dividends from investments, and any other income.

(d) In conducting its business the Board will be subject to the provisions of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001) and the Financial Services Board Act, 1990 (Act No. 97 of 1990).

[Regulation 38 (4) (d) inserted by clause 22 (e) of Government Gazette No. 35032 of 27 February 2012]

(5) The Board of Trustees has the power to –

(a) Receive any monies, assets, allocations, donations and interest or dividends raised on investments as well as other income in terms of Regulation 38(4)(a) for and on behalf of the Board;

(b) Keep in trust any monies in terms of paragraph (a) and to profitably invest any part of it which is not immediately required, with such security and in such a manner as the Board determines;

(c) Approve allocations and loans for purposes mentioned in regulation 38(3);

(d) In terms of regulation 38(2)(b) to sue in its own name and be sued and to obtain movable and immovable property, possess it or

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alienate it, and to take necessary steps, make arrangements, register bonds, and make commitments with any authorised financial services provider for obtaining the necessary funds with regard to procurement, or alienation of such movable or immovable property; and

(e) Take any measure to promote the interests of the Fund.

[Regulation 38 (5) inserted by clause 22 (f) of Government Gazette No. 35032 of 27 February 2012]

(6) The Board of Trustees must manage the financial affairs of the Fund and ensure that –

(a) proper accounts of all financial matters of the Fund shall be kept by the Board;

(b) all monies received on behalf of the Fund, must promptly be paid into a current account or other accounts in the name of the Fund at an authorised financial service provider as determined by the Board;

(c) all payments, including electronic payments must be authorised in relation to such account by the secretary or treasurer and any other member of the Department of Correctional Services designated, by the Board;

(d) cheques, bills of exchange, promissory notes, bank books and other financial documents of, or in aid of the Fund, must be signed or endorsed, as determined by the Board;

(e) all expenditure related to, or resulting from the management or administration of the Fund, investments in aid of the Fund, auditor's fees and any other expenditure which have accumulated on behalf of

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the Fund by the Board, are carried by the Fund, subject to the approval of the Board;

(f) balance sheets and statements of income and expenditure for the financial year of the Fund must be submitted to the Board and must be made available upon request for perusal by any member during office hours;

(g) the books, documents and securities of the Fund must be audited annually by a chartered accountant, appointed by the Board; and

(h) the funds must be used exclusively for investment and for objectives for which the Fund has been established.

[Regulation 38 (6) inserted by clause 22 (f) of Government Gazette No. 35032 of 27 February 2012]

39. Establishment of Departmental Canteen

(1) The National Commissioner may approve the establishment of a departmental canteen contemplated in Section 132 of the Act.

(2) (a) A departmental canteen established in terms of sub-regulation (1) must be controlled by a committee of which the Area Commissioner concerned will be the chairperson. The committee so constituted will exercise its functions as prescribed by the Order. Any correctional official, including members of the Senior Management Service, in the conduct of the business of such canteen or in the management thereof will be subject to discipline contemplated in regulation 33, in the case of misconduct, when functioning in that capacity.

[Paragraph (a) substituted by clause 23(a) of Government Gazette No. 35032 of 27 February 2012]

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(b) Any profits, assets or any proceeds from the liquidation of a departmental canteen may be distributed by the committee, as may be determined by the National Commissioner, for any purposes contemplated in Section 132 of the Act, or for the common benefit or welfare of correctional officials, pensioners, civilian employees and their dependants.

(c) A departmental canteen must be conducted on self supporting business principles, with the exception of accommodation or other necessities which may be provided by the State and any other expenditure which the National Commissioner may, in consultation with the National Treasury authorise from public funds.

[Paragraph (c) substituted by clause 23(b) of Government Gazette No. 35032 of 27 February 2012]

(3) A Correctional Services canteen must be managed for the sole use or benefit of:

(a) correctional officials;

(b) civilian employees of the Department;

(c) civilian persons employed in any work in or in connection with a Correctional Services canteen;

(d) the families of persons referred to in paragraph (a) up to and including (d);

(e) persons to whom permission, referred to in Section 99 of the Act, has been granted to be present in a Correctional Centre; and

(f) inmates in detention.

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40. Access to Correctional Centres

(1) The Head of the Correctional Centre must allow the following persons access to the Correctional Centre under conditions as prescribed by the Order:

(a) healthcare workers and their support staff;

(b) environmental health officers; and

(c) any person with a statutory inspecting authority.

(2) Any person who is allowed access to a Correctional Centre in terms of the Act or the Regulations is required to sign the official visitors register of such Correctional Centre and subject to satisfactory confirmation of identity, such signature will be sufficient authority for admission to such Correctional Centre.

41. Delegation of Authority

The National Commissioner may delegate any power vested in him or her by these regulations to any correctional official.

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"Schedule A

1. PURPOSE AND SCOPE

The purpose of this Code and Procedures is:

1.1 To promote constructive labour relations in the DCS;

1.2 To promote mutual respect among employees and between employees and employer;

1.3 To ensure that managers and employees share a common understanding of misconduct and discipline;

1.4 To promote acceptable conduct;

1.5 To provide employees and the employer with a quick and easy reference for the application of discipline;

1.6 To avert and correct unacceptable conduct; and

1.7 To prevent arbitrary or discriminatory actions by managers toward employees;

1.8 To act in a preventative, progressive manner with the aim to correct unacceptable behaviour;

1.9 It must be noted that this document is a collective agreement and that no party will deviate from all the provisions from this code.

2. PRINCIPLES

The following principles are embraced in the Code and Procedure and must inform any decision to discipline an employee.

2.1 Discipline is a corrective measure and not a punitive one.

2.2 Discipline must be applied in a prompt, fair, consistent, uniform, timely, impartial, confidential and progressive manner.

2.3 Discipline is a line management function.

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2.4 A disciplinary code is necessary for the efficient delivery of service and the fair treatment of employees, and ensures that they:

2.4.1 Have a fair hearing in a formal or informal setting;

2.4.2 Are timeously informed of allegations of misconduct made against them;

2.4.3 Receive written reasons for a decision taken; and

2.4.4 Have the right to appeal against any decision.

2.5 As far as possible, disciplinary procedures shall take place in the place of work and be understandable to all employees.

2.6 If an employee commits misconduct that is also a criminal offence, the criminal procedure and the disciplinary procedure will continue as separate and different proceedings.

2.7 Disciplinary proceedings do not replace or seek to imitate court proceedings.

2.8 The Disciplinary Code and Procedures constitutes a framework within which departmental policies may be developed to address appropriate circumstances, provided such policies do not deviate from the provisions of the framework.

2.9 In the event that the employee denies an allegation of less serious misconduct, a formal disciplinary hearing may be instituted.

2.10 Employees can only be disciplined for work related misconduct.

3. SCOPE OF APPLICATION

This Disciplinary Code and Procedure is applicable to all employees (levels 2 to 12) of the Department of Correctional Services employed in terms of the Correctional Services Act, Act 111 of 1998, as amended or the Public Service Act, 1994, as amended.

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4 CODES, RULES AND STANDARDS

4.1 The Code of Good Practice: Dismissal contained in Schedule 8 of the Labour Relations Act, 1995, insofar as it relates to discipline, constitutes part of this Code and Procedure.

4.2 Employee conduct that may warrant a disciplinary action is listed in Annexure A. This list is not exhaustive. Management may discipline an employee in respect of other conduct, if the employee knew, or could be reasonably expected to have been aware, that the conduct constituted grounds for disciplinary action.

4.3 In applying Annexure A, management must assess the seriousness of the alleged misconduct by considering:

4.3.1 The nature of the employee's work and responsibilities;

4.3.2 The extent of the alleged misconduct or any dishonesty displayed by the employee;

4.3.3 The actual or potential impact of the alleged misconduct on DCS, the employee's component, colleagues and/or the public;

4.3.4 The regularity of the misconduct;

4.3.5 The circumstances in which the misconduct occurred;

4.3.6 Any other factor which, in the light of the peculiar circumstances prevailing at the place and time where the misconduct was committed, should be taken into consideration;

4.3.7 Whether, objectively seen, the employer/employee relationship has been damaged or has become intolerable.

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5. PROCEDURES: DISCIPLINARY ACTIONS

Less serious misconduct

In the event of less serious misconduct, the supervisor may invoke any one of the procedures outlined in clauses 5.1 to 5.5 which he or she deems appropriate.

5.1 **Corrective counselling.** In cases where the seriousness of the misconduct warrants counselling, the manager of the employee must:

5.1.1 Bring the misconduct to the employee's attention;

5.1.2 Determine the reasons for the misconduct and give the employee an opportunity to respond to the allegations, through himself/herself or by a union representative;

5.1.3 Seek to get agreement on how to remedy the conduct; and

5.1.4 Take steps to implement the agreed course of action.

5.2 **Verbal warnings.** In cases where the seriousness of the misconduct warrants a verbal warning, the supervisor/manager of the employee may give a verbal warning. The steps in clauses 5.1.1 and 5.1.2 must be followed. The supervisor/manager must inform the employee that further misconduct may result in more serious disciplinary action, and record the warning. The verbal warning will only be valid for 03 months.

5.3 **Written warnings.** In cases where the seriousness of the misconduct warrants a written warning, the supervisor/manager may give the employee a written warning. The steps in clause 5.1.1 and 5.1.2 must be followed. The following provisions apply to written warnings:

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5.3.1 The written warning may use the form of Annexure B.

5.3.2 The supervisor/manager must give a copy of the written warning to the employee, who must sign receipt of it. If the employee refuses to sign receipt, the supervisor/manager must hand the warning to the employee in the presence of another employee; both the supervisor and the other employee must sign in confirmation that the written warning was conveyed to the employee.

5.3.3 The written warning must be filed in the employee's personal file.

5.3.4 A written warning remains valid for six months. At the expiry of the six months, the written warning must be removed from the employee's personal file and destroyed.

5.3.5 If during the six-month period, the employee is subjected to disciplinary action on a same or related offence; the written warning may be taken into account in deciding an appropriate sanction.

5.4 **Final written warnings.** In cases where the seriousness of the misconduct warrants a final written warning, the manager may give the employee a final written warning. The steps in clause 5.1.1 and 5.1.2 must be followed. The following provisions apply to final written warnings:

5.4.1 The final written warning may use the form of Annexure C.

5.4.2 The manager must give a copy of the final written warning to the employee, who must sign receipt of it. If the employee refuses to sign receipt, the manager must hand the warning to the employee in the presence of another employee; both the supervisor and the other

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employee must sign in confirmation that the final written warning was conveyed to the employee.

5.4.3 The final written warning must be filed in the employee's personal file.

5.4.4 A final written warning remains valid for six months. At the expiry of the six months, the final written warning must be removed from the employee's personal file and destroyed.

5.4.5 If during the six-month period, the employee is subject to disciplinary action on a same or related offence, the final written warning may be taken into account in deciding an appropriate sanction.

5.5 For the purpose of determining appropriate disciplinary actions, valid warnings for similar offences by the employee shall be taken into account.

6. SERIOUS MISCONDUCT

If the alleged misconduct justifies a more serious form of disciplinary action than provided in paragraph 5, the employer must initiate a disciplinary enquiry. The employer must appoint an employee as a representative (Initiator) in writing, who as far as possible should be the manager/ supervisor of the employee, to initiate the enquiry.

7. DISCIPLINARY HEARING

7.1 Notice of hearing

7.1.1 The employee must be given notice at least seven working days before the date of the hearing.

7.1.2 The employee must sign receipt of the notice. If the employee refuses to sign receipt of the notice, it must be given to the employee in the

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presence of a fellow employee who can sign in confirmation that the notice was conveyed to the employee.

7.1.3 The written notice of the disciplinary meeting must use the form of Annexure D, and provide:

7.1.3.1 A clear description of the allegations of misconduct and the main evidence on which the employer will rely;

7.1.3.2 Details of the time, place and venue of the hearing; and

7.1.3.3 Information on the rights of the employee to representation by a fellow employee or a representative or officials of a recognized trade union, and to bring witnesses to the hearing;

7.1.3.4 A summary of the investigation report and statements to be used by the employer.

NB: SUMMARY of the investigation report should contain the following: the facts established a conclusion and a decision.

NNB: Finalization of the investigation shall be the date on which the delegated authority takes the decision whether to charge or not to charge the employee.

7.2 Precautionary suspension

7.2.1. The employer may suspend an employee on full pay or transfer the employee if:

7.2.1.1 The employee is alleged to have committed a serious offence; and;

7.2.1.2 The employer believes that the presence of an employee at the workplace might jeopardize any investigation into the alleged misconduct, or endanger the well being or safety of any person or state property.

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7.2.2 A suspension of this kind is a precautionary measure that does not constitute a judgment. An employee shall not be suspended without salary or normal benefits. Benefits shall not include overtime payment or danger and/or special danger allowances.

7.2.3 If an employee is suspended or transferred as a precautionary measure, the employer must hold a disciplinary hearing within 60 calendar days, depending on the complexity of the matter and the length of the investigation. If after 60 days of suspension the disciplinary hearing has not been instituted the suspended employee may return to work. Depending on the seriousness of the alleged misconduct, the Employer may extend the suspension for a further 30 days. If after such period the disciplinary hearing has not been instituted the employee must return to work. If the disciplinary hearing has been instituted the employer shall determine when the employer can return to work.

7.3 Conducting the disciplinary hearing

7.3.1 The disciplinary hearing must be held within ten working days after the notice referred to in paragraph 7.1.1 is delivered to the employee.

7.3.2 The formal disciplinary hearing should be finalized within a period of 60 days from the date of finalization of the investigation. If the time frame cannot be met, the parties involved must be informed accordingly with reasons for the delay. If the employer, without good reason, fails to institute disciplinary proceedings within a period of 4 months after completion of the investigation, disciplinary action shall fall away.

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7.3.3 The Chair of the hearing must be appointed by the employer and be an employee on a higher grade than the alleged transgressor.

7.3.4 The Initiator, if appointed from the same Management Area, must be of equal or higher rank than the alleged transgressor. If appointed from another Management Area, the Initiator need not be of equal or higher rank than the alleged transgressor, but competency shall be the determining factor.

7.3.5 The employer and the employee charged with misconduct may agree that the disciplinary hearing will be chaired by an arbitrator from the relevant Sectoral Bargaining Council appointed by the council. The decision of the arbitrator will be final and binding and only open to review in terms of the *Labour Relations Act,* 1995. All the provisions applicable to disciplinary hearings in terms of this Code will apply for purposes of these hearings. The Employer will be responsible to pay the costs of the arbitrator.

7.3.6 If the employee wishes, she or he may be represented in the hearing by a fellow employee or a representative of a recognized trade union.

7.3.7 If necessary, an interpreter may attend the hearing.

7.3.8 In a disciplinary hearing, neither the employer nor the employee may be represented by a legal practitioner, unless –

7.3.8.1 The employee is a legal practitioner or the representative of the employer is a legal practitioner and the direct supervisor of the employee charged with misconduct; or

7.3.8.2 The disciplinary hearing is conducted in terms of paragraph 7.3.5.

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For the purposes of this agreement, a legal practitioner is defined as a person who is admitted to practice as an advocate or an attorney in South Africa.

7.3.9 If the employee fails to attend the hearing and the chair concludes that the employee did not have a valid reason, the hearing may continue in the employee's absence.

7.3.10 The chair must keep a record of the notice of the disciplinary hearing and the proceedings of the meeting.

7.3.11 The chair will read the notice for the record and start the hearing.

7.3.12 The representative of the employer will lead evidence on the conduct giving rise to the hearing. The employee or the employee's representative may question any witness introduced by the representative of the employer.

7.3.13 The employee will be given an opportunity to lead evidence. The representative of the employer may question the witnesses.

7.3.14 The chair may ask any witness questions for clarification.

7.3.15 If the chair decides that the employee has committed misconduct, the chair must inform the employee of the finding and the reasons for it.

7.3.16 Before deciding on a sanction, the chair must give the employee an opportunity to present relevant circumstances in mitigation. The representative of the employer may also present aggravating circumstances.

7.3.17 The chair must communicate the final outcome of the hearing to the employee within five working days after the conclusion of the disciplinary enquiry, and the outcome must be recorded on the employee's personal file / G102 and PERSAL.

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7.4 Sanctions

7.4.1. If the chair finds an employee has committed misconduct, the chair must pronounce a sanction (within the period referred to in clause 7.3.17), depending on the nature of the case and the seriousness of the misconduct, the employee's previous record and any mitigating or aggravating circumstances. Sanctions consist of:

7.4.1.1 Counselling;

7.4.1.2 Verbal warning;

7.4.1.3 A written warning valid for six months;

7.4.1.4 A final written warning valid for six months;

7.4.1.5 Suspension without pay, for no longer than three months;

7.4.1.6 Demotion by a post level as an alternative to dismissal, such demotion shall be consented to by the employee.

7.4.1.7 Dismissal.

(7.4.1.5 and 7.4.1.6 as alternatives to dismissal)

7.4.2. The employer shall not implement the sanction during an appeal by the employee.

7.4.3. The chairperson must communicate the final outcome of the hearing to the employee within five (5) *working days* after the conclusion of the disciplinary hearing, and the outcome must be recorded on the personal file (and the relevant Registration file and PERSAL records (and G102) must be updated) of the employee.

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7 Appeal

8.1 An employee may appeal a finding or sanction by completing Annexure E. The appeal shall be in the form of a documentary (paper) appeal.

8.2 The employee must, within five working days of receiving the notice of the final outcome of a hearing or other disciplinary procedure, submit the appeal form to his/her Personnel Office or to his/her manager/supervisor, who must acknowledge receipt thereof and who shall then forward it to the appeal authority.

8.3 The appeal authority may, on good cause shown, condone the late lodging of an appeal.

8.4 The appeal authority, who shall consider the appeal in non-dismissal cases, shall be:

8.5 A manager of higher grade than the chairperson of the original hearing; and

8.5.1 Who was not involved in the decision to institute disciplinary proceedings.

8.6 The appeal authority, who shall consider the appeal in dismissal cases, shall be:

8.6.1 The Deputy Regional Commissioner/Deputy Commissioner who may be assisted by the Regional Heads of Legal Services and Employee Relations, and who

8.6.2 Was not involved in the decision to institute the disciplinary proceeding.

8.7 If the persons referred to in paragraphs 8.4 and 8.5 require a hearing [new evidence], she or he shall notify the employee of the date and place.

8.8 The appeal authority may:

8.8.1 Find the appellant not guilty and set aside the verdict and sanction; and/or

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8.8.2 Confirm the verdict of the disciplinary hearing and reduce the sanction;

8.8.3 Confirm the verdict and sanction of the disciplinary proceeding; or

8.8.4 Order a hearing de novo i.e. a complete re-hearing by a new impartial chairperson, only if found that the initial hearing contained gross procedural errors that were material to the employee's dismissal.

8.9 The appeal authority must provide reasons for his/her decision.

8.10 The Department must finalize appeals within 30 working days from the date of the receipt of the appeal, failing which, in cases where the employee is on suspension after dismissal; he/she (after the expiry of the 30 working days) must resume duties immediately and await the outcome of the appeal. The Area Commissioner shall decide on the placement of the employee.

9 General

9.1 Desertion/abscondment

An employee who absents him/herself for 30 consecutive (calendar) days without permission or without notifying the employer shall be summarily dismissed. However, before dismissing the employee, the employer must endeavour to establish the whereabouts of the employee. Upon the employee's reappearance after desertion, he/she may not be reinstated. The employee must make written representations to the delegated authority within 5 days from his/her reappearance should he/she wishes reinstatement/re-employment to be considered.

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DEFINITIONS

In this procedure, references to the male gender include the female gender.

"Employer" means the head of department or any member of his/her department designated to perform the specific action, unless the context indicates otherwise.

"Fellow employee" means an employee from the same office/institution/Management Area than the employee charged with misconduct, except full-time shop stewards.

"Recognized trade union" means all the unions admitted to the DCS Bargaining Chamber and recognized in the DCS.".

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ANNEXURE A

CODE OF CONDUCT / ACTS OF MISCONDUCT

An employee will be guilty of misconduct if she or he, among other things (this list is not exhaustive):

(a) Fails to comply with, or contravenes an Act, regulation or legal obligation.

(b) Mismanages the finances of the State.

(c) Without permission possesses or wrongfully uses the property of the State, another employees and/or a visitor.

(d) Misuse/abuse of movable/immovable property of the State.

(e) Damage to and or cause loss of state property.

(f) Endangers the lives of self or others by disregarding safety rules or regulations.

(g) Prejudice the administration, discipline or efficiency of a department, office or institution of the State.

(h) Misuse of position in the DCS to promote or to prejudice the interest of any political party organization, company or individual.

(i) Theft, bribery, fraud, corruption or any combination thereof.

(j) Accepts any compensation in cash or otherwise from a member of the public, another employee or an offender for performing her or his duties without written approval from the department.

(k) Fails to carry out a lawful order or routine instruction without just or reasonable cause.

(l) Absence or repeated absence from work without a valid reason or permission.

(m) Commits an act of sexual harassment.

(n) Discriminates on the basis of race, gender, disability, sexuality or other grounds outlawed by the Constitution.

(o) Poor or inadequate performance for reasons other than incapacity.

(p) Dereliction of duties.

(q) Allowing a disciplinary hearing to fall away (Refer to clause 7.3.2 of the Procedure).

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(r) Performing of work for compensation in a private capacity for another person or organization either during or outside working hours without written approval.

(s) Breaching the conditions pertaining to authorized private work.

(t) Sleeping on duty.

(u) While on duty, is under the influence of an intoxicating, illegal, unauthorized, habit-forming and/or stupefying drug, including alcohol.

(v) Being in possession of alcohol in the workplace.

(w) Being in possession of illegal, unauthorized, habit-forming and/or stupefying drug on departmental premises.

(x) Permitting an offender to take alcohol or any prohibited drug or to have these substances in his/her possession.

(y) While on duty, conducts herself or himself in an improper, disgraceful and unacceptable manner.

(z) Contravention of the DCS Code of Conduct.

(aa) Assault, attempt or threatens to assault, another employee or person while on duty.

(bb) Incites other personnel to unprocedural and unlawful conduct.

(cc) Displays disrespect towards others in the workplace or demonstrates abusive or insolent behaviour.

(dd) Intimidation or victimization of fellow employees or other persons.

(ee) Prevents/force other employees from belonging/not belonging to any trade union or employee organization.

(ff) Operates any money lending scheme for employees for own benefit during working hours in the workplace.

(gg) Carries or keeps firearms or other dangerous weapons in the workplace without the written authorization of the employer.

(hh) Misuse of firearms and/or other dangerous weapons in the workplace.

(ii) Breaching of security measures.

(jj) Furnishing of false statements or evidence in the execution of his or her duties.

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(kk) Falsification of records or any other documentation.

(ll) Participation in unprocedural, unprotected and/or unlawful industrial action.

(mm) Commitment of a common law or statutory offence whilst on duty and/or on state premises.

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ANNEXURE B

WRITTEN WARNING

[DATE]

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a written warning in terms of the disciplinary procedure. Should you engage in further misconduct, the written warning may be taken into account in determining a more serious sanction. The written warning will be placed in your personal file and will remain valid for a period of six months for the date of the written warning. After six months the written warning will be removed from your personal file and be destroyed.

The nature of the misconduct is:

If you object the warning, you may direct an appeal to **[name]** within five working days.

The nature of the misconduct is:

SIGNATURE OF EMPLOYEE

DATE

SIGNATURE OF MANAGER

DATE

SIGNATURE OF WITNESS (if applicable)

DATE

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ANNEXURE C

FINAL WRITTEN WARNING

[DATE]

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a written warning in terms of the disciplinary procedure. Should you engage in further transgressions, it could lead to formal misconduct proceedings being instituted against you.

This final written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning. After six months the written warning will be removed from your personal file and be destroyed.

The nature of the misconduct is;

If you object the warning, you may direct an appeal to **[name]** within five working days.

SIGNATURE OF EMPLOYEE

DATE

SIGNATURE OF REPRESENTATIVE OF THE EMPLOYER

DATE

SIGNATURE OF WITNESS (if applicable)

DATE

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ANNEXURE D

NOTICE OF DISCIPLINARY MEETING

[DATE]

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

You are hereby given notice to attend a disciplinary hearing in terms of clauses 6 and 7 of the Disciplinary Code.

The alleged misconduct and the available evidence are:

_____

_____

_____

[A DETAILED DESCRIPTION OF MISCONDUCT MAY BE ATTACHED].

The meeting will be held at _____ [PLACE] on _____ [DATE] at _____ [TIME]. If you do not attend and cannot give reasonable ground for failing to attend, the meeting will be held in your absence.

A fellow employee or a representative of official of a recognized union may represent you.

You may give evidence to the hearing in the form of documents or through witnesses. You will be entitled to question any witness introduced by the department.

If the enquiry holds that you are guilty of misconduct, you may present any relevant circumstances in determining the disciplinary sanction.

SIGNATURE OF EMPLOYEE
DATE

SIGNATURE OF REPRESENTATIVE OF THE EMPLOYER
DATE

SIGNATURE OF WITNESS (if applicable)
DATE

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ANNEXURE E

NOTICE OF APPEAL

[DATE]

[NAME OF APPEAL AUTHORITY]

I, _____, [NAME OF EMPLOYEE] am hereby appealing against a disciplinary action imposed on _____ [DATE] at _____ [PLACE].

I attach a copy of the notice of the disciplinary enquiry and/or the written warning. [THE APPEAL REQUEST IS NOT VALID UNLESS THESE DOCUMENTS ARE ATTACHED]

My reasons for appeal are:

The desired outcome of the appeal is:

I wish/do not wish [CHOOSE ONE] to provide additional evidence not available at the time of the disciplinary proceeding.

SIGNATURE OF EMPLOYEE

DATE

[PERSONAL DETAILS OF THE EMPLOYEE]

[Schedule A substituted by clause 25 of Government Gazette No. 23032 of 27 February 2012]

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SCHEDULE B

MEDICAL PAROLE APPLICATION IN TERMS OF SECTION 79 OF ACT 111 OF 1998 AS AMENDED

A DETAILS OF SENTENCED OFFENDER

1. Registration No. | 2. Surname and Initials

3 Date of Birth | 4. Gender

5. Correctional Centre at which detained

1. I, ... (Name and Surname) hereby consent to the full disclosure of my medical information to the extent necessary and to the persons necessary in order to process this application for medical parole. I also agree, that should I be granted medical parole, to undergo periodic medical examination by a medical practitioner in the event that this is required.

SIGNATURE OR RIGHT THUMB PRINT WITNESS

SURNAME AND INITIALS AND SIGNATURE OF

B DETAILS OF APPLICANT (If different from A)

1 ID No. | 2 Surname and Initials

3 Date of Birth | 4 Relationship to Offender

C. MEDICAL REPORT – to be completed by medical practitioner

Name and Surname of Medical Practitioner:

1 . 2. Practice number:

3 I examined the offender on at

4 I | did | did not | Refer the offender for a specialist opinion.

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_____

(if referral to specialist attached separate report)

5

(a) Diagnosis

_____

(b) Medical history

_____

_____

_____

(c) Is the offender suffering from a terminal disease or condition as specified in the conditions listed in Regulation 29A (5)?

_____

(d) What is the prognosis?

_____

(e) Is the offender able / unable to perform activities of daily living and self care due to the above mentioned?

Comments:_____

(f) If unable, date of unset or period he /she suffered from the condition / diseases / incapacity?

_____

_____

(g) Is the impact of the illness or condition on activities of daily living and self care, mental, physical and intellectually capacity minor, moderate or severe? Please explain:

_____

_____

_____

(h) Has the offender's condition deteriorated permanently or reached and irreversible state? If yes, explain briefly:

_____

_____

_____

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(i) How has the offender managed?

_____

_____

(j) _____

7 Response to treatment

_____

_____

_____

8 Medical parole should be considered for the following reasons:

8.1 Functional or physical incapacity:

_____

8.2 Mental or intellectual capacity:

_____

8.3 Unable to provide self care:

_____

9 In your professional opinion does the condition of health render the offender incapable of committing further

criminal acts, in particular of sexual and / or violent nature?

_____

_____

_____

_____

10 If released, the offender would require the following health care:

_____

_____

_____

_____

_____

11 The health care required in 10 above is available in the area in which the offender will reside?

(Specify health capacity, hospice, home care etc)

_____

_____

_____

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Name: _____ Date: _____

(BLOCK CAPITALS)

Signature: _____

D. DETAILS OF OFFENCE, SENTENCES AND REHABLITATION- to be completed by CMC

1. Was the sentencing court aware of the current condition of the offender?

_____

Attached SAP62, SAP 69 and sentencing remarks where available

2. Type of offence

_____

_____

_____

3. Date of sentence _____

4. Length of sentence _____

5. Previous Convictions

_____

_____

_____

_____

7 Name of Court. _____ Case number _____

8 What programmes has the offender attended?

_____

_____

_____

9 What is your assessment of the risk of the offender re-offending given his present medical condition

_____

_____

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10 Attach latest social work report

11 Has the offender been found guilty of any disciplinary offences whilst in detention? (specify)

E. ARRANGEMENTS FOR offender's SUPERVISION, CARE AND TREATMENT –to be completed by Community Corrections

(a) Where will the offender be accommodated after release on medical parole

i. Hospice

ii. Hospital

iii. Friends or Family

iv. Other (Specify)

Address

(b) Is the address monitorable? _____

(c) Who will care for the offender and what is their relationship?

(d) To what extent are the relatives and friends aware of the offender's medical condition?

(e) Are relatives and friends able to take care of the offender in his/her present condition?

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(f) If the offender is to be accommodated in a hospital, hospice or other institution what arrangement has been made with such institution?

Name:_____ Date: _____

(BLOCK CAPITALS)

Signature:_____

[Schedule B inserted by clause 26 of Government Gazette No. 35032 of 27 February 2012]

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