

# ARREST AND THE TREATMENT OF AN ARRESTED PERSON UNTIL SUCH PERSON IS HANDED OVER TO A COMMUNITY SERVICE CENTRE COMMANDER

## Table of contents

1. Background.....	2
2. Definitions .....	3
3. Securing the attendance of an accused at the trial by means other than arrest ..	4
4. The object of an arrest .....	5
(1) General rule.....	5
(2) Exceptions to the general rule .....	5
5. The requirements for a lawful arrest .....	8
6. Manner of effecting an arrest .....	9
(1) General rule - Arrest with a warrant.....	9
(2) Arrest without a warrant.....	9
7. Arrest of a respondent in the case of an incident of domestic violence.....	10
8. Physical execution of an arrest .....	11
(1) Exercise of physical control .....	11
(2) Amount of force which may be used in effecting arrest .....	11
(3) Entering of premises for the purpose of arrest .....	12
(4) Information that must be furnished to a person upon arrest .....	12
9. Procedure after arrest.....	14
(1) Recording of the fact that the arrested person has been informed of his or her rights .....	14
(2) Presumption of innocence .....	15
(3) Injuries sustained prior to or during arrest .....	15
(4) Search of the arrested person .....	16
(5) The use of restraining measures .....	17
(6) Informing an employer in the case of arresting an employee .....	17
(7) Transporting the arrested person .....	17
10. Handing suspect over to the community service centre commander .....	18
11. Completion of Arrest Statement (SAPS 3M(i)) .....	19

## 1. Background

- (1) In terms of section 12(1) of the Constitution of the Republic of South Africa, 1996, everyone has the right to freedom and security of the person, which includes the right —
  - (a) not to be deprived of freedom arbitrarily or without just cause;
  - (b) not to be detained without trial;
  - (c) to be free from all forms of violence from either public or private sources;
  - (d) not to be tortured in any way; and
  - (e) not to be treated or punished in a cruel, inhuman or degrading way.
  
- (2) Arrest, by definition, constitutes a serious restriction of an individual's freedom of movement, and can also affect his or her dignity and privacy. Therefore, arrest is fully regulated by legislation. This includes the Constitution of the Republic of South Africa, 1996, the Criminal Procedure Act, 1977 (Act No. 51 of 1977) and other legislation. In addition, this national standard also regulates the circumstances when a person may be arrested and how such person should be treated and must therefore be strictly adhered to.
  
- (3) It follows that an arrest is lawful only when effected in accordance with the relevant statutory provisions. The object of an arrest must be to bring the arrested person before a court to be charged, tried, and then either convicted or acquitted.

## 2. Definitions

In this National Standard, unless the context otherwise indicates, —

- (a) “*child*” means a person younger than 18 years, irrespective of the nationality of the *child*;
- (b) “*community service centre commander*” means the member of the South African Police Service who is in charge of a community service centre of the South African Police Service and includes a member of the South African Police Service who is performing the functions of a *community service centre commander*;
- (c) “*complainant*” means any person who is or has been in a domestic relationship with a *respondent* and who is or has been subjected or allegedly subjected to an act of domestic violence, including any *child* in the care of the *complainant*;
- (d) “*Criminal Procedure Act*”, means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (e) “*First Schedule*” means the *First Schedule* to the *Criminal Procedure Act*;
- (f) “*member*” means a *member* of a municipal police service;
- (g) “*police station*” means a *police station* under the command and control of the South African Police Service; and
- (h) “*respondent*” means any person who is or has been in a *domestic relationship* with a *complainant* and who —
  - (i) has committed or allegedly committed; or
  - (ii) has used or allegedly used a third party actor to commit or allegedly to commit, an act of domestic violence against the

*complainant.*

- (i) In this National Standard, a reference to *reasonable suspicion/grounds* must be interpreted to mean that a person will have *reasonable suspicion/grounds* to believe or suspect something or that certain action is necessary if —
  - (i) he or she really ‘believes’ or ‘suspects’ it;
  - (ii) his or her belief or suspicion is based on certain facts from which he or she has drawn an inference or conclusion; and
  - (iii) any reasonable person would, in view of those facts, also have drawn the same conclusion.

### **3. Securing the attendance of an accused at the trial by means other than arrest**

- (1) There are various methods by which an accused’s attendance at a trial may be secured. Although arrest is one of these methods, it constitutes one of the most drastic infringements of the rights of an individual and a *member* should therefore regard it as a last resort.
- (2) It is impossible to lay down hard and fast rules regarding the manner in which the attendance of an accused at a trial should be secured. Each case must be dealt with according to its own merits. A *member* must always exercise his or her discretion in a proper manner when deciding whether a suspect should be arrested or rather be dealt with as provided for in subparagraph (3) below.
- (3) A *member*, even though authorised by law, should normally refrain from making an arrest if —
  - (a) the attendance of an accused may be secured by means of a summons as provided for in section 54 of the *Criminal Procedure Act*, or

- (b) the *member* believes on *reasonable grounds* that a magistrate's court, on convicting such person of that offence, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, (at present R 5000,00), in which event such *member* may hand to the accused a written notice [J 534] as a method of securing the attendance of the accused in the magistrate's court in accordance with section 56 of the *Criminal Procedure Act*. If the person must be taken to the *police station* to be issued with a J 534, the person must be taken immediately to the *police station*. Pocket Book and Occurrence Book entries must be made in all these instances.

#### 4. The object of an arrest

##### (1) General rule

As a general rule, the object of an arrest must be to secure the attendance of such person at his or her trial. A *member* may not arrest a person in order to punish, scare, or harass such person.

##### (2) Exceptions to the general rule

There are circumstances where the law permits a *member* to arrest a person although the purpose with the arrest is not solely to take the person to court. These circumstances are outlined below and constitute exceptions to the general rule that the object of an arrest must be to secure the attendance of an accused at his or her trial. These exceptions must be studied carefully and *members* must take special note of the requirements that must be complied with before an arrest in those circumstances will be regarded as lawful.

##### (a) Arrest for the purpose of further investigation

If a *member* has a *reasonable suspicion* that a person has committed a *First Schedule* offence but realises that further

investigation by the South African Police Service will be necessary before it will be possible to determine whether the suspect should be charged, such *member* may arrest the suspect *if the detention of the suspect is necessary to complete such further investigation*. It is thus proper for a *member* to arrest such a person with the purpose of handing him or her to a member of the South African Police Service. The member of the South African Police Service will conduct a further investigation and, depending on the outcome of such further investigation, charge or release the person. A *member* may only arrest a person for this purpose if such *member* has *reasonable grounds* to believe that the investigation of the South African Police Service will be hampered should the person not be arrested. This will normally be the case if such *member* has *reasonable grounds* to believe that —

- (i) the person will either abscond, do away with an article required as an exhibit, interfere with a witness or otherwise endeavour to evade or defeat the ends of justice;
- (ii) it is necessary for the purpose of the investigation of the case to establish the bodily features of that person and such person refuses to submit himself or herself voluntarily to the examination of his or her fingerprints, buccal sample or bodily appearance as provided for in the *Criminal Procedure Act*; or
- (iii) such person is an illegal foreigner (a person who is not a South African citizen and is in South Africa in contravention of the Immigration Act, 2002 (Act No. 13 of 2002)) or a person who is a prohibited person in terms of section 29 of the Immigration Act, 2002. Such person may be arrested without a warrant and be detained for purposes of conducting an investigation in terms of the said Act which

may lead to the obtaining of a warrant from the Minister of Home Affairs authorising such person's removal from the Republic.

**(b) Arrest to verify a name and/or address**

In terms of section 41(1) of the *Criminal Procedure Act*, a *member* is given the power to call upon any person —

- (i) whom he or she has power to arrest;
- (ii) whom he or she reasonably suspects of having committed any offence or of having attempted to commit any offence; and
- (iii) who may, in his or her opinion, be able to give evidence in regard to the commission of any offence,

to furnish his or her full name and address. If such a person furnishes a name or address which the *member* reasonably suspects to be false, such *member* may arrest the person and must hand such person over to a member of the South African Police Service. The South African Police Service may detain such person for a period of twelve hours in order to verify the name and address of such person.

**(c) Arrest in order to prevent the commission of an offence**

In terms of section 40(1)(f) of the *Criminal Procedure Act*, a *member* may arrest a person whom he or she finds at night in circumstances which afford *reasonable grounds* for believing that such person is about to commit an offence. The purpose with the arrest in these circumstances is to prevent the commission of an offence. Such a person must be handed over to a member of the South African Police Service and may only be detained until the member of the South African Police Service is satisfied that the person will not proceed to commit the offence.

**(d) Arrest in order to protect a suspect**

If a *member* is authorised by any legislation to arrest a person and such *member* has *reasonable grounds* to believe that such person may be killed or be seriously injured unless he or she is immediately arrested, such *member* may arrest such person in order to protect him or her. (This would normally be the case when the suspect is threatened by the victim of the offence or a mob of people that he or she will be assaulted or be killed.) Such person must be handed over to a member of the South African Police Service and may normally be detained by the South African Police Service until he or she is brought before a court and the court has decided whether he or she should be released or be further detained.

**(e) Arrest in order to end an offence**

If a person may be arrested in terms of any legislation and a failure to arrest the person will result in the person continuing to commit an offence, such person may be arrested to prevent him or her from continuing to commit an offence. (This would for instance be the case where a person trespasses on property and refuses to leave the property).

## **5. The requirements for a lawful arrest**

For an arrest to be lawful and for lawful continued detention after arrest, the following four requirements must be complied with:

**(a) The arrest (with or without a warrant) must have been properly authorised.**

There must be a statutory provision authorising the arrest. (See paragraphs 6(1) and (2) below).

**(b) The member who effected the arrest must exercise physical control**



**over the person who has been arrested.**

(See paragraphs 8(1) and (2) below).

- (c) The person who has been arrested must be informed of the reason for his or her arrest and of the rights that he or she has as an arrested person, in terms of section 35(1) of the Constitution**

(See paragraph 8(4) below).

- (d) The person who has been arrested must be brought to the appropriate authorities as soon as possible.**

(See paragraph 9(7) below.)

## **6. Manner of effecting an arrest**

### **(1) General rule - Arrest with a warrant**

- (a) An arrest should preferably be effected only after a warrant for the arrest has been obtained in terms of section 43 of the *Criminal Procedure Act*.

- (b) Once a warrant for the arrest of a person has been issued, any *member* may execute such warrant. It is accordingly not necessary for the warrant to be executed by a particular *member*.

### **(2) Arrest without a warrant**

- (a) It is only in exceptional circumstances where a *member* is specifically authorised by an Act (for example, sections 40 and 41 of the *Criminal Procedure Act*) to arrest a person without the authority of a warrant. Any arrest without a warrant, which is not specifically authorised by law, will be unlawful.

- (b) Section 40(2) of the *Criminal Procedure Act*, determines that if provision is made in a statute for a *member* to arrest a person without a warrant, subject to certain conditions or to the existence of certain circumstances mentioned in such Act, those conditions

must be observed and those circumstances must exist before the arrest is made.

- (c) Section 41 of the *Criminal Procedure Act*, provides that a *member* may call upon any person —
- (i) whom he or she reasonably suspects of having committed any offence or of having attempted to commit any offence; or
  - (ii) who may, in his or her opinion, be able to give evidence in regard to the commission or suspected commission of any offence,
- to furnish his or her full name and address.
- (d) If the person referred to in subparagraph (c), fails to furnish his or her full name and address, or the *member* reasonably suspects that a false name or address has been given to him or her, the *member* may forthwith arrest him or her. In the event that the person refuses to furnish his or her name or address, or furnishes a false name or address, such person is guilty of an offence and should be charged with the offence in the normal manner.

## 7. Arrest of a respondent in the case of an incident of domestic violence

- (1) In terms of section 3(1) of the Domestic Violence Act, 1998, a *member* **may arrest** without a warrant any person —
- (i) who is or has been in a domestic relationship with the *complainant*, and
  - (ii) whom the *member* reasonably suspects of having committed any offence against the *complainant*. The power to arrest in these circumstances is not limited to offences where violence is an element or circumstances as provided for in section 40(1) of the *Criminal*

*Procedure Act*).

- (2) A *member* **MUST**, in terms of section 3(2) of the Domestic Violence Act, 1998, without a warrant, arrest any *respondent* at the scene of an incident of domestic violence, if the *member* reasonably suspects that the *respondent* committed an offence containing an element of violence against the *complainant* (including the offence of common assault). If the *member* reasonably suspects that more than one *respondent* committed an offence containing an element of violence against any *complainant*, all *respondents* must be arrested.
- (3) In addition, *members* must comply with the provisions relating to arrest in the case of an incident of domestic violence as set out in National Standard on Domestic Violence.

## 8. Physical execution of an arrest

### (1) Exercise of physical control

The *member* must confine the freedom of movement of the arrested person. Section 39 of the *Criminal Procedure Act*, determines that, unless the person who has been arrested submits to custody, an arrest is effected by actually touching his or her person or, if the circumstances so require, by forcibly confining his or her person.

### (2) Amount of force which may be used in effecting arrest

- (a) As a rule there should be no need for the use of force, and, in every case where it may be necessary, only such force as is absolutely necessary to overcome resistance to the arrest, may be used. No justification whatsoever exists for beating, kicking or otherwise ill-treating an arrested person and there is no excuse whatsoever for a *member* to act in this manner.

- (b) Section 49 of the *Criminal Procedure Act*, provides for circumstances where the use of force to overcome the resistance offered by a suspect or if the suspect is fleeing from arrest. In this regard, the National Standard on the use of force when effecting an arrest must be complied with.

**(3) Entering of premises for the purpose of arrest**

- (a) Section 48 of the *Criminal Procedure Act*, provides that any person who may lawfully arrest another person in respect of any offence and who knows or reasonably suspects that such other person is on premises, may, if he or she has first —
- (i) audibly demanded entry into such premises; and
  - (ii) notified the purpose for which entry is sought.
- (b) If the *member* fails to gain entry after complying with the requirements stated in subparagraphs (a), such *member* may break open, enter and search such premises for the purpose of effecting the arrest.

**(4) Information that must be furnished to a person upon arrest**

- (a) The information that must be given to a person at the time of or immediately after his or her arrest is as follows:
- (i) the reason for his or her arrest;
  - (ii) that he or she has the right to remain silent and that anything he or she says, may be used as evidence against him or her in a court of law;
  - (iii) that he or she has a right to consult with a legal practitioner of his or her choice or that he or she may, if he or she so prefers, apply to the Legal Aid Board to have a legal practitioner assigned to the case at state expense; and
  - (iv) that he or she has the right to apply to be released on bail.

- (b) Section 39(2) of the *Criminal Procedure Act*, requires that the person who effects an arrest must, at the time of effecting the arrest or immediately thereafter, inform the person who has been arrested of the reason for his or her arrest. It is not necessary to use the actual words of the charge - mentioning the offence would be sufficient. If the arrest took place by virtue of a warrant, a copy of the warrant must, upon his or her demand, be handed to the person who has been arrested.
- (c) The information in subparagraph (a) must be given to the arrested person in a language which he or she understands. For this purpose the said information must be printed on the first pages of the Pocket book (SAPS 206) in all eleven official languages. To ensure that a person is fully informed of these rights, the arresting *member* must read this information from the Pocket book (SAPS 206) to the arrested person in a language which the arrested person understands. The person must, in all circumstances, acknowledge that the information in subparagraph (a) was conveyed to him or her by signing in the *member's* pocket book.
- (d) If a *member* —
- (i) is unable to establish what language the person understands; or
  - (ii) cannot speak the language that the person understands; the *member* must read this information in English. In such a case, the *member* must, upon his or her arrival at the *police station*, inform the *community service centre commander* that the person does not understand English and that steps must be taken by the *community service centre commander* to ascertain what language the person understands in order to convey the

information to the person in that language.

- (e) Should a person volunteer any statement on arrest or prior to being formally charged at the community service centre of the South African Police Service, he or she must, once again, be informed of his or her rights as set out in subparagraph (a).

## 9. Procedure after arrest

### (1) Recording of the fact that the arrested person has been informed of his or her rights

- (a) A *member* who arrests a person must, as soon as possible after having furnished the information in paragraph 8(4)(a)(above), to the arrested person, record in his or her Pocket book (SAPS 206) the fact that the information was so furnished.
- (b) The *member* must request the arrested person to confirm that he or she has been informed of his or her rights and that he or she understands the contents thereof, by signing next to the recording, referred to in subparagraph (a), in the Pocket book (SAPS 206).
- (c) If the arrested person refuses to sign in the Pocket book (SAPS 206), a third person (whether a civilian or another *member*) who witnessed the person being informed of his or her rights, must sign next to the recording to confirm that he or she has witnessed this and that the arrested person refused to sign. If a third person is not available, the *member* must make a recording in the Pocket book (SAPS 206) to the effect that a third person was not available to confirm that the arrested person was informed of his or her rights and that the arrested person refused to sign the Pocket book (SAPS 206).

**(2) Presumption of innocence**

- (a) An arrested person has a right to be presumed innocent until proven guilty in a court of law. A *member* who arrests a person must therefore, at all times, control himself or herself and must never allow his or her belief in the guilt of the arrested person to move him or her to treat the arrested person in a manner which would amount to punishing the person for what the *member* believes that the person has done.
- (b) Even though an arrested person must be presumed to be innocent, a *member* must do everything which may legally be done in order to obtain evidence which could be presented in court to prove the guilt of the arrested person. A *member* must also take every precaution necessary in the circumstances to ensure that the person is not allowed any opportunity to escape.

**(3) Injuries sustained prior to or during arrest**

Upon the arrest of a person, a *member* is obliged to ensure the safety of such person while in his or her care. The following provisions must therefore be complied with:

- (a) The *member* concerned must take all reasonable precautions to ensure that the person will not be injured and will not escape before arrival at the *police station*.
- (b) Should the arrested person show any signs that he or she is seriously ill or is seriously injured, irrespective of whether the injury was sustained during the arrest or not, the *member* must —
- (i) exercise his or her discretion and decide whether the person should be taken for emergency medical treatment even before he or she is taken to the *police station*; and

- (ii) if the arrested person, in the opinion of the *member* concerned, needs emergency medical treatment, decide whether the person is fit to be transported by police vehicle or should rather be transported by ambulance.
  
- (c) If a *member* is in doubt as to whether emergency medical treatment is needed, he or she should rather take the necessary steps to arrange for such treatment. The Executive Head must issue standing orders informing the *members* under his or her command of the applicable hospitals, ambulances or medical practitioners that may be utilised for this purpose.
  
- (d) The *member* who effects an arrest during which the arrested person is injured, must as soon as possible, enter particulars of the injuries, as well as the circumstances under which they were sustained, in his or her Pocket book (SAPS 206) and submit a full statement to the *community service centre commander* of the *police station* to which such person is handed over (for the information of the director of public prosecutions) which will accompany the case docket. He or she must also report any injuries which the arrested person sustained prior or during the arrest to the *community service centre commander* upon arrival at the *police station*.

**(4) Search of the arrested person**

In terms of section 23 of the *Criminal Procedure Act*, a *member* may search an arrested person. The purpose of such a search is twofold, namely to find any article that may be in such person's possession and which could be used in evidence, and to find any article which such person could use to injure himself or herself or any other person.

- (a) Every arrested person must always, immediately upon his or her



arrest, at least be searched to determine whether he or she has any concealed weapons on him or her.

- (b) The search of an arrested person must be undertaken in a decent manner which displays respect for the inherent dignity of the person as required by section 29 of the *Criminal Procedure Act*, and a person may only be searched by a person of the same gender.

**(5) The use of restraining measures**

- (1) In order to curb the increasing number of escapes from police custody, any person who has been arrested and who is detained, may be placed in handcuffs and/or leg-irons (the latter depends on the circumstances).
- (2) Irrespective of whether restraining measures are used to secure an arrested person, *members* in charge of arrested persons must always remain alert until such persons are safely handed over to a member of the South African Police Service.

**(6) Informing an employer in the case of arresting an employee**

If a *member* arrests a person while such person is on duty and is in charge of his or her employer's property or business during the latter's absence, the *member* must, if possible, immediately inform the employer of such person of the arrest and take reasonable steps to ensure that the employer's interests are safeguarded by someone else.

**(7) Transporting the arrested person**

- (1) In terms of section 50(1) of the *Criminal Procedure Act*, a person who has been arrested must as soon as possible be brought to—
- (a) a *police station*; or

<b>National Standard</b>	<b>Arrest and the treatment of person in custody until such person is handed over to a community service centre commander</b>
--------------------------	---

(b) in the case of an arrest by warrant, to the place stipulated in the warrant.

(2) The *member*, transporting the arrested person must drive with the necessary caution to ensure that arrested the person is not injured in any manner and must take the safest and shortest possible route to the *police station* or any other place specified in the warrant. Unnecessary driving around with arrested persons must be avoided.

## **10. Handing suspect over to the community service centre commander**

(1) Upon arrival at the *police station*, the *member* must hand the arrested person to the *community service centre commander* or the *member* in charge of the detention facilities at a *police station* and provide such person with the following information:

- (a) the name of the *member* who has arrested the person;
- (b) the name of the person arrested;
- (c) the reason for the arrest;
- (d) the date, time and place of arrest;
- (e) the risk profile of the person arrested (risk of escaping, injuring others or him-or herself; and
- (f) whether the person sustained any injuries prior to or during the arrest (see paragraph 9(3)(d) above).

(2) The *member* must also, upon arrival at the *police station*, complete the Arrest Statement (SAPS 3M(i)) referred to in paragraph 11 below.

## 11. Completion of Arrest Statement (SAPS 3M(i))

The Arrest Statement (SAPS 3M(i)) is intended to ensure that an arrested person was informed of his or her fundamental rights as soon as possible after arrest, as required in paragraph 8(4)(above).

- (1) After a *member* has arrested a person, such person must, in terms of section 64H of the South African Police Service Act, 1995 (Act No. 68 of 1995), be brought to a *police station* under the control of the South African Police Service, or, in the case of an arrest by warrant, to any other place which is expressly mentioned in the warrant, to be dealt with in terms of section 50 of the *Criminal Procedure Act*.
- (2) A *member* must, upon his or her arrival at a *police station*, hand the arrested person to the *community service centre commander* or the member in charge of the detention facilities at a *police station* and the *member* must complete the Arrest Statement (SAPS 3M(i)).
- (3) Any force used during the arrest to overcome resistance or in order to prevent an escape, which resulted in injuries being sustained by the person during the arrest, must be recorded in a separate statement made by the *member* who applied the force.
- (4) The instructions, printed at the beginning of the Arrest Statement (SAPS 3M(i)), must be strictly adhered to.