

**PROTOCOL ON PROCEDURE TO BE FOLLOWED IN THE CASE OF CONDUCTING FORENSIC PSYCHIATRIC OBSERVATIONS IN RESPECT OF ACCUSED PERSONS**

**(MENTAL HEALTH OBSERVATION AND RELATED MATTERS PROTOCOL)**

**The Establishment of a New, Modernized, Efficient, Effective and Transformed**

**Criminal Justice System for South Africa**

**MENTAL HEALTH OBSERVATION AND RELATED MATTERS PROTOCOL**

This Mental Health Observation and Related Matters Protocol deals with the procedures and practices in respect of enquiries into the mental health of accused persons in terms of sections 77, 78 and 79 of the of the *Criminal Procedure Act, 51 of 1977*, and following court procedures. It does not deal with the procedures in respect of other persons who may require mental health care such as State patients, sentenced offenders or members of the public. Furthermore, it does not address the procedures and practices in the case of children.

**THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

**AND**

**THE SOUTH AFRICAN POLICE SERVICE**

**AND**

**THE NATIONAL PROSECUTING AUTHORITY**

**AND**

**LEGAL AID SOUTH AFRICA**

**AND**

**THE NATIONAL AND PROVINCIAL DEPARTMENTS OF HEALTH**

**AND**

**THE DEPARTMENT OF CORRECTIONAL SERVICES**

**WHEREAS** Cabinet, on 7 November 2007, approved a package of seven fundamental and far-reaching transformative changes (“the CJS Seven-Point-Plan”) that must be adopted and implemented in an integrated and holistic manner to achieve a new dynamic and coordinated Criminal Justice System;

**AND WHEREAS** one of the seven transformative changes adopted by Cabinet provides that practical short- and medium-term proposals to improve the performance of the courts should be developed;

**AND WHEREAS** the agreement to and adoption of this Protocol was one of the initiatives flowing from the CJS Seven-Point-Plan;

**ACKNOWLEDGING** that the present processes in dealing with accused persons referred for an enquiry into and report on their mental condition in terms of the *Criminal Procedure Act, 1977*, is inefficient;

**ACKNOWLEDGING** that there are currently backlogs with regard to the observation of accused persons which impacts on the finalisation of cases;

**WHEREAS** Departments are committed toward solving problems facing the Criminal Justice System in an integrated way;

**AND WHEREAS** Departments have previously adopted a protocol which has been revised and is hereby replaced;

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

**ARTICLE 1**

**INTERPRETATION**

(1) In this Protocol, unless the context otherwise requires –

1. **“court”** includes all district, regional and High courts;
2. **“*CPA*”** means the *Criminal Procedure Act, 51 of 1977*;
3. **“correctional centre”** includes a prison;
4. **“DCS”** means the Department of Correctional Services;
5. **“DCS facility”** means a correctional centre or remand detention facility or any other place where persons remanded in detention may be held;
6. **“DOH”** includes the National Department of Health and Provincial Departments of Health;
7. **“DoJ&CD”** means the Department of Justice and Constitutional Development;
8. **“DPP”** means a Director of Public Prosecutions;
9. **“head”** means a person who manages the establishment or facility concerned;
10. **“health establishment”** means institutions, facilities, buildings or places where persons receive care, treatment, rehabilitative assistance, diagnostic or therapeutic interventions or other health services and includes facilities such as community health and rehabilitation centres, clinics, hospitals and psychiatric hospitals;
11. **“High Court”** means the High Court of South Africa;
12. **“Legal Aid SA”** means Legal Aid South Africa;
13. ***“head of a designated health establishment”*** means a head of a psychiatric hospital~~[[1]](#footnote-1);~~
14. **“*MHCA*”** means the *Mental Health Care Act, 17 of 2002*;
15. **“NPA”** means the National Prosecuting Authority;
16. **“prosecutor”** includes all members of the prosecuting authority as set out in section 4 of the *National Prosecuting Authority Act, 32 of 1998*;
17. **“psychiatric hospital”** means a health establishment that provides care, treatment and rehabilitation services only for users with mental illness[[2]](#footnote-2);
18. **“psychiatrist”** means a person registered as such in terms of the *Health Professions Act, 56 of 1974*, and for purposes of observation preferably a forensic psychiatrist registered under the subspecialty of forensic psychiatry or one with forensic experience.
19. **“clinical psychologist”** means a person registered as such in terms of the *Health Professions Act, 56 of 1974*;
20. **“SAPS”** means the South African Police Service; and
21. **“*Sexual Offences Act*”** means the *Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007*.

(2) This Protocol will be known as the Mental Health Observation and Related Matters Protocol.

**ARTICLE 2**

**OBJECTIVES**

The objectives of this Protocol are to—

1. promote, facilitate and regulate cooperation between the Departments in relation to mental observation of accused persons;
2. ensure that the most effective mechanisms are utilised to deal speedily with accused persons who may be affected by mental illness or intellectual disability, in relation to the charges against them or in relation to court proceedings; and to reduce case cycle times and the postponement of cases;
3. reduce delays, unnecessary detention and the impact on accused persons who require mental health observation.

**ARTICLE 3**

**RESPONSIBILITIES OF THE COURT**

1. If at any stage of criminal proceedings it appears that an accused person is not capable of understanding the proceedings so as to make a proper defence due to mental illness or intellectual disability, the court is obliged to direct that an enquiry be made into the mental health condition of the accused person and that a report be submitted to the court.
2. If it appears at any stage of criminal proceedings, that an accused person, by reason of mental illness or intellectual disability or for any other reason, who is alleged to have committed an offence, was at the time of the commission of the offence not criminally responsible, due to a mental illness or intellectual disability which made him or her incapable of appreciating the wrongfulness of his or her act or omission, or acting in accordance with an appreciation of such wrongfulness, the court is obliged to direct that an enquiry be made into the mental health condition of the accused person and that a report be submitted to the court.
3. Where such accused person is unrepresented, the court may, in accordance with section 77(1A) of the *CPA*, order that the accused person be provided with a legal practitioner in terms of section 3B of the *Legal Aid Act, 22 of 1969* at the proceedings, if it is of the view that substantial injustice would otherwise result.
4. **I**n the absence of a medical or factual basis, the court will not direct that the mental health of the accused person be enquired into. Presiding officers may refer accused persons to a medical practitioner for preliminary screening for mental illness or intellectual disability.
5. Where the court directs that an enquiry be conducted into the mental health of an accused person, the court shall direct that:
	1. Where the accused is charged with—
		1. murder;
		2. culpable homicide;
		3. rape or compelled rape contemplated in sections 3 or 4 of the *Sexual Offences Act*;
		4. charges involving serious violence;
		5. where the court considers it necessary in the public interest; or
		6. where the court in a particular case so directs,

the enquiry to be conducted and reported on by a panel.

* 1. Where the accused person is charged with any other offence, the enquiry shall be conducted, and the report be compiled by a single psychiatrist.
1. A panel normally consists of *two* psychiatrists and where relevant, aclinical psychologist and will be made up of:
	1. The *head of the health establishment* designated by the court, if such head is a psychiatrist, or a psychiatrist appointed by such *head of the designated health establishment* at the request of the court.
	2. A psychiatrist appointed by the court~~.~~
	3. A psychiatrist appointed for the accused person by the court *upon application and on good cause shown by the accused person for such appointment. The court must ensure that the required psychiatrist has a forensic background.*
	4. *A clinical psychologist, where the court so directs.*
2. Where a panel observation is to be conducted, a court must identify every panel member that is not the head of the designated health establishment, or a psychiatrist appointed by such head of the *designated health establishment*.
3. For purposes of the enquiry the court shall commit the accused person to a *designated health establishment,* or any other place designated by the court for such periods as it may from time to time determine. The period may not exceed thirty (30) days at a time.
4. When the period of committal is extended for the first time, such extension may be granted in the absence of the accused person, unless requested otherwise by the accused person or his or her legal representative.
5. Should the accused person not be in custody, the court shall specify the date or dates that the accused person must present himself or herself at the *designated health establishment* or other designated place.
6. Where accused persons are committed to DCS facilities for purposes of observation, it is preferable that DCS facilities which have a health facility and are in near proximity to the designated health establishment are utilised.
7. Pending the committal of the person for the enquiry, the case shall be postponed. Where an accused person is in custody, the accused person may continue to be detained, but the J7 warrant for detention should be endorsed to reflect that the accused person is being detained pending observation.
8. Where an accused person who is detained is committed for the enquiry, a J138 warrant shall be issued. The place where the observation is to be conducted and the type of observation required, i.e., single psychiatrist or panel observation, must be clearly indicated on the J138.
9. Where the finding contained in the relevant report is unanimous, and not disputed by the prosecutor or accused person, the court may determine the matter based on the report without the hearing of further evidence.
10. Should the finding not be unanimous, or be disputed by the prosecutor or accused person, the court shall hear further evidence and provide an opportunity for the prosecutor and the accused person to present such evidence as they deem relevant.
11. Should the court find that the accused person is capable of understanding the proceedings so as to make a proper defence, the proceedings shall be continued in the ordinary way, including any possible proceedings in terms of section 78 of the *CPA*.
12. Should the court find that the accused person is not capable of understanding the proceedings so as to make a proper defence, the court may consider such information or evidence as it deems fit to determine whether the accused person committed the act in question or any other offence and whether the offence involved serious violence.
13. If an accused person is found not capable of understanding the proceedings so as to make a proper defence by reason of mental illness or *intellectual disability,* the court may:
	1. In terms of the section 77(6)(*a*)(i)(*aa*) or (*bb*) of the *CPA* direct that the accused person be detained in a psychiatric hospital or temporarily in a correctional centre; in terms of section 77(6)(*a*)(i)(*cc*) of the *CPA* direct that the accused person be admitted to and detained as if the accused person were an involuntary mental health care user in terms of section 37 of the *MHCA*; in terms of section 77(6)(*a*)(i)(*dd*) of the *CPA* release the accused person conditionally; in terms of section 77(6)(*a*)(i)(*dd*) of the *CPA* refer the accused person to a Children’s Court in all cases of—
		1. murder;
		2. culpable homicide;
		3. rape or compelled rape contemplated in sections 3 or 4 of the *Sexual Offences Act*;
		4. charges involving serious violence; or
		5. where the court considers it necessary in the public interest.
	2. In terms of section 77(6)(*a*)(ii)(*aa*) of the *CPA*, where the accused person has committed any other offence than the above or has committed no offence, have the accused person admitted to and detained in a designated health establishment stated in the order as if the accused person were an involuntary mental health care user, after which the procedure contemplated in section 37 of the *MHCA* applies; or in terms of section 77(6)(*a*)(ii)(*bb*) of the *CPA*, to direct that the accused be released conditionally; or in terms of 77(6)(*a*)(ii)(*cc*) of the *CPA* be released unconditionally; or in terms of 77(6)(*a*)(ii)(*dd*) of the *CPA*, refer the accused person to a Children’s Court.
14. If the court finds that an accused person is able to conduct his or her defence and committed the act in question and was, at the time of the commission of the act, not criminally responsible due to mental illness or intellectual disability, the court after finding the accused not guilty by reason of mental illness or *intellectual disability* has a discretion to:
	1. In terms of section 78(6)(*b*)(i)(*aa*), (*bb*), (*dd*) or (*ee*) of the *CPA* to declare the accused person a state patient and direct that he or she be detained in a psychiatric hospital or temporarily in a correctional centre; or direct that the accused person be admitted to a mental health facility as if the accused person were an involuntary mental health care user; or release the accused person conditionally; or release the accused person unconditionally; or *refer the accused person to a Children’s Court* in all cases of—
		1. murder;
		2. culpable homicide;
		3. rape or compelled rape contemplated in sections 3 or 4 of the *Sexual Offences Act*;
		4. charges involving serious violence; or
		5. where the court considers it necessary in the public interest.
	2. In any other cases than the above the court has a discretion to direct in terms of section 78(6)(*b*)(ii)(*aa*), (*cc*); (*dd*) or (*ee*) of the *CPA* that the accused person be admitted to a designated health establishment stated in the order as if the accused person were an involuntary mental health care user, or that the accused person be released conditionally or unconditionally, or to refer the accused person to a Children’s Court.
15. Where the court makes a finding and gives a direction in terms of section 77(6) or 78(6) of the *CPA,* that the accused person is by reason of mental illness or *intellectual* disability not capable of understanding the proceedings so as to make a proper defence or was, by reason of mental illness or intellectual disability, not criminally responsible for the act which constituted murder, attempted murder, rape, indecent assault, or assault with the intent to do grievous bodily harm, with regard to a child, the accused person shall be found unsuitable to work with children in terms of section 120(4)(*b*) of the *Children’s Act, 38 of 2005*.
16. Where the court has made a finding and given a direction in terms of section 77(6) or 78(6) of the *CPA,* that the accused person is by reason of mental illness or intellectual disability not capable of understanding the proceedings so as to make a proper defence or was, by reason of mental illness or intellectual disability, not criminally responsible for the act which constituted a sexual offence against a child or a person who is mentally disabled, the court shall make an order that the particulars of the accused person be included in the National Register for Sexual Offences in terms of section 50(2)(*a*)(ii) of the *Sexual Offences Act*.

**ARTICLE 4**

**RESPONSIBILITIES OF THE SOUTH AFRICAN POLICE SERVICE**

1. Where it is suspected or alleged that a person detained or arrested for the alleged commission of an offence, is suffering from a mental illness or intellectual disability, the police shall investigate whether there are grounds for believing that the person may be suffering from a mental illness or *intellectual disability.*
2. In the case of minor offences, the investigating officer shall take the docket to the relevant prosecutor for a decision whether or not to institute a prosecution.
3. If the prosecutor declines to prosecute, such accused person must be taken to a hospital or clinic for an application in terms of section 32 of the *MHCA*. A form *MHCA* 04 needs to be completed.
4. Where the court directs that an accused person be committed to a designated health establishment or other place for purposes of enquiry into the mental health condition of the accused person, the SAPS are responsible for the transport of the accused person who is in custody between the court, DCS facility, hospital and mental health facility.
5. The SAPS shall, as soon as they have been informed that a bed is available for observation of the person, provide transport to take the accused to court in order for the J138 warrant to be issued.
6. Where the accused person is detained in custody, the SAPS shall transport the person to the relevant designated health establishment or other designated place as soon as possible, upon receipt of the relevant order.
7. Whilst the accused person is undergoing investigation at the designated health establishment, the SAPS remain responsible for the safe custody and 24 hour guarding of that person.
8. Where the SAPS have been informed that the observation has been concluded and the accused person is to be discharged, they shall immediately arrange for collection of the accused person from the designated health establishment and transportation to the place where the accused person is to be detained or alternative place that may have been arranged arising from the investigation.
9. SAPS shall assist in the execution of an order by a magistrate for the detention, apprehension or removal of a mentally ill person.

**ARTICLE 5**

**RESPONSIBILITIES OF THE NATIONAL PROSECUTING AUTHORITY**

1. Where a prosecutor becomes aware or it is alleged that an accused person may be suffering from a mental illness or intellectual disability the prosecutor shall request the investigating officer to obtain the evidence in respect of this issue, which may include taking the accused to a mental health practitioner to conduct a preliminary examination into the mental condition of the accused.
2. A prosecutor may decide not to institute a prosecution in a particular case and may request the investigating officer to take the person to an appropriate health establishment.
3. Where it is alleged or appears that an accused person before court may be suffering from a mental illness or *intellectual disability*, the prosecutor shall request the court to consider the issue of referral of the person for enquiry into the mental condition of the accused person.
4. Where an accused person is not legally represented at such proceedings, the prosecutor should first request the court to consider the appointment of a legal representative for the accused person in terms of section 77(1A) of the *CPA*.
5. The prosecutor should ensure that a proper basis, whether factual or medical, is placed before the court to enable the presiding officer to determine whether the mental health condition of the accused must be enquired into.
6. Prosecutors must oppose requests for referral by or on behalf of the accused person where the available evidence indicates a contrary position or where, upon application for the appointment of a third psychiatrist by the accused person, no good cause is shown for such appointment.
7. Prosecutors should ensure that when the court directs that an enquiry be conducted, the court specifies whether the enquiry is in terms of section 77 or 78 of the *CPA* or both and that the panel members other than the head of the health establishment or a psychiatrist identified by the said head, are identified.
8. Prosecutors should request the court, in cases where the accused person applies for the appointment of a third psychiatrist as a panel member, to establish whether such psychiatrist has a forensic background to be able to assist the court.
9. Before the referral of an accused person to a designated health establishment for observation, the prosecutor shall ensure that the relevant institution has been contacted and a reference number obtained, or arrangements are made in connection with reserving bed-space for the accused person.
10. Where the case is withdrawn and the bed-space is no longer required, prosecutors should ensure that the designated health establishment has been advised that the reservation can be cancelled.
11. Where the observation is to take place at a Correctional Centre the prosecutor shall be informed and shall confirm that the relevant institution has been contacted or purposes of observation.
12. Where an accused person is held in a police cell or DCS facility pending referral, prosecutors should ensure that the situation is continually monitored with a view to having the accused person admitted to the hospital or institution as soon as possible.
13. As soon as it is known that a bed is available for an observation, the prosecutor must arrange to have the accused person appear in court in order for the person to be referred for observation and inform the representative of the arrangements made.
14. Prosecutors may assist in relation to the reservation of bed-space where necessary.
15. Prosecutors must forward a report, as set out below, to the head of the designated health establishment and, where applicable, to each psychiatrist, as well as the relevant DPP.
16. This report must comply with section 79(1A) of the *CPA* and should contain the following information, namely—

(a) the prosecutor’s file reference;

(b) the name of the accused person;

(c) the name of the prosecutor and his or her contact telephone number;

(d) the name of the investigating officer and his or her contact telephone number;

(e) the name of the legal representative of the accused person and his or her contact telephone number;

(f) the case number;

(g) the SAPS CAS or CR reference;

(h) the date to which the case has been postponed;

(i) the social background of the accused person, family composition and the names and addresses of his or her nearest relatives or guardians, insofar as it is within the knowledge of the prosecutor;

(j) the charge(s) against the accused person;

(k) whether the referral was in terms of section 77 and/or 78 of the *CPA*;

(l) the background to the referral including at whose request or on whose initiative the referral took place;

(m) at which stage of the proceedings the referral has taken place;

(n) the purport of the information or evidence relevant to the accused person's mental condition tendered in court;

(o) the facts of the case against the accused person, the relationship between the victim and the accused person, the victim’s age and gender and where possible, copies of relevant affidavits from the docket;

(p) a description of any planning before and after the commission of the crime(s) and the relationship between the victim and the accused;

(q) the motive for the crime(s);

(r) any injuries to the complainant or deceased;

(s) the nature and value of damage to property;

(t) the circumstances of the arrest of the accused person;

(u) the essence of any statement made by the accused person before or during the court proceedings and where available, copies of statements made by the accused;

(v) any previous convictions of the accused person;

(w) any report by a social worker, should such be available; and

(x) any other facts that may, in the opinion of the prosecutor, be relevant in the evaluation of themental capacity of the accused person.

1. The above report shall, where possible, be electronically transmitted or hand-delivered to the DPP and to the head of the relevant health establishment and psychiatrists as soon as possible after the referral and a copy should accompany the person to the hospital or place of observation. Any annexure to this report (e.g., form J88, *post-mortem* report, photographs; SAP 69’s, statements) should be forwarded through the normal channels to all the recipients mentioned above as soon as possible.
2. Should it be necessary to extend the initial period of committal for the first time, the prosecutor shall generally request that this takes place in the absence of the accused person so that the observation continues uninterrupted.
3. Where the findings are not unanimous or there is a dispute as to the findings, prosecutors must present evidence and may subpoena and cross-examine any person who enquired into the mental condition of the accused.
4. Prosecutors should make appropriate submissions (informed by the DPP instruction) to the court in respect of the proper option to be applied to each case where a mental illness or *intellectual disability* is found. In this regard, prosecutors should consult with the authorities at the relevant designated health establishment but must make independent submissions to the court.

**ARTICLE 6**

**RESPONSIBILITIES OF LEGAL AID SOUTH AFRICA**

1. Where it is alleged or appears that an accused person is suffering from a mental illness or mental defect, the legal practitioner must ensure that a basis, whether factual or medical, are placed before the court to enable the presiding officer to determine whether the mental condition of the accused must be enquired into.
2. Where the court, in terms of section 77(1A) of the *CPA*, has ordered that the accused person be provided with a legal practitioner at state expense in termsof section 3B of the *Legal Aid Act, 22 of 1969*, the services of a suitable practitioner shall be provided as soon as is reasonably possible.
3. Where the findings are not unanimous or there is a dispute as to the findings, legal practitioners may present evidence and may subpoena and cross-examine any person who enquired into the mental condition of the accused.
4. The legal representative is entitled to address and make recommendations to the court on any issues arising from the appointment of a panel to enquire into the mental health of an accused person including the number of panellists~~.~~
5. Where the court finds that the accused is not capable of understanding the proceedings so as to make a proper defence and the court considers information or evidence to determine whether the accused committed the offence in question or any other offence, the legal practitioner is entitled to challenge such evidence or information and has the right to place evidence before the court that is relevant to the court’s enquiry. This should be done without delay. The legal representative is also entitled to address the court on any issues raised by the evidence or information before the court makes a finding.

**ARTICLE 7**

**RESPONSIBILITIES OF THE REGISTRAR OR THE CLERK OF THE COURT**

1. Where the court has ordered that the accused be provided with the services of a legal practitioner, the registrar or clerk of the court must notify Legal Aid SA of the order.
2. Where the designated health establishment does not have a high-security section for dangerous accused persons sent for observation, arrangements shall be made with DCS for detention of such accused persons for observation purposes in the hospital section of the DCS facility closest to the hospital, and the head of the designated health establishment, or the psychiatrist appointed by such head at the request of the court, and/or the panel, must be advised accordingly and any necessary and relevant arrangements be put in place.
3. Where an accused person is detained in custody pending the availability of bed-space the J7 warrant for detention must be endorsed to reflect that the accused person is being detained pending observation.
4. Where an accused person is referred to a designated health establishment the registrar or clerk of the court must ensure that the relevant establishment and officer in charge of the detention centre, where the accused person is or will be detained, is provided with a J138 warrant signed by the Judge or Magistrate.
5. The registrar or clerk of the court shall ensure that when the written report is submitted following the enquiry into the mental condition of the accused person, that both the prosecutor and the accused receive a copy thereof.
6. Where the court makes the finding in terms of section 120(4)(b) of the *Children’s Act, 38 of 2005*, that the accused person is unsuitable to work with children, the registrar or clerk of the court must notify the Director-General of the Department of Social Development of the finding for entry of the name of the accused person in Part B of the National Child Protection Register.
7. Where the court has made an order in terms of section 50(2)(a)(ii) of the *Sexual Offences Act* that particulars of the accused person be included in the National Register for Sex Offenders, the registrar or clerk of the court must forward the order to the Registrar of the National Register for Sexual Offenders, together with the particulars of such person, for entry into the Register and, where possible, notify the employer of the accused person of such order.

**ARTICLE 8**

**RESPONSIBILITIES OF THE DEPARTMENTS OF HEALTH**

1. The Director-General: Health must compile and maintain a current list of all psychiatrists and clinical psychologists who are prepared to conduct enquiries and the areas served by them.
2. The head of the designated health establishment may, in accordance with section 79(1) of the CPA, delegate such person to conduct the enquiry
3. An updated list must be provided to the Registrars of the High Courts and to all clerks of magistrates’ courts, as well as the DPP’s, Legal Aid South Africa, DCS and SAPS on an annual basis.
4. The Departments of Health should also provide a list of facilities where observations can take place on an in/outpatient basis, as well as places where persons can be referred to for admission and detention as involuntary health care users.
5. The NDOH shall liaise with the DCS with regard to the use of the health facilities in Correctional Centres for enquiries, where applicable.
6. The NDOH shall charge the DoJ&CD the agreed tariff in respect of awaiting trial detainees observed in terms of the *CPA*.
7. On an annual basis the NDOH and DoJ&CD shall revise tariffs in accordance with changes to the recommended fees approved by the medical industry and agree to the tariff to be charged.
8. The NDOH shall allocate beds for forensic observations.
9. The relevant establishment shall notify the prosecutor who has made a booking as soon as a bed is to become available.
10. Where an accused person has been referred for observation, the person must be informed that a report will be submitted to the court by a mental health care practitioner and that he or she is under no obligation to divulge information.
11. Should it become apparent that psychiatric treatment is urgent, such treatment may commence prior to the submission of the report to the court which will detail the treatment initiated. Provision of such psychiatric treatment remains the responsibility of the DOH.
12. Should the need to extend a period of observation arise, the establishment shall notify the registrar or clerk of the court and the relevant prosecutor five days prior to expiry of the warrant for detention.
13. Where the date of completion of the observation has been determined, the establishment shall notify the prosecutor and SAPS that the accused person will be ready to be discharged in order for SAPS to make travel arrangements to collect the person.
14. The written report must be submitted in triplicate to the prosecutor and to the DPP as soon as possible after conclusion of the observation.
15. The head of the health establishment may, in exceptional circumstances and upon the recommendation of a mental health care practitioner, request the SAPS to assist with the transfer of an assisted or involuntary mental health user to and between health facilities.

**ARTICLE 9**

**RESPONSIBILITIES OF THE DEPARTMENT OF CORRECTIONAL SERVICES**

1. Where it appears to the head of a DCS facility that an accused person remanded in custody pending trial may be mentally ill, the head must make arrangements for a mental health assessment of the person.
2. If it is found that the accused person is mentally ill, the head of the DCS facility must take the necessary steps to ensure that the required levels of care, treatment and rehabilitation are provided to that person and should also notify the relevant prosecutor or investigating officer of the finding where such person is not already in detention pending forensic observation.
3. Where accused persons detained in DCS facilities awaiting mental health observation have exhibited high risk behaviour that is suspected to be related to mental illness or intellectual disability, such persons should be accommodated in separate cells from the general population, and a consultation should be made with the correctional facility medical team.
4. If the evaluation is to be conducted in a DCS facility, the accused person must be transferred to the in-patient section of the DCS facility closest to the designated health establishment for the observation.
5. Upon receipt of a J138 warrant, the person must be immediately transferred to the DCS facility in-patient section.
6. Details of any treatment, special investigations, medication prescribed and administered or applied to an accused person detained in the DCS facility whilst waiting for observation, as may be required by the health of the detainee, should be reported to head of the designated health establishment responsible for the enquiry.
7. The provision of treatment, care and support shall remain the responsibility of DoH and DCS shall ensure medication is administered as prescribed.
8. The DCS shall provide to the DOH a list of Correctional Centres that have suitable health facilities were mental observation is able to be conducted.

**ARTICLE 10**

**RESPONSIBILITIES OF THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

1. The DoJ&CD is obliged to pay the tariff agreed with the DOH for the observation of awaiting trial detainees.
2. The DoJ&CD is obliged to pay the fees of psychiatrists and clinical psychologists who conducted enquiries under section 79 of the *CPA* promptly.
3. On an annual basis the DoJ&CD and DOH shall revise tariffs in accordance with changes to the recommended fees approved by the medical industry and agree to the tariff to be charged.

**ARTICLE 11**

**REVIEW AND AMENDMENT**

An amendment to this Protocol must be in writing and adopted by all parties.

**ARTICLE 12**

**COMPLIANCE WITH PROTOCOL**

(1) The Protocol is binding on all the employees from those Government Departments and Agencies that are signatories to the Protocol.

(2) The DoJ&CD, SAPS, NPA, Legal Aid SA, DOH and DCS must ensure where relevant that the responsibilities embodied in this protocol are contained in training programmes, norms and standards, standing orders, directives and other instruments with which employees must comply.

(3) Any dispute as to the interpretation of this protocol shall be resolved by negotiation.

**ARTICLE 13**

**ENTRY INTO FORCE**

This Protocol shall enter into force on the date the last signature is appended by the parties.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Director-General: Justice and Constitutional Development**

**Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**National Commissioner: South African Police Service**

**Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**National Director of Public Prosecutions**

**Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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**Chief Executive Officer: Legal Aid South Africa**

**Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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**Director-General: Department of Health**

**Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**National Commissioner: Department of Correctional Services**

**Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

1. CPA was amended with reference to superintendent now Head of Health Establishment [↑](#footnote-ref-1)
2. . The *CPA* has been amended and now refers to Head of Health Establishment. [↑](#footnote-ref-2)