

NATIONAL INSTRUCTION 1 OF 2014

PROTECTION OF OLDER PERSONS

1. Background

The Older Persons Act, 2006 (Act No. 13 of 2006) provides protection to *older persons* to maintain and promote their status, well-being, safety and security and to combat their *abuse*.

The purpose of this instruction is to provide clear direction to members on how to respond to a complaint of *abuse* of an *older person* in order to comply with the obligations imposed on a member in terms of *the Act*.

2. Definitions

In this instruction, unless the context otherwise indicates, –

- (a) “*abuse*” means any conduct or lack of appropriate action, within any relationship where there is an expectation of trust, which causes harm or distress or is likely to cause harm or distress to an *older person*, and includes physical, sexual, psychological and *economic abuse*;
- (b) “*care*” means physical, psychological, social or material assistance to an *older person*, and includes services aimed at promoting the quality of life and general well-being of an *older person*;
- (c) “*caregiver*” means any person who provides *care* to the *older person*;
- (d) “*economic abuse*” means the —
 - (i) deprivation of economic and financial resources to which an *older person* is entitled under any law;
 - (ii) unreasonable deprivation of economic and financial resources which the *older person* requires out of necessity; or
 - (iii) disposal of household effects or other property that belongs to the *older person* without the *older person*’s consent;
- (e) “*older person*” means a person who, in the case of a male, is 65 years of age or older and, in the case of a female, is 60 years of age or older;
- (f) “*older person in need of care and protection*” means an *older person* who —
 - (i) has his or her income, assets or old age grant taken against his or her wishes or who suffers any other *economic abuse*;
 - (ii) has been removed from his or her property against his or her wishes or who has been unlawfully evicted from any property occupied by him or her;
 - (iii) has been neglected or abandoned without any visible means of support;

- (iv) lives or works on the streets or begs for a living;
 - (v) abuses or is addicted to a substance and is without any support or treatment for such substance abuse or addiction;
 - (vi) lives in circumstances likely to cause or to be conducive to seduction, abduction or sexual exploitation;
 - (vii) lives in or is exposed to circumstances which may physically or mentally harm that *older person*; or
 - (viii) is in a state of physical, mental or social neglect;
- (g) “*physical abuse*” means any act or threat of physical violence towards an *older person*;
- (h) “*psychological abuse*” means any pattern of degrading or humiliating conduct towards an *older person*, including repeated —
- (i) insults, ridicule or name calling;
 - (ii) threats to cause emotional pain; and
 - (iii) invasion of an *older person’s* privacy, liberty, integrity or security;
- (i) “*sexual abuse*” means any conduct that violates the sexual integrity of an *older person*; and
- (j) “*social worker*” means a person registered as a social worker in terms of the Social Service Professions Act, 1978 (Act No. 110 of 1978) and in the employ or service of the state or a registered welfare organisation.

3. General principles applicable to policing relating to older persons

- (1) All proceedings, actions or decisions in a matter concerning an *older person* must —
- (a) respect, protect, promote and fulfil the older person’s rights, the best interests of the *older person* and the rights and principles set out in *the Act*, subject to any lawful limitation;
 - (b) respect the *older person’s* inherent dignity;
 - (c) treat the older person fairly and equitably; and
 - (d) protect the older person from unfair discrimination on any ground, including on the ground of the health status or disability of the older person.
- (2) In any matter concerning an *older person* —
- (a) an approach which is conducive to conciliation and problem-solving should be followed and a confrontational approach should be avoided; and
 - (b) a delay in any action or decision to be taken must be avoided as far as possible.

- (3) *Older persons* are different from other persons and do not necessarily have the same knowledge, experience and insight normally expected from any person.
- (4) A *member* must always treat an *older person* in a manner which is in the best interest of the *older person*.
- (5) A *member* must not humiliate or intimidate an *older person* and must at all times treat and communicate with the *older person* in a manner which is appropriate to the age and health of the *older person*. The older the *older person*, the more patient and understanding the *member* must be while communicating with the *older person*. The *older person's* ability to understand and communicate is relevant when considering what would be an appropriate manner in which to treat and communicate with the *older person*.
- (6) The *member* must take steps to protect the privacy and dignity of the *older person* and must ensure that discussions with an *older person* who lays a complaint, (whether at the police station or at the crime scene) take place in private, out of sight and hearing of other persons.
- (7) A *member* who explains to an *older person* and (if appropriate) any person who may support the *older person*, the contents of a notice or procedure, must take into account the background of the *older person*, the supporting person and the fact that they may not be conversant with the functioning of the courts and court procedures. The *member* must explain the contents of the notice or procedure in simple, understandable language and give sufficient details to the *older person*. The *member* must also encourage the *older person* to ask questions without interrupting him or her.
- (8) (a) An *older person* must be addressed in a language that he or she understands (preferably the language of his or her choice) using plain and simple vocabulary.
- (b) If a *member* –
- (i) is unable to establish what language the *older person* understands; or
 - (ii) cannot speak the language that the *older person* understands,
- the *member* must explain the information in English.
- (c) In the event that the *older person* does not understand English, the *member* must inform the Community Service Centre

Commander accordingly. The Community Service Centre Commander must determine what language the *older person* understands and ensure that the information is conveyed in that language.

- (d) In the event that the *older person* does not understand English, the Community Service Centre Commander must make an entry in the Occurrence Book (OB) setting out the steps taken to ensure that the information is conveyed in a language that is understood by the *older person*.

4. Responsibility of the Divisional Commissioner: Visible Policing

- (1) The Divisional Commissioner: Visible Policing must obtain from the Department of Social Development –
 - (a) the particulars of every provincial older person co-ordinator;
 - (b) a list of provincial and local older person forums in every province; and
 - (c) a list of old age homes and residences for elderly persons in every province.
- (2) The Divisional Commissioner: Visible Policing must distribute the information referred to in subparagraph (1) to every Provincial Commissioner.

5. Responsibility of a Provincial Commissioner, cluster commander and station commander

- (1) The Provincial Commissioner must distribute the information referred to in paragraph 4(1) to every cluster commander and station commander in his or her province.
- (2) Every station commander must liaise with local and provincial representatives of the Departments of Social Development, Cooperative Governance, Justice, Health, the local Community Police Forum, the Provincial Older Persons' Forum, and any other relevant local institution, to identify local organisations that are willing and able to provide assistance to *older persons*.
- (3) After having identified the organisations and institutions referred to in subparagraph (2), the station commander must liaise with the said organisations and institutions to determine –
 - (a) the specific services that are rendered by each;
 - (b) whether the services are rendered free of charge or at a fee;

- (c) whether the services are rendered after hours, during weekends and on public holidays, and, if so, the after hour contact numbers that may be used to access the services; and
 - (d) the contact particulars of each.
- (4) The station commander must compile a list of the organisations and institutions identified in accordance with subparagraph (2) and include in it, in respect of each organisation and institution, at least the information referred to in subparagraph (3) as well as information relating to relevant *social workers*, hospitals, and health care professionals that may be contacted to provide social services, medical treatment and counselling to *older persons*.
- (5) The original list referred to in subparagraph (4) must be kept by the station commander who must update it at least once every six months.
- (6) The station commander must ensure that a copy of –
 - (a) *the Act*;
 - (b) this Instruction;
 - (c) the station orders issued by him or her in terms of subparagraph (7);
 - (d) the information referred to in subparagraph (3) (above); and
 - (d) the list referred to in subparagraph (4);are at all times available in the Community Service Centre and that a copy of the list referred to in subparagraph (4) is at all times available in each police vehicle at his or her station which is utilized to attend to complaints. The station commander must also provide a copy of the list referred to in subparagraph (4) to the commander of the detectives at his or her station, who must ensure that a copy of the list is available in each vehicle utilised by the detectives.
- (7) The station commander must, taking into account the unique circumstances prevailing in his or her specific station area, available resources, etc., issue station orders –
 - (a) requiring a member under his or her command, in appropriate circumstances, to inform the *older person* of the services rendered by organisations and institutions mentioned in the list (eg by providing him or her with a copy of the list or allowing him or her to peruse the list or reading the information from the list); and
 - (b) in general, instructing members under his or her command on any other matter relating to the treatment of *older persons* which he or she deems necessary in respect of his or her specific station area.

- (8) (a) If a police station area forms part of a larger area consisting of more than one police station area and a radio control unit has been established to patrol and attend to complaints in such larger area, every station commander of a station in such larger area must, for information purposes, provide the commander of such radio control unit with a copy of —
- (i) the list referred to in subparagraph (3) and, when he or she has updated the list, a copy of the updated version thereof; and
 - (ii) the station orders issued in accordance with subparagraph (7) and, if he or she amends the orders, a copy of the updated version thereof.
- (b) The commander of the radio control unit must acknowledge receipt of the copies referred to in subparagraph (8)(a) and the acknowledgement of receipt must be filed for record purposes.
- (9) The station commander must ensure that every functional member at his or her station receives in-service training (also at station meetings) on *the Act*, this Instruction and the station orders issued by him or her. The station commander must keep record of all such training provided and the names of the members who attended the training sessions.

6. Reporting of allegations that an older person is in need of care and protection

- (1) If an allegation is received that an *older person is in need of care and protection*, the member receiving the allegation, must carefully listen to the allegation and consider whether the conduct constitutes an offence.
- (2) The member must inform the person making the allegation of the right to —
- (a) lay a criminal charge (if the conduct allegedly committed by the perpetrator, constitutes an offence). (If that person wishes to lay a criminal charge, the member must assist him or her to make an affidavit and ensure that a docket is opened and registered on CAS);
 - (b) apply for a protection order in terms of the Domestic Violence Act, 1998 (Act No. 116 of 1998), if the *older person* and perpetrator is in a domestic relationship; or
 - (c) lay a criminal charge as well as apply for a protection order and inform the person that laying a criminal charge is not a prerequisite for applying for a protection order.

7. Steps to be taken in respect of older persons in need of care and protection

- (1) If a member has reasonable grounds to believe that a particular *older person* may be *in need of care and protection* (whether that suspicion is based on an allegation that he or she had received or on his or her own observations while patrolling or attending to complaints) such member must consider the available facts and determine whether there are grounds to believe that the *older person is in need of care and protection*.
- (2) If the available facts are insufficient to determine whether the *older person is in need of care and protection* to ensure his or her safety and well-being, the member must inquire into the circumstances. If necessary, the member must visit the *older person* and obtain information from the *older person* and any other person that may be able to assist him or her to determine whether the *older person is in need of care and protection*.
- (3) If the member, after having considered the available facts, including the facts that came to light during his or her inquiry, is satisfied that there are reasonable grounds to believe that the *older person is in need of care and protection*, the member must report the matter to the *social worker* for further inquiries and make an OB entry to this effect, which contains the particulars of the person that he or she had spoken to.
- (4) If, during the inquiry, the member is satisfied that an offence was committed, the member must open a docket for the investigation of the offence and register the docket on CAS.
- (5) If the member, after having considered the available facts, including the facts that came to light during his or her inquiry, concludes that the *older person* —
 - (a) is not *in need of care and protection*, he or she must make an entry to this effect in the Occurrence Book (OB), setting out the reasons on which his or her conclusion is based; or
 - (b) may possibly be *in need of care and protection*, he or she must report the matter to the *social worker*.

8. Ensuring the safety and well-being of an older person in need of care and protection

- (1) Once an *older person* has been identified by a member as an *older person who is in need of care and protection*, the member must ensure the safety and well-being of such *older person* by either –
 - (a) removing the *older person* (after having discussed the matter with the *social worker*) and having obtained guidance on the placement of the *older person*; or
 - (b) removing the alleged offender in accordance with paragraph 8.
- (2) In deciding whether to remove the *older person* or to remove the alleged offender, the best interests of the older person must be the determining factor and the general principles, set out in paragraph 3, must be taken into account.
- (3)
 - (a) The member must determine whether the *older person* referred to in subparagraph (1) is in need of medical treatment and, if so, ensure that the *older person* receives medical treatment. The member must record in his or her Pocket Book (SAPS 206) any injuries that the *older person* may have reported to the member as well as any injuries the member has personally observed. This information must also be recorded in the OB.
 - (b) A member may request medical assistance by ambulance or paramedics.
 - (c) If a case has been registered and the *older person* was the victim of the offence, the member must issue a J88 and SAPS 308 to the registered medical practitioner. Where possible, and provided transport is available, the member must arrange for the *older person* to be taken to the registered medical practitioner together with the J88 and SAPS 308.

9. Removal of alleged offender by issuing of Written Notice (SAPS 593)

- (1) A member who receives a report indicating that an *older person* may be *in need of care and protection* –
 - (a) may, if he or she is satisfied that it will be in the best interest of the *older person* concerned if the alleged offender is removed from the home or place where the *older person* resides; or
 - (b) must, if a report is received from a *social worker* indicating that it will be in the best interest of the *older person* that the alleged offender be removed,

remove the alleged offender from the home or place where the *older person* resides and issue a Written Notice (SAPS 593) to the alleged offender.

- (2) The member must explain the importance of the form SAPS 593 to the alleged offender and warn him or her that, if he or she fails to comply with the form SAPS 593, and –
 - (a) refuses to leave the home or place where the *older person* resides; or
 - (b) has contact with the *older person* in contravention of the form SAPS 593,
he or she will be guilty of the offence of contravening section 27(8)(a) of *the Act*. This is a Schedule 1 offence and, if a member has reasonable grounds to believe that a person has committed the offence, such a person may be arrested.
- (3) If the alleged offender fails to appear in the court or fails to remain in attendance at the proceedings referred to in the SAPS 593, he or she will be guilty of an offence and may be charged. (If convicted of the offence, the alleged offender may, in terms of section 55 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977, be sentenced to imprisonment for a period not exceeding three months.)
- (4) The original SAPS 593 must be handed to the alleged offender. The duplicate original must be handed to the clerk of the magistrates' court before 09:00 of the next court day, before the inquiry commences. The third copy of the Written Notice must remain in the SAPS 593 book for control purposes.
- (5) The member must, upon his or her arrival at the police station, –
 - (a) notify the relevant provincial department of social development that the alleged offender has been removed and issued with the Written Notice and of the date, time and place where such alleged offender will appear in the magistrates' court; and
 - (b) make an entry in the Occurrence Book (OB) recording how the relevant provincial department of social development and *social worker*, that requested the removal of the alleged offender, was informed and stating the serial number of the SAPS 593 that had been issued to the alleged offender.