**Report of the Portfolio Committee on Police on the Criminal Law (Forensic Procedures) Amendment Bill [B25 – 2021] (National Assembly – sec 75), dated 18 May 2022**

The Portfolio Committee on Police (the Committee), having considered the Criminal Law (Forensic Procedures) Amendment Bill [B25 – 2021] referred to it and classified by the Joint Tagging Mechanism (JTM) as a section 75 Bill, reports as follows:

1. **Introduction**

The Criminal Law (Forensic Procedures) Amendment Bill [B25 – 2021] was introduced in Parliament and referred to the Portfolio Committee on Police for processing on 20 December 2021 (ATC No 173-2021). The notice of its introduction was published by the Civilian Secretariat for Police Service in the Government Gazette on 10 December 2021 (No. 45616).

1. **Objective and purpose of the Amendment Bill**

The purpose of the Criminal Law (Forensic Procedures) Amendment Bill [B25-2021] is to make provision for the full implementation of certain transitional arrangements contained in the Criminal Law (Forensic Procedures) Amendment Act, 2013; to provide for the enforcement of the obligation to submit to the taking of a buccal sample; and to provide for matters connected therewith.

1. **Clauses of the Amendment Bill**

The Criminal Law (Forensic Procedures) Amendment Bill [B25-2021] proposes the following clauses:

**Clause 1: Definitions:** The clause provides for any word or expression to which a meaning has been assigned in the Act.

**Clause 2(a): Removal of time limit and reporting requirements:** Clause 2(a) essentially removes the time limitation on the taking or buccal samples from already convicted (and imprisoned) persons on Schedule 8 offences and further imposes several reporting requirements on the National Commissioners of the SAPS and Correctional Services.

Clause 2(a) substitutes section 7(7) of the Act for a provision identical to the previous subsection (7), but without a limitation to the period allowed to take buccal samples of persons convicted for Schedule 8 offences.

The proposed subsection (7)(a) provides for the taking of buccal samples from any person serving a sentence of imprisonment in respect of any offence listed in Schedule 8 of the Criminal Procedure Act 51 of 1977 *(see Annexure A for the list of offences)* –

* before the release of the person, if the buccal sample had not already been taken upon his or her arrest;
* before the release of a person either on parole or under correctional supervision by a court.

The proposed subsection (7)(b) provides that the National Commissioner of Correctional Services must:

* report the prescribed information of Schedule 8 offenders to the National Commissioner of the SAPS at least three months prior to the planned release date of such persons; and
* report on the implementation of the requirement for taking of buccal samples from convicted Schedule 8 offenders*,* on a quarterly basis.

The proposed subsection (7)(c) provides that the National Commissioner of the SAPS must:

* submit quarterly reports to the Minister of Police on the progress made concerning the taking of buccal samples from convicted Schedule 8 offenders.

**Clause 2(b): Refusal by convicted offender to submit to a buccal sample:** Clause 2(b) focusses on convicted schedule 8 offenders (inmates) refusing consent for taking a buccal sample. The clause provides that a warrant should be obtained from a judge or magistrate and that, if after such warrant was obtained, the offender continues to refuse a buccal sample to be taken, minimum force may be used to obtain such sample. It further provides that the inmate concerned must receive medical attention and that the incident must be reported to the Inspecting Judge immediately.

Subsection (7A) provides that, if a person does not consent to the taking of a buccal sample,

* The National Commissioner of the SAPS (or his/her delegate) must apply for individual cases (*ex parte)* to a judge or magistrate for a warrant authorising the taking of a buccal samples which application must be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based; and
* A judge or magistrate may issue such warrant if satisfied that:
	+ the person to whom it relates is a person serving a sentence of imprisonment on conviction of a schedule 8 offence; and
	+ the provisions of section 15J(2), (3), (4) or (5) of the South African Police Service Act 1995 (Act No. 68 of 1995), relating to the removal of a forensic DNA profile, do not apply.

Subsection (7B) allows for an authorised person (police officer), assisted by correctional officials, to **use minimum force** against a person who refuses to submit to the taking of a buccal sample under authority of a warrant. This is despite the provisions of section 32(1)*(c)* of the Correctional Services Act, 1998 (Act No. 111 of 1998), which provides for the circumstances under which force may be used against an inmate.

Subsection (7C), requires the National Commissioner of the SAPS, in consultation with the National Commissioner of Correctional Services, to issue and publish in the *Gazette* **National Instructions regarding the use of minimum force**.

Subsection (7D) provides that when force was used to obtain a buccal sample from an inmate, the inmate concerned must undergo an immediate **medical examination** and receive the treatment prescribed by the correctional medical practitioner and must be reported to the Inspecting Judge, immediately, as provided in section 32(5) and (6) of the Correctional Services Act, 1998.

1. **Public participation and meetings held**

The Committee held public hearings on 16 March 2022 and adopted its Report on Public Participation on 30 March 2022. The Committee had six meetings in deliberation of the Amendment Bill dated 16 February 2022, 16 March 2022, 18 March 2022, 23 March 2022, 30 March 2022 and 11 May 2022.

1. **Adoption of the Criminal Law (Forensic Procedures) Amendment Bill [B25 – 2021]**

The Portfolio Committee on Police adopts the Criminal Law (Forensic Procedures) Amendment Bill [B25 – 2021] without any amendments.

**Report to be considered.**