

SOUTH AFRICAN POLICE SERVICE

SUID-AFRIKAANSE POLISIEDIENS



APPLICATION BY VICTIM OR INTERESTED PERSON FOR HIV TESTING OF ALLEGED OFFENDER

Section 30 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)

PLEASE READ THE FOLLOWING NOTES BEFORE COMPLETING THE APPLICATION FORM:

- (1) In terms of the Act, the victim of a sexual offence or an interested person acting on behalf of the victim, may apply for the HIV testing of the alleged perpetrator of the sexual offence. The Act provides that an interested person is any person who has a material interest in the well-being of a victim, including a spouse, same sex or heterosexual permanent life partner, parent, guardian, family member, care giver, curator, counsellor, medical practitioner, health service provider, social worker or teacher of a victim.
(2) If the application is made by an interested person (as set out above), the application must be made with the written consent of the victim, unless the victim is —
- younger than 14 years;
- mentally disabled;
- unconscious;
- a person in respect of whom a curator has been appointed in terms of an order of court; or
- a person whom the magistrate considering the application, is satisfied is unable to provide the required consent.

Where applicable, the written consent of the victim must be attached to the application form.

- (3) If you require assistance with the completion of the application form, you may request the investigating officer to assist you.

IN THE MAGISTRATES' COURT FOR THE DISTRICT OF ...
HELD AT ...
Case No.:

APPLICATION

To the clerk of the court, ...

Take notice that ...

(the victim*/interested person*) in terms of section 30 of the Act applies to this Court for an order –

- (a) that the alleged sex offender, described below, be tested for HIV*; and
(b) that the HIV test results be disclosed to ... (the victim*/interested person*) and to the alleged offender; or
(c) that the test results of the alleged offender, which has already been obtained on application by an investigating officer as contemplated in section 32 of the Act, be disclosed to ... (the victim*/interested person*)

* Delete which is not applicable

PART A: DECLARATION BY VICTIM OR INTERESTED PERSON ACTING ON BEHALF OF VICTIM

1. PARTICULARS OF VICTIM

Full names and surname:

Indicate any other surnames:

Date of birth:

Age:

Identity number/passport number:

2. PARTICULARS OF INTERESTED PERSON, IF APPLICABLE (See note (1) above)

Full names and surname:

Date of birth:

Identity number/passport number:

Relationship with victim (eg parent):

If the applicant is not the spouse, same sex or heterosexual permanent life partner or parent of the victim, state the reason why application is made on behalf of victim:

3. WRITTEN CONSENT OF VICTIM IF APPLICATION IS MADE BY INTERESTED PERSON (See note (2) above)

(a) Has the written consent been obtained from the victim? If yes, attach the consent to this form*

(b) The written consent of the victim is not required if the victim is * —

- below the age of 14 years;
- mentally disabled;
- unconscious;
- a person in respect of whom a curator has been appointed by the court; or
- unable to provide consent because (provide reasons):

* Delete which is not applicable

4. PARTICULARS OF ALLEGED SEXUAL OFFENCE AND POSSIBLE EXPOSURE TO THE BODY FLUIDS OF THE OFFENDER

(To be completed by the victim or the interested person acting on his or her behalf or by the investigating officer)

(a) Date, time and place where the alleged sexual offence was committed:

(b) Explain why you believe that you were exposed to the body fluids (semen, blood, vaginal fluid) of the alleged offender:

(Attach a copy of the J 88 or medical report if available)

I certify that the deponent has acknowledged that he/she* knows and understands the contents of this statement which was sworn to / affirmed * before me and the deponent's signature was placed thereon in my presence.

SIGNED AND SWORN TO / SOLEMNLY CONFIRMED* IN MY PRESENCE ON THIS THE DAY OF AT AND AT (TIME).

SIGNATURE OF JUSTICE OF THE PEACE/COMMISSIONER OF OATHS

Full names:

Designation:

Area for which appointed:

Business address:

*Delete whichever is not applicable

PART B: ALLEGED OFFENDER

1. PARTICULARS OF ALLEGED OFFENDER (To be completed by the investigating officer)

A complaint in respect of an alleged sexual offence has been reported by the victim whose particulars appear in PART A above against the alleged offender whose particulars appear below.

Name and surname:

Date of birth:

Age:

Identity number/passport number:

Residential address/temporary address:

Telephone number:

Cell number:

CAS/CR no:

Offence charged with:

Is the alleged offender in detention or has he or she been released on bail? (Delete if not applicable)

If the alleged offender is in detention, state the place where he or she is being detained:

If the alleged offender has been released on bail, state the bail conditions subject to which he or she has been released:

6. AFFIDAVIT/SOLEMN DECLARATION BY INVESTIGATING OFFICER

I,....., (the investigating officer) with Persal number..... hereby declare that the above information is to the best of my knowledge true and correct.

The above statement was made by me at the place, date and time as indicated.

- * I know and understand the contents of this statement.
I have no objection to taking the prescribed oath.
I consider the prescribed oath to be binding on my conscience.

OR

- * I solemnly affirm that the contents of this statement is true.

*Delete whichever is not applicable

.....
SIGNATURE OF INVESTIGATING OFFICER PLACE

DATE

I certify that the deponent has acknowledged that he/she* knows and understands the contents of this statement which was sworn to / affirmed * before me and the deponent's signature was placed thereon in my presence.

SIGNED AND SWORN TO / SOLEMNLY CONFIRMED* IN MY PRESENCE ON THIS THE DAY OF..... AT AND AT (TIME).

SIGNED: JUSTICE OF THE PEACE*/COMMISSIONER OF OATHS*

Full names:

Designation:

Area for which appointed:

Business address:

*Delete whichever is not applicable

Please note: The Act strictly limits the circumstances in which an alleged offender of a sexual offence may, without his or her consent, be subjected to a compulsory HIV test. The Act only allows this in order to assist victims of sexual offences. If you have not been the victim of a sexual offence, or you do not act on behalf of a victim of a sexual offence, and abuse this procedure to establish the HIV status of a person with malicious intent, you may be prosecuted and convicted of an offence and sentenced to a fine or to imprisonment for a period not exceeding three years. You may also face a civil claim for damages.

SOUTH AFRICAN POLICE SERVICE

SUID-AFRIKAANSE POLISIEDIENS

SAPS 580(c)



APPLICATION BY INVESTIGATING OFFICER FOR HIV TESTING OF ALLEGED OFFENDER

Section 32 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)

Note:

This application form must be completed by the investigating officer. The completed form must be placed in a sealed envelope which is marked "Confidential/Vertroulik", with the CAS / CR number and name and rank of the investigating officer written on the envelope. The envelope must be handed to the clerk of the court.

IN THE MAGISTRATES' COURT FOR THE DISTRICT OF ... HELD AT ... Case No.:

1. APPLICATION

To the clerk of the court, ...

Take notice that ... (the investigating officer) applies in terms of section 32 of the Act to this Court for an order —

- (a) that the alleged sex offender, described below, be tested for HIV; or
(b) that the HIV test results of the alleged offender, already obtained on application by a victim or interested person on behalf of a victim as contemplated in section 30 of the Act, be made available to —
(i) ... (the investigating officer); and / or
(ii) ... (the prosecutor who needs to know the results for purposes of the prosecution of the matter in question or any other court proceedings, contemplated in section 32(1)(b) of the Act).

2. PARTICULARS OF VICTIM

Full names and surname: ... Any other surnames: ... Date of birth: ... Age: ... Identity number/passport number: ...

3. PARTICULARS OF ALLEGED OFFENDER

Full names and surname: ... Any other surnames: ... Date of birth: ... Age: ... Identity number/passport number: ...

4. GROUNDS FOR APPLICATION

On the strength of information taken on oath or by way of solemn declaration, in which it is alleged that a sexual offence, or an offence as defined in section 27 of the Act, was committed by the alleged offender, the application is based on the

following grounds:.....
.....
.....
.....

5. PARTICULARS OF APPLICATION ALREADY BROUGHT BY VICTIM OR INTERESTED PERSON IN TERMS OF SECTION 30 OF THE ACT*

Date of application:

Magistrate's Office where application was granted:

Where is test results kept?

**Delete whichever is not applicable*

6. AFFIDAVIT / SOLEMN DECLARATION BY INVESTIGATING OFFICER

I, (the investigating officer) with Persal number hereby declare that the above information is to the best of my knowledge true and correct.

The above statement was made by me at the place, date and time as indicated.

- * I know and understand the contents of this statement.
- I have no objection to taking the prescribed oath.
- I consider the prescribed oath to be binding on my conscience.

OR

- * I solemnly affirm that the contents of this statement is true.

**Delete whichever is not applicable*

.....
SIGNATURE OF INVESTIGATING OFFICER

.....
PLACE

.....
DATE

I certify that the deponent has acknowledged that he* / she* knows and understands the contents of this statement which was sworn to* / affirmed * before me and the deponent's signature was placed thereon in my presence.

SIGNED AND SWORN TO* / SOLEMNLY CONFIRMED* IN MY PRESENCE ON THIS THE DAY OF..... AT AND AT (TIME).

.....
SIGNED: JUSTICE OF THE PEACE/COMMISSIONER OF OATHS

Full names:

Designation:

Area for which appointed:

Business address:

.....
**Delete whichever is not applicable*

SOUTH AFRICAN POLICE SERVICE

SAPS 580(d)
SUID-AFRIKAANSE POLISIEDIENS



NOTICE TO ALLEGED OFFENDER IN RESPECT OF ORDER FOR HIV TESTING

*Section 31(5)(b) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007
(Act No. 32 of 2007)*

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF

HELD AT

Case No. :

(To be handed to the alleged offender by the investigating officer)

To:

(the alleged offender) charged with the offence of

against (the victim).

The purpose of this notice is to inform you that the court mentioned above issued an order to have you tested for HIV without your consent and to disclose the result of the test to the victim or an interested person acting on behalf of the victim and, where applicable, to the prosecutor responsible for your prosecution or any other related court proceedings.

What is HIV infection?

HIV refers to infection with the human immuno-deficiency virus. HIV destroys important cells that control and support the immune system. As a result, the body's natural built-in defence mechanisms are weakened and find it difficult to offer resistance against illnesses. Most people infected with HIV ultimately develop AIDS and die as their bodies can no longer offer any resistance to illnesses such as TB, pneumonia and meningitis. Infection with HIV therefore has serious consequences for you as an individual. There is currently no cure for HIV/AIDS.

How is HIV transmitted?

HIV is transmitted in three different ways:

- during sexual intercourse;
- during a blood transfusion when HIV infected blood is passed directly into the body; and
- from a mother to a fetus during pregnancy, childbirth or whilst breast feeding.

Can HIV be transmitted during the commission of a sexual offence?

Yes. If there is any exposure to HIV infected blood, semen or vaginal fluid during the commission of the offence, HIV may be transmitted.

Why should I be tested for HIV?

You may have exposed the victim to HIV during the commission of the alleged sexual offence or offence as defined in section 27 of the Act with which you are charged. (Section 27 of the Act defines

a "sexual offence" as a sexual offence in terms of which the victim may have been exposed to body fluids of the alleged offender, and an "offence" is defined as any offence, other than a sexual offence, in which the HIV status of the alleged offender may be relevant for purposes of investigation or prosecution). In the light of the serious consequences of HIV infection and the fear of victims of being infected with HIV, victims have the right to apply for the HIV testing of the alleged offenders and to have the result disclosed to them. The investigating officer may also apply to have you tested for HIV.

How will knowledge about my HIV status help the alleged victim?

The result of the test may help him or her —

- to decide whether to submit himself or herself to medical treatment which is costly and has serious effects but could prevent him or her from contracting the virus;
- to take measures to prevent the virus from being transmitted further from himself or herself to other persons (eg to the sexual partner of the victim or to her baby if she is pregnant or breast-feeding); and
- to provide the victim with peace of mind regarding his or her possible exposure to HIV during the alleged commission of the sexual offence.

Who granted the order that I be tested for HIV?

A magistrate from the magistrate's court in the district in which you allegedly committed the sexual offence or offence granted the order.

On what basis has the court order been granted?

The magistrate granted the order after considering evidence on oath by the person who applied to have you tested for HIV and by the investigating officer. The magistrate is satisfied that on a *prima facie* basis —

- you have committed a sexual offence or offence against the victim who applied, or on whose behalf application was made, to have you tested for HIV;
- in the course of the commission of the alleged offence, the victim may have been exposed to your body fluids (semen, blood or vaginal fluid); and
- no more than 90 calendar days have lapsed from the date of the alleged commission of the offence.

You must note that the existence of *prima facie* evidence against you does not mean that you will be convicted of the crime. The state must prove beyond reasonable doubt that you committed the offence you are charged with. *Prima facie* evidence is utilized for the application to have you tested for HIV without your consent.

May I refuse to have my blood samples tested for HIV?

No. It is an order of the court. The magistrate may also issue a Warrant of Arrest if there is reason to believe that you may avoid compliance with the order or have already avoided compliance therewith. If you fail to comply with, or avoid compliance with a court order for your HIV testing, you are guilty of an offence and may be liable on conviction to a fine or to imprisonment for a period not exceeding three years.

How will I be tested for HIV?

The investigating officer will take you to a registered medical practitioner or nurse who will take two blood samples from you. The investigating officer will take the properly identified samples to a designated public health establishment where they will be tested for HIV.

Who will pay for the HIV testing?

The State. It will not cost you any money.

Will I be informed about the HIV test result?

Yes. The investigating officer will ensure that you receive the HIV test result and information on where you can obtain assistance in dealing with the results and the implications thereof.

What if the charge against me is a false charge?

Any person who, with malicious intent, lays a charge with the South African Police Service in respect of an alleged sexual offence with the intention to apply in terms of section 30(1) of the Act to ascertain the HIV status of any person, is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding three years.

Will the test result be disclosed to other persons?

The HIV test results may only be disclosed to the victim or the interested person who applied for the compulsory HIV testing of the alleged offender, yourself (as the alleged offender), the investigating officer and the prosecutor, where applicable, or any other person who needs to know the test results for purposes of any civil proceedings or an order of the court.

Will the test result be used in the trial against me?

Yes. Section 34 of the Act provides that the results of an HIV test may be used as evidence in any civil proceedings ensuing from the sexual offence or to enable the investigating officer to gather information for purposes of criminal proceedings.

How does my HIV status affect others?

Your HIV status does not only have serious implications for the alleged victim, but also for your own health and the health of others (eg your sexual partner or baby). Every person has the responsibility not to put others at risk of HIV infection. It is important that you obtain advice, assistance and information on treatment if you are HIV positive and on how to protect yourself and others against infection with HIV.

Are there any service organizations which can provide counseling and support?

There are a number of private and public institutions that will assist you to deal with the implications of the HIV test results. Some of these services are free of charge, while others may require the payment of a fee. These include:

- Private medical and social facilities (eg a general medical practitioner or psychologist);
- Public medical and social facilities, including —
 - Life Line
 - Child Line
 - Child protection organizations
 - Local State Hospitals and Clinics
 - Rape Crisis
 - FAMSA
 - Departments of Social Welfare
 - Local AIDS Service Organizations

Contact details of these service providers are available in the telephone directory, from the investigating officer and from the prison authorities.

SOUTH AFRICAN POLICE SERVICE

SAPS 580(e)
SUID-AFRIKAANSE POLISIEDIENS**NOTICE CONTAINING INFORMATION ON CONFIDENTIALITY OF AND HOW TO DEAL WITH HIV TEST RESULTS***Section 33(1)(e) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007) (Act No. 32 of 2007)***Note:**

- (1) The Notice must be handed to —
- (a) the victim or interested person who acts on behalf of the victim and who applied to have the alleged offender tested for HIV; and
 - (b) the alleged offender who has been tested for HIV.
- (2) The purpose of the Notice is to provide the parties set out in (1) above, with information on the confidentiality and how to deal with information about the outcome of a compulsory HIV test.

How will I be informed of the HIV test result of the alleged offender?

The results of the HIV test of the alleged offender will be made available to you in a sealed envelope, marked "Confidential / Vertroulik".

What will be contained in the sealed envelope?

The sealed envelope will contain a document completed by a person attached to the health establishment that performed the HIV testing on the blood samples of the alleged offender. The form will state whether the alleged offender tested:

- positive for HIV; or
- negative for HIV.

If I am the victim, may I disclose the HIV status of the alleged offender to other people?

You may not disclose the HIV test results with malicious intent or in a grossly negligent manner to any person other than the alleged offender, the investigating officer, the prosecutor or any other person who needs to know the test results for purposes of any civil proceedings or an order of the court.

What should I do with the HIV test result?

You should obtain assistance from an expert to understand the implications of the result and on how to deal with the result, regardless of whether the test result was positive or negative. Expert assistance will help you to —

- understand the test result;
- deal with immediate emotional reactions and concerns;
- understand how the result will affect your health and the health of others (eg your sexual partner);
- identify the need for social and medical care; and
- discuss the need to disclose the test result to others.

Service organisations which can provide counselling and support

There are a number of private and public facilities that will assist you to deal with the implications of the HIV test results. Some of these services are free of charge, while others may require the payment of a fee. These include:

- Private medical and social facilities (eg a general medical practitioner or psychologist);
- Public medical and social facilities, including —
 - Life Line
 - Child Line
 - Child protection organizations
 - Local State Hospitals and Clinics
 - Rape Crisis
 - FAMSA
 - Departments of Social Welfare
 - Local AIDS Service Organizations

Contact details of these service providers are available in the telephone directory and from the investigating officer.

If, after you have read the Notice, there is anything you do not understand, you may contact the investigating official, one of the service providers mentioned above or a social worker of the Department of Correctional Services for assistance.

SOUTH AFRICAN POLICE SERVICE

SAPS 580(f)
SUID-AFRIKAANSE POLISIEDIENS



APPLICATION FOR A WARRANT OF ARREST

Section 33(3) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)

IN THE MAGISTRATES' COURT FOR THE DISTRICT OF

HELD AT

Case No.:

1. APPLICATION

I, (Persal number) (rank)
..... (name and surname
of investigating officer), hereby applies in terms of section 33(3) of the Act to the Magistrate of
..... to issue

a warrant of arrest for the alleged offender referred to below as —

*(a) there is reason to believe that he or she may avoid; or

*(b) he or she has avoided,

compliance with an order contemplated in section 31(3) or section 32(3) of the Act.

2. PARTICULARS OF ALLEGED OFFENDER CHARGED WITH COMMITTING SEXUAL OFFENCE OR OFFENCE

Full names and surname:

Any other surnames:

Date of birth:

Age:

Identity number / passport number:

Home address / temporary address:

.....

* The offender has not been arrested for the alleged sexual offence or offence.

* The offender has been released on bail subject to the following bail conditions:

.....
.....
.....
.....

** Delete whichever is not applicable.*

3. ORDER FOR HIV TESTING CONTEMPLATED IN SECTION 31(3) OR SECTION 32(3) OF THE ACT

The order contemplated in section 31(3) or section 32(3) of the Act —

*(a) was granted on (date). A copy of the order is attached hereto.

*(b) is being applied for simultaneously with this application.

** Delete which is not applicable*

4. GROUNDS FOR APPLICATION

The application is brought on the following grounds:

.....
.....
.....
.....
.....
.....
.....
.....

The above statement was made by me at the place, date and time as indicated below.

- * I know and understand the contents of this statement.
- I have no objection to taking the prescribed oath.
- I consider the prescribed oath as binding on my conscience.

OR

- * I solemnly affirm that the contents of this statement is true.

**Delete whichever is not applicable*

.....
SIGNATURE OF INVESTIGATING OFFICER **PLACE**

.....
DATE

I certify that the deponent has acknowledged that he/she* knows and understands the contents of this statement which was sworn to / affirmed * before me and the deponent's signature was placed thereon in my presence.

SIGNED AND SWORN TO / SOLEMNLY CONFIRMED* IN MY PRESENCE ON THIS THE DAY OF AT ANDAT (TIME).

.....
SIGNED: JUSTICE OF THE PEACE/COMMISSIONER OF OATHS

Full names:

Designation:

Area for which appointed:

Business address:

**Delete whichever is not applicable*

SOUTH AFRICAN POLICE SERVICE

SAPS 580(g)
SUID-AFRIKAANSE POLISIEDIENS



APPLICATION FOR ACCESS TO HIV TEST RESULT OF ALLEGED SEXUAL OFFENDER

I, (name and surname of prosecutor) attached to the (court) hereby apply to (rank) (name and surname of investigating official) in the case of (name of alleged sexual offender) to obtain access to the MIV test result that was conducted on the alleged offender.

I am responsible to conduct the prosecution of the alleged offender for the commission of the sexual offence or any other court proceedings.

.....
SIGNATURE OF PROSECUTOR

.....
DATE

I, (Persal number) (rank) (name and surname of investigating official) handed over the result of the MIV test of the alleged offender to the prosecutor referred to above.

.....
SIGNATURE OF INVESTIGATING OFFICIAL

.....
DATE

Notes to the investigating official:

- (1) This application form must be filed in the docket.
- (2) An appropriate entry must be made in the investigating diary of the docket and you must request the prosecutor to sign at the entry to acknowledge receipt of the record.