

OFFENCES PROVIDED FOR IN TERMS OF THE JUDICIAL MATTERS AMENDMENT ACT, 2002
(ACT NO.55 OF 2002)

A-F

1 The Judicial Matters Amendment Act 2002 (Act No. 55 of 2002) amended section 1 of the General Law Further Amendment Act, 1962 (Act No.93 of 1962 (hereinafter referred to as "The Act" and came into operation on 17th January 2003.

2 Before its amendment section 1 of the Act provided that a parent who has sole custody of a minor child in terms of a court order and who, contrary to such order and without reasonable cause, refuses or prevents the child's other parent access to the child, is guilty of an offence. The Act further provided that such a parent who fails to notify the child's other parent, in writing, of any change in his or her residential address is also guilty of an offence.

3 Section 3 of the Judicial Matters Amendment Act substituted section 1 of the Act. Section 1 of the Act, as it now reads, no longer only applies to a parent who has sole custody of a child, but applies to any parent who has custody of a child in terms of a court order, including a parent who has joint custody of a child.

4 The effect of the amendment is as follows: If a parent has custody of his or her minor child in terms of a court order, such a parent must allow the other parent access to the child in accordance with the court order, and must in writing, inform the other parent if he or she has moved, and therefore changed his or her residential address. A failure to do either constitutes an offence in terms of the section.

5 Members will normally be confronted with this problem if approached by a parent who alleges that he or she is divorced and presents a copy of the Order issued by the divorce court in terms of which he or she is entitled to have access to his or her child or children who are in the custody of the other parent and further alleges that the other parent refuses or prevents him or her to have access to the child or children or failed to inform him or her in writing of a change in that parent's residential address. Members should note however, that the section is not limited to parents who are divorced. Any court order that grants custody of a child to one parent of the child and allows access to the child by the other parent is also covered by the section.

6 A member who is approached by a parent who alleges that a court order has granted him or her access to his or her child who is in the custody of the other parent of the child and who alleges that the other parent refuses or prevents him or her access to the child or failed to inform him or her in writing of a change in that parent's residential address, must take an affidavit from the parent, open a docket and have it registered on the CAS system for investigation. The offence must be recorded as a contravention of section 1 of the General Law Further Amendment Act, 1962 (Act No.93 of 1962). If the complainant has a copy of the court order with him or her, the member to whom the complaint is made must make a copy of the court order and file it as A2 in the docket.

7 It does happen from time to time that a complainant in such a case requests the member to accompany him or her to the house of the parent who has allegedly committed the offence, to arrest the offending parent and to remove the child from that parent and hand the child over to the complainant. Such a request must be handled with extreme caution. In deciding how to deal with such a request, the following principles must be taken into account and the instructions relating to each must be complied with at all times.

7.1 *(1) In terms of section 12 of the Child Care Act, 1983 (Act No. 74) of 1983) a police officer may, without a warrant, remove a child from his or her parent, if he or she has reasonable grounds to believe*

that the child is a child "in need of care" and that the delay that will be caused in obtaining a warrant for the removal, will be prejudicial to the safety and welfare of that child.

A "child in need of care" is defined in section 14 (4) of the Child Care Act *inter alia* as being a child who:

- has been abandoned or is without visible means of support;
- displays behavior which cannot be controlled by his or her parents or the person whose custody he or she is in;
- lives in circumstances likely to cause or conduce to his or her seduction, abduction or sexual exploitation;
- lives in or is exposed to circumstances which may seriously harm the physical, mental or social well-being of the child.
- is in a state of physical or mental neglect; or
- has been physically emotionally or sexually abused or ill-treated by his parents or guardian or the person in whose custody he or she is.

7.2 (2) If a member arrives at the residence of the offending parent, the member must, after having observed the circumstances in which the child is kept, decide whether he or she has reasonable grounds to believe that the child is a child "in need of care" or not.

7.3 (3) If the member has reasonable grounds to believe that the child is a child "in need of care" and that the delay that will be caused in obtaining a warrant, will be prejudicial to the safety and welfare of that child, the member may remove the child from the premises.

- In such an event the child must be placed in a place of safety. If no official place of safety is available within a reasonable distance, the assistance of any social worker may be called in to determine where the child should be taken to. Only if the social worker is of the opinion that the child may be placed in the care of the complaining parent as a place of safety, the child may be placed in the care of the complaining parent.
- Once a child has been removed from the care of the offending parent, the matter must immediately be reported to the children's court assistant as required by section 12 (2) of the Child Care Act. The provisions of Standing Order (General) 292 must also be adhered to.
- If there is a Family Violence, Child Protection and Sexual Offences Unit (PCS), the matter must be reported to that unit without delay.
- If the member has reasonable grounds to believe that the child is a child "in need of care" because he or she is or was physically or sexually being abused or ill-treated by the parent in whose custody the child is at that stage (when the member arrives at the scene), the member must open a docket regarding the offence committed towards the child and have it registered on the CAS system for investigation. In such a case a member may only arrest the offender for the offence against the child (assault GBH, attempted murder, rape, etc.,) if this would be appropriate in terms of Standing Order (General) 341.

7.4 (4) If the member arrives at the residence of the offending parent and, after having observed the circumstances in which the child is kept, does not have reasonable grounds to believe that the child is a child "in need of care", the child may not be removed from the custody of a parent simply because that parent has allegedly contravened section 1 of the General Law Further Amendment Act, 1962. In such an event the member must:

- inform the complainant that the member will not remove the child to hand the child over to the complainant unless the complainant presents a court order specifically ordering a police official to remove the child and hand the child over to the complainant;
- inform the complainant that the docket (opened in accordance with paragraph 6 (above) will, after its investigation, be forwarded to the public prosecutor for a decision on whether to prosecute or not;

- inform the complainant that the complainant should approach a social worker for assistance and, if the complainant deems it necessary, approach an attorney to assist him or her to obtain the necessary court order referred to in subparagraph (a); and
- make a pocket book entry regarding the incident and record that he or she has informed the complainant of the above-mentioned and request the complainant or a witness to sign the entry in his or her pocket book.

8 If the public prosecutor decides to prosecute the offending parent, attendance in court of the offending parent may be secured by means of a summons, unless there is compelling reasons to believe that such parent will not attend the court proceedings, in which case the parent may be arrested.

9 Members must attend to complaints of this nature with sensitivity and must at all times keep the best interest of the child or children in mind. Although the contravention of section 1 (1) of the Act is a First Schedule offence, members should not arrest the alleged offending parent, unless exceptional circumstances necessitate an arrest.

10 In each of the above instances, the member must contact a social worker appointed for the station area, and inform him or her of the incident. An entry must be made in the Occurrence Book (SAPS 10) setting out the particulars of the social worker, the time when the social worker was informed of the incident and the response of the social worker.

11 The content of this circular must be brought to the attention of all members.

G-1 Copy for your information

NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE

Stamped and signed by Dr. V. SINGH. 13/4/05