higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

MARKING GUIDELINE

NATIONAL CERTIFICATE (VOCATIONAL)

CRIMINAL JUSTICE PROCESS
NQF LEVEL 4

15 November 2022

This marking guideline consists of 12 pages.

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SECTION A

Answer ALL the questions in SECTION A.

QUESTION 1

1.1 A
1.2 C
1.3 B
1.4 D
1.5 B

(5 × 1) **[5]**

QUESTION 2

2.1 False
2.2 True
2.3 False
2.4 True
2.5 True

(5 × 1) **[5]**

QUESTION 3

3.1 G
3.2 L
3.3 F
3.4 J
3.5 A
3.6 H
3.7 B
3.8 C
3.9 E
3.10 I

(10 × 1) **[10]**

QUESTION 4

4.1 Victim-offender reconciliation programme
4.2 Achieving justice
4.3 Repair the harm suffered
4.4 Voluntary
4.5 No specific outcome

(5 × 1) **[5]**

TOTAL SECTION A: 25

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SECTION B

Answer ALL the questions in SECTION B.

QUESTION 5

5.1 5.1.1 In an accusatorial trial a verdict is reached by an impartial judge or jury after having considered the evidence brought before the court. (1)

5.1.2
- An inquisitorial trial is one in which the presiding officer has a prosecuting role.
- An inquisitorial trial is an inquisitorial process in which the presiding officer or court is involved in the investigation of the facts of the case to find the truth and not to see it as prosecution in a hostile sense. (Any 1 × 1) (1)

5.2 (Note to the assessor: The learner must provide each step for ½ mark each as well as an explanation for an ½ mark. This means that each of the steps has a maximum value of 1 mark.)

First step: Determine the state of mind of the complainant.
- Police officials must bear in mind that complainants will arrive at the station in various emotional states as a result of their ordeal, especially if they were victims of violent crimes.
- Some complainants will be upset and angry, while others (victims of violent crimes) will be extremely distressed.
- It is important for members of the police to remember that when a complainant phones or arrives at the station to lay a complaint, the complainant has been the victim (or witness) of some form of crime.
- The police official assisting the complainant should try to put himself/herself in the shoes of the complainant. Remember the saying that states: 'Do to others as you would like to have done to yourself.'
- In other words, if you were the complainant, what service would you like the police to give you? Police officials should try to identify the complainant's state of mind and act accordingly.

Second step: Win the confidence of the complainant.
- Police officials should try to calm the complainant.
- This can be done in various ways. The approach depends on the complainant's mental state at that moment.
- A police official should always try to give fast and efficient service.
- Officials can use reassuring sentences such as 'I understand' or 'I will try my best to assist you with ...'.
- It is important to reassure the complainant, but at the same time not to lie or make promises that cannot be kept.
- The SAPS member should convey to the complainant that the complaint is important and that SAPS members will do their best to deal efficiently with the complaint.

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Third step: Act in a professional manner when recording the complaint.

- Members of the SAPS must regard every complaint by members of the public as important.
- All complainants deserve and should receive the best possible attention and service from the SAPS. (6 × ½) (3)

5.3 Section 37 of the CPA regulates the acquisition of information✓ by taking finger-, palm and footprints,✓ holding identification parades,✓ determining physical features,✓ taking blood samples✓ and taking photographs.✓

Only the finger-, palm and footprints of suspects, accused persons or convicted persons may be taken.✓ Only medical officials or nurses may take blood samples.✓

The Criminal Law (Forensic Procedures) Amendment Act 37 of 2013 makes provision for the taking of *buccal* samples✓ (saliva swabs taken from the cheek or mouth of a person by, for instance, using an ear bud)✓ by police officials for DNA analysis.✓

(Any 6 × 1) (6)

5.4

- It would be to the detriment of society if only the treatment of inmates received attention, while the necessary functions of safe custody and of guarding the inmates is neglected. ✓
- It is therefore important that these functions should complement one another. ✓
- It is not impossible to reconcile the two functions because they both contain elements that complement each other. ✓
- The basic elements that form part of an effective prison system are stipulated in Section 4 of the CSA. They are:
- The care of inmates by making provision for their basic needs✓
- Nutritious food, clothing and providing medical and dental care✓
- The upliftment of inmates as individuals in their own right. ✓
- The creation of a favourable psychological and physical climate in the prison, which is regarded as a prerequisite for successful treatment and rehabilitation. ✓ (Any 4 × 1) (4)

[15]

QUESTION 6

6.1 (Note to the assessor: The learner may provide additional explanations and or examples. As this is applied theory in practice, marks may be allocated for logically correct answers.)

- Convicted persons may be admitted to prison only on presentation of a warrant (Section 6 of the Correctional Services Act 111 of 1998 (CSA).
- Convicted persons are taken into custody at a prison.
- This means that their freedom of movement is restricted.
- Such a restriction can be authorised only by the necessary legal document. Section 6(1)(a) of the CSA clearly stipulates: 'A person may not be committed to a prison without a valid warrant for his/her detention.'
- The warrant authorises the commissioner to detain the person concerned at any prison.
- The warrant must first be checked by the head of the prison (HOP). The reason for this is that the warrant must meet certain requirements.
- The most important requirement is that at every prison there must be a register in which the following information is recorded:
- Information concerning the identity of the inmate
- The reason and authority for the committal
- The day and hour of admission and release (Any 5 × 1) (5)

6.2 (Note to the assessor: The learner may provide additional explanations and or examples. As this is applied theory in practice, marks may be allocated for logically correct answers.)

- Secondary victimisation refers to the way in which the criminal justice system,
- the fringe professions like health and welfare,
- and the community at large
- may actually victimise the victim once more
- by blaming the victim,
- ignoring his/her role in the criminal justice process
- and by their insensitive treatment. (Any 4 × 1) (4)

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6.3 (Note to the assessor: The learner may provide additional explanations and or examples. This is applied theory in practice therefore marks may be allocated for logically correct answers. The learner gets 1 mark per characteristic for a maximum of 3 marks as well as for 1 mark an explanation for a maximum of 3 marks. This means that each of the characteristics has a maximum value of 2 marks.)

The following characteristics of effective reintegration programmes are identified:

- Multicultural and created by the people✓: South Africa has a diverse population. In a multicultural setting, care must be taken to ensure sensitivity and culturally appropriate design features, including values, aims, resources, action and process plans. ✓
- Transformational✓: Any good programme is required to be transformational to create space and the opportunity for people undergoing the programme to change their actions voluntarily. It should also transform the way in which they perceive themselves and others. ✓
- Journey-based✓: The programme should aim to divert prisoners from conflict with the law and social norms and values. It aims to break the cycle of crime, arrest, conviction and imprisonment. The prisoner has to redefine a course of action and formulate goals and strategies. ✓
- Process based✓: Programmes should be planned in detail and achievable objectives should be formulated to build on the prisoners' strengths.
- Adaptable✓: Programmes should be of such a nature that they can be adapted according to changing situations✓.
- Multifocussed✓: A programme must accommodate the complexity of human nature and look at the past, present and future. The prisoners must explore themselves in relation to others and formulate strategies for change. ✓
- Multi-dimensional: Programmes must accommodate the multidimensional nature of human interaction and address social, spiritual and psychological aspects of the prisoners, considering the offenders' potential and intellect. Further aspects, e.g. inspiration, historical and cultural roots, community experiences, emotions and the way they express themselves will assist with the success of the programme. ✓
- Holistic approach✓: The programme must reflect the values and principles of the environment. ✓
- Multisourced✓: Various role players and resources should be used, including volunteers, families, NGOs and community-based organisations (CBOs), professionals, the private sector as well as policy and decision makers. ✓
- Active experience✓: The participants must be able to implement the values and principles obtained from the programme. The aim of punishment must be to return a better individual to society. ✓ (Any 6 × 1) (6)

[15]

TOTAL SECTION B: 30

SECTION C

Answer ALL the questions in SECTION C.

QUESTION 7

7.1

- Once a statement has been taken down, the case docket must be processed in the CAS where a CAS number is allocated to the case.✓

The case number consists of the following:

- Station name, CAS, serial number/date: day, number of month and year,✓ e.g. Ceres CAS 19/11/2020.✓
- The purpose of the CAS in the SAPS is to facilitate the work of the personnel and to make policing more effective.✓
- The CAS number is given to the complainant as a reference number after reporting the crime.✓
- Nowadays the police also use SMS services to confirm the registration of the case and to keep the complainant up-to-date with the investigation process and the outcome if there were no results. ✓
- All the information entered into the CAS must be correct. ✓
- If the CAS is managed correctly, it simplifies the management and administration of dockets. ✓
- It is also a source of information to determine crime rates, crime trends and clearance rates. ✓ (Any FIVE of the above) (Any 5 × 1) (5)

7.2 (Note to the assessor: The learner may provide additional explanations and or examples. This is applied theory in practice therefore marks may be allocated for logically correct answers.)

The prosecutor may decline to prosecute, therefore no action will be taken against a suspect, depending on the following three factors:

(a) The nature and seriousness of the crime:✓

- Seriousness of the offence:
  - The effect of the crime on the victim; ✓
  - Manner in which the crime was committed; ✓
  - The motivation for the act;✓
- Nature of the offence:
  - Prevalence and recurrence; ✓
  - The effect on public order and morale. ✓
- Economic effect on the community: ✓
  - Threat to people or damage to public property; ✓
  - The effect on the peace of mind and sense of security of the public. ✓
- Likely outcome in the event of a conviction. ✓

(b) The interests of the victim and the community at large:✓

- Attitude of the victim of the offence towards a prosecution and the potential effects of discontinuing it. Care should be taken considering this factor, since public interest may demand that certain crimes should be prosecuted, regardless of the victim's wish not to proceed. ✓
- The need for individual and general deterrence. ✓
- The necessity to maintain public confidence in the criminal justice system.
- Prosecution priorities as determined from time to time. ✓
- The likely expense of a trial and whether or not a prosecution would be deemed counter-productive.✓

(c) The circumstances of the offender:✓

- Previous convictions of the accused, his/her criminal history, background, culpability and personal circumstances, as well as mitigating and aggravating factors. ✓
- Whether the accused has admitted guilt, shown repentance, made restitution or expressed a willingness to co-operate with the authorities in the investigation or prosecution of others. ✓
- Whether the objectives of criminal justice would be better served by implementing non-criminal alternatives to prosecution, particularly in the case of juvenile offenders and less serious matters. ✓
- Whether there has been an unreasonably long delay between the date when the crime was committed, the date on which the prosecution was instituted and the trial date, taking into account the complexity of the offence and the role the accused in the delay.✓

(Any FIVE of the above) (Any 5 × 1) (5)

7.3

- Day parole is a placement option that is used to ensure effective control over selected offenders who are not yet ready, in all respects, for placement on parole.
- It can therefore be regarded as a pre-phase for parole.
- Such parolees are allowed to leave the correctional centre during office hours
- for example to work, to seek employment or accommodation and attend programmes
- but they have to return to the correctional centre at night.

Offenders who may be selected for day parole are those who:

- Are experiencing practical resettlement problems.
- Are institutionalised or those with adaptation or socialisation problems.
- Have a doubtful prognosis and pose a high security risk.

The aim is to combat criminalisation and institutionalisation in the sense that:

- The day parolee gradually becomes used to life in free society.
- Control and supervision are still exercised over the day parolee during the day parole period.
- He/she is systematically exposed to more responsibility.
- The parole or correctional supervision of a parolee who does not comply with the conditions may be revoked and the offender may be detained in a correctional centre to serve the unexpired portion of the sentence.

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(Any FIVE of the above) (Any 5 × 1) (5)

7.4 (Note to the assessor: The learner may provide additional explanations and or examples. This is applied theory in practice therefore marks may be allocated for logically correct answers.)

- Crime is a broader concept than breaking the law or deviating from a regulation.
- Crime is a disruption in the three-dimensional relationship between victim, offender and community.
- Because crime harms the victim and the community, restoring the damage and healing the victim and the community ought to be a primary objective.
- The victim, offender and community must be involved in establishing the content of the reaction to crime; the state must give up the monopoly in this area.
- Case disposition must be based on victim and community needs, not only on the offender's needs, responsibility, danger to society or criminal past.

(5 × 1) (5)

7.5 (Note to the assessor: The learner may provide additional explanations and or examples. This is applied theory in practice therefore marks may be allocated for logically correct answers.)

- Conditional pardon or pardon by the State President.
- Release on medical grounds used for cases where inmates have Aids or are terminally ill.
- Release after sentence commutation where the length of the sentence is reduced, for example correctional supervision or house arrest.
- Correctional supervision or probation.
- Parole (5 × 1) (5)

[25]

TOTAL SECTION C: 25

SECTION D

Answer any ONE of the two questions in SECTION D.

QUESTION 8

(Note to the assessor: The learner may provide additional explanations and or examples. This is applied theory in practice therefore marks may be allocated for logically correct answers.)

The following are key concepts in the sentencing process:

Sentencing is the specific process in the trial phase when a punishment is announced.✓

Punishment is usually a sentence, fine or other penalty with the exception of a warning by the court✓ referring to the following:

- It is something unpleasant for the offender✓
- It is the consequence of a crime committed✓
- It is imposed on the perpetrator of the crime✓
- It includes sanctions by a court with the necessary authority✓

The three principles (the triad) that have been worked out by the courts as the basic elements of sentencing are applied when imposing a sentence.✓

The three principles that have to be taken into consideration when sentencing are:

- The gravity or seriousness of the crime✓
- The interests of the community✓
- The particular personal circumstances of the accused✓

Sentencing is complicated because various factors always have to be borne in mind when considering an appropriate sentence.✓

Three questions that are jointly related are the following:

- What are the appropriate goals of sentencing and how should they be weighed in the light of the facts of the current case?✓
- How can the goals of sentencing be achieved in the circumstances of the case?✓
- What specific sentence is justified given the facts of the case?✓

Passing the sentence entails the following:

- The decision relating to the sentence is an important element in court procedure. ✓
- In pronouncing the decision, the trial court announces the sentence and makes it known to the accused and other interested parties. ✓

The decision must be given:

- In open court and in the presence of the accused.✓
- In a language which the accused and all interested parties can understand.✓
- As soon as possible after conviction.✓
- After hearing the sentence, the accused may apply for leave to appeal against the verdict to a court of appeal.✓
- The appeal court will be in a position to identify and consider the thinking of the trial court at the time of passing sentence.✓
- Passing sentence is the duty of the presiding officer, who alone decides on a suitable sentence and sentences the offender.✓
- Imposing a sentence not only entails considering aggravating and mitigating factors, but must also be done with a specific goal in mind.✓
- The main purposes of punishment are deterrence, prevention, reformation and retribution.✓
- Excessive emphasis should not be placed on any one of the aims alone.✓
- *Judge NV Khumalo,* the appeal judge✓gave the following summary:
- 'Punishment must fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy according to the circumstances.✓
- The aim of punishment is to arrive at an appropriate punishment.✓
- Deciding on a sentence must be tempered with humaneness or compassion.✓

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- Therefore, the court must not sentence to take revenge or to destroy the person under sentence.✓
- This measure of humaneness is called mercy.✓
- Although the court imposes the judicially correct sentence, it should nevertheless be tempered with humaneness so that the punishment is not used to destroy the offender.✓
- The aim of sentencing is the rehabilitation of the individual so that the offender's disposition and attitude to life is changed.✓
- In the case of imprisonment, the aim is to offer support so that the criminal can adjust in a socially acceptable way to society after release.✓
- Successful rehabilitation can prevent crime.✓
- Punishment serves as a deterrent to individual people as well as society as a whole.✓
- The unpleasantness of punishment should be a lesson to the individual offender experiencing he punishment and also serve as an example to potential offenders so that they do not commit crime.✓
- Crime can be prevented to the extent that punishment deters individuals and the public in general.✓
- Imprisonment leads to an offender's removal from society.✓
- During the period that the criminal is removed from society, crime is prevented.✓

(Any 20 × 1) **[20]**

OR

QUESTION 9

Note to the assessor: The learner may provide additional explanations and or examples in his/her discussion of the three concepts.

- Reception is a process in which aspects of another legal system are voluntarily received,✓
- added to and put into action in an existing legal system.✓
- This can happen by deliberate decision or through a process of acceptance over a period of time.✓

The elements of reception are:

- Aspects are parts or portions of something, not the whole thing.✓
- Voluntarily refers to the way in which something is done without force or obligation, but out of own free will.✓
- Received is the process of having obtained and accepted something.✓
- Existing legal system refers to a current legal system that is in place in a territory at the time.✓
- Reception refers thus to a situation where the people in a territory have their own legal system in place,✓
- but allow parts of another legal system to become integrated in their system.✓

Examples of reception are:

- The adoption of Roman law into the Germanic legal systems, including that of the Netherlands and particularly the Province of Holland✓
- Canon law into the Germanic and English law in Europe and England✓
- English law into Roman-Dutch law in South Africa✓
- When an entire legal system is adopted from one community✓
- and voluntarily implemented by another community without an existing legal system, this process is referred to as one of *transplantation.*✓

- Dutch settlers came to the southern tip of Africa in the 17th century. They wanted to establish a refreshment station for the *Vereenigde Oost-Indische Compagnie* (VOC) at the Cape of Good Hope as they called Cape Town and surroundings in those days.✓
- They brought with them their own laws and legal system as practised in the Province of Holland in the Netherlands.✓
- Their legal rules were known as Roman-Dutch law.✓

The elements of *transplantation* are:

- Entire is a word used to refer to something as a whole; a complete unit.✓
- Adopted is the process of having accepted and incorporated something.✓
- Implemented refers to a process whereby we have started to use or apply something.✓
- Voluntarily refers to a way in which something is done without force or obligation, but out of own free will.✓

- Thus, the Dutch settlers copied the system of Holland✓
- and started using it for their own purposes.✓
- However, it was not the same case with indigenous people living in the same area.✓

The last concept is *Imposition*.✓

- Historical sources tell us that when the settlers arrived at the Cape, indigenous communities of South Africa already had their own legal system in place✓
- which they had been practising over centuries.✓
- The local Khoi and the San people lived a seminomadic life in the region at the time.✓
- Although they had no writing, historians could learn about their history through studying their rock paintings,✓
- through archaeology and by learning from their traditions as transmitted orally over centuries.✓
- These communities had their own way of dealing with problems✓
- and did not want to follow the foreign laws and processes ✓
- of the settlers as they had their own as original inhabitants of the area.✓

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- So, without doubt, we can say that the Dutch and later the English, imposed their laws✓
- and rules on the indigenous people at the Cape.✓
- Legal writers use the term 'imposition' to describe the unwelcome application and enforcement of a legal system within a community that already has a system in place.✓

(Any 20 × 1) **[20]**

TOTAL SECTION D: 20
GRAND TOTAL: 100

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