

ITHEMPLEYITHI YOKUDRAFTA UMGAAQO-NKQUBO WESIKOLO WOKUSETSHA NOKUHLUTHA  
NGEQUBULISO NOKUVAVANYELWA UTYWALA OBUNXILISAYO KUNYE NEZIYOBISI EZINGEKHO  
MTHETHWENI EZIKOLWENI

Igama lesikolo

Idilesi kune nefoni

Ilogo yesikolo

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**1. IINGCACISO-MAGAMA KUNYE NEZIFINYEZO**

Kwesi sikhokelo somgaqo-nkqubo, ngaphandle kokuba umxholo ophethwego walatha okunye –

‘into ebutywala’ kuthetha –

- (a) nantoni na engekho mthethweni enefuthe lokuchaphazela ukusebenza kwengqondo okanye ukusebenza komzimba; okanye
- (b) nantoni na enesiphumo esilolo hlobo umntu anayo ngokuchasene nomthetho; kunye(okanye
- (c) nantoni na engekho mthethweni enxilisayo okanye edengisayo;

‘imfundu esisiseko’ kuthetha imfundu eqala kwiBakala R (Reception) kuye kutsho kwiBakala 12;

‘UMgaqo-siseko’ kuthetha uMgaqo-siseko weRiphablikhi yoMzantsi Afrika (uMthetho 108 ka-1996);

**'isixhobo esiyingozi'** kuthetha –

- (a) nasiphi na isixhobo okanye into enokuqhushumba;
- (b) nawuphi na umpu okanye isixhobo serhasi (*gas weapon*) ;
- (c) nayiphi na into okanye isixhobo esinokusetyenziselwa ukwenzakalisa umntu emzimbeni okanye ukonakalisa ipropathi, okanye esinokubangela emntwini ukungasebenzi kwamalungu omzimba okwethutuya (*temporarily paralysed*) okanye ukumkelwa yingqondo (*unconscious*); okanye
- (d) nasiphi na isixhobo athe –
  - (i) uMphathiswa kaZwelonke (*National Minister*) wasibhengeza njengento eyingozi phantsi koMthetho weZikolo zaseMzantsi Afrika ukulungiselela injongo yaloo Mthetho; okanye
  - (ii) uMphathiswa wePhondo (*Provincial Minister*) wasibhengeza ngesaziso kwiGazethi yePhondo njengento eyingozi ukulungiselela injongo yalo Mthetho

**'isixhobo i-digital device'** kuthetha nasiphi na isixhobo umntu anokuhamba-hamba naso esisetyenziselwa ukufona okanye ukuthumela imiyalezo kusetyenziswa amaza omoya okanye ingcaciso ebalwe njengamanani;

**'utitshala'** kuthetha nabani na, kungabandakanya mntu oqeshelwe ukuba enze kuphela imisebenzi emva kwexesha lokufundisa (*extra-curricular duties*), ofundisa okanye oqequesha abanye abantu okanye obonelela ngeenkonzo zemfundo zoqequeshelo-msebenzi, kubandakanya netheraphi yoqequeshelo-msebenzi kunye neenkonzo zesayikholoji, esikolweni;

**'iNtloko yeSebe leMfundo'** kuthetha intloko yeSebe leMfundo leNtshona Koloni;

**'isiyobisi esingekho mthethweni'** kuthetha nasiphi na isiyobisi esichazwa kuMthetho *i-Drugs and Drug Trafficking Act, of 1992 (Act 140 of 1992)*, esisetyenziselwa okanye umntu anaso esaphula umthetho ngokwesiqendu 4 saloo Mthetho;

**'umfundi'** kuthetha nawuphi na umntu ofumana imfundo okanye onyanzelekileyo ukuba afumane imfundo ngokwalo Mthetho;

**'igosa'** kuthetha umqeshwa weSebe leMfundo leNtshona Koloni oqeshwe ngokoMthetho wezeNgqesho yooTitshala, ka-1998 (uMthetho 76 ka-1998) (isiBhengezo 138 sika-1994), okanye ngokoMthetho weNkonzo kaRhulumente, ka-1994 (isiBhengezo 103 sika-1994);

**'umzali'** kuthetha –

- (a) umzali okanye umgcini womfund;
- (b) umntu onelungelo ngokumsethethweni lokugcina umfund; okanye
- (c) umntu ovumayo ukwenza imisebenzi eluxanduva lomntu okhankanywe kumhlathi (a) no-(b);

**'inqununu'** kuthetha uitshala oqeshiwego njengentloko yesikolo okanye obambeleyo njengentloko yesikolo;

**'uMphathiswa wePhondo'** kuthetha uMphathiswa wePhondo ophathiswe ezemfundo kweli phondo;

**'isikolo'** kuthetha isikolo sikarhulumente okanye esizimeleyo esibhalisa abafundi kwibakala elinye okanye angaphezu koko ukuqala kwiBakala R (*Reception*) ukuya kwiBakala 12;

**'umsebenzi wesikolo'** kuthetha nawuphi na umsebenzi wezemfundo, wenkcubeko, imidlalo, ukunyusa ingxowa-mali okanye ezolonwabo esikolweni okanye ngaphandle kwamasango esikolo;

**'ukubeka esweni'** kuthetha ukuphatha nokulawula abafundi esikolweni okanye ngeshesa lomsebenzi wesikolo;

**'Io Mthetho'** kuthetha uMthetho weMfundu weZikolo zePhondo leNtshona Koloni ka-1997 (uMthetho 12 ka-1997);

**'ISebe leMfundu leNtshona Koloni'** kuthetha isebe lemfundo lephondo elijongene nemfundo kwiphondo eli.

## IZIFINYEZO

<i>WCP</i>	<i>Western Cape Province</i>
<i>WCED</i>	<i>Western Cape Education Department</i>
<i>HOD</i>	<i>Head of Education Department of the Western Cape Education Department</i>
<i>SAPS</i>	<i>South African Police Services</i>
<i>CPA</i>	<i>Criminal Procedure Act, 1977 (Act 51 of 1977)</i>
<i>NEPA</i>	<i>National Education Policy Act, 1996 (Act 27 of 1996)</i>
<i>SASA</i>	<i>South African Schools Act, 1996 (Act 84 of/ 1996), as amended</i>

## 2. INTSHAYELELO

### 2.1 Injongo yalo Mgaqo-nkqubo

Kukubonelela izikolo namagosa eSebe iWCED ngemigaqo ekumgangatho ofanayo wokusetsha nokuhlutha kanye nokuvavanyelwa utywala obunxilisayo neziyobisi ezingekho mthethweni ezikolweni.

### 2.2 Umhlaba oza kufikelelwa kanye nokuSetyenziswa kwalo Mgaqo-nkqubo

2.2.1 UMgaqo-siseko weRiphabliki yoMzantsi Afrika, 1996, umisela uMqulu wamaLungelo oLuntu (*Bill of Rights*). La malungelo alandelayo achaphazela ukusetsha ngequbuliso nokuhlutha kanye nokuvavanyelwa iziyobisi notywala ezikolweni:

(i) Isidima somntu (isiqendu 10)

Wonke umntu unelungelo azalwa nalo lokunikwa isidima sakhe nelungelo lokuhlonitshwa nokukhuselwa kwesidima sakhe.

(ii) ILungelo lekhusi (isiqendu 14)

Wonke umntu unelungelo lekhusi, elibandakanya ilungelo lokuba kungenzeki ukuba –

(a) *Umzimba wakhe okanye ikhaya lakhe lisetshwe;*

(b) *Ipropathi yakhe isetshwe;*

(c) *Izinto zakhe anazo zisetshwe; okanye*

(d) *Ilungelo lekhusi lonxibelelwano linyashwe. (The privacy of their communications infringed.)*

(iii) Ipropathi (isiqendu 25)

(1) *Akukho mntu makahluthwe ipropathi ngaphandle kwakwimeko yokusetyenziswa komthetho ngokubanzi, kwaye kungekho mthetho unokuvumela ukuhluthwa ipropathi ngendlela edlelelela ilungelo lakhe (arbitrary deprivation of property).*

2.2.2 Ukusetsha ngequbuliso nokuhlutha kanye nokuvavanyelwa utywala neziyobisi ngokucacileyo kungathi kuwanyashe la malungelo. Nakuba kunjalo, uMgaqo-siseko wona ngokwawo umisela ukuba akukho lungelo ligqibeleleyo, ngenxa yokuba naliphi na ilungelo elikuMqulu wamaLungelo oLuntu linokusikelwa imida ngokweSiqendu 36(1) soMgaqo-siseko, esibonelela ukuba "Amalungelo akuMqulu lwamaLungelo oLuntu anokusikelwa imida kuphela ngokusetyenziswa komthetho ngokubanzi kangangoko oko kusikelwa imida kwawo kufanelekile yaye kulungile kuluntu

olukhululekileyo nolulawulwa yintando yesinanzi esekelwe kwisidima somntu, ukulingana nenkululeko."

- 2.2.3 Isiqendu 45A salo Mthetho ngumthetho wokusetyenziswa ngokubanzi ngokuba usebenza kuzo zonke izikolo yaye injongo yawo kukukhusela ezona zinto zilungiselela abafundi ngokunxulumene nelungelo labo lokufumana imfundo, emayiqhubekelo kwindawo engenazixhobo ziyingozi, engenatywala bunxilisayo nengenaziyobisi zingekho mthethweni.
- 2.2.4 Ngokususela ekubeni isiqendu 45A sisikela imida amalungelo athile anikiweyo kuMqulu wamaLungelo oLuntu, kufuneka sisephunyezwe kuthathelwa ingqalelo efanelekileyo isidima somntu, ilungelo lekhusi kunye nelungelo lokubanepropathi komfundu ochaphazelekayo.
- 2.2.5 Lo Mgaqo-nkqubo ke ngoko wenzelwe ukulawula ukusetyenziswa kwesiqendu 45A salo Mthetho ngokuthi umisele indlela ekunokuphunyezwa ngayo amanyathelo alolu hlobo, kunye neenkqubo eziyimfuneko emazisetyenziswe ukufikelela kwijongo yale migaoqo yezomthetho kwindawo esisikolo.
- 2.2.6 Lo mgaqo-nkqubo usebenza kubo bonke abafundi beSikolo sase.....

### **3. IMITHETHO ESETYENZISIWEYO**

UMgaqo-siseko weRiphabliki yoMzantsi Afrika, 1996 (uMthetho 1 ka-1996)

UMthetho weZikolo zaseMzantsi Afrika, 1996 (uMthetho 84 ka-1996)

UMthetho oFakelo iZilungiso kuMthetho weMfundo weZikolo zePhondo leNtshona Koloni, 2010 (uMthetho 7 ka-2010);

*Criminal Procedure Act, 1977 (Act, 51 of 1977)*

*National Education Policy Act, 996 (Act 27 of 1996)*

*Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992*

*IMimiselo yamaNyathelo oKhuseleko IweZikolo zikaRhulumente (Regulations for Safety Measures for Public Schools)*

### **4. IIIMEKO EZINGQONGILEYO**

Ukwenzakala ngokwasengqondweni okanye ngokwasemzimbeni okuxhomisa amehlo, okuye ngamanye amaxesha kubangele ukusweleka kwafundi, kuyenzeka kwimihlaba

yezikolo zethu ngenxa yokuba abafundi benezixhobo eziyingozi okanye utywala obunxilisayo okanye iziyobisi ezingekho mthethweni.

Oku kunegalelo ngqo kwimingeni yokubonelela ngemfundo eyaikhula ngomgangatho kubo bonke abafundi ukwenzela ukuba kumiselwe isiseko sophuhliso.

Umgao-nkqubo wokusetscha kuhluthwe izinto nokuvavanyelwa utywala neziyobisi uyamkelwa sesi sikolo, omisela iinkqubo ezingqongqo emakwenziwa ngazo ukusetscha ngequbuliso yinqununu okanye ngabo kudluliselwe amagunya kubo ezikolweni, ukukhusela amalungelo nesidima sabafundi, nokuba ngaba badlulile kwimida yomthetho (*have transgressed*). Injongo yalo mgaqo-nkqubo kwakhona kukuphelisa iziganeko zobundlobongela nokusetyenziswa kweziyobisi ezingekho mthethweni ngabafundi, nokudala indawo ekhuselekileyo esikolweni yokufundisa nokufunda kumntu wonke.

## 5. UKUSETSHA NGEQUBULISO KUNYE NOKUHLUTHA IZINTO

### 5.1 Inqununu

5.1.1 Isiqendu 45A salo Mthetho sicacisa ukuba, ngaphandle kokuba kugunyaziswe yinqununu ukulungiselela iinjongo zemfundo ezisemthethweni, akukho mntu makeze naso nasiphi na isixhobo esiyingozi, utywala obunxilisayo okanye isiyobisi esingekho mthethweni (iziyobisi ezingekho mthethweni) kumasango esikolo okanye abe naso nasiphi na isixhobo esiyingozi, utywala obunxilisayo okanye isi(z)iyobisi esi(z)ingekho mthethweni ngexesha lawo nawuphi na umsebenzi wesikolo.

5.1.2 Inqununu inokuthi, ukulungiselela iinjongo zemfundo, igunyazise ubukho kumasango esikolo bezixhobo eziyingozi, ezinjengezikere, iinaliti neemela, ukulungiselela iinjongo zemfundo ezmthethweni, kunye namayeza amiselwe ngugqirha. Nakuba kunjalo, zonke ezi zinto mazigcinwe zitshixelwe.

### 5.2 Inkqubo yokusetscha ngequbuliso nokuhlutha izinto

5.2.1 Ngokwesiqendu 45A(2)(a) salo Mthetho, inqununu okanye lowo kudluliselwe kuye amagunya unako ukusetscha nawuphi na umfundsi, okanye ipropathi yakhe nawuphi na umfundsi, ukufuna nasiphi na isixhobo esiyingozi, utywala obunxilisayo okanye iziyobisi ezingekho mthethweni, ukuba inqununu inorhano ngokufanelekileyo ngenxa yezizathu lobukho besixhobo esiyingozi, utywala obunxilisayo okanye isiyobisi esingekho mthethweni kumasango esikolo okanye ngexesha lomsebenzi wesikolo. Oku

kulandelayo kungaluphawu lobukho beziyobisi ezingekho mthethweni nezixhobo eziyingozi esikolweni:

- (a) oontamnani (*whistleblowers*) abaxeleta inqununu ngobukho bazo;
- (b) ivumba lentsangu kumasango esikolo;
- (c) iingxelo ezivela kubazali;
- (d) iimvuthuluka zeziyobisi nezinto zotywala obunxilisayo kumasango esikolo;
- (e) izoyikiso zokusetyenziswa kwezixhobo eziyingozi kwabanye abafundi;
- (f) ukwenzakala ngenxa yokusetyenziswa kwezixhobo ezilolu hlobo;
- (g) nawo nawuphi na umqondiso ongomnye ontama ubukho bazo/babo.

5.2.2(a) Apho kukho urhano lokuba abafundi banezixhobo eziyingozi okanye utywala obunxilisayo okanye iziyobisi ezingekho mthethweni, koobhaka besikolo babo okanye kwiilokhari, ukusetsha ngequbuliso makwenziwe koobhaka besikolo babafundi nakwiilokhari kuphela yaye kungaze kudlulelw eziqwini zabo.

- (b) Apho kukho urhano lokuba abafundi bafake izixhobo eziyingozi okanye utywala obunxilisayo okanye iziyobisi ezingekho mthethweni ezipokothweni zabo okanye kwenye indawo esezipahleni zabo, kuphela ziimpahla neepokotho emazisetshwe, kungabi yipropathi yabo (enjengoobhaka besikolo kunye neelokhari).
- (c) (i) Ukuba kukho ukuthandabuza ukuba zifihlw phi na izixhobo eziyingozi, utywala obunxilisayo kunye/okanye iziyobisi ezingekho mthethweni, ukusetsha kufuneka ekuqaleni kwensiwe kwizinto zabo, ezinjengoobhaka besikolo neelokhari, zelo qela labafundi.  
(ii) Ukuba akukho nto ifumanekayo koobhaka besikolo neelokhari, ukusetsha oko kunokwenziwa ezimpahleni nasemzimbeni.

5.2.3 Isiqendu 45A(4) salo Mthetho sicacisa ukuba apho ukusetsha okuchatshazelwe kumhlathi 5.2.1 kuthetha ukusetshwa emzimbeni kwakhe nawuphi na umfundi, umntu ossetsha umfundi—

- (a) akanako ukufuna ukuba umfundi akhulule nayiphi na impahla ngaphandle kwempahla engaphezulu;
- (b) uya kuba ngowesini esifanayo nesini somfundi; kwaye

(c) unokuqhubeka ngokusetsha kuphela xa kukho omnye utitshala/umsebenzi walapho okwangowesini esifanayo nesomfundi.

5.2.4 Ukusetsha makuqhutyelwe kwindawo yabucala.

5.2.5 Ukusetsha makungadluleli kuyo nakuwuphi na umthunja osemzimbeni womfundi, kwaye makungaze kuphathwe amalungu angasese omfundi.

5.2.6 (a) Ukuba kuthi, ngenxa yokusetsha okanye ngenxa yengcaciso ethembakeleyo efunyenweyo, okanye ngenxa yaso nasiphi na esinye isizathu, inqununu ibe nesizathu esifanelekileyo sokukholelwa ukuba nasiphi na isixhobo esiyingozi, utsyalwa obunxilisayo okanye isiyobisi esingekho mthethweni sifihlw esiqwini okanye emzimbeni womfundi othile, inqununu ingacela ilungu leeNkonzo zamaPolisa aseMzantsi Afrika ukuba lize kusetshisisa umzimba waloo mfundi, okungathetha ukukhululwa kweempahla ngokwesiqendu 45A(5) salo Mthetho.

(b) Ukuba kurhaneleka ukuba umfundi uginye into ethile erhanelekayo, umbandela lowo mawunikezelwe ngqo emapoliseni.

(c) Inqununu okanye lowo idlulisele kuye amagunya unokuhlutha nasiphi na isixhobo esiyingozi, utsyalwa obunxilisayo okanye isiyobisi esingekho mthethweni, esifunyenwe xa bekusetshwa ngokwesiqendu 45A(2)(b) salo Mthetho.

### 5.3   Ukudlulisewa kwegunya ngenxa yokungabikho kwenqununu

5.3.1 Abantu ababini, omnye olibhinqa omnye oyindoda, mabadlulisewa igunya lokwenza umsebenzi wokusetsha nokuhlutha izinto kwimeko apho inqununu ingafumanekiyo. Amagama aba bantu kugqithiselwe kubo amagunya makarekhodwe kwincwadi yeziganeko (*log book*) yaye makaziwe ngawo onke amaxesha ukwenzela ukuba kubekho ingqiniseko malunga nokuba ngaba lolukabani uxanduva lokuthatha amanyathelo xa ingekhoyo inqununu.

5.3.2 Ukuba inqununu ayikhange ikhethe abameli ababini phambi kokuba ihambe, inqununu leyo inokudlulisela amagunya kwabo bantu ngeponi okanye ngesixhobo *i-digital device*. Ezi nkqubo zokudlulisewa kwamagunya zenziwayo nemiyalelo enikwa ngeponi okanye ngesixhobo *i-digital device* mazibhalwe phantsi ngulowo kudlulisewa kuye amagunya kwincwadi yeziganeko apho esikolweni.

- (i) Ukuba inqununu iya kuba ingekho ithuba elide, umzekelo, ikwikhefu lokufunda, kwikhefu lokugula, lowo ubambeleyo ngokusesikweni endaweni yakhe uya kuba namagunya afanayo okudlulisela amagunya njengenqununu.
- (ii) Ukuba inqununu iya kuba ingekho ithutyana, kufuneka, phambi kokuba ihambe, ikhetha abantu ababini emakudluliselwe kubo amagunya (nabanako ukuba batyunjwe ngokusisigxina njengekudluliselwe kubo amagunya), ukwenzela ukuba bonke abantu bazi ukuba ngoobani abadluliselwe amagunya yinqununu ngokunxulumene nokusetsha nokuhlutha izinto okuchaphazelekayo.

5.3.3 Umsebenzi wokusetsha kuhluthwe izinto awunakuyekwa ungenziwa okanye uhlehliselwe elinye ixesha kuba inqununu ingafumaneki.

#### **5.4 Ukusingatha imeko yomfundi ongakufuni kusetshwa ngokwesiqendu 45A(5)**

- 5.4.1 Ukuba oku kunokwenzeka, makufonelwe umzali okanye kuthunyelwe umyalezo kumzali ngandlela ithile engenye ukumazisa umzali lowo ukuba umfundi akafuni kusebenzisana nabo bamsetshayo ngendalela esemthethweni yokusetsha nokuhlutha into njengoko kubonelelwe nguMthetho, nokuba umfundi uya kunikeyelwa emapoliseni.
- 5.4.2 Ukuba umzali ubonisa ukuba uyafuna ukuthatha inxaxheba ngokuyalela umfundi ukuba abonise intsebenziswano nabo bamsetshayo xa kusetshwa kuhluthwa izinto okwenziwayo ngokwesiqendu 19 salo Mthetho nalapho isiphumo sinxulumeneyo nenqubo yezoluleko yangaphakathi, –
  - (i) umzali unokunikwa ithuba elifanelekileyo lokuza esikolweni nokuyalela umfundi ukuba abonise intsebenziswano;
  - (ii) umzali unako kwakhona ukunika umyalelo onjalo kumfundi nakwinqununu ngefon;
  - (iii) ingqina malibe kunye nomfundi lo gama kuqhubeka loo ncoko efonini; kwaye
  - (iv) kubaluleke gqitha ukuba inqununu inxibelelane nomzali nokuba inqununu ichaze isizekabani nentsusa yokusetsha nokuhlutha izinto ngokwemimiselo yesiqendu 45A salo Mthetho.

5.4.3 Ukuba umfundi okanye umzali akavumi kubonisa ntsebenziswano, inyewe leyo kunye nomfundi mayinikezelwe emapoliseni ukwenzela ukuba aqhube usetsho ngokoMthetho i-Criminal Procedure Act. Isiphumo solo setsho sinxulumene neNkqubo yeNkundla yamaTyala eSizi (Criminal Court Process) nokutshutshiswa enkundleni ngenxa yolwaphulo-mthetho okungenzeka.

#### 5.5 Ukujongana neemeko zikaXakeka (Emergencies)

- 5.5.1 Kunokwenzeka esikolweni ukuba kuvele imeko kaxakeka apho ubani angenako ukusebenzisa iinkqubo eziqhelekileyo nemigqaliselo yesiqendu 45A kunye neMimiselo yaManyathelo ezoKhuseleko kwiZikolo zikaRhulumente. (*Regulations for Safety Measures at Public Schools*).
- 5.5.2 Kwimeko enjalo, hlola imeko leyo uze, ukuba imeko iya isiba mandundu ngakumbi okanye ukuba umfundi akavumi kuzola, biza amapolisa ngoko nangoko.
- 5.5.3 Gqithisela kwi-ofisi yesithili semfundo abo bachatshazelwe mpela lunxunguphalo ngenxa yomothuko (*post traumatic stress*) ngokubangelwa yiloo meko kaxakeka ukuba kuthonyalaliswe umothuko (*counselling*).

#### 5.6. Ukuhluthwa kweZixhobo eziYingozi

- 5.6.1 Inqununu, okanye lowo idlulisele kuye amagunya okanye ipolisa, linokuhlutha nasiphi na isixhobo esiyingozi okanye utywala obunxilisayo okanye iziyobisi ezingekho mthethweni ezikhoyo kumasango esikolo sikarhulumente okanye kumntu ophula lo mgaqo-nkqubo.
- 5.6.2 Isiqendu 45A(6) salo Mthetho simisela ukuba nasiphi na isixhobo esiyingozi, utywala obunxilisayo okanye isiyobisi esingekho mthethweni esihluthiweyo siya —
- (a) kufakwa ilebhille ecacileyo nechanekileyo nazo zonke iinkcukacha ezipheleleyo, ezibandakanya—
- (i) apho sifumanek khona kwaye, ukuba kuyasebenza oku, igama lomfundisifunyenwe kuye;
- (ii) ixesha nomhla wokusetsha nokuhlutha izinto;
- (i) inombolo yesalathisi yesiganeko (*an incident reference number*);
- (ii) igama lomntu obeqhuba usetsho;

- (iii) Igama likatitshala obekusetshwa ekho, apha kusebenzayo oku; kunye
- (vi) naziphi na ezinye iinkukacha ezingayimfuneko ukuqaphela into leyo kunye nesiganeko;
- (b) kurekhodwa kwincwadi yeerekhodi yesikolo; yaye
- (c) kunikezelwa kwilungu leeNkonzo zamaPolisa aseMzantsi Afrika ngoko nangoko ukwenzela ukuba zishenxiswe ngokwesiqendu 31 soMthetho *i-Criminal Procedure Act, 1977 (Act 51 of 1977)*.

- 5.6.3 Isiqendu 45A(7) salo Mthetho simisela ukuba, xa amapolisa engakwazi kusithatha isixhobo esiyingozi, utywala obunxilisayo okanye isiyobisi esingekho mthethweni esikolweni ngoko nangoko, inqununu okanye lowo kudluliselwe kuye amagunya uya—
- (a) kusithatha isixhobo esiyingozi, utywala obunxilisayo okanye isiyobisi esingekho mthethweni asise kwesona sitishi samapolisa sikufutshane; aze
  - (b) asinikezele isixhobo esiyingozi, utywala obunxilisayo okanye isiyobisi esingekho mthethweni emapoliseni ukuba asishenxise (*dispose of*) ngokwesiqendu 31 soMthetho *i-Criminal Procedure Act, 1977*

- 5.6.4 Isiqendu 45A(8) salo Mthetho simisela ukuba ipolisa elamkela isixhobo esiyingozi, utywala obunxilisayo okanye isiyobisi esingekho mthethweni liya kukhupha irisithi yaseburhulumenteni liyinike inqununu okanye lowo idlulisele kuye amagunya

## **6. UKUVAVANYELWA IZIYOBISI NOTYWALA**

- 6.1 UkuThintelwa kweZiyobisi ezingekho mthethweni kuMasango eSikolo ngokwesiqendu 45A(1) salo Mthetho
- 6.1.1 Ngaphandle kokuba kugunyaziswe yinqununu ngeenjongo zokulungiselela imfundo ngokusemthethweni, akukho mntu makeze naso nasiphi na isixhobo esiyingozi, utywala obunxilisayo okanye isiyobisi esingekho mthethweni kumasango esikolo okanye omakabe nasiphi na isixhobo esiyingozi, utywala obunxilisayo okanye isiyobisi esingekho mthethweni kumasango esikolo okanye ngexesha lawo nawuphi na umsebenzi wesikolo.
- 6.2 IZizathu eziseMthethweni zokuVavanyelwa iZiyobisi eziNgekho Mthethweni
- 6.2.1 Isiqendwana 45A(9) salo Mthetho simisela ukuba inqununu okanye lowo kudluliselwe kuye amagunya unokwenza uvavanyo lomchamo okanye olunye uvavanyo

olungangeneleli kangako kwizinto eziyimfihlo yakhe buqu (*non-invasive test*) kuye nawuphi na umfundu ukuba inqununu inesizathu esifanelekileyo sokurhanelu ukuba umfundu –

- (a) uphethe okanye usebenzisa utywala obunxilisayo okanye iziyobisi ezingekho mthethweni; okanye
- (b) uphantsi kweempembelelo zotywala obunxilisayo okanye zeziyobisi ezingekho mthethweni, ngeeyure zesikolo okanye ngexesha lomsebenzi wesikolo.

#### 6.3 INkubo yokuVavanyelwa iZiyobisi eziNgekho Mthethweni

6.3.1 Umfundu ochatshazelwe kumhlathi 6.2 unokwenziwa uvavanyo lomchamo okanye olunye uvavanyo olungangeneleli kangako kwizinto eziyimfihlo yakhe buqu, njengoko kucacisiwe kwisiqendu 45A(10), avavanyelwe utywala obunxilisayo okanye iziyobisi ezingekho mthethweni kuphela ukuba—

- (a) uvavanyo Iwenziwa ngumntu wesini esifanayo nesomfundu;
- (b) Iwenziwa kwindawo yabucala;
- (c) kukho ingqina elingumntu omdala wesini esifanayo nesomfundu;
- (d) isampula ifakwe ilebhile ecacileyo nechanekileyo kunye neenkukacha ezizeleyo njengoko kuchatshazelwe kwisiqendwana (6), kuze kwensiwe iinguqulelo eziyimfuneko; yaye
- (e) kusetyenziswa isixhobo esichatshazelwe kwisiqendu 8A(11) soMthetho weZikolo zaseMzantsi Afrika.

#### 6.4 Amanyathelo enziwayo ekuVavanyeni uTywala neZiyobisi

##### 6.4.1 UkuChazwa nokuPapashwa kweZixhobo zokuVavanyela iZiyobisi

6.4.1.1 UMphathiswa weMfundu kaZwelonke, uye wathi ngokwesiqendu 8A(11) soMthetho weZikolo zaseMzantsi Afrika, njengoko ufakelwe izilungiso, wachaza izixhobo eziya kusetyenziswa ekuvavanyeni iziyobisi neenkubo eziya kulandelwa.

6.4.1.2 UMphathiswa uye, ke ngoko, watsho izixhobo ezilishumi (10) zokusetyenziswa ngokunxulumene noku kwaye ezi sele zipapashwe kwiGazethi kaRhulumente.

6.4.1.3 Isikolo sinokusebenzisa nasiphi na kwezi zixhobo zikolu luhlu.

6.4.1.4 Oku kulandelayo luluhlu lwezixhobo ezenzelwe ukulungiselela le njongo:

- (i) *Drug Detective Wipe Detection System for Surfaces*
- (ii) *One Step Home Cocaine Test Strip*
- (iii) *Multi-drug Test*
- (iv) *Quicktox Drug Screen Dipcard Test*
- (v) *Monitect Drug Screen Casette Test*
- (vi) *Toxcup Drug Screen Cup Test*
- (vii) *Multipanel Drug Testing Device*
- (viii) *Smart Check Drug Screen Test*
- (ix) *Drug Smart Cup*
- (x) *Avitar Oral Screen 4 or Drugometer*

6.4.2 Ukulungiselela injongo yokuvavanyelwa utywala, isixhobo esivunyiweyo yi-SABS sinokusetyenziswa okanye, ngemvume yomzali, kunokwenziwa uvavanyo lwegazi kwindawo yonyango evunyiweyo.

#### 6.4.3 Isixhobo

6.4.3.1 Ikhithi yokuvavanya mayivulwe ekho umfundi osele eza kuvavanya.

6.4.3.2 Umfundi osele eza kuvavanya makaqale abuzwe ukuba ngaba kukho yeza lithile ebekhe walisebenzisa na.

#### 6.4.3.3 Uvavanyo malwenziwe—

- (i) ngumntu wesini esifanayo;
- (ii) likho ingqina elingumntu omdala wesini esifanayo nesomfundi; kwaye
- (iii) kwindawo ekungekho abanye abafundi nabanye abantu.

6.4.4 Umntu oqhuba uvavanyo makanxibe iiglavu *zelatex*.

6.4.5 Okungaphakathi kwiphakheji yesixhobo ngasinye kubonisa indlela isiphumo solo vavanyo emasitolikwe ngayo.

6.4.6 Ingcaciso ebhalwe kwiphetshana elifakwe kwipakethe mayifundwe yinquinunu okanye ngulowo idlulisele kuye amagunya kukho nomfundi phambi kokuba kwensiwe uvavanyo.

6.4.7 Uvavanyo malwenziwe njengoko kumiselwe koko kufakwe ngaphakathi kwiphakheji.

6.4.8 Lowo kudluliselwe kuye amagunya makanikwe irisithi yinquinunu eya kusebenza njengobungqina bokunikwa kwakhe isixhobo nanjengerekhodi.

**7. UkuRekhodwa kweNgcaciso nokuShenxiswa kweZixhobo eziYingozi, iZiyobisi eziNgekho Mthethweni neeSampula zoMchamo**

- 7.1 Nasiphi na isixhobo esiyingozi okanye isiyobisi esingekho mthethweni esihluthiweyo okanye isampula yomchamo eseiyavanyiwe mayifikwe ilebhile ecacileyo nechanekileyo kanye neenkukacha ezipheleleyo, kubandakanya
- (a) igama lomfundu ebekufunyenwe kuye okanye ebekuthathwe kuye isampula
  - (b) ixesha nomhla wokusetsha nokuhlutha izinto okanye ekwathathwa ngalo isampula;
  - (c) inombolo yesalathiso yesiganeko;
  - (d) igama lomntu osetshe okanye ovavanye umfundu;
  - (e) igama lengqina; kanye
  - (f) nazo naziphi na ezinye iinkukacha ezinokuba yimfuneko zokuqaphela loo nto ithathiweyo nesiganeko eso;
- 7.2 Zonke iinkukacha mazirekhodwe kwincwadi yokurekhoda.
- 7.3 Emva kokuhlutha isixhobo esiyingozi, inqununu okanye lowo idlulisele kuye amagunya unokuyidlulisela loo nto ithathiweyo nokuba kusemapoliseni okanye kumzali.
- 7.4 Ukuba isixhobo esihluthiweyo asikho mthethweni, inqununu okanye lowo idlulisele kuye amagunya unyanzelekile ukuba asidlulisele emapoliseni.
- 7.5 Inqununu okanye lowo idlulisele kuye amagunya makathathe isixhobo eso sichaphazelekayo asise kwisitishi samapolisa esikufuphi ukuba amapolisa akakwazi kuza kusithatha.
- 7.6 Ipolisa elamkela isixhobo malikhuphe irisithi emalunga noko.

**8 ISAZISO ESITHUNYELWA EBAZALINI KUNYE NENKQUBO YOLULEKO**

**8.1 Izaziso ezithunyelwa ebazialini**

Isiqendu 45A(11) salo Mthetho sicacisa ukuba inqununu okanye lowo idlulisele kuye amagunya uya kuthi —

- (a) lungadlulanga usuku lomsebenzi olunye, ukuba kunako ukwenzeka oko, axelete umzali womfundu ochaphazelekayo ukuba uvavanyo okanye ukusetsha nokuhlutha kwensiwe ngokunxulumene nomntwana wakhe; yaye
- (b) axelete umfundu nomzali ngesiphumo sovavanyo ngoko nangoko emva kokuba sifumanekile.

Ukuba ekuvavanyweni komfundi kufunyaniswe esebezise iziyobisi ezingekho mthethweni, makubanje ingxoxo nomzali ukwenzela ukuba akwazi ukuqonda iziphumo zokusetyenziswa kweziyobisi ezingekho mthethweni. Inqununu inako, ukuba umzali ucela ngolo hlobo, ukuthumela umfundi kwiziko lokunyanga amakhendle eziyobisi nokubuyiselwa kwimeko yesiqhelo kwabo (*rehabilitation institution*) ukuya kufumana ingcebiso ngokusebenzisa kwakhe iziyobisi. Kuphela ngumfundu kunye nabazali bakhe amabaxeelwe ngesiphumo sovavanyo Iweziyobisi. Malingaze lixelwe igama lomfundu, ngaphandle kwakubazali bakhe kuphela.

## 8.2 Inkubo yoluleko

- 8.2.1 Ngokwesiqendu 45A(12), umntu osebenzisa amagunya phantsi kwesi siqendu usebenzisa loo mandla njengoko kufanelekileyo kwiimeko ezo awasebenzisela phantsi kwazo amagunya.
- 8.2.2 Ngokwesiqendu 45A(13), umfundi unako ukuthathelwa amanyathelo ezoluleko ukuba —
  - (a) umfundi unesixhobo esiyingozi, utywala obunxilisayo okanye isiyobisi esingekho mthethweni ngeeyure zesikolo okanye ngexesha lomsebenzi wesikolo; okanye
  - (b) umfundi ufumanekе esebezise utywala obunxilisayo okanye isiyobisi esingekho mthethweni kwiimeko ezichazwe kwisiqendwana (10).
- 8.2.3 Ngokwesiqendu 45A(14), nawaphi na amanyathelo ezoluleko ngokunxulumene nomfundu aya kuqhutywa ngokomgaqo wokuziphatha ochatshazelwe kwisiqendu 45(1) salo Mthetho. Akukho simangalo solwaphulo-mthetho masenziwe kwinkundla yomthetho kumangalelwe olu didi lomfundu.
- 8.2.4 Kwimeko apho umfundi angavumiyo ukusetshwa okanye ukuvavanyelwa utywala okanye iziyobisi, inqununu okanye lowo idlulisele kuye amagunya makaxelete amapolisa, wona aya kuthatha amanyathelo afanelekileyo ngokoMthetho i-Criminal Procedure Act, 1977.

## 9. UKUPHIKISA IZIPHUMO ZOVAVANYO

- 9.1 Ukuba isiphumo sovavanyo oluqhutywe esikolweni siyaphikiswa, makwenziwe uvavanyo olulaneliswayo *Iwe-gas chromatography* kunye *ne-mass spectrometry (GC/MS)* okanye, kwimeko yokuvavanyelwa ukubenzisa utywala, makusetyenziswe ukuxilongwa kwegazi, ukungqina iziphumo.
- 9.2 Ezi mvavanyo zikumgangatho ophezulu mazenziwe ngoncedo IweSebe lezeMpilo.

## 10. UMHLA WOKUQALA UKUSEBENZA

Lo mgaqo-nkqubo uqala ukusebenza ukususela ngoku.