

**Directives issued in terms of section 79(13) of the
Criminal Procedure Act, 1977 (Act No. 51 of 1977)
as amended by section 10(b) of the
*Judicial Matters Amendment Act, 2008 (Act No. 66 of 2008)***

REFERRAL FOR MENTAL OBSERVATION

1. Section 10 of the *Judicial Matters Amendment Act, 2008 (Act No. 66 of 2008)* provides for the amendment of section 79 of the *Criminal Procedure Act, 1977*. The latter section provides for the appointment of a panel of only two psychiatrists, unless the prosecutor applies for the appointment of a third psychiatrist.
2. Prosecutors may only apply for the appointment of a third psychiatrist in accordance with section 79(1)(b)(ii), in terms of a written authority or directive from the relevant DPP.
3. Where prosecutors identify matters that may require the appointment of a third psychiatrist, this should be brought to the attention of the relevant DPP for consideration.
4. Factors that may be considered by a DPP in using his/her discretion to authorise or direct a prosecutor to apply for the appointment of a third psychiatrist for observation purposes include—
 - (a) the seriousness of the offence;
 - (b) the complexity of the evidence;
 - (c) whether the accused person wishes the court to appoint a psychiatrist of his or her choice; and
 - (d) the history of the particular accused person (e.g. previous observations of the accused person).
5. Where an application is brought for the appointment of a third psychiatrist and the accused person is not legally represented, the prosecutor must request the court to consider the appointment of a legal representative for the accused person in terms of section 77(1A) of the *Criminal Procedure Act, 1977*.
6. These directives only take effect after submission to Parliament.
7. Prosecutors who fail to comply with the directives will be dealt with according to the disciplinary codes of the National Prosecuting Authority.