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**THE KAKAMEGA COUNTY ENFORCEMENT SERVICE BILL,
2018**

A Bill for,

AN ACT of the County Assembly of Kakamega to provide for the organization, functions and operations and discipline of the Kakamega County Enforcement Service and for connected purposes

ENACTED by the County Assembly of Kakamega as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Kakamega County Enforcement Service Act, 2018 and shall come into effect upon publication.

Interpretation

2. In this Act unless the context otherwise requires—

“county” means Kakamega County;

“county public service board” means Kakamega County Public service board;

“chief officer” means the Chief Officer responsible for Public Service and Administration;

“executive committee member” means the Executive Committee Member responsible for Public Service and Administration;

“officer” means a member of the county enforcement service above the rank of senior sergeant;

“service member” means a member of county enforcement service below the rank of inspector.

Object and Purpose

3. The object and purpose of this Act is to—

- (a) provide a legal framework for the organization, functions, operations and discipline of the Kakamega County Enforcement Service; and
- (b) give effect to Article 187 of the Constitution that requires the County executive committee to implement county legislation.

**PART II—ESTABLISHMENT AND COMPOSITION OF
COUNTY ENFORCEMENT SERVICE**

Establishment of Service

4. (1) There is established an enforcement service in the County known as the Kakamega County Enforcement Service.

(2) The service shall be a section within the County public service.

Composition of the Service

5. (1) The Kakamega County Enforcement Service shall consist of—

(a) such maximum number of officers and service members as shall be determined from time to time by the county public service board; and

(b) ranks set out in the First Schedule.

(2) The members of the county enforcement service shall have seniority according to their ranks as set out in the First Schedule.

(3) In recruiting the members of the county enforcement service, the county public service board shall so far as reasonably practicable ensure gender, ethnic and regional balance.

Declaration on becoming a member service

6. Every member of the enforcement service shall on being enlisted make and sign before an officer authorized by law to administer oaths, the oath or the affirmation set forth in the Second Schedule.

Identification cards

7. (1) The county public service board shall ensure that an identification card is issued to every person who is appointed as a member of the enforcement service.

(2) A member of the enforcement service shall produce the identification card issued under subsection (1) on being requested to do so by any person in relation to whom the member is exercising or is about to exercise power conferred by this Act.

**PART III—FUNCTIONS AND POWERS OF ENFORCEMENT
SERVICE**

Functions of the enforcement service

8. (1) The functions of the enforcement service shall be to—

(a) implement and enforce policies, strategies and guidelines in the county;

- (b) enforce county legislation;
- (c) assist the National Police Service in the maintenance of law and order in the county by ensuring adherence within the county to national legislation to the extent that the legislation requires;
- (d) assist in carrying out inspections within the county to ensure compliance with set standards in respect of the devolved functions;
- (e) regulate and control traffic on roads within the county;
- (f) keep order on and prevent obstruction in public places;
- (g) provide security to public and county government property;
- (h) ensure safety of county government employees when they are on duty;
- (i) prepare cases and testify in court;
- (j) conduct internal investigations in the county;
- (k) gather intelligence on behalf of the county government; and
- (l) perform any other duty that may be prescribed by this Act or any other written law from time to time.

(2) Any person who disobeys any lawful order given by a member of the enforcement service acting under subsection (1) (b), (c), (e) (f) (g) and (h) commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment to a term not exceeding six months.

(3) A person who disobeys a lawful order pursuant to subsection (2) may be arrested without a warrant unless he or she gives his or her name and address and satisfies a member of the enforcement service that he or she will duly answer any summons or other proceedings which may be taken against him or her.

County Chief of Security and Enforcement

9. The enforcement service shall be under the overall command of the county chief of security and enforcement who shall be appointed by the Governor from a list of persons competitively recruited by the county public service board.

Functions of County Chief of Security and Enforcement

10. (1) The County Chief of Security and Enforcement shall—
- (a) plan, organize and coordinate county security and enforcement programs and activities;

- (b) be the principal advisor to the governor on all enforcement and security matters;
- (c) monitor and evaluate the implementation of security programs;
- (d) provide technical advice on security and enforcement matters;
- (e) co-ordinate complex investigations on sensitive crimes;
- (f) liaise with relevant national government security agencies on matters of security;
- (g) ensure discipline is maintained among the members of the county enforcement service;
- (h) co-ordinate county security meetings;
- (i) prepare reports on security and maintain records of acts of unlawful interference;
- (j) develop emergency procedures and contingency planning;
- (k) co-ordinate security surveys;
- (l) co-ordinate inspection and assessment of security threats;
- (m) prepare periodic reports on security affairs;
- (n) plan and co-ordinate development and design of security documents including passes and registers;
- (o) budget and plan for the enforcement section;
- (p) train, develop and supervise security and members of the county enforcement service;
- (q) conduct performance management and capacity building for the security and enforcement section; and
- (r) perform any other lawful duties on behalf of the County enforcement service.

(2) In the performance of his or her duties under subsection (1) the county chief of security and enforcement shall be responsible to the department responsible for public service and administration.

Delegation of Powers

11. The county chief of security and enforcement may delegate any of the powers conferred upon or vested in him or her by this Act or any other written law to his or her deputy in command.

Service standing orders

12. The County Chief of Security and enforcement may issue administrative orders, to be called service standing orders, not inconsistent with the provisions of this Act or of any regulations made thereunder, for the general control, direction and information of the service.

Power to enter premises, stop vehicles, etc

13. (1) If a member of the County Enforcement Service has reasonable cause to believe—

- (a) that anything necessary to the investigation of an alleged offence is in any premises and that the delay caused by obtaining a warrant to enter and search the premises would likely imperil the success of the investigation; or
- (b) that any person in respect of whom a warrant of arrest is in force, or who is reasonably suspected of having committed a cognizable offence, is in any premises, he or she may demand that the person residing in or being in charge of such premises shall allow him or her free ingress thereto and afford him or her all reasonable facilities for a search therein, and if, after notification of his or her authority and purpose, ingress cannot without unreasonable delay be so obtained member of the County Enforcement Service may without warrant enter such premises and search therein, and may, if necessary in order to effect such entry, break open any outer or inner door or window or other part of such premises.

(2) A member of County Enforcement Service may stop, search and detain any vehicle or vessel which he or she has reasonable cause to suspect is being employed in the commission of, or to facilitate the commission of, an offence.

(3) A person who fails to obey a reasonable signal given by a member of the County Enforcement Service in uniform requiring him or her to stop any vehicle or vessel commits an offence and shall be liable on conviction to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding six months.

(4) A member of the County Enforcement Service may arrest a person under this section without warrant unless the person gives his or her name and address and satisfies the member of the County Enforcement Service that he or she will duly answer any summons or other proceedings which may issue or be taken against him or her.

Power to stop and detain any person for production of licence, etc

14. (1) A member of the County Enforcement Service in uniform or on production of a service identity card may stop and detain any person whom he or she —

- (a) sees doing any act or thing;
- (b) sees in possession of anything; or
- (c) suspects of doing any act or thing or of being in possession of anything, for which a licence, permit, certificate or pass is required under any county written law and may require the person to produce the licence, permit, certificate or pass.

(2) A person who fails to produce a licence, permit, certificate or pass when called upon by a member of the enforcement service so to do may be arrested without a warrant unless he or she gives his or her name and address and otherwise satisfies the member of the County Enforcement Service that he or she will duly answer any summons or other proceedings which may issue or be taken against him or her.

Powers of arrest without warrant

15. Subject to Article 49 of the Constitution, a member of the County Enforcement Service may without a warrant of arrest, arrest a person—

- (a) who commits a breach of the peace in his or her presence or who is accused by another person of breaching any law within his or her enforcement jurisdiction which he or she believes upon reasonable ground that such breach has been committed;
- (b) who commits a breach of a county law or believes upon reasonable ground that such breach has been committed;
- (c) who obstructs him or her while in the execution of his or her duty;
- (d) in whose possession is found anything which may reasonably be suspected of having committed an offence with reference to that thing; or
- (e) whom he or she has reasonable cause to believe a warrant of arrest has been issued.

Power to use riot gears, batons, shields and handcuffs

16. (1) Subject to subsection (2), a member of the County Enforcement Service shall in exercise of their powers and functions under this Act use riot gears, batons, shields and handcuffs to ensure compliance.

(2) Despite subsection (1), a member of the County Enforcement Service shall use riot batons and handcuffs in accordance with the rules contained in the Third Schedule.

Regard to fundamental human rights

17. In exercise of functions and powers conferred by this Act or any other county written law, a member of the County Enforcement Service shall pay due regard to the fundamental human rights and freedoms enshrined in the Constitution and other written laws.

Resignation from service

18. A member of the County Enforcement Service may be permitted to resign from the Service before the expiration of his or her period of enlistment on personal or compassionate grounds in the manner applicable to other public officers.

Surrender of public property on resignation

19. (1) Every member on leaving the County Enforcement Service shall forthwith deliver up to such person as may be authorized in that behalf, any uniform, identification card, clothing, equipment or accoutrements supplied to him or her by or on behalf of the Service, provided the Executive Committee Member, at his or her discretion, may authorize a member to retain items of clothing on leaving the Service.

(2) Any person who fails to comply with the provisions of subsection (1), or who returns such property in a damaged condition, the damage not being attributable to the proper discharge of his or her duties whilst a member of the enforcement service, shall be liable for the cost of replacing or repairing such property, and such cost shall be a debt due from such person to the government and may be recoverable by deduction from any moneys due from the government to such person, or by civil suit for the whole amount, or for any balance due after such deduction as aforesaid.

Service may be divided into branches, etc

20. (1) The County Enforcement Service may be divided into such numbers and description of branches, units and sub-units as the county chief of security and enforcement in consultation with the county public service board, may from time to time direct.

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(2) Any member, save a member of the County Enforcement Service specifically seconded to a particular branch, unit or subunit for a particular role, may at the discretion of the Executive Committee Member be posted to and deployed in any branch, unit or subunit of the County Public Service.

Training facilities

21. (1) The County Enforcement Service shall progressively establish and maintain an enforcement training institutions for purposes of training and retraining its officers and service members.

(2) Training in the institution referred to in sub section (1) shall be conducted in accordance with the training curriculum.

(3) The County Enforcement Service may collaborate with other training institutions to provide training to its personnel.

Designation of service posts

22. The County chief of Security and Enforcement may designate service posts.

(2) In designating the posts under subsection (1) the County Chief of Security and Enforcement shall ensure the posts are equitably distributed among all wards in the County.

(3) Each service post shall be the center for administrative and command functions of the service in respect of the area of jurisdiction.

PART III—DISCIPLINE AMONG MEMBERS OF THE COUNTY ENFORCEMENT SERVICE

Responsibility of member of a senior rank

23. When members of County Enforcement Service are acting together, the member holding the senior most rank shall be in charge and shall be held responsible for all orders that shall be given.

Obedience to a lawful order

24. A member of the County Enforcement Service shall obey and execute any lawful order in respect of execution of the duties of office which he or she may, from time to time, receive from his or her superiors in the service.

Conduct of members

25. (1) A member of County Enforcement Service shall at all times conduct himself or herself in an irreproachable manner, both on and off duty.

(2) A member of County Enforcement Service shall undertake duties and tasks necessary for effective administration and operation of the service responsibly.

Public property not to be used privately

26. (1) Unless specifically authorized, no member of the County Enforcement Service shall be entitled to keep or use for private benefit any article that has been supplied to the member at the public expense but shall hold every such article at the order and disposal of the government.

(2) A member of enforcement service who contravenes the provisions of sub section (1) commits a disciplinary offence.

**PART IV—OFFENCES AGAINST DISCIPLINE BY MEMBERS OF
THE COUNTY ENFORCEMENT SERVICE**

Offence against discipline

27. The following shall be offences against discipline by members of County Enforcement Service—

- (a) willfully disobeying any lawful command, order or instruction;
- (b) unlawful strike, use of threats or violence against any member of county enforcement service or any other member of the public;
- (c) use of obscene, abusive or insulting language in any form to member of County Enforcement Service or any other member of the public;
- (d) use of threatening or insubordinate or disrespectful language, word, act or demeanor to a member of County Enforcement Service senior to him or her in rank;
- (e) causing disturbance in any public place;
- (f) member of County Enforcement Service leaving his or her post or place of duty before he or she is relieved, except in fresh pursuit of an offender who it is his or her duty to apprehend;
- (g) while under arrest or in detention, member of County Enforcement Service leaving or escaping from such arrest or detention before he or she is set at liberty by proper authority;
- (h) neglecting or refusing to assist in the apprehension of any member of County Enforcement Service charged with an offence, when lawfully ordered to do so;
- (i) resist any lawful arrest;

- (j) negligently allowing any suspect or any person whom it is his or her duty to guard to escape;
- (k) without reasonable cause, fail to attend a parade, class or court or any other duty which he or she is required to attend;
- (l) being in improper possession of any public or private property;
- (m) commits any act of plunder or wanton destruction of any property;
- (n) negligent in the performance of his or her duty;
- (o) appearing on duty untidy or dirty in his or her personal uniform or failing to wear appropriate uniform as required;
- (p) make or sign any false statement in a document or official record;
- (q) disclosing or conveying any secret information concerning the county without proper authority;
- (r) being drunk while on duty;
- (s) drinking intoxicating liquor or illicit substances or drugs while in uniform when actively engaged on duty;
- (t) being absent without official permission;
- (u) sleeping while on duty;
- (v) malingering or feigning any disease or infirmity;
- (w) engaging in corrupt practices;
- (x) failure, refusal or neglect to make or send any report or return which it is his or her duty to do so;
- (y) knowingly make any false accusation, complaint or statement against any member of the public or county enforcement service;
- (z) act or behave in a manner that constitutes cowardice—
 - (i) be engaged in any other gainful employment or office without the authority of the county public service board;
 - (ii) tampering with exhibits to assist a suspect;
 - (iii) pecuniary embarrassment; and
 - (iv) desertion of duty.

Impersonation of enforcement officer

28. (1) A person other than a member of the County Enforcement Service who without the written authority of the County Chief of Security and Enforcement —

- (a) puts on either in whole or in part the uniform, name, designation or description of a member of the enforcement service or a uniform, name or designation resembling the uniform, name or designation of a member of the County Enforcement Service; or
- (b) in any way pretends to be a member of the County Enforcement Service;

commits an offence and is liable on conviction to a fine not exceeding Fifty thousand shillings or imprisonment to term not exceeding six months.

(2) Notwithstanding the provisions of subsection (1) a person may with the approval of the County Chief of Security and Enforcement use the service uniform for artistic purposes.

General Penalty

29. A person who contravenes the provisions of this Act for which no penalty is specified or fails to comply with any order or direction given under this Act shall be liable on conviction to a fine not exceeding fifty thousand shillings or imprisonment to term not exceeding six months.

**PART V—COUNTY ENFORCEMENT OFFICERS’
DISCIPLINARY COMMITTEE AND SERVICE MEMBERS
DISCIPLINARY COMMITTEE**

County enforcement officers disciplinary committee

30. (1) There is established the County Enforcement Officers Disciplinary Committee which shall inquire into offences against discipline by officers of the County Enforcement Service.

- (2) The Committee established in subsection (1) shall consist of—
 - (a) the County Chief of Security and Enforcement who shall be chairperson;
 - (b) four officers not below the rank of inspector; and
 - (c) one person appointed by chief officer who shall be the secretary.

- (3) During the hearings of the committee—
- (a) there shall be a member of the County Enforcement Service prosecuting the offence being a member authorized to inquire into offences against discipline and shall be of a rank higher than the accused member; and
 - (b) a member of the County Enforcement Service facing disciplinary action shall be escorted for trial by a member of the County Enforcement Service of his or her own choice and the same rank as the accused.

Functions of the county enforcement officers disciplinary committee

31. (1) The County Enforcement Officers Disciplinary Committee shall—

- (a) handle disciplinary cases involving officers;
- (b) resolve minor cases that may not carry serious penal consequences;
- (c) make recommendations to County Human Resource Management Advisory Committee on cases that carry serious penal consequences;
- (d) supervise and advise the County Service Members Disciplinary Committee; or
- (e) recommend an accused officer for re-training, guidance and counseling and rehabilitation in addition to any disciplinary action.

(2) In conducting an inquiry under subsection (1), the committee may engage the services of any person or institution with expert knowledge in the matter to which the inquiry relates.

County service members disciplinary committee

32. (1) There is established a County Service Members Disciplinary Committee which shall inquire into offences against discipline by service members.

- (2) The Committee shall consist of—
- (a) an officer of the rank of inspector or above who shall be the chairperson;
 - (b) four other members of the county enforcement service above the rank of the accused person; and
 - (c) one person appointed by chief officer who shall be the secretary.

(3) During the hearings of the Committee —

- (a) there shall be a member of the county enforcement service prosecuting the offence being a member authorized to inquire into offences against discipline and shall be of a rank higher than the accused member but not of a rank higher than the chairperson;
- (b) a member of the county enforcement service facing disciplinary action shall be escorted for trial by a member of the county enforcement service of his or her own choice and the same rank as the accused.

Functions of the service members disciplinary committee

33. The Service Members Disciplinary Committee shall—

- (a) handle disciplinary cases involving service members;
- (b) resolve minor cases that may not carry serious penal consequences;
- (c) make recommendations to County Human Resource Management and Advisory Committee on cases that carry serious penal consequences; and
- (d) recommend service member for re-training, guiding and counseling and rehabilitation in addition to any disciplinary action.

Power to summon witness

34. (1) A member of the county enforcement service empowered to inquire into offences against discipline may summon and examine witnesses on oath or affirmation.

(2) A member of the county enforcement service shall be required to produce relevant documents in any matter connected to the inquiry, and may seek adjournment during the inquiry to avail necessary documents.

(3) A member of the county enforcement service summoned as a witness under subsection (1) and fails to attend at the time and place specified in the summons, or, having attended, refuses to answer any questions that are lawfully put to him or her or fails without reasonable cause to produce any document, commits an offence against discipline.

Conduct of disciplinary hearings

35. (1) Disciplinary hearings shall be conducted between 8 O'clock in the morning and 5 O'clock in the evening.

(2) The chairperson of the trial proceeding may, at his or her discretion, order the accused to remove any article which he or she considers may be used as a weapon during the proceedings.

(3) An accused member of the county enforcement service shall not be handcuffed during any proceedings unless the chairperson of the trial considers it necessary for the purpose of preventing his or her escape or rescue or for restraining violent conduct.

(4) The County Chief of Security and Enforcement shall designate a prosecutor for purposes of sections 30(3)(a) and 32(3)(a).

Appeal

36. A service member aggrieved by a decision of the Service Member Disciplinary Committee's decision may appeal to the county Chief of Security and Enforcement.

Redress complaint mechanism

37. The department responsible for Public Service and Administration shall on the commencement of this Act, establish a redress complaint mechanism by the members of the public against members of the County Enforcement Service.

PART VI—MISCELLANEOUS

Allocation of funds

38. The County Assembly shall allocate adequate funds to enable the service perform its functions.

Regulations

39. The Executive Committee Member may make regulations for the better carrying out of the provisions of this Act.

FIRST SCHEDULE

(S.5 (1)(b))

UNIFORMED SERVICE MEMBERS

Constable
Corporal
Sergeant
Senior Sergeant

OFFICERS

Inspector
Chief Inspector
Superintendent
Senior Superintendent
Deputy County Chief Security and Enforcement
Senior Deputy County Chief Security and Enforcement
County Chief Security and Enforcement

SECOND SCHEDULE

(s.6)

OATH OF OFFICE

I Do swear in the name of almighty god that I will be faithful to the governor and the people of the Kakamega county;

That I will diligently serve the governor and the people of Kakamega county as an officer/service member of the County Government of Kakamega.

I will discharge my duties as an officer of the County Government of Kakamega in accordance with the law without fear or favour.

SO HELP ME GOD.

Name.....

Signature.....Date.....

THIRD SCHEDULE

(S.16 (2))

A – CONDITIONS AS TO THE USE OF BATONS

1. A member of the County Enforcement Service shall always attempt to use non-violent means first and force may only be employed when non-violent means are ineffective or without any promise of achieving the intended result.
2. The force used shall be proportional to the objective to be achieved, the seriousness of the offence, and the resistance of the person against whom it is used, and only to the extent necessary while adhering to the provisions of the law and the Standing Orders.
3. A member of the County Enforcement Service who uses any form of force shall immediately, report to the superior explaining the circumstances that necessitated the use of force and the superior shall judge the rightfulness and decide on the next step, subject to these regulations.
4. Any use of force that leads to death, serious injury and other grave consequences shall be reported immediately by the officer in charge or another direct superior of the person who caused the death or injury, to the County redress and complaints body.
5. It shall be a disciplinary offence for a member of the county enforcement service to fail to report in accordance with these regulations.
6. A member of the County Enforcement Service shall not tamper or otherwise damage any evidence from the scene of the act.
7. Following the orders of a superior is no excuse for unlawful use of force.

B-USE OF HANDCUFFS TO PREVENT ESCAPE

1. A member of the county enforcement service may use handcuffs as instruments of restraint—
 - (a) to prevent the escape of a detainee; and
 - (b) to prevent the detainee from self-injury or injuring other people or damaging property.
2. The handcuffs shall—
 - (a) not be applied for longer than necessary to secure the purpose for which it is used;
 - (b) not be used as a punishment; and
 - (c) be removed immediately after the purpose for which it is used is achieved.

MEMORANDUM OF OBJECT AND REASONS

The Bill is intended to provide for the organization, functions, operations and discipline of the Kakamega County Enforcement Service.

The Bill establishes a legal framework for the organization structure, functions of the enforcement service, ranking structures, the mode of carrying out duties and complaints redress mechanisms.

The Bill is divided into seven parts as follows—

Part I provides for preliminaries including short title, interpretation and object and purpose of the Bill.

Part II provides for the establishment and composition of the Kakamega County Enforcement Service.

Part III provides for the functions and powers of the Enforcement Service while part IV and V provide provisions relating to discipline among members of the Enforcement Service and offences against discipline by members of the enforcement service.

Part VI establishes the disciplinary committees while **Part VII** encompasses miscellaneous matters.

The Bill shall occasion additional expenses, which will be provided for in the budget estimates.

BONIFACE OSANGA,
Chairperson, Public Service and Administration Committee.