

REPUBLIC OF SOUTH AFRICA

CRIMINAL PROCEDURE AMENDMENT BILL

-----  
*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill  
published in Government Gazette No. 33619 of 7 October 2010) (The English text is the  
official text of the Bill)*  
-----

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B39—2010]

---

**GENERAL EXPLANATORY NOTE:**

- [            ]            Words in bold type in square brackets indicate omissions from existing enactments.
- \_\_\_\_\_            Words underlined with a solid line indicate insertions in existing enactments.

**BILL**

**To amend the Criminal Procedure Act, 1977, so as to substitute and align the provisions relating to the use of force in effecting arrest of a suspect with a judgment of the Constitutional Court; and to provide for matters connected therewith.**

PARLIAMENT of the Republic of South Africa enacts, as follows:—

**Substitution of section 49 of Act 51 of 1977, as substituted by section 7 of Act 122 of 1998**

1. The following section is hereby substituted for section 49 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977):

**"Use of force in effecting arrest**

- 49.** (1) For the purposes of this section—
- (a) **'arrestor'** means any person authorised under this Act to arrest or to assist in arresting a suspect; **[and]**
- (b) **'suspect'** means any person in respect of whom an arrestor has **[or had]** a reasonable suspicion that such person is committing or has committed an offence; and
- (c) **'deadly force'** means force that is likely to cause serious bodily harm or death and includes, but is not limited to, shooting at a suspect with a firearm.

**Option 1: Existing provision in Bill**

(2) If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing: Provided that the arrestor **[is justified in terms of this section in using deadly force that is intended or is likely to cause death or grievous bodily harm to a suspect, only if he or she believes on reasonable grounds—**

- (a) **that the force is immediately necessary for the purposes of protecting the arrestor, any person lawfully assisting the arrestor or any other person from imminent or future death or grievous bodily harm;**
- (b) **that there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed; or**
- (c) **that the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening**

**violence or a strong likelihood that it will cause grievous bodily harm]**  
may use deadly force only if—

- (a) the suspect poses a threat of serious violence to the arrestor or any other person; or
- (b) the suspect is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of effecting the arrest, whether at that time or later.”.

**Option 2: Proportionality requirement amplified**

(2) If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing [ : **Provided that the arrestor is justified in terms of this section in using deadly force that is intended or is likely to cause death or grievous bodily harm to a suspect, only if he or she believes on reasonable grounds—**

- (a) that the force is immediately necessary for the purposes of protecting the arrestor, any person lawfully assisting the arrestor or any other person from imminent or future death or grievous bodily harm;**
- (b) that there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed; or**
- (c) that the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening violence or a strong likelihood that it will cause grievous bodily harm]**

**, but, in addition to the requirement that the force must be reasonably necessary and proportional in the circumstances, the arrestor may use deadly force only if—**

- (a) the suspect poses a threat of serious violence to the arrestor or any other person; or
- (b) the suspect is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of effecting the arrest, whether at that time or later.”.

**Short title**

2. This Act is called the Criminal Procedure Amendment Act, 2010.