

22 Use of force in effecting arrest

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.

(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.”.

Citizens' Arrest In South Africa

Any South African citizen may execute an arrest for "any conspiracy, incitement, or attempt to commit any offense" [2|3|5], pertaining to any Schedule 1 offense, as determined by THE CRIMINAL PROCEDURES ACT OF 1977, Act 51 [2|3], and THE CRIMINAL LAW AMENDMENT ACT OF 2007, Section 3 and 4.

Lawful Citizens' Arrest

THE SOUTH AFRICAN CRIMINAL PROCEDURES ACT OF 1977, ACT 51, SECTION 42, says concerning an "Arrest by private person without warrant":

1. ANY PRIVATE PERSON MAY WITHOUT WARRANT ARREST ANY PERSON –
 - (A) WHO COMMITS OR ATTEMPTS TO COMMIT IN HIS PRESENCE OR WHOM HE REASONABLY SUSPECTS OF HAVING COMMITTED AN OFFENSE REFERRED TO IN SCHEDULE 1;
 - (B) WHOM HE REASONABLY BELIEVES TO HAVE COMMITTED ANY OFFENSE AND TO BE ESCAPING FROM AND TO BE FRESHLY PURSUED BY A PERSON WHOM SUCH PRIVATE PERSON REASONABLY BELIEVES TO HAVE AUTHORITY TO ARREST THAT PERSON FOR THAT OFFENSE;
 - (C) WHOM HE IS BY ANY LAW AUTHORIZED TO ARREST WITHOUT WARRANT IN RESPECT OF ANY OFFENSE SPECIFIED IN THAT LAW;
 - (D) WHOM HE SEES ENGAGED IN AN AFFRAY [F1];
2. ANY PRIVATE PERSON WHO MAY WITHOUT WARRANT ARREST ANY PERSON UNDER SUBSECTION 1 -
 - (A) MAY FORTHWITH PURSUE THAT PERSON, AND ANY OTHER PRIVATE PERSON TO WHOM THE PURPOSE OF THE PURSUIT HAS BEEN MADE KNOWN, MAY JOIN AND ASSIST THEREIN.
3. THE OWNER, LAWFUL OCCUPIER, OR PERSON IN CHARGE OF PROPERTY ON OR IN RESPECT OF WHICH ANY PERSON IS FOUND COMMITTING ANY OFFENSE, AND ANY PERSON AUTHORIZED THERETO BY SUCH OWNER, OCCUPIER OR PERSON IN CHARGE, MAY WITHOUT WARRANT ARREST THE PERSON SO FOUND.

THE SOUTH AFRICAN CRIMINAL PROCEDURES ACT OF 1977, ACT 51, SECTION 39, says concerning the "Manner and effect of arrest":

1. AN ARREST SHALL BE EFFECTED WITH OR WITHOUT A WARRANT, AND, UNLESS THE PERSON TO BE ARRESTED SUBMITS TO CUSTODY, BY ACTUALLY TOUCHING HIS BODY OR, IF THE CIRCUMSTANCES SO REQUIRE, BY FORCIBLY CONFINING HIS BODY.

2. THE PERSON EFFECTING AN ARREST SHALL, AT THE TIME OF EFFECTING THE ARREST OR IMMEDIATELY AFTER EFFECTING THE ARREST, INFORM THE ARRESTED PERSON OF THE CAUSE OF THE ARREST AND, IN CASE OF AN ARREST EFFECTED BY VIRTUE OF A WARRANT, UPON THE DEMAND OF THE PERSON ARRESTED HAND HIM A COPY OF THE WARRANT.

3. THE EFFECT OF AN ARREST SHALL BE THAT THE PERSON ARRESTED SHALL BE IN LAWFUL CUSTODY AND THAT HE SHALL BE DETAINED IN CUSTODY UNTIL HE IS LAWFULLY DISCHARGED OR RELEASED FROM CUSTODY.

Unlawful Citizens' Arrest

THE SOUTH AFRICAN CRIMINAL PROCEDURES ACT OF 1977, ACT 51, SECTION 53, says concerning the "Saving of civil law rights and liability":

SUBJECT TO THE PROVISIONS OF SECTION 46 AND 331, NO PROVISION OF THIS CHAPTER RELATING TO ARREST SHALL BE CONSTRUED AS REMOVING OR DIMINISHING ANY CIVIL RIGHT OR LIABILITY OF ANY PERSON IN RESPECT OF A WRONGFUL OR MALICIOUS ARREST.

Examples

Always take into consideration that you may only execute Citizens' Arrest for Schedule 1 offenses, and no other.

- » Sodomy is NOT a Schedule 1 offense.*** [2]
- » Prostitution is NOT a Schedule 1 offense. [3]
- » Drug-dealing is NOT a Schedule 1 offense. [2|5]
- » Public drunkenness is NOT a Schedule 1 offense. [3]
- » Dumping rubbish is NOT a Schedule 1 offense. [3]
- » Littering is NOT a Schedule 1 offense. [3]
- » Urinating in public is NOT a Schedule 1 offense. [3]
- » Abusive language is NOT a Schedule 1 offense. [3]

Schedule 1 Offenses

- » Treason [2|3|5]: "serious acts of betrayal of one's sovereign or nation" [4]
- » Sedition [2|3|5]: "to inspire insurrection" [6]
- » Murder [2|3|5]: "the unlawful killing of another human being with intent" [7]
- » Culpable Homicide [2|3|5]: "the purposeful, reckless, or negligent (but not necessarily illegal) act of killing a human being" [8|9]
- » Rape [2|3|5] or Compelled Rape [3|5]: as contemplated in THE CRIMINAL LAW AMENDMENT ACT OF 2007, Section 3, concerning Sexual Offenses and Related Matters. [3]

- » Indecent Assault [2], Sexual Assault, Compelled Sexual Assault, or Compelled Self-Sexual Assault [3|5]: as contemplated in THE CRIMINAL LAW AMENDMENT ACT OF 2007, Section 5 and 7, concerning Sexual Offenses and Related Matters. [3]
- » Any sexual offense against a child or the mentally disabled [3|5]: as contemplated in THE CRIMINAL LAW AMENDMENT ACT OF 2007, Section 3 and 4, concerning Sexual Offenses and Related Matters. [3]
- » Human Trafficking for sexual reasons [3|5]: as contemplated in THE CRIMINAL LAW AMENDMENT ACT OF 2007, Section 71, concerning Sexual Offenses and Related Matters. [3]
- » Bestiality [2|3|5|10]: "the practice of sex between humans and animals" [11]
- » Theft**** [2|3|5]: "the illegal taking of another person's property without that person's freely-given consent" [12], by stealth or fraud [13]
- » Robbery [2|3|5]: "the crime of seizing property through violence or intimidation" [13]
- » Knowingly receiving stolen goods [2|3|5]
- » Kidnapping [2|3|5] or Childstealing [2|3]: the taking away, or asportation, of any individual, by force or fraud, against his or her will, whether an adult or a minor. [14]
- » Fraud [2|3|5]: "an intentional deception made for personal gain or to damage another individual" [16].
- » Public Violence [2|3|5] or Assault [2|3|5]: especially when a dangerous wound is inflicted. [2|3]
- » Arson [2|3|5]: "the crime of deliberately and maliciously setting fire to structures or wildland areas" [15]
- » Malicious damage or injury to Property [2|3|5]:
- » Breaking and entering any Property, with the intent to commit an offense**** [2|3]:
- » Forgery, or knowingly using either, forged documents [2|3|5] or coinage [2|3]: "the process of making, adapting, or imitating objects, statistics, or documents, with the intent to deceive" [17]
- » Intimidation [2|5]: "behavior which would cause a person of ordinary sensibilities fear of injury or harm" [18]

Summary

AUTHORIZED TO ARREST

- » Any South African citizen may arrest anyone who commits or attempts to commit a Schedule 1 offense.
- » Any South African citizens may arrest anyone who he/she reasonably suspects of having committed a Schedule 1 offense.
- » Any South African citizen may arrest anyone attempting to escape a security officer, police officer, detective, or national security officer.
- » Any South African citizen may arrest anyone engaged in fighting.
- » Any South African citizen may pursue anyone who committed a Schedule 1 offense, and may authorize anyone else to assist them.
- » Any South African citizen may arrest anyone on any property they own, rent, or guard. *
- » Any South African citizen may physically subdue a suspect, when resisting arrest.
- » South African citizens "are privately liable if [they] perform an unlawful arrest" [3]
- » Always remember that while South African citizens may not execute a Citizens' Arrest for Schedule 2 Offenses (except when duly authorized to do so by a Police Official), they may still offer eye witness testimony in Court.

NOTIFICATION OF ARREST

» Any South African citizen must inform the suspect of the reason for his or her arrest, either while performing it, or immediately thereafter.

FOLLOWING THE ARREST

» From the moment of arrest, the suspect has the right to consult a lawyer.** [1]

» Apart from giving his or her name and address, the suspect has "the right to remain silent". He or she is under no legal obligation to answer any questions, whatsoever, until his or her lawyer is present. [1]

» No South African citizen may release any suspect, unless lawfully discharged or released from custody by a Police Official.