Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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THE PRESIDENCY

No. 782

25 September 2012

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:-

5 WhiBc "- `cZ&\$%&`7 f]a]bU `DfcWYXi fY`5 a YbXa Ybh5 Whž&\$%&`



2 No. 35714	GOVERNMENT GAZETTE, 25 SEPTEMBER 2012
Act No. 9 of 2012	CRIMINAL PROCEDURE AMENDMENT ACT, 2012

GENERAL EXPLANATORY NOTE:

[]	Words in bold type in square brackets indicate omissions from existing enactments.	
<u></u>	-	Words underlined with a solid line indicate insertions in existing enactments.	

(English text signed by the President) (Assented to 13 September 2012)

ACT

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 5 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]

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- (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 15 <u>a firearm</u>.

(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 20 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 25 reasonable grounds—

(a) that the force is immediately necessary for the purposes of protecting the arrestor, any person lawfully assisting the arrestor

Act No. 9 of 2012

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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 10 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, 2012.