

Criminal Procedure Act, 1977

(Act 51 of 1977)

State may seize certain articles

Section 20

The State may, in accordance with the provisions of this Chapter, seize anything (in this Chapter referred to as an article)-

- (a) which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within the Republic or elsewhere;
- (b) which may afford evidence of the commission or suspected commission of an offence, whether within the Republic or elsewhere; or
- (c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence.

Search of premises

Section 24

Any person who is lawfully in charge or occupation of any premises and who reasonably suspects that stolen stock or produce, as defined in any law relating to the theft of stock or produce, is on or in the premises concerned, or that any article has been placed thereon or therein or is in the custody or possession of any person upon or in such premises in contravention of any law relating to intoxicating liquor, dependence-producing drugs, arms and ammunition or explosives, may at any time, if a police official is not readily available, enter such premises for the purpose of searching such premises and any person thereon or therein, and if any such stock, produce or article is found, he shall take possession thereof and forthwith deliver it to a police official.

Resistance against entry or search

Section 27

- (1) A police official who may lawfully search any person or any premises or who may enter any premises under section 26, may use such force as may be reasonably necessary to overcome any resistance against such search or against entry of the premises, including the breaking of any door or window of such premises: Provided that such police official shall first audibly demand admission to the premises and notify the purpose for which he seeks to enter such premises.
- (2) The proviso to subsection (1) shall not apply where the police official concerned is on reasonable grounds of the opinion that any article which is the subject of the search may be destroyed or disposed of if the provisions of the said proviso are first complied with.

Search to be conducted in decent and orderly manner

Section 29

A search of any person or premises shall be conducted with strict regard to decency and order, and a woman shall be searched by a woman only, and if no female police official is available, the search shall be made by any woman designated for the purpose by a police official.

Manner and effect of arrest

Section 39

- (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 or, in the case of an arrest effected by virtue of a warrant, upon 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.

Arrest by private person without warrant

Section 42

- (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 offence referred to in Schedule 1;

- (b) whom he reasonably believes to have committed any offence 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 offence;
 - (c) whom he is by any law authorized to arrest without warrant in respect of any offence specified in that law;
 - (d) whom he sees engaged in an affray.
- (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 offence, and any person authorized thereto by such owner, occupier or person in charge, may without warrant arrest the person so found.

Use of deadly or lethal force to effect an arrest

Section 49

Parliament adopted the revised Section 49 of the Criminal Procedure Act, after recommendations were made by the President of the Constitutional Court. These revisions were published in the Government Gazette No. 25206, dated 11 July 2003.

The new Section 49 no longer distinguishes between First Schedule and other offences. For the general public this essentially means that it is no longer allowed to kill a suspect unless lives are endangered. Thus, the arrestor must meet the following conditions:

- He/she must attempt to arrest the suspect;
- The suspect must resist the attempt, flee or both;
- It must be clear to the suspect that an attempt to arrest him/her is being made;
- It must be impossible to arrest the suspect without using force; and
- The arrestor may use force only if it is reasonable, proportional and necessary in those particular set of circumstances.

To be able to justify the use of deadly or lethal force which may either kill or cause grievous bodily harm to the suspect, the arrestor must believe on reasonable grounds that:

- immediate force is necessary to protect either the arrestor or any other person from imminent or future death or serious assault or grievous bodily harm;
 - there exists a substantial risk that the suspect will cause death or serious assault or grievous bodily harm (which is imminent or in the future) if the arrest is delayed;
 - the offence (either in progress or imminent) is of a forceful and serious nature, involving lethal violence or a strong likelihood that the offence will cause bodily harm.
- (2) (a) refers to the common law principle of “private defence,” and also makes provision for the occurrence of future violence;
- (b) refers to “substantial risk” that the suspect **will** cause imminent or future bodily harm if the arrest is delayed; and
- (c) stipulates that the offence must already be in progress and also involve serious violence, or a strong likelihood that serious bodily harm will be caused.

It is thus advisable that the general public do not become involved in any situation unless they are absolutely convinced that they or their loved ones will be killed if they do not react to the offence.

Schedule 1 Offences

Schedule 1 has been amended by section 8 of the Judicial Matters Second Amendment Act, 1998 (Act 122 of 1998).

- Treason.
- Sedition.
- Public violence.
- Murder.
- Culpable homicide.
- Rape.
- Indecent assault.

- Sodomy* (under constitutional revision)
- Bestiality.
- Robbery.
- Kidnapping.
- Child stealing.
- Assault, when a dangerous wound is inflicted.
- Arson.
- Malicious injury to property.
- Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence.
- Theft, whether under the common law or a statutory provision.
- Receiving stolen property knowing it to have been stolen.
- Fraud.
- Forgery or uttering a forged document knowing it to have been forged.
- Offences relating to the coinage.
- Any offence, except the offence of escaping from lawful custody in circumstances other than the circumstances referred to immediately hereunder, the punishment whereof may be a period of imprisonment exceeding six months without the option of a fine.
- Escaping from lawful custody, where the person concerned is in such custody in respect of any offence referred to in this Schedule or is in such custody in respect of the offence of escaping from lawful custody.
- Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

Procedure after arrest

Section 50

- (1) (a) Any person who is arrested with or without warrant for allegedly committing an offence, or for any other reason, shall as soon as possible be brought to a police station or, in the case of an arrest by warrant, to any other place which is expressly mentioned in the warrant.
- (b) A person who is in detention as contemplated in paragraph (a) shall, as soon as reasonably possible, be informed of his or her right to institute bail proceedings.
- (c) Subject to paragraph (d), if such an arrested person is not released by reason that-
 - (i) no charge is to be brought against him or her; or
 - (ii) bail is not granted to him or her in terms of section 59 or 59A, he or she shall be brought before a lower court as soon as reasonably possible, but not later than 48 hours after the arrest.