

## 9 Ga. Proc. Criminal Procedure § 6:19

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Criminal Procedure

Part Two. Procedures Preliminary to Trial

Chapter 6. Arrest

Stephanie A. Giggetts, J.D.; and Robert F. Koets, J.D.

III. Arrest by Private Person

### § 6:19. Arrest by citizen based on immediate knowledge, reasonable, and probable suspicion

[Topic Summary](#) | [Correlation Table](#) | [References](#) | [Divisional References](#)

#### West's Key Number Digest

West's Key Number Digest, [Arrest](#) 64

Private citizens of the state have a limited right to make arrests in Georgia.<sup>1</sup> A private person may arrest an offender where the offense is committed in such person's presence or within the person's immediate knowledge. If the offense is a felony and the offender is escaping or attempting to escape, a private person may arrest the offender upon reasonable and probable grounds of suspicion.<sup>2</sup> The phrases "in his presence" and "within his immediate knowledge" are synonymous. Knowledge of the crime must come from the exercise of any of the person's senses.<sup>3</sup>

#### Illustration:

A defendant was detained by a store manager after the store manager observed the defendant stealing. After being confronted by the store manager, the defendant killed the store manager, and fled the scene. The offense for which the store manager detained the defendant was the misdemeanor offense of theft by shoplifting. Even though the actual shoplifting was not done within the presence of the store manager, the defendant's later admission of the theft to the store manager, coupled with other evidence known by the store manager, was sufficient to permit bring the facts within the store manager's immediate knowledge.<sup>4</sup>

A private citizen has as much power to arrest a fugitive felon where the emergency calls for immediate action, as a police officer, and while so doing, is equally under the protection of the law.<sup>5</sup> This provision for preventing a felony from being carried out is closely tied to the recognized right of a homeowner to violently resist a person believed to be breaking in to the homeowner's residence.<sup>6</sup> Other Georgia decisions phrased the right of a citizen to make an arrest in terms of not only a right, but the duty of a private citizen when a felony is committed to apprehend the felon. After a felony is committed, any private person may arrest the felon with the same view, upon reasonable and probable ground of suspicion of his or her guilt.<sup>7</sup> This exemption, however, does not confer on private citizens the right to kill in order to carry out a citizen's arrest.<sup>8</sup>

**Illustration:**

An officer's state certification was suspended for failure to maintain credentials. The officer stopped the defendant's car and, after obtaining permission to search the defendant's car, discovered a large quantity of marijuana. Although the officer's arrest was ineffective as a police officer, his arrest was valid as a citizen's arrest for a felony offense that was committed in his immediate presence.<sup>9</sup>

In making a citizen arrest, the citizen is limited to reasonable force to restrain the individual.<sup>10</sup> Thus, although a private person may make a citizen's arrest, only force that is reasonable under the circumstances may be used to restrain the individual arrested.<sup>11</sup> In order to make a citizen's arrest for a misdemeanor, it is not necessary that the crime actually occur in the citizen's presence.<sup>12</sup>

**Illustration:**

Defendant's detention of his step-daughter in her bedroom was not legally authorized as a citizen arrest as would preclude a conviction for false imprisonment; although defendant testified that he wanted to question his step-daughter regarding his suspicion that she had stolen his money, defendant was not present when the step-daughter allegedly took the money and his suspicion amounted to mere speculation, and defendant had no intention of reporting the alleged theft to police.<sup>13</sup>

A private person who makes such an arrest must, without any unnecessary delay, take the person arrested before a judicial officer, or deliver the person and all effects removed from the person to a peace officer of this state.<sup>14</sup>

Footnotes

- 1 Johnson v. Jackson, 140 Ga. App. 252, 230 S.E.2d 756 (1976).
- 2 O.C.G.A. § 17-4-60.  
For a private individual to make an arrest for a misdemeanor, the offense must have either been committed in such individual's presence or be within his or her immediate knowledge. *Delegal v. State*, 109 Ga. 518, 35 S.E. 105 (1900).
- 3 *Humphrey v. State*, 231 Ga. 855, 204 S.E.2d 603 (1974); *Forehand v. State*, 130 Ga. App. 801, 204 S.E.2d 516 (1974); *Piedmont Hotel Co. v. Henderson*, 9 Ga. App. 672, 72 S.E. 51 (1911).
- 4 *Young v. State*, 238 Ga. 548, 233 S.E.2d 750 (1977).
- 5 *Croom v. State*, 85 Ga. 718, 11 S.E. 1035 (1890); *Cobb v. Bailey*, 35 Ga. App. 302, 133 S.E. 42 (1926).
- 6 *Savannah News-Press, Inc. v. Harley*, 100 Ga. App. 387, 111 S.E.2d 259 (1959).
- 7 *Long v. State*, 12 Ga. 293, 1852 WL 1422 (1852).  
*Savannah News-Press, Inc. v. Harley*, 100 Ga. App. 387, 111 S.E.2d 259 (1959).
- 8 *Hayes v. State*, 261 Ga. 439, 405 S.E.2d 660 (1991).
- 9 *State v. Pinckney*, 255 Ga. App. 692, 566 S.E.2d 325 (2002).
- 10 *Carter v. State*, 269 Ga. 891, 506 S.E.2d 124 (1998).
- 11 *Patel v. State*, 279 Ga. 750, 620 S.E.2d 343 (2005).
- 12 *Griffis v. State*, 295 Ga. App. 903, 673 S.E.2d 348 (2009); *Merneigh v. State*, 242 Ga. App. 735, 531 S.E.2d 152 (2000).
- 13 *Smith v. State*, 314 Ga. App. 583, 724 S.E.2d 885 (2012).
- 14 O.C.G.A. § 17-4-61(a).  
When a felony is committed, any private person acting upon a reasonable and probable ground of suspicion may apprehend the person suspected of the crime, without a warrant. The arrest under these circumstances is only for the purpose of taking the offender before a magistrate. *Croker v. State*, 114 Ga. App. 492, 151 S.E.2d 846 (1966).