

# Making a Citizen's Arrest – Is it Permissible? If So, Is it a Good Idea?

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September 2025

Agricultural Law and Taxation Blog, by Roger McEowen: <https://lawprofessors.typepad.com/agriculturallaw/>

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## Overview

Those old enough may remember an episode from the Andy Griffith show where Gomer makes a citizen's arrest of Deputy Fife for making an illegal U-turn in Mayberry. Sheriff Taylor made the Deputy write out a ticket for himself because the situation with the observing townspeople was getting blown out of proportion. It's a funny episode, but it does raise an important question. Can a private person make a citizen's arrest of someone else? If so, in what situations may such an arrest be made? And if it can be done, is it a good idea?

## Background

Citizen's arrest, also known as private prosecution or self-help justice, is a concept where individuals, not necessarily law enforcement personnel, apprehend someone who has committed a crime or is suspected of doing so.

In Kansas, for example, a citizen's arrest can be made, but it is subject to specific legal requirements. Kan. Stat. Ann. §22-2403 outlines the conditions under which a person who is not a law enforcement officer may make an arrest.

According to this statute, a citizen's arrest is lawful in two main situations: (1) if a felony has been or is being committed, and the person making the arrest has probable cause to believe that the arrested person is guilty of that felony; and (2) for any crime, other than a traffic infraction or a cigarette or tobacco infraction, that is being committed by the arrested person "in the view of the person making the arrest."

The application of the statute can be illustrated as follows:

**Example:** Phil is the owner/operator of a jewelry store. He sees a customer in the store steal a high-value item, like a diamond necklace, which constitutes a felony. If Phil has probable cause to believe the thief is the person they see running away, Phil could make a citizen's arrest.

**Example:** Phil, while walking back to his jewelry store from a lunch break, sees someone punch another person (which could be a battery or aggravated battery, a crime in Kansas). Phil could legally restrain the person until law enforcement arrives.



## Risks

Making a citizen's arrest carries significant risks, including potential civil and criminal liability if the arrest is not legally justified. For this reason, it is generally recommended to call law enforcement and be a witness rather than attempting to physically detain someone. Simply the possibility of getting sued and brought into court after making a citizen's arrest is a sufficient deterrent for many people. On that point, consider *State v. Miller*, 257 Kan. 844 (1995). Acting on a tip, a city police officer went to the defendant's home outside of the city to question him about a burglary that occurred within the city. As a result of the questioning, the officer arrested the defendant for that crime. The defendant argued, and the state admitted, that the officer acted beyond the territorial limits of his jurisdiction at the time of the arrest. However, the state argued on appeal, and the court agreed, that the trial court erred in dismissing the complaint against the defendant because the officer's arrest made outside of his jurisdiction could have been lawful as a citizen's arrest under Kan. Stat. Ann. Sec. 22-2403 if it were determined that the officer had probable cause to believe that defendant was guilty of a felony. The Kansas Supreme Court reversed the trial court's dismissal of the complaint against the defendant and remanded the action to the trial court with instructions that the trial court consider the whether the defendant's arrest was a valid citizen's arrest.

**Note:** The Kansas case highlights a key point about citizen's arrests - even sworn officers can be considered private citizens when they act outside of their legal authority or jurisdiction. It also points out that the individual making the arrest must be prepared to prove that the crime was committed and that they had probable cause (for a felony) or witnessed it directly. This is why legal experts and law enforcement agencies almost always advise against making a citizen's arrest due to the high risk of liability.

## State Approaches

Approximately 35 states allow some form of citizen's arrest. In some of these states, a citizen's arrest is permitted, allowing individuals to take the law into their own hands to prevent further harm or hold perpetrators accountable. But the laws vary significantly from state to state. For example, consider the following state approaches:

- California law specifies that a private person may arrest another for a public offense committed or attempted in their presence. They may also arrest someone who has committed a felony, even if not in their presence, or when a felony has been committed and the person has reasonable cause to believe the arrested person committed it. *California Penal Code § 837*.
- Georgia's law allows a private person to arrest an offender if the offense is committed in their presence or within their immediate knowledge. For a felony, they may arrest the offender upon reasonable and probable grounds of suspicion if the offender is escaping or attempting to escape. The law explicitly states that the right to make a citizen's arrest does not grant the right to kill to carry it out. *Georgia Code § 17-4-60*.



- In Illinois, any person can make an arrest when they have reasonable grounds to believe that an offense other than a minor traffic violation is being committed. Unlike some other states, the statute allows for a citizen's arrest for a crime that is merely suspected, not necessarily one that was witnessed firsthand. *Illinois Compiled Statutes 725 ILCS 5/107-3*.
- New York law specifies that a private person may arrest another for a felony if they have reasonable cause to believe that the person has committed the felony and that the crime was, in fact, committed. For misdemeanors, the arrest is only legal if the misdemeanor was actually committed or attempted in their presence. *New York Criminal Procedure Law § 140.30*.
- In Texas, a citizen can make an arrest for a felony or a breach of the peace committed in their presence or within their view. The law is very specific, requiring the crime to be actively happening, or just happened, in front of the person making the arrest. *Texas Code of Criminal Procedure, Art. 14.01*.
- Under Florida law, a private person can arrest someone who has committed a felony in their presence. Unlike some other states, Florida's law does not explicitly grant the authority to arrest for a felony not committed in their presence, placing a stricter limit on this power. *Florida Statute § 901.35*.

Some states have not codified their citizen's arrest laws in a single statute. Instead, they rely on the common law, which generally allows a citizen to arrest someone for a felony if the crime was actually committed and they have reasonable grounds to believe the person they are arresting committed it. The crime does not have to be committed in their presence. In these states a citizen can arrest for an offense that is a breach of the peace that has been committed in the citizen's presence. However, regardless of the state, anyone contemplating a citizen's arrest should be aware of the serious risks involved. Law enforcement agencies strongly discourage the making of a citizen's arrest due to the possibility of making a mistaken identification that leads to the arrest of the wrong person; believing a crime has occurred when it hasn't; exposing oneself to a claim of assault or battery; and the potential for being sued for false imprisonment, assault, or other torts.

## Conclusion

Citizen's arrest, while permitted in some states, is a complex topic with significant legal implications. Before performing a citizen's arrest, it is essential to understand the applicable state laws governing self-help. Each state has its own set of laws and circumstances, and what may be acceptable in one state may be illegal or unethical in another. Approach any potential situation with caution, prudence, and a thorough understanding of the legal landscape. Indeed, anyone considering making a citizen's arrest should consider the following:



- Make sure to become familiar with relevant state laws, including those governing self-defense, stand-your-ground, and any applicable criminal code sections.
- Report the arrest to the appropriate authorities (police department, sheriff's office, etc.) as soon as possible.
- Be prepared to testify in court and provide evidence of the arrest and the circumstances surrounding it.
- Make sure to prioritize personal safety and that of others, taking steps to minimize risk and potential harm.

So, can a citizen's arrest be made? It depends. If it's allowed, should the right be exercised? That's your call.

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