

MEMORANDUM REGARDING CITIZEN'S ARREST LAWS**I. Introduction**

In February 2020, Ahmaud Arbery, an unarmed 25-year-old Black man, was pursued, shot, and killed in a predominantly white enclave, Satilla Shores, near Brunswick, Georgia by Travis McMichael and his father Gregory McMichael. Arbery had been pursued by the McMichaels in their vehicle and William “Roddie” Bryan in his vehicle. After Arbery’s case was passed to 3 different District Attorneys’ (DA) offices, including one DA’s office who had advised the Glynn County Police Department not to make arrests, Joyette M. Holmes was assigned the case.¹

A key aspect of the case against Arbery’s killers is a citizen’s arrest law adopted in 1863 and known for its initial use to round up escaped slaves.² The Georgia law allowed persons to arrest offenders whose offense was committed in the person’s presence or within their immediate knowledge.³ If the suspected offender committed a felony and was attempting to escape, the arresting person had to have reasonable and probable grounds of suspicion to arrest the suspected offender.⁴ The now repealed law is being used as a defense to the McMichaels assault and killing of Arbery.

We have surveyed citizen’s arrest laws in each U.S. jurisdiction and reviewed information regarding Georgia’s law and its repeal. To complete our effort, we searched online for existing national surveys of citizen’s arrest laws. This information is covered in Section II. Additionally, we searched news articles online to summarize the repeal of Georgia’s citizen’s arrest law after the killing of Arbery, covered in Section III. We also contacted Professor Robert Weisberg, to gather information about his work on citizen’s arrest laws. Finally, we completed a search on Google Scholar for articles analyzing citizen’s arrest laws and state efforts to repeal existing citizen’s arrest law, covered in Section V and VI.

¹ Michael Brice-Saddler, *Georgia attorney general assigns fourth prosecutor in killing of Ahmaud Arbery*, Washington Post, May 11, 2020, available at: <https://www.washingtonpost.com/nation/2020/05/11/ahmaud-arbery-new-prosecutor/>

² Jeff Amy, *Georgia Gov. Kemp signs repeal of 1863 citizen’s arrest law*, Associated Press, May 10, 2021, available at: <https://apnews.com/article/ahmaud-arbery-georgia-arrests-government-and-politics-276c5e51f5363112537ceab4159f9dc5>

³ OFFICIAL CODE OF GEORGIA ANNOTATED § 17-4-60 (Repealed).

⁴ *Id.*

II. Survey of Citizen's Arrest Laws

Every jurisdiction in the U.S. has some form of a citizen's arrest law on the books.⁵ The laws primarily differ depending on: (1) the type of crime for which one can detain an individual; (2) the level of suspicion needed to make a valid detention; (3) the length for which a suspected offender can be detained; and (4) the amount of force permitted for the detention.⁶ Solutions Institute, an "activist consulting firm," compiled a list of each state's citizen's arrest law which is accessible [here](#). However, not all of the links are functional. Additionally, the Howard Law Journal contains an article, entitled *The Puzzling Persistence of Citizen's Arrest Laws and the Need to Revisit Them*, that contains the text of every state's citizen's arrest laws.⁷

III. Georgia Repeal of their Citizen's Arrest Law

After much advocacy against Georgia's original citizen's arrest law due to the killing of Ahmaud Arbery, Georgia's citizen's arrest law has now been repealed and replaced.⁸ The new law, passed under [House Bill 479](#), eliminates the ability of a person to arrest another but allows private detention in certain situations, particularly for a business owner who has reasonable grounds to believe a crime was committed.⁹ The main components of the new Georgia citizen's arrest law are:

1. An officer acting outside of their own jurisdiction can arrest a citizen if:
 - a. The offense was committed in the officer's presence or within their immediate knowledge;
 - b. The officer is in hot pursuit; or
 - c. The officer is aiding another officer in a different jurisdiction;
2. A private citizen can only arrest a suspected offender if the private citizen is:
 - a. A retail store owner with reasonable grounds to believe that the offender shoplifted;
 - b. A restaurant owner with reasonable grounds to believe that the offender engaged in theft;

⁵ Ira P. Robbins, *Vilifying the Vigilante: A Narrowed Scope of Citizen's Arrest*, Cornell Journal of Law and Public Policy: Vol. 25: Iss. 3, Article 1 (2016), p. 557, available at: <http://scholarship.law.cornell.edu/cjlp/vol25/iss3/1>

⁶ *Id.*

⁷ Chad Flanders, et. al, *The Puzzling Persistence of Citizen's Arrest Laws and the Need to Revisit Them*, Howard Law Journal (2020), p. 161-238, available at:

<https://heinonline.org/HOL/Page?handle=hein.journals/howlj64&id=169&collection=journals&index=>

⁸ Emma Hurt, *In Ahmaud Arbery's Name, Georgia Repeals Citizen's Arrest Law*, NPR, May 11, 2021, available at: <https://www.npr.org/2021/05/11/995835333/in-ahmaud-arberys-name-georgia-repeals-citizens-arrest-law>

⁹ Gabrielle Ware, *Taking a closer look at the citizens arrest repeal in Georgia*, WALB, May 14, 2021, available at: <https://www.walb.com/2021/05/14/taking-closer-look-citizens-arrest-repeal-georgia/>

- c. A business owner with reasonable grounds to believe that the offender engaged in theft;
 - d. A weight inspector; or
 - e. A private detective;
3. An arresting citizen must release the detainee within a reasonable amount of time or contact law enforcement;
 4. An arresting citizen must not use force which causes great bodily harm to detain the suspected offender *unless* the arresting citizen is using self-defense or defense of others or habitation.¹⁰

IV. Professor Weisberg's Casebook

Professor Robert Weisberg, a faculty member at Stanford Law School, dedicated a section of his forthcoming casebook to an analysis of citizen's arrest laws. Weisberg analyzes two ways with which Georgia's original citizen's arrest law could be used: either (1) as a defense to a criminal charge; or (2) by a defendant who was the object of the purported citizen's arrest and claims s/he was acting in legitimate self-defense because the arrest did not meet the legal criteria. The McMichaels are using the former Georgia citizen's arrest law as a defense to their charges of murder, aggravated assault, and false imprisonment. Professor Weisberg posits, however, that deadly force is rarely permitted in a citizen's arrest, citing previous Georgia caselaw. He also notes that deadly force *can* be used in a citizen's arrest scenario if the person being arrested resists with deadly force.

V. Articles Regarding Citizen's Arrest Laws

The leading published article regarding citizen's arrest is Professor Ira P. Robbins' *Vilifying the Vigilante: A Narrowed Scope of Citizen's Arrest*.¹¹ Professor Robbins argues that citizen's arrest laws should be restricted to allow a citizen's arrest only in the following categories: shopkeepers, out-of-jurisdiction police, and private police forces with appropriate training and oversight.¹² The article includes an Anti-Vigilante Act, a model statute for citizen's arrest.¹³

The conservative Heritage Foundation also maintains a web article on citizen's arrest laws in which they argue that citizen's arrest laws are part of a community safety approach on

¹⁰ OFFICIAL CODE OF GEORGIA ANNOTATED § 17-4-80; *See also* Georgia House Bill 479.

¹¹ *Supra*, note 5.

¹² *Id.*

¹³ *Id.* at 596.

policing crime and are valid considering the laws specify lawful actions on the part of the arresting person.¹⁴

Additional articles are located in the Howard Law Journal,¹⁵ the South Carolina Law Review,¹⁶ and the Texas Law Review.¹⁷ A 1977 book on citizen's arrest is also available in the Stanford Crown Law Library.¹⁸

VI. Other Efforts to Repeal Citizen's Arrest Laws

Lawmakers are pursuing efforts to repeal existing citizen's arrest laws in 2 different states: New York and South Carolina. New York State Senator Michael Gianaris wrote an Op-Ed proposing a repeal and amendment to the state's citizen's arrest law and his proposal has passed in the state senate.¹⁹ South Carolina's state senator Bamburg has also proposed a citizen's arrest repeal in his state.²⁰

¹⁴ Amy Swearer, *Citizen's Arrest After Ahmaud Arbery: Reasonable Reform of a Valuable Doctrine*, The Heritage Foundation, June 17, 2021, available at: <https://www.heritage.org/crime-and-justice/report/citizens-arrest-after-ahmaud-arbery-reasonable-reform-valuable-doctrine>

¹⁵ *Supra*, note 7.

¹⁶ Roger M. Stevens, *A Legacy of Slavery: The Citizen's Arrest Laws of Georgia and South Carolina*, The South Carolina L. Rev. (2021), available at: <https://racism.org/articles/law-and-justice/criminal-justice-and-racism/134-police-brutality-and-lynchings/9617-a-legacy>

¹⁷ Kimberly Kessler Ferzan, *Taking Aim at Pointing Guns? Start with Citizen's Arrest, Not Stand Your Ground: A Reply to Joseph Blocher, Samuel W. Buell, Jacob D. Charles, and Darrell A.H. Miller*, *Pointing Guns*, 99 *Texas L. Rev.* 1173, 100 *Tex. L. Rev. Online* 1 (2021), available at: https://scholarship.law.upenn.edu/faculty_scholarship/2704

¹⁸ M Cherif Bassiouni, *Citizen's Arrest: the Law of Arrest, Search, and Seizure For Private Citizens and Private Police*, Thomas (1977).

¹⁹ Denis Slattery, *N.Y. lawmaker wants to end citizen's arrests in honor of Ahmaud Arbery*, NY Daily News (2021), available at: <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-ahmaud-arbery-michael-gianaris-citizens-arrest-20210224-sjy6z5hmdfclfbqnfqngnrhbdy-story.html>; *See also* <https://www.nysenate.gov/legislation/bills/2021/s3183/amendment/a> (listing the progress of the bill).

²⁰ Brodie Hart, *State lawmakers propose bill to abolish "Citizen's Arrest" law*, abcNews (2020), available at: <https://abcnews4.com/news/local/state-lawmakers-propose-bill-to-abolish-citizens-arrest-law>; *See also* https://www.scstatehouse.gov/sess124_2021-2022/bills/3428.htm