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Citizen's Arrest After Ahmaud Arbery: Reasonable Reform of a Valuable Doctrine

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KEY TAKEAWAYS

The law of citizen's arrest plays an important role in American law enforcement, but there are opportunities for clarification and modernization across the states.

Reform would not prevent all abuses of citizen's arrest, but it would make the line between citizen's arrest and vigilantism clearer for the average citizen.

Both the public and the rule of law are served best when citizens, juries, and courts can more easily determine which actions are lawful and which are not.

On February 23, 2020, three white residents of Brunswick, Georgia, used their vehicles to chase down a black jogger, initiating a confrontation that resulted in one of the residents shooting the jogger to death in the middle of the street. The white residents—Travis McMichael, his father Gregory McMichael, and their friend William Bryan—told responding law enforcement officers that they believed the jogger—Ahmaud Arbery—was actually a burglar whom they suspected was behind several neighborhood break-ins.[1] They had seen Arbery briefly enter the premises of a residential construction site and then leave. Several minutes later, the McMichaels used their truck to block the road on which Arbery was running and, while brandishing firearms, attempted to detain Arbery as Bryan filmed from another car.[2] Bryan's video of the confrontation shows that Arbery reached for Travis

McMichael's shotgun.[3] Travis McMichael then shot and killed Arbery as the two fought over the firearm.[4]

Initially, local authorities declined to charge the McMichaels and Bryan over Arbery's death, citing a state statute authorizing private citizens to make arrests under certain circumstances, a legal concept known colloquially as a "citizen's arrest."[5] This reliance on Georgia's citizen's arrest statute appears to be misguided, given the facts of the case and the text of the law.[6] After months of public outcry, a state investigation ultimately led to murder charges against the McMichaels and Ryan.[7]

The publicity surrounding Arbery's death nonetheless threw Georgia's citizen's arrest statute into the national spotlight and sparked contentious debates about the place of such laws in modern society. Several criminal justice activists and state lawmakers called for the Georgia statute's repeal, and lawmakers in several other states demanded that similar actions be taken by their respective legislatures.[8] Various media outlets and academics published articles decrying citizen's arrest as rooted in racism, the historical progeny of slave patrols and roving bands of white vigilantes.[9] In May 2021, Georgia Governor Brian Kemp signed into law a bill repealing the state's citizen's arrest statute.[10]

Ahmaud Arbery's tragic death was arguably the result of unlawful vigilantism at the hands of overzealous citizens. It does not demonstrate, however, a serious and general need to repeal citizen's arrest statutes. Certainly, many states—including Georgia before its recent repeal—have citizen's arrest statutes that would benefit from reasonable reform, but the concept of citizen's arrest itself remains an important part of American law enforcement, and its complete repeal would have significant detrimental effects for law-abiding citizens, the Second Amendment, and overall public safety. Even in Georgia, "repeal" of the citizen's arrest statute was practicable only because unique aspects of that state's self-defense law independently create private rights of detention roughly mirroring those of a model citizen's arrest law.

Far from being rooted in the antebellum slave trade, these laws find their origins in the English common law and historical concepts of communal policing duties. Like all laws, those permitting arrests by private persons are occasionally misused or abused, with tragic consequences. That does not mean, however, that citizen's arrest laws give would-be vigilantes a "get out of jail free" card. States should not repeal these laws, but they should take meaningful steps to reform convoluted or outdated statutes; impose clear, reasonable standards and duties on would-be private arrestors; and fill in other statutory gaps that could incentivize vigilantism.

Common-Law Origins of Citizen's Arrest

Every United States jurisdiction today recognizes some right of a private person to take another into custody for criminal conduct.

- Thirty-seven states and the District of Columbia have codified that right into a citizen's arrest statute.

- Ten states maintain a common-law right developed through judicial opinions.

- New Jersey has created a hybrid system whereby the common law governs private arrests for felonies and a statute governs such arrests for misdemeanor offenses committed by "disorderly persons."[11]

- Pennsylvania's statutory code does not explicitly authorize citizen's arrests, but it does imply the recognition of the common-law privilege by describing the permissible use of force for private persons when making arrests.[12]

- North Carolina technically prohibits private arrests but allows private citizens to "detain" others for criminal conduct under circumstances that render the privilege virtually indistinguishable from that of a citizen's arrest.[13]

- Georgia repealed its citizen's arrest statute in 2021 but specifically kept a statutory right of private detention under certain limited circumstances.[14] More important, the bill's sponsors and proponents routinely and roundly emphasized the rights of private detention still permitted under other statutes—rights that in practice overlap substantially with those of a citizen's arrest.[15] In short, it appears that Georgia residents are still permitted to detain individuals for police custody in any situation in which they may use defensive force, using the same degree of force justified during the initial defensive act.[16] This includes being able to use or threaten the use of deadly force to stop forcible felonies, as well as some ability to pursue criminals actively in the immediate aftermath of a forcible felony.[17]

By itself, this universal recognition, crossing every geographic and historical division in the nation, should belie assertions that citizen's arrest laws

originate from slave codes and racist vigilantism. The development of these laws (and the law enforcement concepts upon which they are based) predate the African slave trade by centuries. Rather than originating in slavery, the law of citizen's arrest is anchored in English common law and a historical emphasis on policing as a community-wide duty.

The concept of a large, professional police force serving as the primary mechanism of law enforcement is a rather modern development in the West.[18] For much of Anglo-American history, the enforcement of laws and protection of public safety was a community affair in which all individuals were not just authorized to make arrests; they also had an active duty to bring criminals to justice. This individual duty to participate in collective law enforcement was first codified in the Statute of Winchester of 1285, an effort by King Edward I to reform and standardize the existing "Watch and Ward" policing system.[19] Under this statute, any witness to a crime was expected to raise a "hue and cry," upon which all able-bodied men were obligated to join and assist the county sheriff in finding the criminal and delivering him to justice.[20] Over the centuries, the duty of the hue and cry slowly gave way to the common-law right of citizen's arrest, which by the 17th and 18th centuries had become well-recognized and subject to well-defined limits.[21]

This norm of collective law enforcement was transported to the American colonies with the rest of British common law. After independence, law enforcement continued to be largely a communal affair through the sustained use of citizen's arrest laws; the temporary deputation of civilians through the mechanism of posse comitatus; and, in the most serious cases of civil unrest, the calling up of the local militia, which was comprised of all abled-bodied men.

Elements of Common-Law Citizen's Arrest. The common-law right of citizen's arrest continued to evolve in the United States after independence, and this led to slight distinctions, nuances, and variations among the states—and between the states and England—as courts developed the case law within their respective jurisdictions. Minor variations notwithstanding, however, the right of citizen's arrest generally fit within a highly structured legal framework concerned with both due process and the maintenance of law and order.

In other words, common-law citizen's arrest was not vigilantism by another name. On the contrary, it served to regulate communal law enforcement by imposing reasonable minimum standards and norms that protected the rights of the accused in cases of warrantless arrests.

Warrantless arrests, whether by constables, sheriffs, or private persons, could not be made for arbitrary reasons or to seek out and find criminal activity where none was otherwise reasonably suspected. Instead, under the common law, warrantless arrests—including those by private persons—could be conducted only upon probable cause for a felony or when a misdemeanor breach of the peace had actually occurred in the arrestor's presence.[22] In fact, the private arrestor would be liable for false imprisonment if he arrested another person for a suspected misdemeanor or breach of the peace under incorrect (but reasonably believed) assumptions of guilt.[23] The use of force was typically limited "only to the extent that is reasonably necessary to make an arrest," while deadly force could be used only to arrest a suspect for a felony.[24] The arrestor could not unilaterally impose punishment on the criminal suspect, but had a duty to take the arrested person to a constable or to the jail, where he was entitled to the full due process of law.[25]

Slave Patrols as Bastardization of the Common-Law System. The right of citizen's arrest predates the slave patrol—and, for that matter, the entire institution of African slavery in America—by centuries. It is nonetheless true that citizen's arrest, like many other common-law institutions, played a role in the historical development of slave patrols. As one scholar has noted, "[p]atrols were not created in a vacuum, but owed much to European institutions that served as the slave patrol's institutional forebears."[26] The common-law duty of citizen's arrest was certainly one of those institutional forebears, but it was far from the only one: The slave patrol systems in many respects bore a much clearer resemblance to the militia system and the institution of professional bounty hunting than they did to citizen's arrest. Importantly, the slave patrol also represented a "completely new law enforcement system" that was, in reality, a hybrid of the common law, Spanish and Portuguese slave codes, and the most effective slave-control practices born out of the experiences of Caribbean slave owners.[27]

Given the English courts' rather slow, sparing response to the African slave trade in the colonies and the rights of enslaved persons, the common law could provide no more than a partial legal foundation from which to build a society centered on slavery. In many respects, the slave patrol system represented a bastardization of the common law and its institutions rather than its natural development.

Modern American society rightly shudders at the institution of slavery. Slaves were not just property with "no rights which the white man was bound to respect."[28] Beyond being legally excluded from "the people" of the nation, they were widely perceived as an ever-present threat to civil

society, and extensive slave codes were designed to keep them in a state of subjugation.[29] The stark reality is that African Americans were at once property, a national security threat, and inherently viewed with criminal suspicion. It is therefore hardly surprising that the slave patrol system functioned in ways that were antithetical to the common-law protections afforded to citizens. Masters wielded almost total authority over their slaves, and "even as to strangers, [ ] the slave was not granted the full protections guaranteed by the common law."[30]

Nevertheless, the fact that law enforcement, especially in the American South, so often wrongly focused on the enforcement of slavery and the subjugation of people of color does not mean that law enforcement (including private law enforcement) is inherently racist. The focus, rather, should be on raising historically oppressed communities into the status of "the People" who are fully endowed—in theory, law, and practice—with the rights, duties, and privileges of citizenship.

Continued Usefulness of Citizen's Arrest Laws

Ahmaud Arbery's death may have brought criticism of citizen's arrest laws to the national forefront, but such criticisms are not new. As early as the mid-1800s, citizen's arrest laws (by then already enjoying a centuries-long history) were being challenged by some as outmoded and anachronistic.[31] The arguments for their continued usefulness—and even necessity—remain the same today as they did in 1869 when the Pennsylvania Supreme Court defended the doctrine of citizen's arrest against those who insisted that it was "contrary to the genius of our institutions" and "the relic of a barbarous age."[32]

> In a republic, where the people themselves represent its sovereignty and security, the felon is an enemy of the sovereign and security, forfeits his liberty, and cannot complain when the hand of his fellow man arrests his flight and returns him to justice. What title has he to immunity from the law that he has violated, and by what right should he be permitted to escape its penalties because the officer of justice is not at hand to seize him? He has broken the bond of society; he has dealt a blow to its welfare and security; and he has placed himself in open hostility to all its faithful members, whose duty it becomes to bring him to justice.[33]

This philosophical defense of the importance of active civilian engagement in local law enforcement remains as valid in the 21st century as it was

in the 19th century. Beyond the philosophically sound basis for citizen's arrest laws in a republic of the people, by the people, and for the people, however, is the reality that completely eliminating the right of private arrest would lead to absurd results in two different ways.

First, the reality of limited law enforcement resources in a non–police state like ours means that citizens will often find themselves confronted by serious criminal activity without meaningful assistance from law enforcement. Stripped of the ability to intervene lawfully, such civilians more often than not would be legally helpless to defend their rights and property from criminals.

Consider one routine example from Turner, Maine, where a property owner came upon two individuals he reasonably suspected were in the process of burglarizing his abandoned house.[34] He held them at gunpoint until police arrived, for all intents and purposes conducting a citizen's arrest.[35] The property owner's legal right to detain these individuals at gunpoint without himself being guilty of a crime stemmed from Maine's citizen's arrest law. This statute allows a private citizen to conduct a warrantless "arrest" when he or she "has probable cause to believe [the arrestee] has committed or is committing" the equivalent of a felony.[36] Without it, the Turner property owner would arguably have been forced to allow the burglars to make off with his property.

Unfortunately, local law enforcement would likely have been of little help under the circumstances. Turner, Maine, is a town of roughly 5,000 residents and does not have its own police department. Instead, residents are dependent upon the Androscoggin County Sheriff's Office, located roughly 20 minutes away in the city of Auburn. The 12 full-time Androscoggin County Sheriff's Patrol Deputies are responsible for serving county residents not only outside of city limits, but also in eight towns, including Turner, that lack their own police forces.[37] The "County Rural Patrol" deploys no more than three deputies at any given time to cover the county's entire 497 square miles.[38] There is little rational argument for insisting that this Turner property owner should be stripped of his legal ability to stop criminal activity happening before his own eyes simply because a law enforcement officer might (or might not) be available within a 100-mile radius.

This type of predicament would not be unique to rural residents in Maine. Rather, limiting the ability of law-abiding citizens to stop obvious criminal activity occurring in their presence would have far-reaching consequences. According to the U.S. Department of Justice, roughly half of the nation's law enforcement agencies employ fewer than 10 sworn officers, and a significant majority employ fewer than 25 sworn officers.[39] It is little wonder that

Americans routinely act as the first line of defense in protecting themselves and their communities from criminals, often by combining their widely exercised Second Amendment rights with the right to detain those whose criminal actions endanger the rights and liberties of others.

The second absurd legal result of completely repealing citizen's arrest statutes stems from the continued (and rightful) existence of self-defense laws. A legal system that permits the use of lethal force in self-defense but not the right to threaten any level of force to detain an individual in similar circumstances risks incentivizing the unnecessary use of lethal force by removing lesser commonsense options. Consider, for example, a scenario in which a homeowner confronts an intruder in the middle of the night. In every state, that homeowner would likely have a valid legal defense for fatally shooting the intruder under the state's self-defense statute. Absent some legal right to detain the intruder, however, the same homeowner would technically be guilty of false imprisonment if he or she attempted to hold that intruder at gunpoint until police arrived.

The Antithesis of Vigilantism

Contrary to the recent narrative, citizen's arrest statutes do not provide carte blanche for unrestrained vigilantism. By definition, laws outlining specific scenarios in which private citizens are legally authorized to make arrests are the antithesis of vigilantism, which involves non-sanctioned actions to enforce law and order outside of the criminal justice system's official mechanisms.

This distinction is not just technical in nature. As noted, one of the defining features of the common-law premise of citizen's arrest was its concern for the rights and privileges of the alleged criminal and consequent operation within existing criminal justice norms of due process, fairness, and proportional use of force. A citizen's arrest, like an arrest by a police officer, serves merely to bring a suspected criminal into the formal mechanisms of justice. Especially when written so that they incorporate these criminal justice norms, citizen's arrest statutes provide a framework within which private citizens can be held to reasonable standards:

> Under our system of government we do not recognize the right of a private individual to take the law into his own hands to redress his grievances. The law itself furnishes him an ample remedy. When a private person, then, seeks to justify his imprisonment of another, it must appear that he has complied with the law that warrants such imprisonment.[40]

It is true that individuals sometimes misuse or misunderstand the citizen's arrest laws in their states and commit shocking acts under the claim of lawful private arrest. This is not, however, unique to citizen's arrest statutes. These statutes are no more permission for vigilantism than self-defense statutes are permission for murder. Just as self-defense statutes will not protect individuals from criminal or civil liability when their actions fall outside the confines of certain legal requirements, those who attempt to conduct a citizen's arrest outside of the circumstances specified by law can be—and routinely are—held accountable for their conduct.[41] Similarly, just as prosecutors will routinely take questionable cases of self-defense before a grand jury or to criminal trial, the same options exist for dealing with questionable cases or close calls in the context of alleged citizen's arrests.[42]

Several months after Arbery's death in Georgia, police in Florida arrested Luis Santos and charged him with false imprisonment for detaining a teenager under the auspices of the state's citizen's arrest law.[43] Santos incorrectly (and, arguably, unreasonably) believed that the teen, who was riding his bicycle to an early-morning basketball practice, was breaking into vehicles.[44] According to the State Attorney's Office, Santos "aggressively approached" the teen, demanded personal information like his name and address, and informed him that "you're not going anywhere; you're being detained."[45] He then held the teen against his will while calling police.[46]

Florida's courts have long maintained the common-law right of citizen's arrest, but only when "a person [] in the citizen's presence commits a felony or breach of the peace" or, "a felony having occurred, the citizen believes this person committed it."[47] In other words, the common law afforded Santos no right to arrest an individual he merely suspected *might* have been trying to break into cars. According to Santos's own account, he neither witnessed a crime occurring nor was sure that a felony had in fact been committed.[48] His misinterpretation of the facts and his ignorance of the law do not prevent Santos from being held accountable for actions that fell outside the scope of his legal right.

Similarly, just months before the Arbery killing, Gary, Indiana, City Council President Ron Brewer was arrested for his armed pursuit and detention of teenagers he allegedly found in possession of his stolen vehicle.[49] According to reports, Brewer tracked the vehicle's GPS to a Chicago, Illinois, street using a phone app, and when he reached that location, he found the car with two unknown teenagers in it.[50] Police say he then fired a gun into the vehicle and chased down one of the teens, forcing him into his car at gunpoint and taking him back across state lines to Gary, Indiana.[51]

Brewer's actions were of questionable legality for several reasons, including the fact that he may not have had a valid Illinois gun license.[52] Illinois' citizen's arrest statute permits that "any person may arrest another when he has reasonable grounds to believe that an offense other than an ordinance violation is being committed."[53] In making that arrest, however, the person "is justified in the use of force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or another."[54] The laws therefore provided adequate room for legal review of whether Brewer used an unjustified level of force. Additionally, the Illinois' statute did not necessarily impose a clear legal duty on Brewer to turn the person he arrested over to law enforcement immediately, but such a duty may yet exist—a duty with which Brewer would have failed to comply.

These types of serious legal consequences are quite common for individuals who cross the line from lawful citizen's arrest into vigilantism. While work can and should be done to clarify and redraw the boundary lines, it is simply not true that laws permitting citizen's arrest effectively condone pure vigilantism. The Ahmaud Arbery case itself is proof of this. Even under Georgia's poorly written statute, the McMichaels and Bryan are still facing a review of their actions by a jury of their peers precisely because there are so many questions regarding the reasonableness and legality of their actions.

Basic Principles for Reasonable Reform

Given the wide variations among existing state laws regarding citizen's arrest, as well as the reality that America's federalist system is built to account for the varying needs and circumstances faced by different states, it would be unwise to believe that a single model statute could or should be rigidly imposed on all 50 states. There are, however, certain principles that can serve as important guidelines for citizen's arrest reform around the nation and that broadly address the common problems found in many state frameworks.

At the most fundamental level, reform should focus on protecting those who perform citizen's arrests in a reasonable, good-faith manner and on emphasizing the primarily defensive nature of such arrests. At the same time, it should place strict limits on arrests undertaken in a primarily offensive manner (that is, where arrestors actively seek out or pursue the arrestee) and incentivize reliance on professional police resources when there is a reasonable opportunity to do so.

Additionally, it may be wise for states to take an explicit view that these laws do not make every private citizen a law enforcement officer authorized to conduct strictly law enforcement functions. Some states have already recognized this limiting principle in practice. For example, the Montana Supreme Court has described that state's citizen's arrest statute thusly:

> Importantly, the statute does not give the private person the right "to take the law into his own hands to redress his grievances." Nor does the statute authorize the private person to conduct forensic tests or searches or to otherwise "process" the arrestee, as those are strictly law enforcement functions. The statute contemplates a public safety purpose, not a criminal investigation purpose. It grants private persons the power to take another into custody in the interest of public safety, but mandates that the arrestee be promptly turned over to law enforcement, thereby allowing the normal processes and safeguards of the criminal justice system to take effect.[55]

This limiting principle is a useful guide for state legislatures when thinking about broad philosophical bases underlying reform. On a more specific level, laws permitting citizen's arrest should:

- Be readily accessible to the average citizen;
- Use language that is easily understood by laymen;
- Impose clear and reasonable limitations on the circumstances under which an arrest can be conducted, taking into account the type of crime committed, whether it is still being committed, and the certainty that a crime has been committed by the person to be arrested;
- Impose clear and reasonable limits on the use of force in making an arrest, including parameters for the threatened or actual use of deadly force;
- Clearly articulate the arrestor's duties before, during, and after an arrest; and
- Incentivize reliance on professional law enforcement when it is practicable to do so.

Accessibility of Laws. A common (and perhaps the most significant) problem with modern citizen's arrest statutes is one that arguably underlies the entirety of the American legal system: the relative inaccessibility of laws for the average citizen.[56] Because the states with the least accessible citizen's arrest laws are those that rely on the common-law right, many laymen cannot readily find, much less understand, their rights and duties under the law.

Consider the problems faced by Massachusetts residents wishing to know whether it is permissible to conduct a private arrest of a drunk driver who might put the lives of other motorists at risk. Even if one were to know that the state relies on a common-law right of citizen's arrest, he or she would have to search through and piece together relevant information from several state court decisions spread over almost a century to get something close to a full picture of the law.[57]

And in this case, the details are crucial. In Massachusetts, unlike most other states that rely on the common-law right of citizen's arrest, the state Supreme Court expressly rejected the traditional common-law parameters permitting private arrests for misdemeanor breaches of the peace.[58] Because first and second offenses of driving under the influence are only misdemeanors in Massachusetts, a citizen's arrest would not be lawful under the circumstances, even though it would be lawful under the traditional common-law tests and in most other states.[59]

Another common accessibility problem is that many states spread clauses relevant to citizen's arrest throughout various sections of the criminal code. For example, Alabama places laws detailing the permissible use of force in making an arrest in a section of its code that is completely different from where it places laws detailing the circumstances under which an arrest can be made—and New York places them in a different code altogether.[60] In California, relevant statutes can be found scattered from Section 197 to Section 847 of the Penal Code.[61]

At the very least—or perhaps in the interim—state attorneys general would do well to compile the relevant statutes into advisory documents for citizens in their states. These documents should also include relevant state court or attorney general opinions that further expound on the rights and duties of citizens undertaking a private arrest.

Easily Understood Language. A second common problem in state citizen's arrest statutes and common-law characterizations is the use of outdated or confusing language that fails to make sense in a modern context. For many centuries, the distinction between felonies, breaches of the peace, and misdemeanors was, if not always perfectly clear, at least

far more obvious than it is today.[62] However, with the expansive growth of the administrative state has come the addition of thousands of new crimes across the state and federal levels that no longer bear any relationship to the deep moral failing or violence originally associated with the term "felony."[63]

Despite this, many citizen's arrest statutes—as well as the common-law right—require laymen to know and understand the distinctions between felonies and misdemeanors or between misdemeanors that "breach the peace" and misdemeanors that do not. In a modern context, such distinctions are often very technical and rarely intuitive. For example, someone who breaks a vehicle's window to steal a purse may only be guilty of a misdemeanor, while a person who attempts to steal the latest smartphone from a store may be guilty of a felony because the phone's retail value exceeds a specific amount. Moreover, these distinctions will vary widely by state.

Some states further complicate the language for laymen by distinguishing between various subsets of similar crimes or by failing to update citizen's arrest statutes to accommodate changes in the criminal code. For example, Nebraska permits citizen's arrest for felonies and "petit larceny," a grade of larceny that no longer exists in the state's current criminal code.[64] Iowa, meanwhile, authorizes private arrests for any "public offense."[65] While another part of the state criminal code defines a "public offense" as "that which is prohibited by statute and is punishable by a fine or imprisonment," it would be quite easy for a layman to construe that language as permitting arrests only for crimes that are committed in public, causing him arbitrarily yet unknowingly to limit the scenarios into which he might otherwise intervene.[66]

The use of non-intuitive language also extends to the use of highly technical legal standards without otherwise defining those standards using plain language. Perhaps the worst offender in this regard was Georgia, whose newly repealed citizen's arrest statute was a simple two sentences composed of bizarrely complicated and non-intuitive standards for when a private arrest may be made:

> A private person may arrest an offender if the offense is committed in his presence or within his immediate knowledge. If the offense is a felony and the offender is escaping or attempting to escape, a private person may arrest him upon reasonable and probable grounds of suspicion.[67]

What, exactly, constitutes a person's "immediate knowledge?" What are "reasonable and probable grounds of suspicion," and how are they different from "immediate knowledge?" None of these questions is answered

anywhere else in the statute, leaving laymen—and even those with legal backgrounds—scratching their heads as they try to figure out where, precisely, the limits of citizen's arrest in Georgia lie.

On the other hand, states would do well to learn from North Carolina's citizen's arrest statute, which provides one of the clearer and more intuitive delineations of offenses for which private arrests may be made:

> A private person may detain another person when he has probable cause to believe that the person detained has committed in his presence:
>
> (1) A felony,
>
> (2) A breach of the peace,
>
> (3) A crime involving physical injury to another person, or
>
> (4) A crime involving theft or destruction of property.[68]

Although this statute runs into the same problem of failing to define what constitutes a "breach of the peace," it otherwise connects citizen's arrest with general concepts of criminal activity instead of specific offenses. This also helps states avoid scenarios like that seen in Nebraska, where the criminal code no longer contains the specific crimes referenced in the citizen's arrest statute.

Clear and Reasonable Limits on Circumstances of Arrest. The common law permitted arrests without a warrant—including those by private citizens—on a very sound philosophical basis related to the degree to which public safety was presumably threatened by the offense. As the Supreme Court of the United States has explained:

> The reason for arrest for misdemeanors without warrant at common law was promptly to suppress breaches of the peace, while the reason for arrest without warrant on reliable report of a felony was because the public safety and the due apprehension of criminals charged with heinous offenses required that such arrests should be made at once without a warrant.[69]

The common law therefore reasonably limited the right of citizen's arrest to those situations that are most likely to endanger the public.[70] It was not intended to act as a broad, permissive grant of warrantless arrest authority for every conceivable harm, no matter how slight. Yet today, some states

sanction private warrantless arrests for situations that fall far outside the original common-law basis. Consider Hawaii's statute, which permits the citizen's arrest of "anyone in the act of committing a crime,"[71] or New York's statute, authorizing such arrests for "any offense" committed in the arrestor's presence.[72]

On the one hand, this broad grant of authority certainly makes it easy for laymen to understand which offenses are offenses for which they may or may not make an arrest. On the other hand, it greatly expands the common-law right far beyond its reasonable philosophical basis and could incentivize civilians to take drastic actions of detainment over nothing more than petty squabbles.[73]

Another consideration states have to take into account is the arrestor's knowledge of the alleged criminal activity. Should it be limited to offenses actually committed within the arrestor's presence, where there is probable cause to believe an offense was committed, or simply for "any offense" whether or not the arrestor has personal knowledge of what occurred (i.e., someone told him or her that an offense occurred)? States are currently all over the map with this type of limiting language—or lack thereof.

States would be also be wise to consider clauses that explicitly prohibit the citizen's arrest of certain categories of public officials—such as judges, elected officeholders, and law enforcement officers—for actions related to the execution of their public office. In recent years, there have been several unfortunate examples of individuals attempting to conduct citizen's arrests of public officials over what essentially amount to personal vendettas or disagreements about public policy.[74]

It is certainly true that public officials can and sometimes do commit serious criminal offenses under color of their office. It is also true that there may be circumstances in which a public official commits a crime unrelated to his or her office, such as assault of a spouse, for which the law should permit private citizens to intervene. However, allowing private citizens unilaterally to bypass norms for dealing with public corruption could undermine core aspects of a stable democracy. Carving out exceptions for alleged crimes of public corruption would help to ensure that citizen's arrest laws cannot be misunderstood or misconstrued to justify undemocratic violence against government officials over policy disagreements.

Perhaps the most disturbing example occurred in Michigan during the height of the COVID-19 pandemic. In the fall of 2020, the FBI arrested members of a right-wing militia group who allegedly plotted to kidnap Michigan Governor Gretchen Whitmer in retaliation for the state's emergency health restrictions, which the militia members considered unlawful.[75]

Barry County Sheriff Dar Leaf refused to denounce the kidnapping plot. Instead, he wondered aloud to reporters whether their plans actually consisted of a perfectly legal citizen's arrest under Michigan law. "Are they trying to kidnap [the governor]?" asked Leaf. "Because a lot of people are angry with the governor, and they want her arrested. So are they trying to arrest, or was it a kidnap attempt? Because you can still, in Michigan, if it's a felony, make a felony arrest."[76]

At first glance, Sheriff Leaf's claims may seem preposterous. After all, how could a governor's imposition of unpopular mandates be construed as a felony criminal offense? But Michigan law is not nearly so clear-cut in this respect. The penal code includes a "catch-all" statute that makes "any indictable offense at the common law" a felony if not expressly provided for by another statute.[77] The Michigan Supreme Court has affirmed that malfeasance and misfeasance by public officers constitute the common-law offense of "misconduct in office" and are therefore felonies.[78] According to that court, the common law defines "misconduct in office" as "corrupt behavior by an officer in the exercise of the duties of his office or while acting under the color of his office," including malfeasance, or "any act which is itself wrongful."[79] By framing an elected official's unprecedented emergency shutdown orders as "a grave and unconstitutional usurpation of power," the claim that the militia members believed they had the lawful authority to arrest the governor for misconduct in office seems less far-fetched than it first appeared to be.

Of course, there is good reason to believe that a Michigan court would still fail to find that a felony actually occurred and therefore that the would-be "arrestors" lacked any legal authority to arrest the governor under the circumstances. But the fact that such a defense might be proffered in the first place should be a cause for serious concern. At the very least, states should be wary of legal ambiguities that might cause residents to believe they have a right to attempt private arrests of elected officials over what in reality amount to policy disagreements.

The Michigan kidnapping attempt is unfortunately far from the only example of individuals harassing or attacking elected officials under the premise of conducting a citizen's arrest.[80] It is unclear whether similar claims have ever been raised successfully in court, but there is little reason to open the door to them.

Clear and Reasonable Limits on Force. There are three common problems that states need to address with respect to the laws regarding the use of force when conducting a citizen's arrest:

- The failure to implement explicit use-of-force standards in the first place,
- The failure to limit the use of lethal force to situations in which there is a reasonable fear of bodily harm, and
- The failure to address the right of physical resistance to unlawful private arrests.

As with the problem of accessibility, states that rely on the common-law right of citizen's arrest present some of the biggest challenges for residents who wish to know the limits on the use of force when conducting those arrests. Along similar lines, a fair number of states utilizing statutory rights for private arrest nevertheless fail to specify the use of force permitted when conducting such arrests. These failures have led some state courts to "gap fill," further muddying the waters and complicating access to important legal information for citizens. While some state courts have unilaterally read limitations on the use of force into legal codes where the state legislature has declined to do so, other state courts have not, effectively defaulting to the common law's fleeing felon rule.[81] This makes it needlessly difficult for responsible citizens to know and comprehend their rights and duties, leaving them to guess what limits might exist in states that lack statutorily specified and/or clearly articulated judicially imposed limits on the use of force.

At common law, the use of deadly force was permitted in all cases where the person to be arrested had committed a felony. Most states today—and the Model Penal Code in general—have rightly recognized that this broad authorization makes little sense in a modern era in which so many felonies are nonviolent in nature.[82] Some states, however, still adhere to the common law's standards, limiting use of force to that which is *necessary* to *effect the arrest* and not to that which is either *reasonable or necessary* to protect the arrestor from physical harm.

For example, Hawaii authorizes private citizens to use "such degree of force...as is necessary to compel the person to submission."[83] This effectively authorizes the use or threatened use of deadly force against all suspected criminals who do not immediately comply with a citizen's arrest, regardless of whether the arrestor has any reasonable cause to fear death or serious injury. A private citizen appears to be permitted under the wording of this statute to draw a firearm on a person committing the pettiest of nonviolent offenses in order to arrest that person, even though such drastic

action would not otherwise be sanctioned under the state's self-defense laws.[84] Similarly, Washington—though largely common law–dependent for citizen's arrest—authorizes all force necessary to arrest "one who has committed a felony,"[85] and Mississippi explicitly justifies homicide "when necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed."[86]

A final issue of concern in state laws regarding the use of force in conducting a citizen's arrest is that they commonly fail to specify what rights, if any, a wrongfully arrested person has to resist an unlawful private arrest. While most states decline to impose any right of resistance with respect to a perceived wrongful arrest by a law enforcement officer—or in some cases even explicitly provide that no such right exists—the very nature of private arrests may warrant consideration for the rights of resistance.[87]

Articulation of Pre-Arrest and Post-Arrest Duties. Many states fail to articulate any pre-arrest or post-arrest duties of individuals who conduct a citizen's arrest. The imposition of basic, minimum duties on those who conduct citizen's arrests would help to clarify the legal lines between lawful private arrests and unlawful, tortious conduct. At the very least, states should expressly impose:

- A pre-arrest duty to inform the arrestee, when practicable, that you intend to detain him and deliver him to law enforcement and

- A post-arrest duty to inform law enforcement officers of the arrest or detainment without unnecessary delay.

While many reasonable citizens might view these duties as inherently obvious aspects of a lawful citizen's arrest, their articulation as statutory mandates is nevertheless important as a sign of the state's expectations for would-be citizen arrestors. As evidenced by the case of Ron Brewer, the unfortunate reality is that legal grey areas caused by the lack of explicit post-arrest duties can be exploited by arrestors who appear to act unreasonably.

Additionally, states that already impose express pre-arrest and post-arrest duties on private arrestors should check existing statutory language for outdated requirements, such as clauses permitting the arrestor to forcibly deliver the arrested individual directly to a jail or before a local magistrate.[88] The proliferation of professional police forces and widely available means of readily communicating with those forces greatly limits the need to bypass the involvement of law enforcement in the vast majority of cases.

Incentivizing the Use of Professional Law Enforcement When Practicable. As noted, tens of millions of Americans live in areas with a limited police presence, and the ability to conduct citizen's arrests remains an important aspect of a society that neither implements nor desires a police state. At the same time, however, modern American society does employ over one million full-time professional law enforcement officers who are trained to understand the law and respond to potentially dangerous situations.[89] We are no longer—and for good reason—a society fully reliant upon the hue and cry to call amateurs to enforce the law or round up criminals. Citizen's arrest laws should therefore serve as complements to professional law enforcement and should incentivize civilian reliance on these professionals when doing so is practicable.

There are two primary ways to accomplish this: (1) by limiting the authority of civilians to seek out or pursue criminal suspects and (2) by limiting the authority of civilians to enter onto private property to arrest suspects who are believed to be inside. As one scholar has explained:

> Temporal limitations on citizen's arrest properly serve to compel reliance upon the police once the danger of immediate public harm from criminal activity has ceased.... Further restriction [from the common law] might be desirable in cases of fresh pursuit when police assistance is easily obtained, or ultimate apprehension of the fugitive is likely because he is not trying to escape or his identity is known.[90]

Additionally, states may wish to consider explicitly imposing a duty of reasonable care on private citizens who undertake active pursuits of criminal suspects, especially with respect to bystanders.[91] This standard is traditionally imposed by the common law for civil liability in many similar scenarios, and incorporating it as part of the statutory duty of those conducting citizen's arrests would place an added emphasis on the goal of limiting the risk of harm to third persons.[92] Along similar lines, states that do not already heavily regulate the practice of "bounty hunting" should do so, demarcating a clear legal line between the active for-profit tracking of fugitives and the primarily defensive and unpaid act of conducting a citizen's arrest.[93]

Several states also permit would-be arrestors to forcibly enter private homes in order to arrest criminal suspects.[94] In Arizona, for example, if a private person witnesses a felony, this authorizes him not just to arrest the individual who committed the felony, but also to "break open a door or window of any building in which the person to be arrested is or is reasonably believed to be, if he is refused admittance after he has announced his purpose."[95]

This holdover from the common-law duty of "hue and cry" may have made a bit of sense in pre–cell phone and pre–professional law enforcement societies in which tracking down an officer to assist in the arrest could take hours or even days, leaving the suspect with plenty of time to flee. However, as with pursuits of suspects, in a world of 911 dispatches and the widespread use of cell phones, it is often fairly easy to obtain police assistance in entering the private property of others. Entry into private residences should therefore be permitted only when it is reasonably necessary to prevent the arrestee's permanent escape or when other emergency circumstances—such as the risk of violent harm to others inside the residence—may reasonably require it.

Conclusion: Reasonable Reform, Not Repeal

It should come as little surprise that the American system of federalism—with 50 states acting as 50 separate "laboratories of democracy"—has led to an extremely wide variance in many aspects of state penal codes, including those for citizen's arrest. Certainly, there is not likely to be a one-size-fits-all approach to private arrest laws. Nor would Americans be well-served if states simply scrapped citizen's arrests laws altogether and left citizens fully reliant on professional law enforcement when confronted by criminals.

However, an examination of the different ways in which states authorize, define, and limit the right of private arrest shows that there are many opportunities for clarification and modernization. Such reform might not prevent all tragic abuses of the right, but at least it would make the law more accessible and understandable for average citizens. Both the public and the rule of law are served best when citizens, juries, and courts can more easily determine which actions are lawful and which are not.

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Endnotes

1. *See* Richard Fausset, *What We Know About the Shooting Death of Ahmaud Arbery*, N.Y. Times (Feb. 28, 2021), https://www.nytimes.com/article/ahmaud-arbery-shooting-georgia.html.
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. Conservative lawyer David French has laid out a compelling case that the McMichaels did not meet the requisite standards of "immediate knowledge" for a lawful citizen's arrest in Georgia and that Arbery was entitled to defend himself against a criminal threat to his life and liberty. *See* David French, *A Vigilante Killing in Georgia*, The Dispatch (May 7, 2020), https://thedispatch.com/p/a-vigilante-killing-in-georgia. Police body camera footage from immediately after the confrontation indicates that Bryan himself had questions about the legality of their actions, telling officers, "Should we have been trying to chase [Arbery]? I don't know." Anne Schindler, *"If I Coulda Gotten a Shot at the Guy, I Would've Shot Him Myself": Murder Defendant to Police Following Ahmaud Arbery Killing*, WCNC Charlotte (updated Dec. 18, 2020), https://www.wcnc.com/article/news/crime/raw-video-released-in-ahmaud-arbery-killing/77-fc9d70e6-3a40-4b17-9a5a-98f90f3b9dda.
7. Richard Fausset, *Suspects in Ahmaud Arbery's Killing Are Indicted on Murder Charges*, N.Y. Times (updated June 26, 2020), https://www.nytimes.com/2020/06/24/us/ahmaud-arbery-shooting-murder-indictment.html.
8. *See* Maya T. Prabhu, *Lawmaker Readies Legislation to Repeal Georgia's Citizen's Arrest Law*, Atlanta Journal-Constitution (Oct. 20, 2020), https://www.ajc.com/politics/lawmaker-readies-legislation-to-repeal-georgias-citizens-arrest-law/D5UHIDVIMVDFJMR5ZHUM3NTGOQ/.
9. Jack Silvers, *Citizen's Arrest Laws Need a Reboot*, Harvard Political Review (Aug. 10, 2020), https://harvardpolitics.com/citizens-arrest-laws-need-a-reboot/; Alan J. Singer, *Citizen's Arrest: Racist at Its Roots*, Inst. of the Black World (May 30, 2020), https://ibw21.org/editors-choice/citizens-arrest-racist-at-its-roots/; Ibram X. Kendi (@Drlbram), Twitter (Apr. 1, 2021, 1:02 PM), https://twitter.com/dribram/status/1377667580438138881?lang=en.
10. Emma Hurt, *In Ahmaud Arbery's Name, Georgia Repeals Citizen's Arrest Law*, NPR (May 11, 2021), https://www.npr.org/2021/05/11/995835333/in-ahmaud-arberys-name-georgia-repeals-citizens-arrest-law.
11. *See* N.J. Rev. Stat. § 2A:169(3) (2019). Although no New Jersey court appears to have held explicitly that the state maintains the common-law right of private arrests for felonies, the state's jury instructions for false imprisonment make clear that there is some form of legal recognition extending beyond the limits of the statute. *See* https://www.njcourts.gov/attorneys/assets/civilcharges/3.20C.pdf?c=yeS.
12. 18 Pa. Cons. Stat. § 508(b) (2019); *See also* Commonwealth v. Corley, 316 Pa.Super. 327 (1983) (declaring that "probable cause" is the proper standard of evidence for citizen's arrest where the felony or breach of peace is committed in the arrestor's presence and applying the Exclusionary Rule to cases of arrest by private citizens).
13. N.C. Gen. Stat. § 15A-404 (2020).
14. *See* H.B. 479, 2021 Legislative Session (as passed by Georgia House and Senate), https://www.legis.ga.gov/legislation/59726.
15. *See* Georgia State Senate, *Senate Committee on Judiciary (3/17/21)*, at 1:45:35–End, YouTube (Mar. 17, 2021), https://www.youtube.com/watch?v=5onTG4yw_Kk&t=7761s (House Leader Bert Reeves introducing and defending bill to state Senate, explaining the broad detention rights retained independently of citizen's arrest statute and unaffected by repeal).
16. O.C.G.A. § 16-3-20(6) provides that the defense of "justification" can be raised not only when the person's conduct is justified as strict self-defense, but also "in all other instances which stand upon the same footing of reason and justice as those enumerated in this article." Georgia courts have interpreted this as essentially allowing broad appeals to a jury's sense of justice. *See*, *e.g.*, Tarvestad v. State, 409 S.E.2d 513 (Ga. 1991) (holding that a defendant charged with being a habitual violator by driving without a license was entitled to a defense of justification under § 16-3-20(6) where he testified that he was driving his wife to the hospital while she was experiencing labor pains and could not drive herself); Glenn v. State, 849 S.E.2d 409 (2020) (referring to § 16-3-20(6) as a "catchall provision" encompassing unenumerated defenses and holding that defendant was entitled to instruction of a justification defense under it where he alleged common-law right to damage property in attempt to resist unlawful, warrantless arrest).
17. *See*, *e.g.*, O.C.G.A. §§ 16-3-21, 16-3-22 (outlining the permissible use of deadly force for the prevention of forcible felonies and in defense of habitation); Robinson v. State, 270 Ga.App. 869 (Ga. App. 2004) (holding that defendant was not entitled to self-defense instruction where victim of home invasion pursued defendant down the street and detained him until police arrived and finding that the victim's actions were all justified under the state's self-defense statutes without ever referencing the citizen's arrest statute).
18. *See* Jerome Hall, *Legal and Social Aspects of Arrest Without a Warrant*, 49 Harv. L. Rev. 566, 578–85 (1936); Dr. Gary Porter, *The History of Policing in the United States*, https://plsonline.eku.edu/sites/plsonline.eku.edu/files/the-history-of-policing-in-us.pdf.
19. *See* Statute of Winchester of 1285 (13 Edw. I, St. 2), https://thehistoryofengland.co.uk/resource/statute-of-winchester-1285/. In fact, the Statute of Winchester arguably did nothing more than "crystalize[] then current rules and practices," meaning that the concepts of the "hue and cry" and of "citizen's arrest" stretch back even further in Anglo-Saxon history. Hall, *supra* note 18, at 579.

20. M. Cherif Bassiouni, Citizen's Arrest: The Law of Arrest, Search, and Seizure for Private Citizens and Private Police 9 (1977).
21. *Id*. at 9–12; Hall, *supra* note 18, at 567–73; *The Law of Citizen's Arrest*, 65 Colum. L. Rev. 502, 511 (1965).
22. Bassiouni, *supra* note 20, at 12.
23. *Id*. at 13, 60–63; Hall, *supra* note 18, at 567–70.
24. *The Law of Citizen's Arrest*, *supra* note 21, at 508–09. It appears that deadly force could be threatened when reasonably necessary during misdemeanor arrests. *Id*. Moreover, the laws of self-defense would clearly justify the use of deadly force during any interaction that prompted the arrestor's reasonable fear of imminent death or bodily harm.
25. *See*, *e.g*., Lima v. Lawler, 63 F. Supp. 446, 451 (E.D. Va. 1945) (explaining that a private arrest permits detention "only until a proper officer of the law is available").
26. Sally E. Hadden, Slave Patrols: Law and Violence in Virginia and the Carolinas 3 (Harvard Ed. 2003).
27. *See Id*. at 3–14.
28. Dred Scott v. Sandford, 60 U.S. 393, 407 (1856). What few legal protections did exist for slaves were derivatives of rights held by their owners in relation to their property—for example, rights against non-owners searching slave quarters for contraband without the owner's consent.
29. *See* Margalynne J. Armstrong, *Are We Nearing the End of Impunity for Taking Black Lives?*, 56 Santa Clara L. Rev. 721, 722–32 (2016); William Y. Chin, *Domestic Counterinsurgency: How Counterinsurgency Tactics Combined with Laws Were Deployed Against Blacks Throughout U.S. History*, 3 U. Miami Race & Soc. Just. L. Rev. 31, 36–45 (2013) (detailing the similarities between antebellum slave codes and counterinsurgency tactics employed by the United States military while acting as an occupying force in foreign countries).
30. Armstrong, *supra* note 29, at 731.
31. *See* Brooks v. Commonwealth, 61 Pa. 352 (Penn. 1869).
32. *Id*. at 359.
33. *Id*.
34. Gabrielle Mannino, *Burglary Suspects Detained and Held at Gunpoint by Homeowner*, News Center Maine (updated June 22, 2020, 12:29 PM EDT), https://www.newscentermaine.com/article/news/crime/burglary-suspects-detained-and-held-at-gunpoint-by-homeowner/97-486db5cc-7ae4-4c31-8227-9ddab7b6b81a. It is important to emphasize the reasonable nature of the property owner's assumption that a crime was indeed being committed. According to reports, he had walked around the back of the property and discovered that the "back door had been forced open and the lock had been ripped off." *Id*. He then saw a man and a woman "exiting the house with items in their hands." *Id*. Given that this was the property owner's house, that he would have knowledge of who did or did not have permission to enter the property, and the surrounding circumstances of apparent forced entry, the evidence for a burglary in process was substantial. *See* Maine Criminal Code Title 17-A § 401(1)(A).
35. Mannino, *supra* note 34. Notably, these types of incidents, while common, are rarely referred to by the media as what they really are: citizen's arrests. These individuals use or threaten to use force to lawfully detain and deliver to the custody of law enforcement those they reasonably suspect are committing or have recently committed a serious crime.
36. Maine Criminal Code Title 17-A § 16(1). Additionally, under the statute, private persons can conduct warrantless arrests for a number of specified misdemeanors when those misdemeanors are committed in the person's presence and in a public place. *Id*. at § 16(2).
37. *Public Safety Division*, Androscoggin County Sheriff's Dept. (last visited May 18, 2021), https://www.androscoggincountymaine.gov/Public_Safety/Public_Safety_Division.html.
38. This three-deputy patrol is likely supplemented, at least to some degree, by additional state and local departments covering their respective jurisdictions within the county.
39. Duren Banks et al., *National Sources of Law Enforcement Employment Data*, Bureau of Justice Statistics, at Table 7 (revised Oct. 4, 2016), https://www.bjs.gov/content/pub/pdf/nsleed.pdf.
40. Kroeger v. Passmore, 93 P. 805, 807 (Mont. 1908).
41. Ray Stern, *Karl "Jack" Frost Pleads No Contest in Case of His "Citizen's Arrest" of Jogger in Bicycle Lane; Gets Probation*, Phoenix New Times (Oct. 11, 2012), https://www.phoenixnewtimes.com/news/karl-jack-frost-pleads-no-contest-in-case-of-his-citizens-arrest-of-jogger-in-bicycle-lane-gets-probation-6637467; Michael Kiefer, *Phoenix Man Convicted After Trying to "Arrest" Judge*, AZ Central (updated 8:44 a.m. Mar. 10, 2017), https://www.azcentral.com/story/news/local/phoenix/2017/03/08/maricopa-county-superior-court-judge-lisa-flores-brittian-young/98881982/; Kevin Jenkins, *Probation Officer Kim Terry II Guilty in Road Rage Assault*, The Spectrum (updated May 3, 2017), https://www.thespectrum.com/story/news/2017/05/02/probation-officer-guilty-road-rage-assault/101206422/; Derrick DePledge, *Man Who Tried to Arrest Mayor Convicted*, Daily Astorian (updated Dec. 10, 2018), https://www.dailyastorian.com/news/local/man-who-tried-to-arrest-mayor-convicted/article_314eed5e-ce45-5153-9773-d8477680f713.html.

42. *See*, *e.g.*, Konstantin Toropin, *Prosecutor Wants Grand Jury to Review Case of Omaha Bar Owner Who Fatally Shot Black Protestor*, CNN (updated June 4, 2020, at 3:32 PM ET), https://www.cnn.com/2020/06/04/us/james-scurlock-omaha-shooting/index.html (describing the case of an Omaha bar owner facing a grand jury review of his actions in the shooting death of Black Lives Matter protestor, which the bar owner claimed was in self-defense); Perry Vandell, *AC Repairman Who Claimed Self-Defense After Killing Customer Found Not Guilty of Murder*, The Arizona Republic (updated Nov. 6, 2019, at 9:30 PM MT), https://www.azcentral.com/story/news/local/surprise-breaking/2019/11/06/ac-repairman-robert-moore-found-not-guilty-fatal-surprise-shooting/2511529001/ (describing the acquittal of an Arizona man who claimed to have shot a customer in self-defense after the customer attacked him); Bill Bowden, *Arkansas Jurors Acquit Shooter in Next-Door Slaying*, Arkansas Democrat Gazette (Sept. 14, 2019), https://www.arkansasonline.com/news/2019/sep/14/jurors-acquit-shooter-in-next-door-slay/ (describing the acquittal of a man who shot his neighbor, allegedly in self-defense, after years of ongoing disputes between the two); *Woman, Jailed 4 Years Awaiting Trial in Killing of Her Husband, Finally Acquitted on Self-Defense*, WECT 6 News (updated Jan. 24, 2019, at 3:57 PM), https://www.wect.com/2019/01/24/woman-jailed-years-awaiting-trial-killing-her-husband-finally-acquitted-self-defense/ (describing the years-long legal battle of a woman finally acquitted of murder charges on the basis of self-defense).
43. Ryan Hughes, *Seffner Man Illegally Detained Black Teen on Way to Basketball Practice, State Attorney Says*, WFLA News 8 (updated July 30, 2020), https://www.wfla.com/news/hillsborough-county/seffner-man-illegally-detains-black-teen-on-way-to-basketball-practice-sao-says/.
44. *Id*.
45. *Id*.
46. *Id*.
47. *See* Edwards v. State, 462 So.2d 581, 582 (Fl. 4th Dist. 1985); State v. Schuyler, 390 So.2d 458, 460 (Fla. 3d DCA 1980; Schachter v. State, 338 So.2d 269, 270 (Fla. 3d DCA 1976).
48. It does appear that the crime of breaking into an unoccupied vehicle would likely constitute a felony for which a citizen's arrest could be made under Florida law. *See* Fla. Stat. § 810.02(4) (2020).
49. Lauren Cross, *UPDATE: City Council President Accused of Shooting at Teens Attorney Says It Was "Citizen's Arrest,"* NW Indiana Times (updated Nov. 18, 2019), https://www.nwitimes.com/news/local/crime-and-courts/update-council-president-accused-of-shooting-at-teens-attorney-says-it-was-citizens-arrest/article_9919d339-c00c-5a93-8e1e-524d8b8736cf.html.
50. *Id*.
51. *Id*.
52. Even assuming that Brewer complied with Indiana gun laws, Illinois does not recognize the validity of Indiana concealed carry permits, and it is notoriously difficult for non-residents to acquire Illinois concealed carry permits. *See Guide for Non Illinois Residents to Obtain the Illinois Concealed Carry Permit*, ConcealedCarry.com (last visited May 18, 2021) https://illinois.concealedcarry.com/guide-for-non-illinois-residents-to-obtain-the-illinois-concealed-carry-permit/. Illinois does not recognize or honor any other state's concealed carry permit and as of April 2021 authorizes non-resident carry permits only for residents of Arkansas, Idaho, Mississippi, Nevada, Texas, and Virginia. *Summary of Illinois Gun Laws*, U.S. Concealed Carry Assn. (last updated April 15, 2021), https://www.usconcealedcarry.com/resources/ccw_reciprocity_map/il-gun-laws/#changelogs.
53. 725 Ill. Comp. Stat. 7/107-3 (2012).
54. 720 Ill. Comp. Stat. 5/7-6 (2012).
55. State v. Updegraff, 267 P.3d 28, 37–8 (Mont. 2011).
56. *See*, *e.g.*, John G. Malcolm, *Morally Innocent, Legally Guilty: The Case for Mens Rea Reform*, 18 Federalist Soc'y Rev. 40 (2017), https://fedsoc-cms-public.s3.amazonaws.com/update/pdf/W7uuzRNNUySO7NSzOM3e19fm1WIH8inQN1KQoB6D.pdf.
57. *See* Pilos v. First Nat. Stores, 66 N.E.2d 475 (Mass. 1946); Commonwealth v. Lussier, 128 N.E.2d 569 (Mass. 1955); Commonwealth v. Grise, 496 N.E.2d 162 (Mass. 1986); Commonwealth v. Limone, 957 N.E.2d 225 (Mass. 2011).
58. Commonwealth v. Grise, 496 N.E.2d 162 (Mass. 1986).
59. *Id.*; The legality of citizen's arrest in this case is further complicated by the fact that Massachusetts law does not clearly specify whether driving under the influence is a felony or a misdemeanor. Instead, the statute says only that it is punishable by up to 2 ½ years' imprisonment, and it is up to residents to know (from a completely unrelated section of the penal code) that only those crimes punishable specifically by "imprisonment in the state prison" are felonies. *See* Mass. Gen. Laws ch. 274 § 1 (2020); Mass. Gen. Laws ch. 90 § 24(1)(a)(1) (2020).
60. *See* N.Y. Crim. Proc. § 140.30 (2020); N.Y. Penal § 35.30(4) (2020); Ala. Code § 15-10-7(a) (2020); Ala. Code § 13A-2-37(g) (2020).
61. *See*, *e.g.*, Cal. Penal Code § 197(4) (2020) (detailing justifiable homicide during the apprehension of felons and other acts of private law enforcement); Cal. Penal Code § 417(a) (2020) (criminalizing the threatened or threatening use of deadly weapons, "except in self-defense"); Cal. Penal Code §§ 692–694 (2020) (authorizing lawful resistance to prevent offenses against person or property); Cal. Penal Code §§ 837, 841, 844, 846–47 (2020) (outlining the law of arrests by private persons).

62. The common-law definition of "felony" certainly experienced changes and expansions over time, from nine core "traditional" offenses (murder, manslaughter, arson, burglary, robbery, rape, sodomy, mayhem, and larceny) to at least 160 felony offenses at the time of Blackstone. *See* Will Tress, *Unintended Collateral Consequences: Defining Felony in the Early American Republic*, 57 Clev. St. L. Rev. 461, 464–65 (2009); Alice Ristroph, *Farewell to the Felonry*, 53 Harv. C.R.-C.L. L. Rev. 563, 571–73 (2018). But in the earliest medieval senses, "felony" consistently invoked a dimension of a wicked state of mind and certain gravity of harm done as necessary attributes. *See* Ristroph, *supra*, at 572–74. Similarly, Blackstone notes eight specific offenses that constitute common-law misdemeanor breaches of the peace, along with "any thing that tends to provoke or excite others" to breach the peace. William Blackstone, Commentaries 410–13 (American Bar Assn. Publishing 2009) (1796). Yet the modern Corpus Juris Secundum [§ 3. Nature and elements of breach of the peace] explains just how convoluted and varied such offenses can be in a modern context, even in states that acknowledge it as a common-law offense.
63. *See*, *e.g.*, Paul J. Larkin, Jr., *Strict Liability Offenses, Incarceration, and the Cruel and Unusual Punishments Clause*, 37 Harv. J.L. & Pub. Pol'y 1065, 1074–77 (2014) (discussing the provenance and growth of "public welfare offenses"); John G. Malcolm, *Criminal Law and the Administrative State: The Problem with Criminal Regulations*, Heritage Found. Legal Memorandum No. 130 (Aug. 6, 2014), http://www.heritage.org/crime-and-justice/report/criminal-law-and-the-administrative-state-the-problem-criminal-regulations (explaining Congress's continued failure to fulfill its constitutional duty to notify the public of all conduct that it defines as "criminal"); Paul J. Larkin, Jr., *Regulatory Crimes and the Mistake of Law Defense*, Heritage Found. Legal Memorandum No. 157 (July 9, 2015), http://www.heritage.org/crime-and-justice/report/regulatory-crimes-and-the-mistake-law-defense (explaining that certain classes of crimes have no relation to common-law offenses and urging the adoption of a "mistake of law" defense to protect well-intentioned citizens from being punished for non-blameworthy conduct).
64. *Compare* Neb. Rev. Stat. § 29-402 (2020) *with* State v. Redding, 331 N.W.2d 811, 814 (Neb. 1983) (describing the historical changes in Nebraska criminal law regarding larceny), https://law.justia.com/cases/nebraska/supreme-court/1983/469-10.html.
65. Iowa Code § 804.9 (2020).
66. Iowa Code § 701.2 (2020).
67. Ga. Code. Ann. § 17-4-60 (2019).
68. N.C. Gen. Stat. 15A-404(b) (2020).
69. Carroll v. United States, 267 U.S. 132, 157 (1924).
70. Recall the nine traditional "core felonies" under the common law, which, like misdemeanor breaches of the peace, involved inherent violence that was supposed to put the public at continuing risk: murder, manslaughter, arson, burglary, robbery, rape, sodomy, mayhem, and larceny. *Supra*, note 62.
71. Haw. Rev. Stat. § 803-3.
72. N.Y. Crim. Proc. Law § 140.30(1).
73. For example, just last year, a Michigan man found himself in legal hot water (and rightfully so) for handcuffing a woman for allegedly placing Black Lives Matter stickers on pro-Trump signs during a pro-Trump rally. Jessica Dupnak, *Warren Councilman Cuffs Woman Posting Black Lives Matter Stickers on Trump Signs*, Fox 2 News Detroit (Oct. 24, 2020), https://www.fox2detroit.com/news/warren-councilman-cuffs-woman-posting-black-lives-matter-stickers-trump-sign. In Michigan, where arrest by private persons is restricted to felony offenses, the man was promptly charged with assault, battery, and impersonating a public officer. Steve Neavling, *Warren Councilman to Be Charged for Handcuffing Woman for Posting BLM Stickers on Trump Sign*, Detroit Metro Times (Oct. 28, 2020), https://www.metrotimes.com/news-hits/archives/2020/10/28/warren-councilman-to-be-charged-for-handcuffing-woman-for-posting-blm-stickers-on-trump-sign. Had this attempted citizen's arrest occurred under New York's "any offense" standard, the man would arguably have been legally justified in detaining the woman for committing petty offenses such as Criminal Mischief in the Fourth Degree, Unlawfully Posting Advertisements, or Making Graffiti. *See* N.Y. Penal Law §§ 145.00, 145.30, & 145.60.
74. *See*, *e.g.*, Derrick DePledge, *Man Who Tried to Arrest Mayor Convicted*, Daily Astorian (updated Dec. 10, 2018) (detailing how an Astoria resident attempted to arrest the city's mayor and police chief over allegations of corruption stemming from plans to move an aging communications tower), https://www.dailyastorian.com/news/local/man-who-tried-to-arrest-mayor-convicted/article_314eed5e-ce45-5153-9773-d8477680f713.html; Michael Kiefer, *Phoenix Man Convicted After Trying to "Arrest" Judge*, AZ Central (updated 8:44 a.m. Mar. 10, 2017) (detailing a man's conviction for attempting to arrest a judge who ruled against him in a case), https://www.azcentral.com/story/news/local/phoenix/2017/03/08/maricopa-county-superior-court-judge-lisa-flores-brittian-young/98881982/; *Albuquerque Residents Attempt Citizen's Arrest of Police Chief*, The Guardian (May 8, 2014) (detailing protestors' plans to arrest a city police chief for "harboring fugitives from justice" and "crime against humanity" because the chief determined that certain police shootings were justified uses of force), https://www.theguardian.com/world/2014/may/08/albuquerque-police-citizens-arrest-chief-protests; Gene Cubbison & Lauren Steussy, *Occupiers Attempt Citizens Arrest of Mayor Over Snapdragon Decision*, NBC 7 San Diego (updated Jan. 30, 2012, at 5:17 pm) (detailing protestor's failed attempts to arrest city mayor over "felony embezzlement" after a city attorney ruled that the mayor violated the municipal code in approving a stadium's temporary name change without City Council approval), https://www.nbcsandiego.com/news/local/occupiers-attempt-citizens-arrest-of-mayor-over-snapdragon-decision/1937857/.
75. Nicholas Bogel-Burroughs, Shaila Dewan & Kathleen Gray, *FBI Says Michigan Anti-Government Group Plotted to Kidnap Gov. Gretchen Whitmer*, N.Y. Times (Updated Apr. 13, 2021), https://www.nytimes.com/2020/10/08/us/gretchen-whitmer-michigan-militia.html.
76. Tommy Beer, *Michigan Sheriff: Militia Suspects May Have Merely Been Attempting to "Arrest" Whitmer*, Forbes (Updated Oct. 13, 2020, 3:45pm EDT), https://www.forbes.com/sites/tommybeer/2020/10/09/michigan-sheriff-militia-suspects-may-have-merely-been-attempting-to-arrest-whitmer/?sh=70e179b93d8f.

77. Mich. Comp. Laws § 750.505 (2019).
78. Michigan Municipal League, Ethics—Misconduct in Office by Public Officers (Sept. 2016), https://www.mml.org/resources/publications/one_pagers/x%20FS%20ethics%20-Misconduct%20in%20Office.pdf; People v. Coutu, 589 N.W.2d 458 (Mich. 1999).
79. *Coutu*, 589 N.W.2d 458, 460–61 (Mich. 1999).
80. See *supra*, note 73.
81. *Compare* State v. Weddell, 27 P.3d 450 (Nev. 2001) (unilaterally imposing limits on the use of deadly force in effecting a private arrest where the legislature failed to do so and effectively overriding the common law's fleeing felon rule) *with* People v. Couch, 401 N.W.2d 683 (Mich. 1990) (declining to impose limitations on the use of deadly force in effecting a private arrest where the legislature failed to do so and effectively accepting the common law's fleeing felon rule as the default limitation).
82. *See* Model Penal Code § 3.07(2)(b) (Am. L. Inst. 1977).
83. Haw. Rev. Stat. § 803-7.
84. *See* Haw. Rev. Stat. § 703-304.
85. Wash. Rev. Code § 9A.16.020(2) (2019).
86. Miss. Code. Ann. § 97-3-15(1)(g) (2020).
87. Only Louisiana appears to authorize resistance in cases of unlawful arrests, noting that "a person shall submit peaceably to a lawful arrest" and therefore implying that a person is not necessarily required to submit peaceably to an unlawful arrest. La. Code Crim. Proc. Ann. Art. 220 (2020). Some states create limited exceptions for resistance to arrests by peace officers where the officer uses unnecessary force. *See* Ken. Rev. Stat. Ann. §503.060(1) (2020); N.J. Rev. Stat. § 2C:3-4b(1)(a) (2020); N.D. Cent. Code §12.1-05-03(2) (2020); Tex. Penal Code Ann. § 9.31(c) (2019).
88. *See* Ariz. Rev. Stat. Ann. § 13-3900; Iowa Code § 804.24; N.J. § 2A:160-22; N.D. Cent. Code § 29-06-23, 29-06-25; Tenn. Code Ann. § 40-7-113(a).
89. Duren Banks et al., *National Sources of Law Enforcement Employment Data*, Bureau of Justice Statistics Program Report NCJ 249681 (Revised Oct. 4, 2016), https://www.bjs.gov/content/pub/pdf/nsleed.pdf.
90. *The Law of Citizen's Arrest*, *supra* note 21, at 505.
91. *See* Bassiouni, *supra* note 20, at 51.
92. *See*, *e.g.*, Restatement (Second) of Torts § 281; Surratt v. Petrol, Inc., 312 N.E. 2d 487 (Sup. Ct. Ind. 1974); Burns v. Sam, 479 P.3d 741 (Wyo. 2021); Beltran-Serrano v. City of Tacoma, 193 Wash. 2d 537 (Wash. 2019); Stroik v. Ponseti, 699 So. 2d. 1072 (La. 1997).
93. Regulation and licensure of bounty hunters varies widely by state, with a plurality of states leaving the profession largely without meaningful oversight.
94. *See* Ala. Code § 15-10-7(d); Ariz. Rev. Stat. Ann. § 13-3892; Cal. Penal Code § 844; Haw. Rev. Stat. § 803-11; Id. Stat. § 19-611; Mich. Comp. Laws § 764.21; Minn. Stat. § 629.38; Miss. Code Ann. § 99-3-11; Nev. Rev. Stat. § 171.138; N.D. Cent. Code § 29-06-22; Okla Stat. § 22-204; Tenn. Code Ann. § 40-7-112.
95. Ariz. Rev. Stat. § 13-3892.