



PRIVATE PERSONS ARRESTS – WHAT YOU NEED TO KNOW

What are a peace officer's legal responsibilities when responding to a call for service when a person (security guard or ordinary citizen) has made a private person's arrest (PPA)?

Under California Penal Code § 837 a person can make a PPA under very specific circumstances.

- **Felony:** If the crime is a felony, the only requirement is probable cause that the offense has been committed. The private person's presence at the time of the crime is not necessary. *People v. Wilkins*, 27 Cal.App.3d 763 (1972), *People v. Martin*, 225 Cal.App.2d 91 (1964).
- **Misdemeanors:** Probable cause that the offense has been committed is still required. But peace officers must also gather facts that establish the misdemeanor offense was actually committed or attempted in the private person's presence. *Hamburg v. Wal-Mart Stores, Inc.*, 116 Cal.App.4th 497 (2004).
 - What qualifies as "in the presence of"?
The offense must be "apparent to the senses" of the arrester, meaning that mere physical proximity is insufficient. *People v. Martin*, 225 Cal.App.2d 91 (1964), *People v. Lacey*, 30 Cal.App.3d 170 (1973).
 - NOTE: For a PPA reasonable cause to believe that a misdemeanor has been committed is not sufficient. If the person did not actually witness the offense, then the arrest will be invalid, and the citizen could be subject to criminal and civil consequences.

Does a peace officer have to take the person who was arrested by the citizen under a PPA into "custody"?

- If the suspect is in the physical custody of the citizen when officers arrive, officers must— "without unnecessary delay"—take custody of the suspect. Cal. Penal Code §§ 142, 847, 849.
- However, the officer's act of taking custody of the suspect does not constitute an arrest by the officer. *People v. Harris*, 256 Cal.App.2d 455, 459-60 (1967); *In re Roland K.*, 82 Cal.App.3d 295, 298 (1978). The arrest was made by the citizen; the officer is simply accepting a transfer of custody from the citizen as required by California law.
- Legally, regardless of who is physically making the arrest, the person making the arrest is the private person, not the peace officer. The private person is simply delegating to the officers this authority to arrest. *Johanson v. DMV*, 36 Cal.App.4th 1209, 1217 (1995). Therefore, the officer cannot be sued for false arrest or false imprisonment for accepting custody. Cal. Penal Code §847(c); *Kinney v. County of Contra Costa*, 8 Cal.App.3d 761, 768-769 (1970).

Next steps after officer takes "custody" of the person arrested under PPA?

- Deputies must determine the facts establishing probable cause for the arrested charge, and, if it is a





misdemeanor, whether the offense was committed in the presence of the private person.

- A deputy may find the PPA is lawful, and either transport and book the suspect into jail or cite and release the suspect, as legally appropriate.
- A deputy may also release the suspect because the deputy is satisfied “there are insufficient grounds for making a criminal complaint against the person arrested.” *Kinney v. County of Contra Costa*, 8 Cal.App.3d 761, 767 (1970).
 - In that case, the detained person is free to leave, and deputies should inform the private person of the deputy’s determination.

Who is responsible for telling the suspect they are under arrest and what they are under arrest for?

- Either the citizen or the peace officer can inform the person that they are under arrest. There are no “magic words” the citizen must say to make the arrest lawful. *Padilla v. Meese*, 184 Cal.App.3d 1022, 1032 (1986). It can be demonstrated to the suspect via words or shown by actions (e.g., the person taking the suspect by the arm, handcuffing the person, etc.). See also Cal. Penal Code § 841.

Can a private person use force to make the arrest?

- Reasonable force to detain for the purpose of making the arrest is lawful. Note: A pure detention by a citizen to investigate is not permissible. *People v. Fosselman*, 33 Cal.3d 572, (1983); see also *People v. Garcia*, 274 Cal.App.2d 100 (1969).

If a private person conducts an unlawful arrest, there is the potential for both criminal and civil liability for the private person? If yes, what are some possible consequences?

- Yes
- Possible criminal and civil consequences include, but are not limited to:
 - False imprisonment (possibly civil and criminal); Assault (possibly civil and criminal); Battery (possibly civil and criminal); Intentional Infliction of Emotional Distress (civil); Invasion of privacy (civil).

Suggested Best Practice Approach When Responding to a PPA Call for Service

- 1) Respond to the location of the "private person arrest."
- 2) Determine if a crime has, in fact, been committed.
- 3) Determine if reasonable suspicion exists to justify detaining the individual pending further investigation. If reasonable suspicion does not exist, the individual is free to leave.
- 4) Determine if probable cause exists to believe the individual committed the crime in question. If probable cause does not exist, the individual is free to leave.
- 5) If probable cause exists for the offense and the deputy determines the arrest should be made (i.e., the misdemeanor was committed in the private person’s presence), then the person should sign the private person's arrest form and the deputy should book or cite the suspect, as appropriate.

Please note this bulletin does not cover detentions or arrests made by a merchant. There are broader rules with those types of calls for service (i.e., a merchant as the ability to detain to investigate, but a private person does not).

