

**8 GCA CRIMINAL PROCEDURE
CH. 20 ARREST**

**CHAPTER 20
ARREST**

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NOTE: References to "Director of Public Safety" changed to "Chief of Police" pursuant to P.L. 17-78:1, which repealed § 5102 GC providing for the Department of Public Safety, and reenacted § 5102 establishing the Guam Police Department.

§ 20.10. Arrest Defined.

An arrest is made by an actual restraint of the person, or by submission to the custody of the person making the arrest. The person arrested may be subjected to such restraint as is reasonable for his arrest and detention.

NOTE: Section 20.10 continues the substance of former § 835. See also Cal. Pen. Code § 835. The former section referred to the "defendant" and "officer." However, at the time of the arrest, the person arrested may not be a "defendant" and the person making the arrest may not be an "officer." See §§ 20.15 and 20.20. The second sentence of § 20.10 is supplemented by § 20.45 (use of force).

§ 20.15. Peace Officer Arresting Without Warrant; Circumstances.

(a) A peace officer may make an arrest in obedience to a warrant, or may, without a warrant, arrest a person:

(1) Whenever the officer has reasonable cause to believe that the person to be arrested has committed an offense in the officer's presence;

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(2) When the person arrested has committed a felony, although not in the officer's presence;

(3) Whenever the officer has reasonable cause to believe that the person to be arrested has committed a felony or misdemeanor whether or not a felony or misdemeanor has in fact been committed.

(4) Who has escaped from any jail or prison or the lawful custody of a peace officer.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, a peace officer for false arrest or false imprisonment for an arrest which is lawful under Subsection (a).

NOTE: Section 20.15 supersedes and narrows Penal Code Sec. 836. This Section is based upon §§ 836 and 836.3 of the California Penal Code. (See B. Witkin, California Criminal Procedure, Proceedings Before Trial § 102-105 (1963, Supp. 1973.) Note that Subsection (a) (2) requires that a felony be committed out of the presence of the officer. Former law required only a "public offense". Subsection (a)(3) lessens the effect of (a)(2), but narrows former law by excluding petty misdemeanors and violations from those offenses for which a person may be arrested without a warrant. Subsection (a)(4) is not included within the former Penal Code, but was implied by the whole of § 836 of the PC. Subsection (b) Provides positive immunity against civil liability for officers who act in accordance with the law.

§ 20.20. Citizens Arrest; When, Circumstances.

A private person may arrest another;

(a) For an offense committed or attempted in his presence.

(b) When the person arrested has committed a felony, although not in his presence.

(c) When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

NOTE: Section 20.20 is substantively the same as former § 837. See also Cal. Pen Code § 837. See generally B. Witkin, California Criminal Procedure Proceedings Before Trial § 123 (1963, Supp. 1973).

CROSS-REFERENCES: See 10 GCA § 89109(a)(4) with respect to arresting for smoking violations.

§ 20.25. Arresting Person May Summon Aid.

Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

NOTE: Section 20.25 is identical to former § 839. See also former §§ 723 and 727; Cal. Pen. Code § 839. See generally B. Witkin, California Criminal Procedure

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Proceedings Before Trial § 123 (Supp. 1973) (citizen's arrest may be effected by directing officer to make arrest on citizen's behalf). Section 838 which authorized a magistrate to order a peace officer or private person to arrest a person committing an offense in the presence of the magistrate is not continued. The section basically duplicated the much broader authority granted under § 20.25

§ 20.30. Arrest May be Made Day or Night.

Whenever an arrest is authorized by the provisions of this Code, it may be made on any day and at any time of the day or night.

NOTE: Section 20.30 supersedes former § 840. Compare Cal. Pen Code § 840. See generally B. Witkin, California Criminal Procedure Proceedings Before Trial § 109(1963, Supp. 1973). The major change is to authorize misdemeanor arrests by a peace officer at any time on reasonable cause without the additional requirement of a threat of flight or additional injury.

§ 20.35. Formalities in Making Arrest; Exceptions.

(a) The person making an arrest shall inform the person to be arrested of the intention to arrest him, the offense for which he is being arrested, and the authority permitting the person to make the arrest.

(b) Subsection (a) shall not apply when the person making the arrest has reasonable cause to believe that the person to be arrested is engaged in the commission of an offense, or the immediate flight therefrom, until the arrest has been completed.

NOTE: Section 20.35 Continues the substance of former § 841 and a portion of former Rule (4)(c)(3). See generally B. Witkin, California Criminal Procedure Proceedings Before Trial § 107 (1963).

§ 20.40. Possession of Warrant not Required by Peace Officer if Warrant Exists.

An arrest by a peace officer pursuant to a warrant is lawful whether or not the officer has the warrant in his possession at the time of the arrest. However, upon requires of the person arrested, the warrant shall be shown to him as soon as practicable.

NOTE: Section 20.40 continues the substance of a portion of former Rule 4(c)(3). Contrast former § 842. In form, the section is based on § 842 of the California Penal Code. See generally B. Witkin, California Criminal Procedure Proceedings Before Trial § 108(1963). § 20.40 obviates the need for a procedure for "sending" copies of a warrant by telephone, since the officer need not have the warrant in his possession. Compare former § 850.

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§ 20.45. Peace Officer May Use Force to Prevent Escape or Overcome Resistance.

Any peace officer who has reasonable cause to believe that a person to be arrested has committed an offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or the threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right of self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

NOTE: Section 20.45 is based on § 835a of the California Penal Code. See generally B. Witkin, California Criminal Procedure Proceedings Before Trial § 110 (1963). See also 32 Cal. S. Bar J. 607(1957). It supersedes former § 843 and applies whether or not the arrest is being made pursuant to a warrant. (Obviously a warrant itself provides the officer reasonable cause to believe that the person to be arrested has committed an offense. If he has no warrant, the officer may rely on his own observations.) The section does limit the officer to use the "reasonable force." Compare former § 843 ("all necessary means"). See also 9 GCA § 7.86 (justification as a defense; no right to resist arrest); 7.92 (justification as a defense; use of force in law enforcement). It might be noted that resisting arrest is made a misdemeanor by § 55.35 of the Criminal and Correctional Code.

§ 20.50. Forced Entry to Make Arrest Allowed after Notice, and Refusal.

(a) To make an arrest, whether with or without a warrant, a peace officer may break open the door or window of any house in which the person to be arrested is, or in which the officer has reasonable cause for believing him to be, if, after giving notice of his authority and purpose, he is refused admittance.

(b) A peace officer who has witnessed the commission of an offense may pursue the offender into any ship, plane, building, or grounds.

NOTE: Section 20.50 continues the substance of former §§ 844 and 855. See also Cal. Pen. Code § 844. See generally B. Witkin, California Criminal Procedure, Procedure Before Trial, § 111 (1063, Supp. 1973). It should be noted that case law authorized practical exceptions to the announcement requirement. That is, noncompliance may be excused where specific facts known to the officer before his unannounced entry are sufficient to support his good-faith belief that compliance would increase his peril, frustrate arrest, or permit the destruction of evidence. See, e.g., *Parsley v. Superior Court*, 9 C.3d 934, 109 Cal. Rptr. 563, 513 P.2d 611(1973).

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§ 20.55. Weapons to be Taken From Arrestee.

Any person making an arrest may take from the person arrested any weapon which he may have about his person and shall deliver it to the Chief of Police.

NOTE: Section 20.55 continues the substance of the first sentence of former § 846. See also Cal. Pen. Code § 846. The second sentence of former § 846 is deleted. It had no California counterpart; to the contrary, there a citizen making a citizen's arrest is not permitted to make a search for contraband or seize such contraband. See *People v. Sjosten*, 262 C.A. 2d 539, 68 Cal. Rptr. 832 (1969). Deletion of this provision does not, of course, affect in any way a peace officer's right to make a search incident to a lawful arrest and seize evidence so obtained. See *United States v. Rabinowitz*, 339 U.S. 56 (1950). But see *Chimel v. California*, 395 U.S. 752(1969) (scope of search limited).

§ 20.60. "Stationhouse" Release Formalized and Permitted.

(a) Notwithstanding § 45.10, any peace officer may instead of taking any person arrested without a warrant before a judge, release him from custody:

(1) When the officer is satisfied that there are insufficient grounds for requesting a criminal complaint against the person arrested.

(2) When the person was arrested for intoxication only, and no further proceedings are desirable.

(3) When the person was arrested only for being under the influence of a narcotic drug, or restricted dangerous drug and such person is delivered to a facility or hospital for treatment and no further proceedings are desirable.

(4) Pursuant to Chapter 25 (commencing with § 25.10).

(b) Any record of arrest of a person released pursuant to Paragraphs (1) and (2) of Subsection (a) shall include a record of release. Thereafter, such arrest shall not be deemed an arrest, but a detention only.

NOTE: Section 20.60 is new but is substantively similar to California Penal Code § 849 (b) and (c). Compare former Rule 46(a)(1). The section permits release only where the officer believes that prosecution is infeasible, undesirable or the conditions and procedures provided by Chapter 25 are met and followed. The section does not preclude further proceedings, although such proceedings, it seems, would rarely occur where release is based on paragraphs (1) through (3) of Subsection (a).

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§ 20.65. Right of Arrestee to see Lawyer; Penalty for Refusal.

(a) After arrest, any attorney at law entitled to practice in the courts of record in this Territory, may, with the consent of the person arrested and at the request of the person arrested or any relative or friend of such person, visit the person arrested.

(b) Any person, immediately after he is arrested or otherwise detained has the right to make, in the presence of a public officer or employee, at least one completed telephone call to his attorney, employer or a relative.

(c) Any officer having charge of an arrested person, who refuses to allow an attorney to visit the person arrested pursuant to Subsection (a) or deprives a person arrested of his right under Subsection (b), shall forfeit and pay to the person arrested the sum of five hundred dollars (\$500).

NOTE: Section 20.65(a) continues the substance of portion of Penal Code § 825. (See Cal. Penal Code § 825.) § 20.65(b) is based upon a portion of Cal. Penal Code § 851.5 (See B. Witkin, Cal. Criminal Procedure, Proceedings Before Trial § 118-119 (1963 Supp. 1973).) Section 2065(c) provides a sanction to encourage compliance with the requirements of this Section, but police officers should be alert to avoid misuse of this Subsection by over-jealous defense attorneys and their clients.
