

**3.20 FALSE IMPRISONMENT (FALSE ARREST) (Approved 6/89)**

**E. ARREST WITHOUT WARRANT FOR DISORDERLY PERSON'S OFFENSE OR BREACH OF PEACE<sup>1</sup>**

It is the law of this State that a person--whether a private citizen or a police officer — may arrest another person without a warrant if the arrested person has *[committed what is called a disorderly person's offense] [violated a municipal ordinance involving a breach of the peace]* in the arresting person's presence and if the arrested person is then taken to a judge or court clerk located in the county where the arrest took place without any unnecessary delay.

The offense for which it was alleged that the defendant arrested the plaintiff was *[a disorderly person's offense] [a violation of a municipal ordinance involving a breach of peace]*. This is an offense for which an arrest may be made without a warrant.

So, in deciding whether plaintiff was falsely imprisoned, there are two decisions you have to make.

The first is that plaintiff must prove, by the greater weight of the evidence, that defendant intentionally detained or restrained plaintiff in his/her personal liberty or freedom of movement by arresting him/her.

The second, assuming you find that defendant did intentionally restrain plaintiff by an arrest, involves defendant's claim that he/she had a right to make the arrest and that, after the arrest, plaintiff was taken before a judge or court clerk to obtain a warrant without any unnecessary delay.

*[Here discuss facts of arrest and detention].*

If you find that there was an arrest, then defendant must prove to you by the greater weight of the evidence that the offense, for which the arrest is said to have been made, was committed in defendant's presence. Even if you find that the offense was committed in the defendant's presence and, because of that, he/she arrested the plaintiff, you still must consider whether he/she restrained the plaintiff only for a reasonable period of time until the defendant could bring him/her to a judge or court clerk or whether he/she confined the plaintiff for a length of time that was unnecessary under the circumstances. A reasonable time for confinement under the circumstances is the time that an ordinarily cautious person would take to bring the plaintiff before a judge or court clerk in the situation that faced the defendant. The reasonableness of this time would be affected by the availability of the judge or court clerk, the location of the arrest, the time of day or night, the problem of confining the plaintiff, available means for reaching the judge or court clerk and any other factors that you might think had bearing on the amount of time.

If the defendant imprisoned the plaintiff for an unreasonable time, then even though the original arrest was proper, the unreasonable delay would be false imprisonment. If the arrest was proper and the confinement reasonable according to the rules I have explained, then you must find for the defendant. But if you find that there was a confinement, and you find that either there was no right to make the arrest or that there was an unnecessary delay in bringing plaintiff before a local judge or court clerk, then you must find for the plaintiff.

*[go on to Damages (False Imprisonment), Charge 3.14G]*

***NOTE TO JUDGE***

The right of law enforcement officers to arrest without a warrant exists when a felony has been committed in his/her presence or when he/she has a reasonable basis to believe that a felony is being or has been committed, and when he/she has a reasonable basis to believe that the person to be arrested is committing or has committed the felony. *State v. Doyle*, 40 N.J. 320 (1963). *See also State v. Crawley*, 90 N.J. 241 (1982). A felony corresponds to a crime for which a person may be incarcerated for more than one year in a State prison as indicated *supra*.

The authority for a law enforcement officer's warrantless arrest for offenses of lesser gravity than a crime is the same as for the citizen as prescribed by the statutes quoted above. An officer may make a warrantless arrest for a disorderly persons offense *supra*. he/she may also arrest a shoplifter or detain a person whom he/she reasonably believes is willfully concealing unpurchased merchandise. *N.J.S.A. 2C:20-11, supra*.

A law enforcement officer further has the right to make a warrantless arrest when he/she observes a violation of the motor vehicle laws. *N.J.S.A. 39:5-25*. And he/she may make reasonable detention pursuant to his/her administration of these laws. *See Atty. Gen. F.O. 314 (1958); Pine v. Olzewski, supra*.

A police officer may not only apprehend an individual for committing a disorderly persons offense but may also apprehend that individual for violating a municipal ordinance involving a breach of the peace offense. An arrest without a warrant for a violation of a municipal ordinance may be made where the offense is committed upon view of the officer and the offender must be either a disorderly person or have committed a breach of the peace. *See State v. Hurtado, 219 N.J. Super. 12 (App. Div. 1987), reversed o.b., 113 N.J. 1 (1988)*.

Even when an arrest is justified, these common law and statutory rights are not licenses to exercise an unlimited detention. A law enforcement officer may not detain a person for an unreasonable time, after arrest, without taking him/her before the nearest magistrate. *Cannon v. Krakowitch, 54 N.J. Super. 93 (App. Div. 1959)*.

A private citizen has the same duty as a law enforcement officer to take the arrested party before a magistrate within a reasonable time. *See State v. Ferraro, 81 N.J. Super. 214 (Cty. Ct. 1963); Nelson v. Eastern Airlines, Inc., 128 N.J.L. 46 (E. & A. 1942); Jackson v. Miller, 84 N.J.L. 189 (Sup. Ct. 1913); N.J.S.A. 2A:169-3*.

If the arrest by the law enforcement officer is made with a warrant based on proper complaint being made and a hearing held before a magistrate, then an action for false arrest cannot be maintained. *Gierman v. Toman, 77 N.J. Super. 18 (Law Div. 1962); Baldwin v. Pt. Pleasant Beach and Surf Club, 3 N.J. Super. 284 (Law Div. 1949)*.

It is interesting to note that even if the arrest should prove illegal, a private citizen has no right to use force to resist arrest against one he/she knew or had reason to know was an authorized police officer engaged in the performance of his/her duties. *State v. Koonce*, 89 N.J. Super. 169 (App. Div. 1965). *See also State v. Lawrence*, 142 N.J. Super. 208 (App. Div. 1976). In such a situation, a defendant law officer may be able to avail himself/herself of a counterclaim for assault and battery.