

CODE OF GEORGIA

Title 17. CRIMINAL PROCEDURE

Chapter 4. ARREST OF PERSONS

Article 3. WARRANTS FOR ARREST

§ 17-4-40. Persons Who May Issue Warrants For Arrest Of Offenders Against Penal Laws; Persons Who May Issue Warrants For Arrest Of Peace Officers

(a) Any judge of a superior, city, state, or magistrate court or any municipal officer clothed by law with the powers of a magistrate may issue a warrant for the arrest of any offender against the penal laws, based on probable cause either on the judge's or officer's own knowledge or on the information of others given to the judge or officer under oath. Any retired judge or judge emeritus of a state court may likewise issue arrest warrants if authorized in writing to do so by an active judge of the state court of the county wherein the warrants are to be issued.

(b)(1) If application is made for a warrant by a person other than a peace officer or law enforcement officer and the application alleges the commission of an offense against the penal laws, the judge or other officer shall schedule a warrant application hearing as provided in this subsection unless the person accused has been taken into custody by a peace officer or law enforcement officer or except as provided in paragraph (6) of this subsection ; provided, however, that a warrant may be denied without the notice required in paragraph (2) of this subsection where the application form and any testimony from the affiant provided at the time of the application do not demonstrate probable cause for issuing a warrant.

(2) Except as otherwise provided in paragraph (6) of this subsection, a warrant application hearing shall be conducted only after attempting to notify the person whose arrest is sought by any means approved by the judge or other officer which is reasonably calculated to apprise such person of the date, time, and location of the hearing.

(3) If the person whose arrest is sought does not appear for the warrant application hearing, the judge or other officer shall proceed to hear the application and shall note on the warrant application that such person is not present.

(4) At the warrant application hearing, the rules regarding admission of evidence at a commitment hearing shall apply. The person seeking the warrant shall have the customary rights of presentation of evidence and cross-examination of witnesses. The person whose arrest is sought may cross-examine the person or persons applying for the warrant and any other witnesses testifying in support of the application at the hearing. The person whose arrest is sought may present evidence that probable cause does not exist for his or her arrest. The judge or other officer shall have the right to limit the presentation of evidence and the cross-examination of witnesses to the issue of probable cause.

(5) At the warrant application hearing, a determination shall be made whether or not probable cause exists for the issuance of a warrant for the arrest of the person whose arrest is sought. If the judge or other officer finds that probable cause exists, the warrant may issue instant.

(6) Nothing in this subsection shall be construed as prohibiting a judge or other officer from immediately issuing a warrant for the arrest of a person upon application of a person other than a peace officer or law enforcement officer if the judge or other officer determines from the application or other information available to the judge or other officer that:

(A) An immediate or continuing threat exists to the safety or well-being of the affiant or a third party;

(B) The person whose arrest is sought will attempt to evade arrest or otherwise obstruct justice if notice is given;

(C) The person whose arrest is sought is incarcerated or otherwise in the custody of a local, state, or federal law enforcement agency;

(D) The person whose arrest is sought is a fugitive from justice;

(E) The offense for which application for a warrant is made is deposit account fraud under Code Section 16-9-20, and the person whose arrest is sought has previously been served with the ten-day notice as provided in paragraph (2) of subsection (a) of Code Section 16-9-20; or

(F) The offense for which application for the warrant is made consists of an act of family violence as defined in Code Section 19-13-1.

In the event that the judge or officer finds such circumstances justifying dispensing with the requirement of a warrant application hearing, the judge or officer shall note such circumstances on the face of the warrant application.

(7) No warrant shall be quashed nor evidence suppressed because of any irregularity in proceedings conducted pursuant to this subsection not affecting the substantial rights of the accused under the Constitution of this state or of the United States.

(8) Nothing contained in this subsection shall prohibit a judge from denying a warrant based upon the application and testimony heard at the time such application is made without requiring notice to the person whose arrest is sought.

(c) Any warrant for the arrest of a peace officer, law enforcement officer, teacher, or school administrator for any offense alleged to have been committed while in the performance of his or her duties may be issued only by a judge of a superior court, a judge of a state court, or a judge of a probate court.

History. Amended by [2010 Ga. Laws 423, §1](#), eff. 7/1/2010.