

Citizen's Arrest and Self-defence

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Citizen's Arrest

The power to make a citizen's arrest under the Crimes Act 1961 is not as wide as people assume. In fact there is no power at all but there may be justification or protection from criminal responsibility. Justification means people making the arrest are not guilty of an offence and not liable to any civil proceeding. Protected from criminal responsibility means people making the arrest are not liable to any proceedings except a civil proceeding.

Section 35. Arrest of persons found committing certain crimes - Every one is justified in arresting without warrant - (a) Any person whom he finds committing any offence against this Act that is punishable by death or for which the maximum punishment is not less than 3 years' imprisonment: (b) Any person whom he finds by night committing any offence against this Act.

Under subsection (a) of section 35 a person making an arrest for theft is only protected from criminal or civil liability if the value of the property stolen exceeds \$1,000. The penalty for theft of property valued over \$1,000 is imprisonment for a term not exceeding 10 years. The penalty for theft of property valued over \$500 and under \$1,000 is imprisonment for a term not exceeding 1 year, and for property valued \$500 or less the penalty is a term of imprisonment not exceeding 3 months.

Section 36. Arrest of person believed to be committing crime by night - Every one is protected from criminal responsibility for arresting without warrant any person whom he finds by night in circumstances affording reasonable and probable grounds for believing that that person is committing an offence against this Act.

In the Crimes Act night means the interval between 9 o'clock at night and 6 o'clock in the following morning. Note that under Section 36 or subsection (b) of section 35, the crime or offence must be against the Crimes Act 1961. The Crimes Act covers many serious crimes such as burglary, robbery and home invasion but it does not cover minor offences such as disorderly behaviour or trespassing. It covers arson but not lighting fires as described in the Summary Offences Act. These examples serve to show the difficulty for the layperson in determining the situations in which he or she is justified in making a citizen's arrest. If he or she gets wrong there is the potential to face criminal charges for assault and civil liability for false imprisonment (false arrest or detention). Where an offence against the Crimes Act has actually been committed, then a person who arrests someone he or she believes on reasonable and probable grounds did it, is protected from criminal but not civil liability (section 37 Crimes Act).

Assisting Police

People are protected from criminal responsibility if they have been asked by a constable (any police officer) to help arrest any person believed or suspected to have committed any offence unless they know that there is no reasonable ground for the belief or suspicion. The same protection and conditions apply to being called to assist any other officer or person exercising a statutory power of arrest such as a Fishery Officer enforcing the Fisheries Act 1996 or a Officer of Customs enforcing the Misuse of Drugs Act 1975.

Shoplifting

People suspected of shoplifting are often asked to go to the manager's office. Shop staff have no authority to detain people, but the reality is that very few people are going to go to the effort to take legal action against shop staff for detaining them. The Police are likely to have been called. The police can arrest and the summary of facts they put before the court will include comment on whether or not the offender was co-operative or attempted to evade detection.

Shops also have the right to recover their goods and can ask to see inside people's bags. People do not have to reveal the contents of their bags but if they have nothing to hide they should probably co-operate to alleviate suspicion. Shops may display signage saying that entry is conditional upon management having the right to search your bag, however this is still not legal and binding but can lead to the shopper being trespassed from the shop for not complying. The police will search an offender's bag upon arrest.

Apart from criminal conviction, possible job loss, difficulty obtaining entry to some countries and public humiliation, shoplifters can be issued with a trespass notice and the shop can take civil action to recover goods and seek damages.

Self-defence

Section 48 of the Crimes Act 1961 provides justification, which means a person is not guilty of an offence and not liable to any civil proceeding, for using self-defence in some circumstances to protect themselves or others.

Section 48. Self-defence and defence of another - Every one is justified in using, in the defence of himself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use.

Section 48 does not provide immunity from prosecution for using self-defence. Unless the circumstances clearly show the force used was appropriate and in self-defence, the person who has used the force may have to explain their justification to a criminal court.

There are also circumstances in which a person, and anyone acting lawfully to assist the person and under his authority, is justified in using reasonable force to protect his property. This includes resisting having something taken by a trespasser, defending his dwellinghouse from someone breaking in, and preventing trespassing and removing trespassers, but does not permit a person to strike or do bodily harm to the trespasser in the process.

Safety first

Your first concern should always be your own safety and that of others with you. Never take the law in to your own hands or take unnecessary risks. If there are intruders on your property, call the police. It is a Police job and they are trained to deal with trespassers and other criminals. Incidents can quickly get out of hand.

If living on a farm and leaving the house to investigate something untoward, first ensure that someone knows where you are going as much as possible about what you are checking, and how long you expect it will take. This could involve phoning the police or your neighbour, waiting for a neighbour to join you, and taking a mobile phone or handheld radio with you. Ensure the phone or radio is charged and working.

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Giving a good description

Unless it is absolutely necessary to take self-defence action to avoid harm, the best thing anyone can do is to provide a good description for the Police of anyone they see acting suspiciously or committing a crime. For further information see the fact sheet on Giving a Good Description.

If you do see a crime being committed, dial 111 immediately and ask for Police. Keep calm, give your name, address and telephone number. Report where and what is happening. Stay on the phone and, if you can safely, keep watching and write down any further description.

New Zealand legislation can be located at this address under Statutes.

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