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CRIMINAL PROCEDURE

Arrest of Persons: Family Violence Provisions: Unmarried Cohabitation

CODE SECTION:	O.C.G.A. § 17-4-20 (amended)
BILL NUMBER:	HB 1447
ACT NUMBER:	1445
SUMMARY:	The Act allows a police officer to make an arrest without a warrant where there is probable cause to believe a criminal offense involving family violence has occurred between persons of the opposite sex living together in a meretricious relationship.

History

Early provisions of Georgia law allowed a police officer to make a warrantless arrest if an offense occurred in his presence, if an offender was attempting to escape, or if lack of an arrest would be likely to cause a "failure of justice."¹ In 1981, Georgia Code Annotated § 27-207 was amended to address the problem of domestic violence by extending the circumstances for warrantless arrest to include situations where an officer had "probable cause to believe that an act of family violence" had occurred.² "Family violence" was defined as any felony or a named offense (*e.g.*, battery) occurring "between spouses, parents and children, or other persons related by consanguinity or affinity living in the same household."³

When the Georgia Code was revised in 1981, the Legislature divided the provisions of Georgia Code Annotated § 27-207 and recodified them in separate titles. The circumstances under which an arrest could be made without a warrant were codified in O.C.G.A. § 17-4-20 (Criminal Procedure)⁴ and the definition of family violence was codified in O.C.G.A. § 19-13-1 (Domestic Relations).⁵

Applying these two provisions together, law officers called to the scene of domestic violence could make a warrantless arrest if the individuals involved were married. However, officers were not authorized to make a

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1. 1873 Ga. Laws 855.
 2. 1981 Ga. Laws 882, § 6.
 3. 1981 Ga. Laws 880, § 1 (emphasis added).
 4. O.C.G.A. § 17-4-20 (1982).
 5. O.C.G.A. § 19-13-1 (1982).

warrantless arrest when the violence involved a couple living together but not known to be married.⁶

HB 1447

The Act amends O.C.G.A. § 17-4-20 to broaden its application, permitting a warrantless arrest when a criminal offense described in O.C.G.A. § 19-13-1⁷ "has occurred between persons of the opposite sex dwelling together openly in a meretricious relationship,"⁸ thereby protecting abused victims and their children even if the couple involved is unmarried.

The original bill attempted to achieve the same result by amending O.C.G.A. § 19-13-1 to include the named offenses occurring between "persons . . . in a meretricious relationship" *within* the definition of "family violence".⁹ This approach was viewed by some as an "attack on the family unit" and an unwelcome attempt by government to redefine "family".¹⁰ The substitute bill which was enacted attempted to resolve this issue by leaving the "family violence" definition in O.C.G.A. § 19-13-1 unchanged and instead amending O.C.G.A. § 17-4-20. However, opponents still argue that the new O.C.G.A. § 19-13-1 jeopardizes the concept of "family unit" by sanctioning cohabitation by unmarried couples.¹¹

6. In practice, law officers without warrants requested proof of marriage before arresting a person for violence against a cohabitant. As a result, unmarried victims of domestic violence were sometimes left inadequately protected. Interview with Pepe Stevenson, Community Resource Specialist for Atlanta Council on Battered Women, in Atlanta (Apr. 8, 1986).

7. The criminal offenses include: "(1) Any felony; or (2) Commission of offenses of battery, assault, criminal damage to property, unlawful restraint, or criminal trespass." O.C.G.A. § 19-13-1 (1982).

8. O.C.G.A. § 17-4-20 (Supp. 1986).

9. HB 1447, 1986 Ga. Gen. Assem. § 1 (as introduced).

10. *Domestic Violence Bill Passes House With Murphy's Help*, Atlanta J. & Const., Feb. 15, 1986, at 1B, col. 4.

11. *New Domestic Violence Law to Protect Married Women*, Atlanta Const., Apr. 7, 1986, at 6A, col. 2.