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## HB 479: Repeal of Georgia's Citizen's Arrest Law

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## CRIMINAL PROCEDURE

***Arrest of Persons: Amend Title 17 of the Official Code of Georgia Annotated, Relating to Criminal Procedure, so as to Revise Certain Arrest Powers; Provide for Arrests by a Law Enforcement Officer Outside of the Jurisdiction of his or her Employing Law Enforcement Agency under Certain Circumstances; Revise the Grounds for Arrest by a Private Person; Repeal in its Entirety Article 4 of Chapter 4, Relating to Arrest by Private Persons; Provide for Definitions; Provide for the Detaining of Certain Persons Reasonably Suspected of Having Committed Certain Crimes under Certain Circumstances; Provide for Procedures; Conform a Reference; Amend Article 5 of Chapter 2 of Title 35 of the Official Code of Georgia Annotated, Relating to Motor Carrier Compliance Division, so as to Provide for the Powers of Detention by a Weight Inspector; Amend Chapter 38 of Title 43 of the Official Code of Georgia Annotated, Relating to Operators of Private Detective Businesses and Private Security Businesses, so as to Repeal Certain Powers of Detention for Licensees or Registrants under Such Chapter; Amend Article 4 of Chapter 7 of Title 51 of the Official Code of Georgia Annotated, Relating to Detention or Arrest on Suspicion of Shoplifting or Film Piracy, so as to Provide for Certain Immunity from Liability for Certain Owners and Operators of Retail Establishments and Food Service Establishments and Their Agents and Employees for the Detention of Certain Individuals; Provide for Related Matters; Provide for an Effective Date and Applicability; Repeal Conflicting Laws; and for Other Purposes.***

CODE SECTIONS:	O.C.G.A. §§ 17-4-20 (amended); -4-60 (repealed), -4-80 (new); 35-2-105 (amended); 43-38-13 (repealed); 51-7-60 (amended)
BILL NUMBER:	HB 479
ACT NUMBER:	264
GEORGIA LAWS:	2021 Ga. Laws 625

SUMMARY: The Act revises private arrest powers and repeals the Georgia Citizen’s Arrest Law in its entirety. The Act provides certain arresting powers for law enforcement officers when acting outside of their jurisdiction. In addition, the Act clarifies detention powers for shopkeepers of retail, food service establishments, and other business entities under certain circumstances.

EFFECTIVE DATE: May 10, 2021

### *History*

On February 23, 2020, two armed residents near Brunswick, Georgia pursued and shot Ahmaud Arbery, a twenty-five-year-old Black man.<sup>1</sup> Initially, the local district attorney used Georgia’s citizen’s arrest law to justify the shooting.<sup>2</sup> After a video of the incident surfaced, however, the police arrested and charged Gregory McMichael, Travis McMichael, and William Bryan for the murder of Mr. Arbery.<sup>3</sup> Although not named after Mr. Arbery, House Bill (HB) 479, a part of “Ahmaud’s legacy,” serves as an “agent of change.”<sup>4</sup> The shooting of Mr. Arbery and the misuse of Georgia’s citizen’s arrest law brought the law to the forefront of lawmakers’ attention.<sup>5</sup>

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1. Richard Fausset, *What We Know About the Shooting Death of Ahmaud Arbery*, N.Y. TIMES (July 13, 2021), <https://www.nytimes.com/article/ahmaud-arbery-shooting-georgia.html> [https://perma.cc/59ED-7D6K].

2. *Ahmaud Arbery: US State of Georgia Abolishes Citizen’s Arrest Law*, BBC (May 11, 2021), <https://www.bbc.com/news/world-us-canada-57066281> [https://perma.cc/P39D-W3QH].

3. Fausset, *supra* note 1; Emma Hurt, *In Ahmaud Arbery’s Name, Georgia Repeals Citizen’s Arrest Law*, NPR [hereinafter *In Ahmaud Arbery’s Name*], <https://www.npr.org/2021/05/11/995835333/in-ahmaud-arberys-name-georgia-repeals-citizens-arrest-law> [https://perma.cc/57QT-TVRW] (May 11, 2021, 12:00 PM). Mr. Arbery was out jogging in his community when Greg McMichael and Travis McMichael decided to pursue him after suspecting Mr. Arbery of robbery. Fausset, *supra* note 1. William Bryan “joined the chase and filmed the encounter.” *Id.* The video shows Greg and Travis McMichael approach Mr. Arbery and then shoot him in the street. *Id.*

4. Video Recording of House Proceedings at 25 min., 10 sec. (Mar. 8, 2021, PM 2) (remarks by Rep. Bert Reeves (R-34th)), <https://www.gpb.org/lawmakers/2021/day-28>.

5. *Id.*

Initially passed in 1863, Code section 17-4-60 (Georgia's citizen's arrest law) allowed private citizens to "apprehend a suspect without a warrant" so long as the citizen acted upon "reasonable and probable ground of suspicion" that the suspect committed a felony.<sup>6</sup> The law has been continuously reenacted over the last century and a half with little revision.<sup>7</sup> Referred to by many lawmakers across the state as "outdated and antiquated," the law was created when Georgia, and the country, lacked organized police forces.<sup>8</sup> Given the lack of organized police forces, law enforcement could take days to arrive after the commission of a crime.<sup>9</sup> Additionally, known racists created the law, and the law has been used throughout Georgia's history against Black Georgians.<sup>10</sup> At the time of its enactment, the law allowed White Georgians to recapture slaves, and the Ku Klux Klan eventually used the statute to informally justify violence, including lynching, against Black Georgians.<sup>11</sup> The law rarely, if ever, has been asserted in formal court proceedings.<sup>12</sup> The racist history of Georgia's citizen's arrest law made its repeal inevitable.<sup>13</sup>

Now, Georgia has various organized police forces, and technological advances have made it possible for police to arrive at a potential crime scene in minutes.<sup>14</sup> In other words, "there is less of a need for people to take the law into their own hands . . . than there was

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6. O.C.G.A § 17-4-60 (repealed 2021); Frances Robles, *The Citizen's Arrest Law Cited in Arbery's Killing Dates Back to the Civil War*, N.Y. TIMES (May 13, 2020), <https://www.nytimes.com/article/ahmaud-arbery-citizen-arrest-law-georgia.html> [<https://perma.cc/7MSN-DHLX>].

7. Alan J. Singer, *Citizen's Arrest: Racist at Its Roots*, HIST. NEWS NETWORK (May 24, 2020), <https://historynewsnetwork.org/article/175619> [<https://perma.cc/5RT9-GAH4>].

8. *Id.*; Telephone Interview with Pete Skandalakis & Robert Smith, Prosecuting Attorneys' Council of Georgia (PAC) (May 21, 2021) (on file with the Georgia State University Law Review) [hereinafter PAC Interview]; Video Recording of House Proceedings at 24 min., 47 sec. (Mar. 31, 2021, PM 2) [hereinafter House Sine Die Video] (remarks by Rep. Carl Gilliard (D-162nd)), <https://www.gpb.org/lawmakers/2021/day-40>.

9. Singer, *supra* note 7.

10. *Id.*; Patricia Murphy, Opinion, *The Ugly Past of Georgia's Citizen's Arrest Law*, ATLANTA J.-CONST. (Feb. 17, 2021), <https://www.ajc.com/politics/opinion-the-ugly-past-of-georgias-citizens-arrest-law/FTMNUIJNSNPREYBBLNZC56SZIY7U/> [<https://perma.cc/AMR6-BJYV>].

11. *Id.*; House Sine Die Video, *supra* note 8, at 24 min., 47 sec.

12. PAC Interview, *supra* note 8.

13. *Id.*

14. Telephone Interview with former Rep. Bert Reeves (R-34th) (May 25, 2021) (on file with the Georgia State University Law Review) [hereinafter Reeves Interview].

150 years ago.”<sup>15</sup> Most strikingly, the law’s racial history justified violence that “has no place in Georgia.”<sup>16</sup> As Governor Brian Kemp (R) described it, the law was “ripe for abuse.”<sup>17</sup>

In the summer of 2020, Chairperson Chuck Efstoration (R-104th) led the Georgia House Judiciary Committee’s efforts to learn about the origins and history of citizen’s arrest.<sup>18</sup> Along with the support of various groups and lawmakers, this work led Governor Kemp to release a bipartisan plan to repeal the statute in February 2021.<sup>19</sup>

HB 479 made its way through the Georgia General Assembly with little resistance from state legislators.<sup>20</sup> On the other hand, notable resistance came from sheriffs across Georgia.<sup>21</sup> In response, former Representative Bert Reeves (R-34th) worked with the Georgia Sheriffs’ Association and “made clear [the bill] does not change their other rights.”<sup>22</sup> Although Representative Reeves ensured that the language protected out-of-jurisdiction power, the Sheriffs’ Association still did not endorse the bill.<sup>23</sup>

HB 479 raised other concerns, including preservation of the right to self-defense and the defense of others, which sponsors and endorsers made clear that the bill would not affect.<sup>24</sup> Still, HB 479 held overwhelming support in both the House and the Senate, with only Senator Frank Ginn (R-47) voting against the bill.<sup>25</sup> The bill further

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15. *Id.*

16. Emma Hurt, *Kemp Proposes Repeal of Citizen’s Arrest Law Used to Defend Ahmaud Arbery’s Killing*, WABE (Feb. 16, 2021), <https://www.wabe.org/kemp-proposes-repeal-of-citizens-arrest-law-used-to-defend-ahmaud-arberys-killing/> [<https://perma.cc/CL46-GQZA>].

17. *In Ahmaud Arbery’s Name*, *supra* note 3.

18. Emma Hurt, *Georgia Lawmakers Begin Review of Controversial Citizen’s Arrest Law*, WABE (July 13, 2020), <https://www.wabe.org/lawmakers-begin-review-of-controversial-citizens-arrest-law/> [<https://perma.cc/XC65-7WFZ>].

19. *In Ahmaud Arbery’s Name*, *supra* note 3.

20. PAC Interview, *supra* note 8.

21. *Id.*; Reeves Interview, *supra* note 14.

22. Reeves Interview, *supra* note 14. Former Representative Reeves explained that many police powers, such as a sheriff’s ability to make arrests outside of their jurisdiction, are derived from the citizen’s arrest law. *Id.* By eliminating citizen’s arrest, the legislature “technically eliminated all of the precedent underneath it.” *Id.* To ensure those important powers did not also get repealed, lawmakers added specific language to HB 479 that retained a sheriff’s out-of-jurisdiction powers. *Id.*

23. *Id.*

24. *Id.*; PAC Interview, *supra* note 8.

25. State of Georgia Final Composite Status Sheet, HB 479, May 13, 2021.

demonstrates the bipartisan effort to show that Georgia is “too busy to hate.”<sup>26</sup>

Every state has a citizen’s arrest law in “some form or fashion.”<sup>27</sup> Yet, with the passage of HB 479, Georgia became the first state to repeal its citizen’s arrest law.<sup>28</sup> Georgia is now leading the pack as “legislatures in South Carolina and New York started the process of [filing] repeals.”<sup>29</sup>

### *Bill Tracking of HB 479*

#### *Consideration and Passage by the House*

Representatives Bert Reeves (R-34th), Don Hogan (R-179th), Carl Gilliard (D-162nd), Gloria Frazier (D-126th), Buddy DeLoach (R-167th), and William Boddie (D-62nd) sponsored HB 479 in the Georgia House of Representatives.<sup>30</sup> Representative Reeves introduced the bill into the House hopper on February 16, 2021.<sup>31</sup> The House read the bill for the first time on February 17, 2021, and assigned it to the House Judiciary Committee.<sup>32</sup> The House Judiciary Committee met on March 4, 2021, and a number of witnesses spoke on the bill during the committee meeting.<sup>33</sup> Representative Reeves then proposed several amendments.<sup>34</sup>

First, he proposed lines 44–57, which allow law enforcement officers outside of their jurisdictions—specifically sheriffs—to continue to make arrests during “hot pursuit[s]” or when serving warrants.<sup>35</sup> This amendment eased the concern of the Georgia Sheriffs’

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26. House Sine Die Video, *supra* note 8, at 25 min., 31 sec.; Telephone Interview with Rep. Carl Gilliard (D-162nd) (May 24, 2021) (on file with the Georgia State University Law Review) [hereinafter Gilliard interview].

27. Reeves Interview, *supra* note 14.

28. PAC Interview, *supra* note 8; Reeves Interview, *supra* note 14.

29. *Id.*; House Sine Die Video, *supra* note 8, at 25 min., 10 sec.

30. See Georgia General Assembly, HB 479, Bill Tracking [hereinafter HB 479, Bill Tracking], <https://www.legis.ga.gov/legislation/59726>.

31. State of Georgia Final Composite Status Sheet, HB 479, May 13, 2021.

32. *Id.*

33. Video Recording of House Judiciary Committee (Mar. 4, 2021) [hereinafter Mar. 4, 2021 House Committee Video], <https://livestream.com/accounts/25225474/events/8737140/videos/218322068>.

34. *Id.* at 36 min., 15 sec. (remarks by Rep. Bert Reeves (R-34th)).

35. *Id.*

Association regarding sheriff-jurisdictional-arrest power across Georgia.<sup>36</sup> Representative Reeves also proposed an amendment to Article 5 to clarify key terms in the bill, such as “food service establishment” and “law enforcement unit.”<sup>37</sup>

Lastly, House Judiciary Chairperson Chuck Efstration (R-104th) proposed a “friendly” amendment to fix a typo in the language of the bill.<sup>38</sup> The Judiciary Committee unanimously voted to pass the bill by substitute.<sup>39</sup> The Georgia House of Representatives passed the bill by substitute on March 8, 2021, by a vote of 173 to 0.<sup>40</sup>

### *Consideration and Passage by the Senate*

Senator Bill Cowsert (R-46th) sponsored the bill in the Senate.<sup>41</sup> The Senate read the bill for the first time on March 9, 2021, and assigned the bill to the Senate Judiciary Committee.<sup>42</sup> The Judiciary Committee then met on March 18, 2021, and favorably passed the bill.<sup>43</sup> The full Senate voted 33 to 19 on the bill as provided by the House on March 29, 2021; however, Senator Lindsey Tippins (R-37th) offered an amendment after this vote.<sup>44</sup> Specifically, Senator Tippins suggested to replace line seventy-two with “retail establishment or a food service establishment . . . or any business owning personal property located on their own property or on the property of others on which they[] [are] conducting their business activities.”<sup>45</sup> The amendment extends the privilege for retail or food establishments to include those that may need to detain a possible thief and “merely extends the right to preserve your own property by detaining those that

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36. *Id.*

37. 2021 Ga. Laws 625, §§ 1-7, at 625-29.

38. Mar. 4, 2021 House Committee Video, *supra* note 33, at 1 hr., 22 min., 45 sec. (remarks by Chairperson Efstration (R-104th)).

39. *Id.* (vote conducted by Chairperson Efstration).

40. State of Georgia Final Composite Status Sheet, HB 479, May 13, 2021; Georgia House of Representatives Voting Record, HB 479, #214 (Mar. 8, 2021).

41. HB 479, Bill Tracking, *supra* note 30.

42. State of Georgia Final Composite Status Sheet, HB 479, May 13, 2021.

43. *Id.*

44. *Id.*; Georgia Senate Voting Record, HB 479, #345 (Mar. 29, 2021).

45. Video Recording of Senate Proceedings at 1 hr., 10 min., 5 sec. (Mar. 29, 2021, PM 3) [hereinafter Senate Proceedings Video] (remarks by Sen. Lindsey Tippins (R-37th)), <https://www.gpb.org/lawmakers/2021/day-39>.

unlawfully or illegally take property from a business either on their own property or on property on which they are conducting business activities.”<sup>46</sup> The amendment also replaced lines 85–87 with the following language:

[A]n owner of any business entity operating on their own property or on the property of others on which they[] [are] doing business who have reasonable grounds to believe that the individual sought to be detained has committed or attempted to commit theft by taking as set forth in Code section 16-8-2 or theft of services as set forth in Code section 16-8-5.<sup>47</sup>

On March 29, 2021, the Senate again voted on the amended bill, and it passed with a vote of 52 to 1.<sup>48</sup>

#### *Final Consideration and the Governor's Signature*

On March 31, 2021, the bill, as amended by the Senate, went back to the House for a vote.<sup>49</sup> Representative Reeves moved that the House agree to HB 479 as amended by the Senate because the amendment created a “similar category . . . to businesses that have property that are doing business on their property or somebody else’s property.”<sup>50</sup> On that same day, the House passed the Senate amendment by a vote of 169 to 0.<sup>51</sup> The House then sent the bill to Governor Brian Kemp (R) on April 9, 2021.<sup>52</sup>

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46. *Id.*

47. *Id.*

48. Georgia Senate Voting Record, HB 479, #346 (Mar. 29, 2021); State of Georgia Final Composite Status Sheet, HB 479, May 13, 2021; Senate Proceedings Video, *supra* note 45, at 1 hr., 18 min.

49. House Sine Die Video, *supra* note 8, at 29 min., 43 sec.

50. *Id.* at 21 min., 35 sec. (remarks by Rep. Bert Reeves (R-34th)).

51. Georgia House of Representatives Voting Record, HB 479, #346 (Mar. 31, 2021); State of Georgia Final Composite Status Sheet, HB 479, May 13, 2021.

52. State of Georgia Final Composite Status Sheet, HB 479, May 13, 2021.

Governor Kemp signed HB 479 into law on May 10, 2021, becoming Act 264.<sup>53</sup> The Act also became effective on this date.<sup>54</sup> Governor Kemp dedicated the signature of the bill to Mr. Arbery's family as a late "birthday present to Ahmaud."<sup>55</sup>

### *The Act*

The Act amends the Official Code of Georgia Annotated Title 17 by repealing Article 4, Chapter 4; amending Article 5, Chapter 2, Title 35, relating to powers of weight inspectors; amending Chapter 38, Title 43, relating to private security businesses; and amending Article 4, Chapter 7, Title 51, relating to detention powers of owners and operators of private businesses.<sup>56</sup> The Act's overall purpose is to repeal the citizen's arrest law while providing certain rights for law enforcement and private business owners.<sup>57</sup>

### *Section 1*

Section 1 of the Act revises subsection (a) of Code section 17-4-20, which discusses arrests with and without warrants, deadly force, and similar topics.<sup>58</sup> Specifically, the Act reorganizes the beginning of the subsection by placing a law enforcement officer's warrantless arresting powers within their jurisdiction under subsection (a)(1)(B) instead of (a)(2).<sup>59</sup> The Act also adds language to the end of the subsection that explicitly delineates law enforcement's warrantless arresting powers outside of the officers' jurisdiction.<sup>60</sup> Under subsection (a)(2), law enforcement officers can make warrantless arrests outside of their jurisdiction when the offense is "committed in

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53. Maya T. Prabhu, *A 'Birthday Present to Ahmaud,' Georgia Overhauls Citizen's Arrest Law*, ATLANTA J.-CONST. (May 10, 2021), <https://www.ajc.com/politics/a-birthday-present-to-ahmaud-georgia-overhauls-citizens-arrest-law/YRXSTMLS7BEWJDPRQWZGZ3FAPU/> [https://perma.cc/QTC3-CAA5]; State of Georgia Final Composite Status Sheet, HB 479, May 13, 2021.

54. State of Georgia Final Composite Status Sheet, HB 479, May 13, 2021.

55. Prabhu, *supra* note 53.

56. 2021 Ga. Laws 625, §§ 1-7, at 625-29.

57. *Id.*

58. 2021 Ga. Laws 625, § 1, at 625-26 (codified at O.C.G.A. § 17-4-20 (Supp. 2021)).

59. *Id.*

60. *Id.*

such officer's presence or within [their] immediate knowledge," when the pursuit of an offender crosses jurisdictional lines, or when the officers are "aiding or assisting another law enforcement officer" who works in that jurisdiction.<sup>61</sup> Finally, Section 1 adds subsection (a)(3), which states, "[n]othing in paragraph (2) of this subsection shall be construed as limiting sheriffs or deputy sheriffs in the performance of the duties and responsibilities imposed on them by the Constitution and laws of this state."<sup>62</sup>

### *Section 2*

Section 2 repeals Code sections 17-4-60 through 17-4-62 in their entirety, which pertain to arrests by private persons (citizen's arrest).<sup>63</sup>

### *Section 3*

Section 3 adds Article 5 to Chapter 4, Title 17.<sup>64</sup> Now Code section 17-4-80, this Article sets forth detention rights for private businesses.<sup>65</sup> Subsections (a)(1)-(2) and (a)(4) provide the definitions of food service establishments, law enforcement units, and retail establishments that can be found in other Code sections.<sup>66</sup> Subsection (a)(3) adds the definition of "owner," which means "any person or his or her agent or employee who owns or operates a retail establishment or a food service establishment or any business owning personal property located on their own property or on the property of others on which they are conducting their business activities."<sup>67</sup>

Subsection (b) provides the specific circumstances in which a private person may detain another individual.<sup>68</sup> Subsections (b)(1)-(b)(3) create reasonable grounds exceptions.<sup>69</sup> Subsection (b)(1)

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61. O.C.G.A. § 17-4-20(a)(2) (Supp. 2021).

62. 2021 Ga. Laws 625, § 1, at 625–26 (codified at O.C.G.A. § 17-4-20 (Supp. 2021)).

63. 2021 Ga. Laws 625, § 2, at 626 (formerly found at O.C.G.A. §§ 17-4-60 to -62 (2020)).

64. 2021 Ga. Laws 625, § 3, at 626 (codified at O.C.G.A. § 17-4-80 (Supp. 2021)).

65. O.C.G.A. § 17-4-80 (Supp. 2021).

66. *Id.* § 17-4-80(a)(1)-(2), (4).

67. *Id.* § 17-4-80(a)(3).

68. *Id.* § 17-4-80(b).

69. *Id.* § 17-4-80(b)(1)-(b)(3).

allows the owner of a retail establishment to detain an individual if they have “reasonable grounds to believe that the individual sought to be detained has committed or attempted to commit” shoplifting, refund fraud, or “unlawful use of retail sales receipts or Universal Product Code labels.”<sup>70</sup> Subsections (b)(2) and (b)(3) permit owners of food service establishments and business owners operating on their own property or the property of another to detain individuals if they have “reasonable grounds to believe that the individual sought to be detained has committed or attempted to commit theft by taking” or “theft of services.”<sup>71</sup> Finally, subsections (b)(4)-(b)(5) allow weight inspectors and licensees under Chapter 38 of Title 43 to detain persons when “needed for purposes of performing his or her duties.”<sup>72</sup>

Further, the new Article sets forth the requirements and limitations of the private detention of another person.<sup>73</sup> Subsection (c) explains that the business owner must release the detained individual or contact law enforcement within a reasonable time.<sup>74</sup> Any detained person “who is not released shall be surrendered to a law enforcement officer,” and the business owner must surrender that individual’s personal belongings.<sup>75</sup>

Finally, subsection (d) addresses self-defense, the use of force, and other similar rights.<sup>76</sup> Subsection (d)(1) clarifies that this new Article does not limit or alter “any immunity or defense under Article 2 of Chapter 3 of Title 16.”<sup>77</sup> Code sections 16-3-20 through 16-3-28 address self-defense, defense of others, assisting law enforcement, defense of habitation, duty to retreat, stand-your-ground laws, and other related topics.<sup>78</sup> Further, subsection (d)(2) states that individuals acting pursuant to the Article cannot use force “intended or likely to cause great bodily harm or death . . . .”<sup>79</sup> The acting party, however,

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70. *Id.* § 17-4-80(b)(1).

71. O.C.G.A. § 17-4-80(b)(2)-(3) (Supp. 2021).

72. *Id.* § 17-4-80(b)(4)-(b)(5).

73. 2021 Ga. Laws 625, § 3, at 626–27 (codified at O.C.G.A. § 17-4-80 (Supp. 2021)).

74. O.C.G.A. § 17-4-80(c) (Supp. 2021).

75. *Id.*

76. 2021 Ga. Laws 625, § 3, at 626–27 (codified at O.C.G.A. § 17-4-80 (Supp. 2021)).

77. § 17-4-80(d)(1).

78. O.C.G.A. §§ 16-3-20 to -28 (2019).

79. § 17-4-80(d)(2).

may use reasonable force that “he or she reasonably believes is necessary to detain an individual.”<sup>80</sup>

#### *Section 4*

Section 4 amends Code section 17-6-1, which relates to offenses bailable, procedure, schedule of bails, and appeal bonds.<sup>81</sup> The Section strikes from subsection (c)(1), the phrase “or 17-4-62,” which relates to bail of a person detained in facilities other than municipal jails.<sup>82</sup>

#### *Section 5*

Section 5 amends Code section 35-2-102, which relates to the motor carrier compliance division.<sup>83</sup> The Section strikes the first sentence from subsection (d) of Code section 35-2-102, which reads, “[a] weight inspector is not a peace officer and shall not be authorized to carry a firearm or exercise any power of arrest other than a citizen’s arrest in accordance with Code [s]ections 17-4-60 and 17-4-61.”<sup>84</sup>

#### *Section 6*

Section 6 repeals Code section 42-38-12, which relates “to arrest powers of licensees and registrants.”<sup>85</sup>

#### *Section 7*

Section 7 revises Code section 51-7-60, which relates to “preclusion of recovery for detention or arrest of person suspected of shoplifting under certain circumstances,” by altering the language to reflect and reference the new Article added by section 3 of the Act.<sup>86</sup>

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80. *Id.*

81. 2021 Ga. Laws 625, § 4, at 628 (codified at O.C.G.A. § 17-6-1 (Supp. 2021)).

82. *Id.*

83. 2021 Ga. Laws 625, § 5, at 628 (codified at O.C.G.A. § 35-2-102 (Supp. 2021)).

84. *Id.*

85. 2021 Ga. Laws 625, § 6, at 628 (formerly found at O.C.G.A. § 43-38-13 (2020)).

86. 2021 Ga. Laws 625, § 7, at 628–29 (codified at O.C.G.A. § 51-7-60 (Supp. 2021)).

*Analysis*

Although the conversation surrounding HB 479 focused on the repeal of the citizen's arrest law, the bill codified two important provisions: (1) shopkeepers' power to detain and (2) sheriffs' powers to investigate and make arrests outside their jurisdiction.<sup>87</sup>

*Shopkeeper's Provision*

The first provision allows merchants or loss-prevention officers to detain thieves or those under the suspicion of stealing.<sup>88</sup> Merchants can detain thieves for a "reasonable time," which lawmakers describe as the length of time needed to question the individual and wait for the police's arrival.<sup>89</sup>

The same provision also applies to retail or food service establishments.<sup>90</sup> If patrons leave without paying for their food or drink, their act is considered no different from shoplifting.<sup>91</sup> Thus, the establishment may detain an individual, but it must release detainees within a reasonable time or contact law enforcement to make an arrest.<sup>92</sup> Importantly, the Act does not empower retail or food services personnel to make an arrest—trained law enforcement officers would carry this out.<sup>93</sup> Thus, the provision protects shopkeepers and retail establishments while removing their power to arrest.<sup>94</sup>

*Sheriff's Provision*

The second provision allows law enforcement officers to conduct investigations and make arrests outside of their jurisdictions.<sup>95</sup> If an offense is committed in an officer's presence or within the officer's

87. O.C.G.A. §§ 17-4-20(a), 17-4-80 (Supp. 2021).

88. *Id.* § 17-4-80(b).

89. *Id.* § 17-4-80(c); Senate Proceedings Video, *supra* note 45, at 1 hr., 0 min., 0 sec. (remarks by Sen. Cowsert (R-46th)).

90. Senate Proceedings Video, *supra* note 45, at 1 hr., 0 min., 0 sec.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. O.C.G.A. § 17-4-20(a) (Supp. 2021).

immediate knowledge, the Act permits that officer to make an arrest, no matter their location in the state.<sup>96</sup> Such powers, considered a hybrid type of citizen's arrest, fall under this new provision.<sup>97</sup> If an officer drives down the road and spots a fellow officer trying to make an arrest, the officer is allowed to help.<sup>98</sup>

Further, this provision allows campus police officers, who typically only go 500 yards off campus, and municipal police officers, who are not allowed to start an investigation outside of the municipal limits of the city, to make arrests.<sup>99</sup> The provision also allows the campus police officers and municipal police officers to serve warrants outside of their jurisdiction.<sup>100</sup> These examples of how police work outside their jurisdiction are permitted by the Act.<sup>101</sup>

### *Self-Defense Issue*

Although these two provisions are key in analyzing and understanding the Act, the ambiguity of the Act's application to self-defense raises one possible issue.<sup>102</sup> Opponents to the bill raised concerns that repealing citizen's arrest would eliminate the detention capabilities of self-defense laws; however, this concern was unjustified because Georgia's self-defense laws do not mention detention and only require individuals to act reasonably.<sup>103</sup>

This question regarding the ability to detain someone in self-defense could be raised in future litigation.<sup>104</sup> As noted in interviews with both the Prosecuting Attorneys' Council of Georgia and Representative Bert Reeves (R-34th), this issue may be easily resolved: an individual would not be arrested for false imprisonment for detaining someone in

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96. Video Recording of Senate Judiciary Committee Meeting at 1 hr., 46 min., 11 sec. (Mar. 17, 2021) [hereinafter Mar. 17, 2021 Senate Judiciary Video] (remarks by Rep. Bert Reeves (R-34th)), [https://www.youtube.com/watch?v=5onTG4yw\\_Kk&list=PLBff\\_azbJKlVze53YMibHR\\_FdvnAcU1Ju&index=11](https://www.youtube.com/watch?v=5onTG4yw_Kk&list=PLBff_azbJKlVze53YMibHR_FdvnAcU1Ju&index=11).

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. Mar. 17, 2021 Senate Judiciary Video, *supra* note 96, at 2 hr., 5 min.

103. *Id.*

104. *Id.*; Mar. 4, 2021 House Committee Video, *supra* note 33, at 32 min., 45 sec. (remarks by Rep. Bert Reeves (R-34th)).

self-defense under Georgia's defense of habitation and stand-your-ground laws.<sup>105</sup> In other words, repealing citizen's arrest does not impact self-defense laws in any way.<sup>106</sup>

Rather, the Act differentiates between defending others when faced with immediate danger and trying to detain or arrest someone without the presence of danger.<sup>107</sup> In the Senate Floor hearing, Senator Bill Cowsert (R-46th) discussed the example of the inappropriate use of deadly force to stop somebody suspected of stealing a television from a neighbor's house.<sup>108</sup> He stated, "[W]hen citizens try to play a police officer, not being trained and not having the full picture then, that's where we come up with these problems."<sup>109</sup> Moreover, Senator Lindsey Tippins (R-37th) mentioned this is the situation that happened to Mr. Arbery when the men tried to detain him as he left someone else's property.<sup>110</sup> Senator Tippins further explained that everyone has "the right to follow a vehicle speeding, . . . call a law enforcement officer, and give them information," but the Act does not "convey the right for you to intervene in the affairs of your neighbor unless . . . you are doing business."<sup>111</sup>

### *A Catalyst for the Future*

Important to note, this Act is the first of its kind in the United States.<sup>112</sup> Georgia is the first state to repeal its citizen's arrest law, and its repeal has become a catalyst for other states to begin looking at their own citizen's arrest laws.<sup>113</sup> Representative Gilliard, one of the sponsors of HB 479, reported that lawmakers from both South Carolina and New York reached out to him for assistance in repealing

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105. PAC Interview, *supra* note 8; Reeves Interview, *supra* note 14; Senate Proceedings Video, *supra* note 45, at 1 hr., 3 min., 32 sec.

106. PAC Interview, *supra* note 8; Reeves Interview, *supra* note 14; Senate Proceedings Video, *supra* note 45, at 1 hr., 3 min., 32 sec.

107. Senate Proceedings Video, *supra* note 45, at 1 hr., 3 min., 24 sec.

108. *Id.*

109. *Id.*

110. *Id.* at 1 hr., 12 min., 21 sec. (remarks by Sen. Tippins (R-37th)).

111. *Id.*

112. *In Ahmaud Arbery's Name*, *supra* note 3.

113. *Id.*

their states' citizen's arrest laws.<sup>114</sup> He is working closely with them to help advance bills similar to Georgia's.<sup>115</sup> Representative Gilliard also noted that the passage of HB 479 has allowed "a move across the nation that is feeding off of each other."<sup>116</sup> For instance, the Geneva Convention even took up the issue of citizen's arrest last year and issued a resolution.<sup>117</sup>

Representative Gilliard will also introduce the "Georgia Lynching Act" next session, which is another outdated law, like citizen's arrest, that needs change.<sup>118</sup> HB 479 has not only acted as a change agent across the nation but has also caused Georgia's lawmakers to investigate other Georgia laws, leading to discoveries of laws that may need reevaluation.<sup>119</sup>

### *Conclusion*

After the death of Ahmaud Arbery, repealing Georgia's citizen's arrest law was at the forefront of many General Assembly members' agendas during the 2021–2022 Georgia Legislative Session.<sup>120</sup> This Act maintained bipartisan support when codifying provisions for shopkeepers and out-of-jurisdiction sheriffs.<sup>121</sup> Importantly, the passage of HB 479 captured the attention of lawmakers across the nation.<sup>122</sup> Since the Act, lawmakers in Georgia and many other states continue to look into "outdated and antiquated laws."<sup>123</sup> As Representative Gilliard said, "we are just getting started."<sup>124</sup>

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114. Gilliard Interview, *supra* note 26.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. Mar. 4, 2021, House Committee Video, *supra* note 33, at 1 min., 0 sec. (remarks by Rep. Chuck Efstrotation (R–104th)).

121. Gilliard Interview, *supra* note 26; State of Georgia Final Composite Status Sheet, HB 479, May 13, 2021.

122. Gilliard Interview, *supra* note 26.

123. *Id.*

124. *Id.*