Scope of Legal Authority of Private Security Personnel

A REPORT PREPARED BY THE
PRIVATE SECURITY ADVISORY COUNCIL,
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,
U.S. DEPARTMENT OF JUSTICE

SCOPE OF LEGAL AUTHORITY OF PRIVATE SECURITY PERSONNEL

Prepared by the

PRIVATE SECURITY ADVISORY COUNCIL

to the

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
UNITED STATES DEPARTMENT OF JUSTICE

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Points of view or opinions expressed in this document are those of the Private Security Advisory Council, and do not necessarily represent the official position or policies of the Law Enforcement Assistance Administration, U.S. Department of Justice.

PRIVATE SECURITY ADVISORY COUNCIL of the

United States Department of Justice
Law Enforcement Assistance Administration

September 27, 1976

Mr. Richard W. Velde
Administrator
Law Enforcement Assistance Administration
U.S. Department of Justice
633 Indiana Avenue, N.W.
Washington, D.C. 20531

Dear Mr. Velde:

As Chairman of the Private Security Advisory Council, it gives me pleasure to forward the attached report, Scope of Legal Authority of Private Security Personnel, developed by the Council for the Law Enforcement Assistance Administration. This document is the culmination of many hours of volunteer effort by members of the Council and the members of the Law Enforcement/Private Security Relationships Committee.

In its continuing effort to improve the crime prevention and reduction capabilities of private security, the Council and its Law Enforcement/Private Security Relationships Committee feel that the sources of legal authority and restraints upon private security activities must be identified and shared with both private security and public law enforcement. Essentially, this report addresses those areas of legal involvement in which private security personnel may perform activities similar to the law enforcement functions of crime prevention and reduction.

Finally, the Advisory Council recommends that the Law Enforcement Assistance Administration give the widest possible dissemination to this document.

With best personal regards,

Sincerely,

Arthur J. Bilek
Chairman
Private Security Advisory Council

AJB:smb

Enclosure

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Since its inception, the Private Security Advisory Council has achieved a balanced perspective by the representative nature of its membership. All members of the Council and its six Committees are appointed by the Administrator of LEAA and serve without compensation. Members of the Council and its Committees include leaders and executives from both proprietary and contractual private security; public law enforcement; federal, state and local governments; as well as attorneys, insurance and business executives.

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PREFACE

This document, Scope of Legal Authority of Private Security Personnel, was developed by the Private Security Advisory Council and its Law Enforcement/Private Security Relationships Committee to create a greater awareness on the part of private security of the sources of legal authority and legal restraints upon the conduct of private security personnel. Although sources of legal authority and restraints upon private security are generally identified and discussed in this document, it is particularly important for the reader of this report to thoroughly research applicable legal provisions within their respective jurisdictions.

The major effort in developing this document was performed by the Law Enforcement/Private Security Relationships Committee, and special acknowledgement and appreciation is due the Chairman and members of that Committee: Garis F. Distelhorst (Chairman), Robert L. Arko, Dale G. Carson, George A. DeBon, Joseph M. Jordan, Joseph F. McCorry, Herbert C. Yost, and the three Council liaison members: Richard Clement, Howard C. Shook, and John L. Swartz.

This Committee was assisted in preparing this report by members of the Council's staff support contractors: PRC Public Management Services, Inc., and William C. Cunningham, Todd H. Taylor, David Weinstein, and Deborah Galvin of Hallcrest Systems, Incorporated.

The Advisory Council owes a debt of gratitude to Irving Slott, Federal Program Monitor to the Council, for his encouragement in the development of this document.

Arthur J. Bilek
Chairman
Private Security Advisory Council

THE PRIVATE SECURITY ADVISORY COUNCIL

The Private Security Advisory Council was chartered by the Law Enforcement Assistance Administration (LEAA) in 1972 to improve the crime prevention capabilities of private security and to reduce crime in public and private places by reviewing the relationship between private security systems and public law enforcement agencies, and by developing programs and policies regarding private protection services that are appropriate and consistent with the public interest.

The Council was an outgrowth of a meeting of private security representatives, called by LEAA in December 1971, to discuss the research and development efforts of LEAA that related to the private sector and the role of private security in the national effort to reduce crime. During the initial meeting, the representatives from private security overwhelmingly recommended that LEAA establish a national advisory committee, made up of persons with expertise in private security, to provide LEAA with continuing advice on matters of appropriate concern. LEAA followed that recommendation, and the Private Security Advisory Council was created shortly thereafter.

In September of 1974, the membership of the Council was broadened to include representation from the public law enforcement agencies and from consumers of private security services. Since its beginning, the Council has worked on a number of tasks related to security services provided by the private sector. Since its inception, the goals and objectives of the Council have been:

- To act as an advisory to LEAA on issues of national importance which impact, or are impacted by, the private security industry;
- To raise the standards and increase the efficiency of the private security industry;
- To increase cooperation and understanding between the private security industry and public law enforcement; and
- To provide a viable national forum and point of leadership for matters relating to private security.

To achieve those goals, six committees of the Council have been established: Alarm Committee, Armored Car Committee,

Environmental Security Committee, Guards and Investigators Committee, Law Enforcement/Private Security Relationships Committee, and the Prevention of Terroristic Crimes Committee. Each committee has been assigned specific objectives related to accomplishment of Council goals.

The responsibilities and duties of the Private Security Advisory Council are advisory in nature. It cannot prescribe or promulgate rules or regulations. Its findings or recommendations are not official; they can be accepted or rejected by LEAA.

The Council operates pursuant to the provisions of the Federal Advisory Committee Standards Act, Public Law 92-463, LEAA Notice NI300.2, OMB Circular No. A-63, and any additional orders and directives issued in implementation of the Act. The Council was established under the authority of Section 517 of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351) as amended by Public Law 91-644 and the scope of its functions is limited to the duties specified in its charter.

The Council has published a number of other advisories to LEAA on a variety of issues. These include:

- A Report on a Model Hold-Up and Burglar Alarm Business Licensing and Regulatory Statute;
- A Report on the Regulation of Private Security Guard Services, including a Model Private Security Licensing and Regulatory Statute;
- Terroristic Crimes: An Annotated Bibliography;
- Potential Secondary Impacts of the Crime Prevention Through Environmental Design Concept;
- Private Security Codes of Ethics for Security Management and Security Employees;
- Law Enforcement and Private Security Sources and Areas of Conflict;
- Prevention of Terroristic Crimes: Security Guidelines for Business, Industry, and Other Organizations;
- The Private Security Advisory Council: Its History, Organization, Goals, and Accomplishments;
- Reports on the Private Security Advisory Council Meetings of June, 1974; September, 1974; December, 1974; February, 1975; July, 1975; October, 1975; November, 1975; and April, 1976.

Copies of these Council reports are available without cost from LEAA.

In addition to the above reports, the Private Security Advisory Council and its Committees are preparing other advisory reports to LEAA on the need for, and requirements of, a national study of the false alarm problem; the requirements of a comprehensive manual on countermeasures against terroristic crimes; training curricula for private security guards; standards for private investigators; and crime impact and residential security statements as environmental security techniques.

I. INTRODUCTION

The scope of legal authority for private security is not clearly delineated in any one body of law. It is found indirectly in the various forms of law -- constitutional, judge-made, statutory and administrative rule-making; and it is implicit in the substantive areas of law -- criminal, tort and contract. Law does not serve as a detailed "book of reference" concerning the exact parameters of legal authority. Rather, law establishes precedents to be used as guidelines for preventing injuries and damages that may result in lawsuits or state actions. Since the law, then, is quite often a source of authority rather than a definition of authority, it is essential to identify the sources of authority and restraints upon the conduct of private security personnel. This document will:

- outline the bodies of law associated with the scope of authority of private security personnel;
- examine the major categories and the cases of private security legal involvement pertaining to their degree of authority;
- review possible legal sources of privileges and immunities for law enforcement and private security personnel.
- discuss and analyze problem areas related to legal restraint of private security personnel.

Most frequently, the private security employee, under the law, has the equivalent power of a private citizen to arrest, to defend himself and others, to investigate, and to carry firearms. Usually he does not have special police powers, nor is he subject to the constitutional and statutory limitations of public law enforcement. Thus, most law delineating the scope of legal authority of private security is found in private citizens' rights and limitations. What follows, in summary form, is a discussion of the major bodies of law affecting private security, which are briefly described in a section preceding the significant issues in private security legal involvement.

This document has been prepared primarily to address those areas of legal involvement in which private security personnel perform activities similar to the police functions of crime prevention and reduction, and in which they interact with public

law enforcement and other components of the criminal justice system. Improvement of effective working relationships in these areas has been the major objective of the Law Enforcement and Private Security Relationships Committee of the Private Security Advisory Council. There are other legal issues of concern to private security, for example, liability in the protection of patrons, customers and visitors from hazards, and the rendering of emergency medical assistance. However, these issues and others which are not of notable importance to the work of the Private Security Advisory Council or its Committees have been excluded from analysis in this document. The issues affecting private security personnel which have been selected for analysis include:

- arrest and detention;
- false imprisonment;
- search;
- investigations and interrogations;
- use of force;
- use of firearms;
- invasion of privacy;
- defamation.

II. SOURCES OF LEGAL AUTHORITY FOR PRIVATE SECURITY PERSONNEL

Our legal system attempts to strike a balance between the rights of persons and private organizations to protect lives and property from outside interference and the rights of private citizens to be free from the power or intrusions of others. The attempt to balance competing and conflicting interests is nowhere more apparent than in the field of private security. On the one hand, the private sector uses in-house (proprietary) or contractual security employees to protect their own lives and property and that of their customers from the mugger, the shoplifter, the pickpocket, the hijacker, the embezzler, the arsonist, the vandal, and other troublesome people. On the other hand, all citizens are entitled to be free from assault and battery by others, unlawful detention or arrest, injury to reputation, intrusion into personal privacy and solitude, and illegal invasions of one's land, dwelling or personal property.

In order to perform effectively, private security personnel must, in many instances, walk a tight-rope between permissible protective activities and unlawful interferences with the rights of private citizens. The precise limits of the authority of private security personnel are not clearly spelled out in any one set of legal materials. Rather, one must look at a number of sources in order to define, in even a rough way, the dividing line between proper and improper private security behavior. These sources are discussed briefly below.

A. CONSTITUTIONAL LAW

The United States Constitution places many limitations on the conduct of governmental officials, including police and quasi-police agencies and other components of the criminal justice system. But, the Constitution says little about the rights of private citizens in their relationship to other citizens. Most constitutional rights of an individual relate to governmental or state action and not to activities of other private persons or corporations.

Since state action is usually required to enforce constitutional restrictions, such restrictions do not generally pertain to private security activities. In six specific instances, however, constitutional restrictions could apply to private security when private security personnel: (1) act as agents for public law enforcement agencies; (2) act in concert with public law enforcement officials; (3) obtain evidence as agents for law enforcement

personnel for use in a prosecution; (4) act with deputized police powers; (5) act with limited police powers granted by a licensing or regulatory body; and (6) are employed by a public authority. The first three instances are addressed in later sections according to the appropriate areas of legal involvement; a discussion of the latter three instances follows.

Except in cases of deputization, only in rare instances will private security actions be classified as state action, and therefore subject to constitutional restraints. But there are circumstances when actions of private security personnel may be classified as state action. The question of whether or not the licensing of private security personnel constitutes state action is raised in Weyadt v. Mason's Store, Inc., 279 F. Supp. 283, W.D. Pa., (1968). In this case the Court held that although a private detective of a store was licensed under the Pennsylvania Private Detective Act and was acting under "color of the law," the law is not a deputization law and does not invest the licensee with authority of state law. Thus, the private detective of the store was only acting with the authority of a "private citizen." When private security personnel are hired on a contractual basis by a public authority, they are in fact acting with authority of state law and are subject to constitutional restrictions upon the exercise of power. Williams v. United States, 341 U.S. 97, (1951).

B. CRIMINAL LAW

Criminal codes are sources of restraint for the private security officer. In criminal law, an action is defined as a "social harm" to which the offender is answerable to society (not to an individual, as in torts) and is punishable by law.[2] Generally, criminal law acts only as a deterrent to improper activity by private security officers; that is, criminal law operates as a deterrent to the extent that the law is known, that the probability of being convicted is sufficient, and that the criminal justice system operates effectively in imposing sanctions. Because intent to commit a crime is required, crimes are narrowly defined and the prosecution must prove guilt beyond a reasonable doubt. The criminal law can best be seen as establishing outer limits on the behavior of private security employees rather than as a day-to-day regulatory device.

C. TORT LAW

The law of torts is found in both legislation and court-developed common law. There is no one body of tort law; it varies from state to state, although there is an ongoing attempt to achieve some conformity through various model laws and the Restatement of Torts which is published by the American Law Institute. Tort law is defined as a body of law that governs the civil relationships between people.[3] It defines and creates causes of actions permitting

one person to remedy the wrongs committed against him by another, and has the effect of restraining conduct by creating remedial avenues for the one injured. These remedies may either be equitable (the enjoining of certain conduct) or legal (the recovery of money damages for injuries received). Tort law differs from criminal law in that private parties are suing, and the suing party is seeking relief for himself and not punishment of the offending party.

Early rules of arrest, prevention of crime, self defense, defense of others and of property have their basis in common law tort principles. Further, tort law protects an individual's person and property from injurious conduct, his reputation from disparagement, his privacy from unreasonable exposure, and his mental well being from emotional distress. Conduct which harms another and violates norms of reasonableness is generally actionable if done without privilege or immunity. To a certain extent, tort law defines privileges and immunities that offer a source of authority for private conduct.

Tort law does not provide specific authority for private security officers, but it does define, at the least, some limits on the conduct of private security personnel. It allows for an injured party to bring a lawsuit for damages and injuries caused by "tortious" conduct of private security personnel. The courts follow precedents when established, and create new causes of action to fit novel cases. Thus, tort law restrains the authority of private security only by the threat of a subsequent lawsuit, and provides general parameters on reasonable conduct through case law precedents.

In tort law, the private security employee usually has the equivalent status of a private citizen. Private security personnel may be held liable in a tort case in three respects: intent to cause harm, negligence, and liability without intent or negligence.[4] Many tort cases involve aspects of both negligence and intent to do harm. Intention may be involved in self-defense or protection of property while negligence may be involved in failure to establish probable cause in an arrest or detention. Liability without fault, that is, without carelessness or intent to cause harm, is not generally applicable to the private security field.

D. CONTRACT LAW

There are several types of contractual arrangements which are important to the scope of authority of private security personnel. The terms of a contract between a business enterprise and a security service may limit the private security officer's authority and define more stringent standards of behavior than are defined in other bodies of law. The contract between the security agent and the hiring company normally defines and governs

the respective liabilities of all parties for the business enterprise utilizing the contractual security service. If there is harm to a third party, the contract usually establishes who is to be responsible and who is to carry insurance for which risks. The courts have, however, on occasion in suits by third parties, held a person liable even though a contract said that another was to be responsible. (See, Annotation, "Liability of One Contracting for Private Police or Security Services for Acts of Personnel Supplied," 38 ALR 3d 1332 (1971)). In addition, union contracts may impose restraints on employers and thus on private security personnel in such areas as search of employee lockers and belongings and the conduct of investigations into employee wrongdoing.

E. REGULATORY LAWS

The restraints on the conduct of private security personnel may also be garnered from a variety of state and local statutes, rules, ordinances and regulations governing private security business and activity. Much of this legislation is in the form of licensing and registration statutes which place requirements on qualifications of security personnel to obtain or retain a license or permit. To a limited extent these statutes also designate proper forms of conduct and restrain other types of conduct.

Many of these licensing and regulatory statutes provide for suspension or revocation of a license and include a provision requiring surety bonds or insurance for the security agency to protect clients and employees. Special powers may be granted to private security personnel, e.g., the right to carry a weapon. The statutory provisions vary by state and locality, and enforcement procedures vary even more. These provisions, however, are a binding limitation on the authority of private security personnel.

In 1975 there were 34 states that license and regulate some aspect of private security on a statewide basis. In five states, regulation is for revenue purposes only, and 11 states do not have any state statutes regulating private security (see Appendix A). Eleven of the 34 states licensing on a statewide basis do so through an established regulatory board, while the remaining states generally designate a state agency, for example, the Department of State Police or Public Safety, Department of Commerce or Consumer Affairs, or the Attorney General's Office (see Appendix B).

While arrest or police powers are not generally conferred on private security personnel by state statute, in some states, through enabling legislation or county and local ordinances, special police powers are granted to licensed private security personnel under specific conditions. In addition, forty-five states, through state statute or common law, permit arrests by private citizens.

The majority of states have enacted anti-shoplifting statutes which permit detention of suspected shoplifters by private security agents of a merchant. In all of these instances of special police powers, citizens' arrest privileges and shoplifting detention statutes, there is considerable variation among states as to the privileges conferred and legal restraints imposed on the conduct of private security personnel.

The limitations of time and funding precluded a state-by-state analysis of the scope of legal authority of private security officers, but it is essential that the reader of this document concerned with delineating the legal authority of private security personnel closely examine the laws of the state in question. This is particularly important for those proprietary and contractual security entities that operate in more than one state. Also, in some states there is considerable variation among provisions of county and local ordinances which regulate private security, and these should also be closely examined. In California, for example, there are eight counties and 63 cities which have separate ordinances regulating some aspect of private security.

III. MAJOR LEGAL ISSUES AFFECTING PRIVATE SECURITY PERSONNEL

A. ARREST

1. Elements of Arrest

An arrest occurs when an individual is lawfully deprived of his personal freedom for the purpose of securing the administration of justice or the law.[5] Merely touching an individual may be classified as an arrest and one may be liable for battery, false arrest or false imprisonment if the person is not privileged by law to do so.[6] The elements of arrest are defined in People v. Howlett, 1 Ill. App. 3d 906. "Every arrest involves authority to arrest, assertion of that authority with intention to effect an arrest and restraint of person to be arrested."

2. Arrest With a Warrant

The Fourth Amendment to the Constitution protects individuals against "unreasonable searches and seizures." This Amendment also limits the issuance of warrants to probable cause supported by "oath or affirmation" which describes the person or thing to be seized (arrested) or place to be searched. Draper v. U.S., 358 U.S. 307 (1959). Only a sworn peace officer can arrest pursuant to a warrant; a private person, unless given special authority, does not have this power. Consequently, the only arrest private security personnel can lawfully effectuate, unless deputized or under special circumstances, is one that does not require the issuance of a warrant.[7]

3. Arrest Without a Warrant

(a) Under common law rule:

Under common law, a felony arrest by a private citizen was permitted "in order to protect the safety of the public," and arrest for a misdemeanor "constituting a breach of the peace" was permitted by a private citizen "when immediate apprehension was necessary to preserve or restore public order."[8] Usually private security personnel have similar privileges to arrest, as does the private citizen, unless deputized or placed under special state authority. Fourteen states currently rely upon common law for citizen arrest privileges (see Appendix C).

In the absence of a specific statute or deputization, the private citizen is not privileged to arrest another solely upon the reasonable belief that the arrestee was the perpetrator. In the case of a felony arrest, if the private security officer believes that a person committed an offense and effectuates an arrest on reasonable cause, he still might be subject to criminal and civil liability in some states if, in fact, he was wrong.[9] In the case of a misdemeanor, the arrested person must be guilty of the misdemeanor, and it must be committed in the presence of the private security employee or private citizen. 62 Yale L.J. 788 (1953). An arrest must be made immediately or in fresh pursuit. 9 Halsbury, Laws of England 86-9, 2d ed. Hailsham (1933). Some states have narrowed the authority of a private person by limiting arrest committed in his presence to felony cases only.

In lieu of any deputized or special policing powers provided through state statute or county and local ordinance, then, private security personnel are essentially acting as private citizens in effecting an arrest. They have no powers or immunities by virtue of their being in a protection function other than the common law or statutory powers of arrest granted an ordinary citizen, i.e., a "citizen's arrest." In a citizen's arrest, the arrest is valid under the limitations discussed only if the individual has intention to and does turn the arrestee over to the "proper authorities" as soon as practicable.[10] The arrest power is not to be used for any purpose other than to turn the individual over to proper authorities for a felony or misdemeanor committed; it should not be used to obtain a confession.

If a private citizen induces a police officer to make an arrest without a warrant, the burden of proof that the person arrested was guilty of the crime rests with the private citizen. Green v. No. 35 Check Exchange, Inc., 222 N.E. 2d 133, Ill. App. (1966). But, on occasion, it has been held that the private citizen is not liable if he mistakenly informed the police that the suspect committed a crime, Armstead v. Escobedo, 488 F. 2d 509 (1974) or if he did not act in malice in identifying the plaintiff, Tillman v. Holsum Bakeries, Inc., 244 So. 2d 681 La. App. (1971).

(b) Under statutory provisions:

Thirty-one states have enacted statutes to provide felony arrest privileges for private citizens, and 23

states permit arrest by private citizens for misdemeanor offenses (see Appendix C). The circumstances or elements of arrest and the specific offenses, however, vary greatly in each of these states. For example, in some states the felony must be committed in the presence of the arresting person, whereas in other states only an element of reasonable cause is required. The common law tradition which designates only breach of the peace as an offense for citizen misdemeanor arrest is followed by some states, while other states have expanded the arrest power to include petty larceny and shoplifting. Since the power of citizen arrest varies among states according to crime classification and arrest elements required, it is important that private security personnel who do not have deputized or special police powers granted to them be aware of the penal code of the state in which they are employed.

The majority of states have enacted anti-shoplifting statutes, but the authority of a private security officer to effect an actual arrest is extremely tenuous. These statutes are primarily directed toward permitting the merchant or his agent to detain a suspected shoplifter for the purpose of turning the person over to a law enforcement officer (a discussion of detention and false imprisonment issues follows in the next section). The powers, limitations and conditions of a detention differ widely among states, and a few states do not have any statutes permitting shoplifting detentions (see Appendix D).

(c) Under deputization powers:

In many states, private security personnel are given the power of arrest through state statute, state enabling legislation, or county and local government ordinances which confer police powers on private security personnel. This practice often takes the form of ancillary police titles such as "special deputy sheriff," "special police officer" and "auxiliary policemen." The vesting of these powers is often limited to a specific geographical area or place of employment and assignment. The purpose of providing a power of arrest in these instances is to allow the private security officer to operate under the "color of the law" in apprehending a suspected law violator. In practice, the private security officer is often merely afforded the greater civil and criminal protection of a police officer while detaining a suspect until a law enforcement agency can assume formal custody of the suspect.

In the State of Georgia, for example, a state statute was recently enacted which grants licensed private detectives and employees of licensed private security firms the authority to arrest for any crime committed in their presence on the property of their security assignment or in "hot" pursuit from the property. Code of Georgia Sec. 84-6513 (1975). While this statute formally recognizes the authority of duly licensed private security personnel to effect an arrest, in practice it confers no more authority than Georgia's "citizen arrest" statute. The elements and circumstances of the Georgia citizen's arrest power are in fact broader than the arrest power statute for private security personnel: a citizen in Georgia may arrest for a felony or mere "reasonable grounds" that a felony has been committed and for a minor offense if he has "immediate knowledge" of an offense, whereas the private security officer can only arrest under the private security arrest statute if the crime is committed in his presence.

The states of Maryland, Ohio and Pennsylvania provide powers of arrest for those private security personnel who complete an optional period of prescribed training. In Maryland, such powers are granted under the state's private security licensing statutes. In Ohio, the state has established a specified 120-hour training curriculum which can be completed by licensed private security personnel at their option. Upon completion of the training curriculum they are sworn in with deputy police powers.

Private security personnel are sometimes given powers of arrest from private security licensing and regulatory boards and agencies which derive this authority from state statutes or local ordinances. For example, New Orleans, Louisiana enacted an ordinance in 1971 which established standards for the licensing of private guards and detectives and required the New Orleans Police Department to screen applicants and regulate private security licensees. Upon licensing, the private security personnel, as "special officers" are granted limited police powers, limited to the property of the employer or client. The St. Louis, Missouri Board of Police Commissioners, under state enabling legislation effective since 1875, licenses and regulates all private security personnel in that city. Upon licensing, private security personnel have police powers in an assigned, specified area and may arrest under the same circumstances as would a member of the St. Louis Police Department. The Missouri Supreme Court

in Frank v. Wabash Railroad, 295 S.W. 2d 16 (1956) held that a duly-licensed watchman for the railroad was acting as a police officer in arresting a youth for a trespassing misdemeanor on railroad property. In a suit for false arrest, the plaintiff's contention that the watchman was acting merely as a private citizen and had no power to make the arrest was not upheld.

It is significant to note that in a 1975 survey of the membership of the American Society for Industrial Security, conducted by the Private Security Task Force of the National Committee on Criminal Justice Standards and Goals, 74% of the respondents stated that, in general, private security personnel should not have the same legal authority as public police.[11] One interpretation of this statistic is that private security personnel feel that their role more properly is crime prevention and protection of assets. While many of the services of private sector protection parallel those of the public sector, many private security officials are of the opinion that a major point of differentiation should occur with apprehension of a suspect: private security personnel should only make apprehensions of suspects on behalf of their clients or employers in the interest of assets protection and loss prevention.

Indeed, in a membership attitudinal survey conducted at its 1975 annual conference, the American Society for Industrial Security reported that 95% of the responding members viewed crime prevention as the single most important function of private security -- not crime investigation and apprehension.[12] Only 9% felt that laws, rules and regulations were their most important crime prevention techniques. The power of private security personnel to arrest as a police officer under the color of the law, then, is viewed by many as neither desirable nor a particularly effective crime prevention technique in the assets protection and loss reduction efforts of the private sector.

B. DETENTION AND FALSE IMPRISONMENT

1. Common Law Rule

Concommitant to a private citizen's privilege to arrest without a warrant is the privilege to detain another person. Unlawful restraint of a person's liberty, however, is false imprisonment. It is not necessary to physically restrain, confine or touch a person to constitute a false imprisonment.

In Riley v. Stone, 174 N.C. 588, 94 S.E. 434, it was held that a false imprisonment may be committed by "words alone, or by acts alone, or by both," and that "any exercise of force or express or implied threat of force, by which in fact the other person is deprived of his liberty, compelled "to remain or go where he does not wish to be is an imprisonment." The detention or restraint of the person, to be unlawful or a false imprisonment, must be involuntary. If consent is given not under force, then a false imprisonment has not occurred. Martinez v. Sears, Roebuck and Co., 467 P. 2d 37 N.M. (1970). What constitutes consent, however, is debatable. A false imprisonment may also occur through deception as in Winans v. Congress Hotel, 277 Ill. App. 276 (1922), in which a security officer stated that he had a warrant for arrest of a person, when in fact no warrant existed.

Reasonable cause is usually a requirement for a lawful detention. To the extent that reasonable cause is required for an arrest, a false arrest is a means of commiting a false imprisonment. Shelton v. Barry, 66 N.E. 2d 697 Ill. App. (1946). In many cases, false arrest and false imprisonment are interchangeable, the difference being in the plaintiff's suit. Reasonable cause for a detention cannot be based on "mere belief of a third person that somebody did or did not do something" as held in J.C. Penney Co. v. Cox, 246 Miss. 1, 148 S. 2d 679 (1963). However, in Meadows v. F.W. Woolworth Co., 254 F. Supp. 907, 909 N.D. Fla., (1966), it was held that the store manager had probable cause to detain shoplifting suspects who "generally fit the description" of teenage girls believed to be shoplifting of whom he was forewarned by the police. If there is reasonable cause to detain, but the detention is handled in an "unreasonable manner," the detention privilege will be lost. Wilde v. Schwegmann Bros., 160 So. 2d 839 La. App. (1964). In this case Wilde was held for 30 minutes against her will by a supermarket store detective until she signed a confession. On the other hand, a similar time element (27 minutes) for search of the plaintiff's purse in Cooke v. J.J. Newberry & Co., 96 N.J. Super. 232 A. 2d 425 (1967) was held to be a reasonable detention. An earlier decision held that a detention by a store detective was permitted if it was reasonable in both time and manner. Collyer vs. S.H. Kress and Co., 5 Cal. 2d 175, 54 P. 2d 20 (1936).

2. Statutory Modifications

As noted in the previous section, the majority of states have enacted anti-shoplifting statutes. Most of these statutes do not permit an arrest, rather they permit merely a detention; that is, the temporary detention of a person short of an arrest is permitted. While the purpose of the citizen's arrest is to turn the suspect over to police authorities as soon as

practicable, detention statutes often limit the nature of the detention to recovery of merchandise, investigation or interrogation. The provisions of these statutes vary among the states which have enacted shoplifting detention statutes (see Appendix D). In some states, for example, only a merchant or his employee may effect a detention, yet other states extend the privilege to an agent of the merchant. Proprietary and contractual security personnel in retail establishments, then, would not necessarily have the same privileges of detention in the same state.

Even in those states with statutes permitting detention of persons whom the security personnel believe are shoplifters, problems of potential civil liability remain. The burden is on the detaining party to prove that there was probable cause for the detention and that it was reasonable. While a few states grant civil liability for detentions under anti-shoplifting statutes, most states grant no immunity from liability for shoplifting detentions. (For recent cases see, Annotation, "Construction and Effect in False Imprisonment Action of Statutes Providing for Detention of Suspected Shoplifters," 47 ALR 3d 998 (1973); and "Principal's Liability for False Arrest or Imprisonment Caused by Agent or Servant," 92 ALR 2d 15).

C. SEARCH

1. Power to Search

The Federal statutes and the United States Constitution protect the rights of the individual with respect to searches. The power to "search and seize" is highly restricted and its exercise is generally dependent upon the exercise of a lawful arrest by a sworn peace officer, the issuance of a valid search warrant, or the consent of a person. Warrantless personal searches incidental to arrest are limited to the area within "immediate control" of the person by Chimel v. California, 395 U.S. 752 (1969), where the law enforcement officer suspects use of a dangerous weapon or has reasonable cause to believe the search will yield easily-concealed or destructible evidence. In Terry v. Ohio, 392 U.S. 1 (1968) an investigative "stop and frisk" by a law enforcement officer is permitted when he fears for his life or those of others, and a personal search may be conducted to remove weapons if their presence is indicated by the external frisk of clothing.

Private Security personnel frequently conduct searches for suspected stolen property, to recover merchandise, to collect evidence for internal investigations or for prosecutions, and to gather information for clients. Unlike public

law enforcement, the Constitution, on its face, does not limit the powers of private security personnel to conduct searches of persons or property. This applies regardless of whether the search was conducted pursuant to a lawful arrest. Burdeau v. McDowell, 256 U.S. 465 (1921). While the "common law authority for a private search is sparse and inconclusive,"[13] there appear to be four instances in which a search would be permissible by private security: (1) actual consent by a person; (2) implied consent as a condition of employment or as part of an employment contract (e.g., a union contract); (3) incidental to a valid arrest; and (4) incidental to a valid detention. These circumstances parallel the conditions under which public law enforcement may conduct warrantless searches: with consent or pursuant to a lawful arrest or detention. As a general consideration, since the public police are intended to be society's primary law enforcers, the limitations on public police search should set the upper boundaries of allowable search by private police.[14]

A citizen's arrest, if valid, would appear to be analgous to an arrest by a law enforcement officer, and thus a search incidental to arrest would be allowable. In a challenge to a search incidental to arrest of a shoplifter by a store security guard in People v. Santiago, 278 N.Y.S. 2d 260 (1967), for example, the Court stated that the "rationale that justifies searches incident to lawful arrest as outlined in United States v. Rabinowitz, 70 S. Ct. 430, would seem to apply with equal force whether the arrest is made by an officer or a private citizen." It is not clear, however, that in all such cases and in every state a search incidental to arrest would be permitted. Private citizen arrest statutes and shoplifting detention statutes of the states (see Appendices C and D) do not generally address this issue with explicit statutory language. The purpose of these statutes usually does not include searches, and some states expressly prohibit searches incidental to arrest or detention by private persons. In the State of Ohio, for example, shoplifting detentions are permitted, but searches incidental to such detentions are prohibited (Ohio Rev. Code Sec. 2935-04).

Conditions of employment and union contracts often express or imply consent to search employees and their belongings, but searches of patrons, visitors or customers in non-arrest situations is a clouded legal issue. This would include situations such as visitor access control points, inspections of briefcases in office buildings, package inspections of entering customers, visual searches of automobiles parked in or leaving parking lots. "In the absence of consent for an

arrest, there is no authority to detain and search in the above situations."[15] Sometimes contracts (union and otherwise) limit the authority of the company and hence the authority of private security personnel. Rules concerning search of an employee's belongings upon entering or leaving a building or search of a locker many times are defined in contract law. In the Gerstenslanger Company and Allied Industrial Workers, Local 813, 65-1 ARB 8306 (1965), it was found that the company could not require an employee to empty his pockets for search. However, in Friedrich Refrigerators, Inc. and International Union of Electrical, Radio and Machine Workers, Local 780, 63-1 ARB 8108 (1962), refusal of the employee to permit the guard to inspect his briefcase was cause for dismissal. Thus, in the area of employee searches, the authority of the employer and his security service may be limited by the terms of a union contract.

2. Evidence Obtained From Searches

If the search conducted by a law enforcement officer is not pursuant to a lawful arrest or valid warrant, then evidence seized is generally inadmissible at the defendant's trial. This exclusionary rule of evidence is derived from the Fourth Amendment and is applied to the states through the Fourteenth Amendment. Mapp v. Ohio, 376 U.S. 643 (1961). In Burdeau v. McDowell, supra, this exclusionary rule of evidence for law enforcement was held not applicable to private parties, regardless of whether the search by a private person was legal. But, private security personnel could be subject to tort liability for actions taken during the search (assault, battery, theft, trespass, etc.). A number of court decisions have relied upon Burdeau v. McDowell to rule on the admissibility of evidence in a prosecution which was obtained from a search by a private person. United States v. Berger, 355 F. Supp. 919 (1973); People v. Bryant, 243 N.E. 2d 354 Ill. App. (1968); Barnes v. U.S. 373 F. 2d 517 C.A. 5th (1967). Constitutional limitations on searches by law enforcement officers, however, will apply to the conduct of private security personnel when they act as agents for the police, or in concert with the police, or obtain the evidence with the intent of furnishing it to the police for use during a pending prosecution. In any of these contexts, the exclusionary rule would apply to evidence seized by the private security guard. United States v. Small, 297 F. Supp. 582 B. Mass. (1969); Stapleton v. Superior Court of Los Angeles County, 73 Cal. Rptr. 575 (1969). In California v. Fierro, 46 Cal. Rptr. 132 (1965), it was held that evidence obtained illegally in a joint operation between a motel manager and sheriff's office was not admissible in court.

D. INVESTIGATIONS AND INTERROGATIONS

Private security personnel frequently conduct investigations of internal and external theft problems, employee misconduct, embezzlement and fraud, etc., in their role of assets protection and loss reduction. In general, there are no restrictions against soliciting voluntary answers to questions of employees, especially when conditions of employment and union contracts mandate cooperation in such matters. Similarly, when conducted on the premises or in the normal working environment, interrogation or questioning of employees is permitted and would not constitute "custodial interrogation." In the case of an arrest or detention by private security personnel, there is no clear prohibition on asking questions, assuming that the arrest or detention is lawful or reasonable in time and manner. In fact, many of the state shoplifting detention statutes expressly permit interrogations of suspects.

Public law enforcement officers are restricted in custodial interrogation by the Miranda rule, which requires police to advise suspects of the right to remain silent, the fact that anything said may be used against the suspect in court, the right to the presence of an attorney during questioning, and the right to a court-appointed attorney if one cannot be afforded by the suspect. Miranda v. Arizona, 86 S. Ct. 1602 (1966). It has been held that the Miranda warnings are not applicable to private security officers. People v. Frank, 275 N.Y. S. 2d, 570 Sup. Ct. (1966); United States v. Casteel, 476 F. 2d. 152 (1973). It was explicitly stated in United States v. Antonelli, 434 F. 2d 335 (1970) that the "Fifth Amendment privilege against self-incrimination does not require the giving of constitutional warnings by private citizens or security personnel employed thereby who take a suspect into custody."

The person being interrogated, however, does have a right to remain silent and to be free from coercion or duress during questioning; and the use of force or threats of force to coerce answers and an unlawful restraint for purposes of questioning would be actions for tortious conduct. Further, questioning of a suspect in public is limited by tort laws of slander and defamation which prohibit false public statements causing damage to one's reputation, and infliction of mental distress where the statements need not be defamatory to be cause for a lawsuit.

The use of detection or deception tests (polygraphs and psychological stress evaluations) or "lie detectors" in business and industry is a frequent practice in conducting internal investigations. Many firms have regulations as conditions of employment that employees consent to such tests upon request by the firm. Most decisions concerning this practice are found in labor relations arbitrations, not in court decisions. These arbitration decisions center around dismissals for refusal to submit to tests and the admissibility of such tests into the arbitration proceedings. No

clear guidelines are provided in the rulings of various arbitrators, since employees are just as frequently reinstated as employers are upheld in their dismissal. Similarly, failure to hire a new employee who fails a pre-employment detection of deception test is variously held a fair and unfair labor practice. Some states, however, specifically prohibit the use of such devices by employers altogether or under certain circumstances.

When a private security investigator invites the cooperation of public law enforcement, it is questionable whether the Miranda rule, as well as other exclusionary rules of evidence and constitutional restrictions should apply. Although constrained by tort remedies, in general, private security personnel may have greater powers of interrogation than the public police. A key issue for consideration is whether the courts will continue to refuse application of the Miranda rule to private security personnel, and whether confessions obtained from such interrogations will later be admissible in a criminal prosecution.

When private security personnel decide to file a formal complaint for criminal charges, there is generally no liability for "malicious prosecution" if the charges are not sustained. As long as the private security officials had probable cause to believe the person committed a criminal offense, and submitted the fact of their investigation to the proper authorities in good faith and without malice, they will not be held responsible for action for malicious prosecution. A plaintiff would have to have been acquitted or have had charges dropped, demonstrate injury or damage, and assume the burden of proof for malice on the part of the private security employee in order to obtain a judgement.

E. USE OF FORCE

1. In Self-Defense and Defense of Others

In general, when one reasonably believes that another person intends to do him harm, he has the privilege to use force to repel that attack, but such force must be reasonable under all the circumstances. State v. Anderson, 230 N.C. 54, 51 S.E. 2d 895. The degree of force used to repel attack may only be commensurate with the degree of force used by the attacker and sufficient to repel the attack. A greater use of force may subject the person to a charge of assault and/or battery where the degree of force is excessive or beyond common expectations of what is reasonable.

Under the common law, security personnel may also use force to repel an attack on the safety and lives of other persons. The limits on the use of force in such instances are, again, measured by reasonableness. The degree of force which may be used in defense of others must be reasonable and

necessary to repel the attack. Deadly force may be used in self-defense and in the defense of others only when the attack poses risk of death or serious bodily harm (see discussion of Deadly Force in Section 5. below).

2. In Defense of Property

The common law recognizes that an individual possesses the privilege to employ force to protect his own property or to recapture it while in "hot" pursuit. Private security personnel hired to protect the property of another are benefited by the privilege of "protection of one's own property." Perkins speaks in terms of "one in lawful possession."[16] If the true owner permits the security guard to come into lawful possession of the chattel or realty by employment, that security officer will acquire the benefits of the privilege.

3. In Arrest

Where one is without authority to arrest, the use of force regardless of its degree will not be privileged. On the other hand, a lawful arrest assumes a certain level of privileged force. Both the sworn peace officer and the private citizen (i.e., security personnel) may use reasonable force to effectuate a lawful arrest. The reasonableness of that force will depend upon what is necessary under all the circumstances, viewing the severity of the offense, the degree of resistance and other related factors. Excessive force may be grounds for rendering the arrest illegal and subjecting the actor to liability charges.

4. In Prevention of Crime

The common law recognizes a privilege to use force for those who intervene for the purpose of preventing crime. This privilege is intertwined with such other privileges as self-defense, defense of others and defense of property. As a general rule, these privileges are available to all persons if the intervention is not accompanied by force that is excessive or unreasonable in light of all the facts. In the absence of authorizing legislation, there is no privilege at common law to use force to prevent a misdemeanor which is other than a breach of the peace. The illegal use of force amounts to a battery at both criminal and civil law, where it is excessive or beyond common expectations of what is reasonable.

The nature of the crime will determine the force permitted. A private citizen, in common law, was authorized to use deadly force to stop a fleeing felon or to prevent the commission of a felony. This rule developed at a time when any felony

was punishable by death. With the modifications of current state criminal codes, the privilege has changed so that deadly force can be utilized only to prevent a deadly felony (one likely to cause death or serious bodily harm such as murder, robbery, arson, etc.). Other crimes can be prevented by the use of reasonable force not amounting to deadly force.

5. Self-Defense and Deadly Force

While self-defense is a justification for use of deadly force, People v. Joyner, 278 N.E. 2d Ill. (1972), mere threat is not sufficient justification to use deadly force. People v. Odum, 279 N.E. 2d 12, Ill. App. (1972). It is axiomatic that deadly force is never permissible in defense against non-deadly force. Etter v. State, 185 Tenn. 218, 205 S.W. 2d 1 (1947). The right to use deadly force in defense of oneself is a less uniform doctrine and must be treated in general terms. Deadly force is permitted to repel an attack reasonably believed to include the risk of death or serious bodily harm. In some states, the defender must retreat by any reasonable means before the use of deadly force ("he must retreat to the wall") while other states do not require a retreat rule. Whether or not the retreat is required usually depends on the circumstances of the particular case. In the cases of attempting to arrest, protection of one's "castle," or as a victim of a robber, self-defense with use of deadly force is justified with or without retreat. Under the common law, the use of deadly force was never permitted for the sole purpose of stopping one fleeing from arrest on a misdemeanor charge. It has been held that shooting at the escaping car of one charged with a misdemeanor is such criminal negligence as to support a charge of manslaughter if death should result. People v. Klein, 205 Ill., 141, 137 N.E. 145 (1922). On the other hand, the common law permits a private person to kill a fleeing felon if he could not otherwise be taken. Bircham v. Commonwealth, 239 S.W. Ill., Ky. (1951). For a private citizen, such force is not privileged unless the arrestee was in fact guilty, a mere reasonable belief that the arrestee was guilty, when in fact he was innocent, will not justify the killing. If deadly force is justified, the killing of an innocent victim is not a crime, People v. Adams, 291 N.E. 2d 54 Ill. App. (1972); however, if the physical force is not justified, then the killing of an innocent victim is a crime. People v. Thomas, 290 N.E. 2d 418, Ill. App. (1972).

Deadly force is never sanctioned for the defense of property because the value of property could never surmount that of life. However, in the defense of a dwelling, deadly

force may be used if entry is made in a violent manner; deadly force may then also be used by a guest or tenant of that dwelling. People v. Stombaugh, 284 N.E. 2d 640 Ill. (1972). In general, if the protector of a piece of property does not use greater force than reasonably appears to be necessary for the particular purpose, then the use of force may be permissible. Turpin v. State, 89 Okl. Cr. 6, 204 P. 2d 298 (1949); State v. Patterson, 45 Vt. 308 (1873).

If the defender of the property reasonably believes that he is protecting himself from the intruder's killing him or inflicting great bodily harm to him or anyone else in the house, deadly force is permitted when the intruder has "gained the advantage of an entrance."[17] Further, deadly force is privileged to prevent a felonious attack upon the dwelling itself, such as an attempt to commit arson or malicious mischief. State v. Couch, 52 N.M. 127, 193 P. 2d 405 (1948). However, in State v. Beckham, 306 Mo. 566, 276 S.W. 817 (1924), it was found that the private individual may not "booby trap" a dwelling for protective purposes if the booby trap is deadly.

F. USE OF FIREARMS

An issue closely related to legal restraints on the use of force is the carrying and use of firearms by private security personnel. Firearms, of course, constitute potentially deadly force when used and may also be an excessive use of force. There have been unfortunate incidents in which private security guards have shot and killed persons fleeing scenes of crimes, shot innocent bystanders, killed persons with accidental discharges during scuffles, and other extreme but not isolated firearm incidents which resulted in death and serious bodily harm.

In a study of private police in the United States conducted for the Law Enforcement Assistance Administration by the Rand Corporation, it was found that 40% of private security personnel carried a firearm "full-time while on duty" and another 10% carried one "part-time."[18] This figure was confirmed in a 1975 survey of the membership of the American Society for Industrial Security, conducted by the Private Security Task Force of the National Committee on Criminal Justice Standards and Goals.[19] In this later survey, 45% of the respondents indicated that their uniformed security personnel carry a firearm, and 30% of non-uniformed private security personnel carry a firearm in their duties. In addition, only 35% of the respondents indicated that they had hiring qualifications other than age for their private security personnel who carry firearms. Training of private security personnel is minimal, at best, compared to mandated public law enforcement training in most states and is often limited to only weapon "familiarization."

In recognition of these problems, the Private Security Task Force has recommended adoption of a standard for higher licensing qualifications for an individual who wishes to be registered as an armed security employee. In a related standard, the Task Force has recommended completion of a 24-hour firearms course or submission of evidence of competence and proficiency in the use of a firearm, prior to assignment to a private security job requiring a firearm; and, further, that such armed personnel should be required to qualify once a year with the firearm they carry while performing their private security duties.

Similarly, the Private Security Advisory Council has distinguished between armed and unarmed security personnel in its development of a Model Guards Licensing and Regulatory Statute. The Council has defined an "armed private security officer" as any of the following private security personnel who are armed: security guards, armored car guards, courier service guards, and alarm response runners. In developing the Model Guard Statute, the Council's Committee on Guards and Investigators discouraged the use of lethal weapons, but in recognition of demonstrated needs for armed security personnel recommended:

- that those who must carry firearms be required to obtain a firearms user permit from a regulatory body;
- that pre-issue classroon training be mandatory and followed by annual in-service range training;
- that all firearms used by the private security personnel be owned and issued by the employer.

While the right to bear arms traditionally is a privilege extended to all citizens in the United States under the Constitution, in many states the private security personnel have no greater privilege to bear arms than private citizens. Most states impose requirements for licenses or permits to carry a weapon, but often this pertains only to carrying concealed weapons. In California, most proprietary security guards are exempt from a state law prohibiting the carrying of "loaded unconcealed weapons," yet all are exempt from maintaining a state permit to carry a firearm. Among the 34 states that license private security activities, 15 states require as part of their licensing regulations that personnel maintain a state firearm permit if a firearm is to be carried in the performance of private security duties. Only two states specifically authorize private security personnel to carry a firearm while on duty, while seven states mandate completion of a prescribed course of training before security personnel are authorized to carry a firearm.

In addition to the issues of deadly force raised in the preceding section, the use of a firearm may lead to "excessive use of force" when the firearm's usage does not constitute "reasonable force," such as in a self-defense case with "reasonable belief that the use of force is necessary." People v. Joyner, 278 N.E. 2d, 756 I11. (1972). These cases may lead to charges of assault or battery, or lead to liability for negligence. In Oshogay v. Schultz, 257 Wis. 323, 43 N.W. 2d 485 (1950), a bartender who attempted to frighten away a customer with gun shots and accidentally shot the customer in the foot was held liable for damages. In another case, Gross v. Goodman, 173 Misc. 1063, 19 N.Y.S. 2d 732 Sup. Ct. (1940), a truck driver was held liable for wounding an innocent bystander by trying to frighten fleeing thieves with the use of a firearm. In Warner v. Santa Catalina Island Co., 44 C. 2d 310, 282 P. 2d 12 (1955), it was found that "the risk incident to dealing with firearms...requires a great deal of care to be exercised. In other words, the standard of care required of the reasonable person when dealing with such dangerous articles is so great that a slight deviation therefrom will constitute negligence."

In general, the private security employee who "fires into a crowd while pursuing a fleeing suspect," who "accidentally discharges his gun and wounds someone," or who uses excessive force incidental to the circumstances involved in the case would be "subject to liability for negligence."[20] In the case of liability of the employers of private security personnel, the employer is usually responsible for the conduct of the guard while the guard is within the scope of employment. However, there are cases in which the guard acted with negligence and the employer is not found liable. The employer may be found negligent in "directing a man who is untrained in the use of firearms to carry out the duties of an armed guard on his premises,"[21] but an employer is usually not held liable for negligence or acts of special police or "commissioned police officers."[22] As noted earlier, however, contracts for security services usually define and govern respective liabilities of all parties for the business enterprise using contractual rather than a proprietary security service. The contract will usually delineate responsibilities and insurance obligations, if there is harm to a third party. The courts have, however, on occasion in suits by third parties, held a person liable even though a contract said that another was to be responsible.[23]

G. INVASION OF PRIVACY

As stated in Perkins, "prior to the year 1890 no English or American court ever had granted relief expressly based upon the invasion of such a right (the right of privacy), although there were cases which in retrospect seem to have been groping in that

direction and Judge Cooley had coined the phrase, 'the right to be let alone.'"[24] In a noted article by Samuel D. Warren and Louis D. Brandeis, the legal argument was presented for the right of an individual to be left alone, and to be protected from unauthorized publicity in his "essentially private affairs."[25] One of the first states to consider the Warren and Brandeis article was New York, which, in Roberson v. Rochester Folding Box Co., 171 N.Y. 538, 64 N.E. 422 (1902), decided that it was an invasion of privacy to advertise with the use of a name, portrait or picture of any living person without their prior written consent.

Invasion of privacy has been a large area of concern in tort law. In general, there are four areas of invasion of privacy:

- "Intrusion upon plaintiff's seclusion or solitude or in his private affairs;
- Public disclosure of embarrassing facts about the plaintiff;
- Publicity which places the plaintiff in a false light in the public eye; and
- Appropriation, for defendants' advantage, of the plaintiff's name or likeness."[26]

These four areas of invasion of privacy have been cited in several well-known cases: Hamberger v. Eastman, 206 A. 2d 239 (1965) and Yoder v. Smith, 112 N.W. 2d 862 Iowa (1962).

Wiretapping, bugging and other forms of technical surveillance in investigative work may lead to invasion of privacy charges. The 1968 Omnibus Crime Control Act contains an "almost complete prohibition upon interception by wiretap or electronic device of oral communications by persons not parties thereto."[27] Further, "U.S.C. Section 2511 broadly prohibits the willful interception or attempted interception of any wire or oral communication by use of a wiretap or electronic device, except as provided for in the statute and further prohibits the disclosure or subsequent use of information thus obtained."[28] Eavesdropping and wiretapping are permitted only with probable cause and a warrant and by public law enforcement officials, Alderman v. U.S. 394 U.S. 165 (1969).

In Nader v. General Motors Corporation, 255 N.E. 2d 765, the defendant's agents (private investigators) were alleged to have made threatening phone calls to Nader, tapped his telephone and eavesdropped, kept him under unreasonable surveillance, caused him to be accosted by women for purpose of entrapment; and so forth.

The Court found invasion of privacy in the unauthorized wiretapping and electronic surveillance. However, it was found questionable that the plaintiff was "overzealously" surveilled or that there was any actionable invasion of privacy in the other allegations. In Galella v. Onassis, 353 F. Supp. 196 (1972), it was found that Galella was overwhelmingly pervasive in surveillance of the defendant by trailing and chasing her, and he was found actionable. In Sounder v. Pendleton Detectives, 88 S. 2d 716 (1956), it was found that agents investigating an insurance claim were not justified in trespassing on property and peeking into windows.

The courts have often relied on the principle established by the United States Supreme Court in Katz v. U.S., 389 U.S. 347 (1967) that the protection of privacy afforded by the Fourth Amendment depends on an "individual's reasonable expectation of privacy." This principle has been applied in both civil suits for invasion of privacy and criminal trial motions for suppression of evidence gathered from visual observations. In some states, the use of two-way mirrors, peepholes, and other forms of visual observation of dressing rooms, restrooms, locker rooms, and motel and hotel rooms have been held to be an invasion of privacy.

The legal protection of privacy and freedom from intrusions will continue to be a growing area in the years to come. Because the law is developing so rapidly, one should regularly consult the standard legal reference materials. (For some recent developments see the following Annotations: "Eavesdropping as Invasion of Privacy," 11 ALR 3d 1246; "Investigations and Surveillance: Shadowing and Trailing as Invasion of Privacy," 13 ALR 3d 1025; "Uninvited Entry into Another's Living Quarters as Invasion of Privacy," 56 ALR 3d 434).

Obtaining access to criminal history and arrest record information is a standard practice of both proprietary and contractual private security personnel. This information is used in conducting pre-employment or background checks for clients, pre-employment or promotion screening by firms, and the hiring of security personnel. States routinely require in their licensing and regulatory statutes that private security personnel should not have been convicted of any felony or crime involving moral turpitude or have any criminal charges or indictments pending. Financial institutions, retail establishments, defense contractors and other employers view such information as a quid pro quo for employment in positions involving trust or deportment or matters of national security. A survey of the membership of the American Society for Industrial Security revealed that 75% of the respondents expressed a need to know arrest verification and 84% need conviction verification.[29]

In the last few years, privacy considerations in the dissemination and use of both conviction and arrest data has become a major issue. In the past, private security firms, proprietary security

personnel and credit reporting firms have routinely had access to this information. Conviction records have traditionally been held as public information, but arrest records as police information, have on occasion been ruled to be an exception to the general public records doctrine. In general, state statutes do not prohibit public law enforcement from releasing arrest records to "interested parties," and invasion of privacy theories on these practices are largely untested in court decisions. However, in United States v. Kalish, 271 F. Supp. 968 (D.P.R., 1967), the issue of an individual's privacy interest in his arrest record was recognized, and it suggests "a basis for a different theory of recovery based on invasion of privacy."[30] (See Annotation: Right of Exonerated Arrestee to have Fingerprints, Photographs, or Other Criminal Identification and Arrest Records Expunged or Restricted," 46 ALR 3d 900).

Restrictions on dissemination of Federal Bureau of Investigation (FBI) arrest records to private persons or state agencies other than public law enforcement were imposed in Menard v. Mitchell, 328 F. Supp. 718 (D.D.C., 1971) for purposes of licensing employment or related purposes. Local law enforcement files routinely contain federal arrest and conviction information from the FBI, and this raises the issue of whether federal arrest data should be expunged from arrest records obtained by private security personnel from local public law enforcement agencies. Considerable controversy was caused in 1975 by the release of regulations by the Department of Justice which imposed restrictions on the dissemination of conviction and arrest data by all state and local agencies collecting, storing or disseminating criminal history record information where such operations have been funded in whole or partially with LEAA funds.[31] These regulations were imposed in part as a result of privacy considerations emerging in many consumer and citizen interest group areas at the national level, which produced an amendment in 1973 to the original Omnibus Crime Control Act of 1968, LEAA's operating and funding legislation. The original regulations excluded the disseminating of criminal history information to non-criminal justice agencies and prohibited even the confirmation of the existence or non-existence of criminal history record information for employment or licensing checks, unless a state statute expressly required such information.

In large part due to the influence of the private sector and the private security industry in particular at public hearings on these regulations, the U.S. Department of Justice issued substantially modified regulations in March, 1976.[32] Under the revised regulations, there are no federal restrictions imposed on the release and dissemination of conviction data, including arrests within one year (i.e., pending prosecution). For arrest data, the requirement of an express state statute requiring a record check has been removed, i.e., specific language in the statute requiring access to such information. As long as there is an interpretation of an existing state statute or executive order which would permit

access to arrest record information, there are no federal restrictions now imposed on state and local criminal justice record systems for release and dissemination of arrest record information to employers or private security personnel. These federal regulations, however, do not preclude individual states from imposing criminal history access and dissemination restrictions.

H. DEFAMATION

The major element in a case of defamation is damage to the reputation of the plaintiff. Basically, "slander" is composed of speech while "libel" is written defamation. In order to have defamation there must be a communication to a third party. The essential element in defamation is not whether the individual's feelings were injured, but rather that "damage" was caused to his reputation in the eyes of other individuals. In some cases of slander, only the potentially injurious words need be proven; actual harm need not be proven, but is assumed. In other cases, actual damages and malice must be specifically shown. In Whitby v. Associates Discount Corporation, 59 Ill. App. 2d 337, five types of slander were reviewed:

- "imputing the commission of a criminal offense;
- imputing infection with a communicable disease which would tend to exclude one from society;
- imputing inability to perform or want of integrity in the discharge of duties of office or employment;
- prejudicing a particular party in his profession or trade;
- defamatory words which, though not actionable in themselves, occasion the party special damages."

Private security personnel must be extremely cautious in the use of language when apprehending a suspect or detaining a person that the suspect is not publicly accused in front of others of "stealing," being a "thief," or generally accusing the person of committing a criminal offense. (See Annotation: "Defamation: Accusation of Shoplifting," 29 ALR 3d 961). This may be actionable as slander, but also actionable as intentional infliction of mental distress which does not require that verbal statements be defamatory in nature. Security personnel, then, must be careful in dealing with the public in either a protective or investigative capacity that their conduct not be outrageous or so coercive that it is likely to cause undue mental strain on others, and they should refrain from making accusatory statements in public which might be considered defamatory.

The right of businesses to conduct investigations of employee wrongdoing has been consistently upheld in court decisions, but care must be exercised in disclosing statements to other employees made by an employee in an investigation which might be considered defamatory. In the case of Cook v. Safeway Stores, Inc., 511 P. 2d 375 Or. (1973), a store manager told three employees that a former co-worker had been discharged for stealing from the company. The Supreme Court of Oregon held that these words are actionable per se and a general recovery of damages can be made without proof of harm, since they "imputed commission of a crime" by the plaintiff and that he was "unfit to perform the duties of his employment." In Picard v. Brennan, 307 A. 2d 833 Me. (1973), the Supreme Court of Maine considered the issue of slander per se for a statement that an employee was "discharged" or "fired," without a stated reason for the discharge. Regardless of the fact that the statement itself was false, the Court held that a general statement that a person was discharged or fired cannot render the statement slanderous per se; but, the statement might be considered slanderous in the case of a statement of discharge of an employee for reasons shown to be false.

Certain communications are wholly or partially privileged and may be made without fear of legal liability if there is no actual malice involved. In general, a firm may provide information on a current or former employee upon request to insurance firms, credit bureaus, financial institutions, and other employers as qualifiedly privileged communications, i.e., communications which are made in good faith and without malice. It is essential, however, that there be reasonable grounds to believe that the information being communicated is true. In Hooper-Holmes Bureau v. Bunn, 161 F. 2d 102 (1947), it was held that a company's report to insurance firms or prospective employers on the financial standing, health, character and reputation of applicants are qualifiedly privileged communications and that the plaintiff must prove malice to recover damage for defamation. In Swanson v. Speidel Corporation, 293 A. 2d 307 R.I. (1972), the Supreme Court of Rhode Island stated that the public interest requires the protection of the privilege of such communications as long as the publisher of the communication feels it is necessary to safeguard "his interests, or those of third persons, or certain interests of the public." The Courts went further to state that providing such information to other employers in good faith "protects the publisher's own interests by ensuring that he may seek and receive the same information when about to hire new employees."

An important question posed by this area of tort law is the reporting of dismissal reasons to prospective employers of a former employee which constitute criminal acts, although no criminal prosecution was sought as a result of an internal investigation.

It is a frequent practice in the private sector to make private adjustments of essentially criminal acts, such as restitution or voluntary resignation in embezzlement, misappropriation, and vendor kickback schemes. While a firm may satisfy itself that an employee was guilty of impropriety or a crime, it may not have sufficient grounds for a formal criminal charge to be sustained in a complaint. The firm nevertheless might feel an obligation to report to prospective employers of the discharged employee that he was discharged for theft. The liability of a firm in such cases is not clear in communicating this information to prospective employers or other third parties, even though the firm may have reasonable grounds to believe the statements (i.e., its allegations) and deem it in the interest of the third party or the public interest.

While truth is a complete defense in most cases against defamation, the element of malice or intent to cause harm will nullify such a defense. Cases supporting the privileged communication of employee background information and employment records are generally in response to requests for such information from a third party who had a demonstrated need for such information. Offering such information unsolicited or providing such information in a manner to attempt to exclude the former employee from obtaining employment in his chosen field, might well be construed as defamation.

A frequent practice in retail security is the publishing and distribution of "rogue's galleries" such as known shoplifters, passers of bad checks, confidence men, jewelry thieves, etc. The United States Supreme Court in the 1976 decision of Paul v. Davis considered the case of a person whose name and photograph had been distributed in a list of known shoplifters.[33] In a close 5 to 3 decision, the majority held that the person's right to due process under the Fourteenth Amendment does not include protection of one's reputation alone, even though the party in question had been arrested for shoplifting and later had the charges dropped. It might be inferred from the minority opinion, however, that the person may have actionable ground for defamation since distribution of the list amounted to a conviction in the eyes of the public without a trial on the published charges, even though the charges had been dropped. The liability of private security personnel to develop and distribute similar lists, or merely to obtain and utilize public police lists, is unclear.

IV. FOOTNOTES

1. Bird, W.J., Kakalik, J.S., Wildhorn, S., et al., The Law and the Private Police, The Rand Corporation (Santa Monica, California), February, 1972, Vol. II, p. 13.

2. Perkins, Criminal Law and Procedure, Foundation Press (Mineola, New York), 1966, Introduction.

3. Prosser and Smith, TORTS, Foundation Press (Mineola, New York), 1967, p. 1-2.

4. Prosser and Smith, op. cit., p. 20.

5. Perkins, op. cit., p. 786.

6. Perkins, op. cit., p. 787.

7. Perkins, op. cit., p. 788-789.

8. "Law of Citizen's Arrest," 65 Columbia Law Review, 494 (1965).

9. Ibid., p. 502.

10. Bird, W.J., et al., op. cit., p. 107.

11. "Survey of American Society for Industrial Security (ASIS)," Private Security Task Force to the National Advisory Committee on Criminal Justice Standards and Goals, October, 1975.

12. "ASIS Membership Attitudinal Survey," American Society for Industrial Security, 1975 Annual Conference.

13. "Private Police Forces: Legal Powers and Limitations," 38 University of Chicago Law Review, 567 (1971).

14. Ibid.

15. Sullivan, John J., "Legal Authority of Security Personnel," Security Management, Vol. 10, No. 2, February, 1973, p. 25.

16. Perkins, op. cit., p. 628-630.

17. Perkins, op. cit., p. 630.

18. Kakalik, J.S., and Wildhorn, S., The Private Police Industry: Its Nature and Extent, The Rand Corporation (Santa Monica, California), February 1972, Chapter IX.

19. Private Security Task Force, op. cit.

20. Bird, W.J., et al., op. cit., p. 151.

21. Ibid.

22. 35 Am. Jur. 972; 53 Am. Jr. 2d 429-30.

23. "Liability of One Contracting for Private Police or Security Services for Acts of Personnel Supplied," 38 ALR 3d 1332 (1971).

24. Perkins, op. cit., p. 1057.

25. "The Right to Privacy," 4 Harvard Law Review, 193.

26. Prosser and Smith, op. cit., p. 637-639.

27. Bird, W.J., et al., op. cit., p. 36-37.

28. Bird, W.J., et al., op. cit., p. 37.

29. Private Security Task Force Survey, op. cit.

30. Bird, W.J., et al., op. cit., p. 65.

31. 40 Federal Register, 22114.

32. 41 Federal Register, 11714.

33. Vol. 44, U.S. Law Week, 4337-4350.

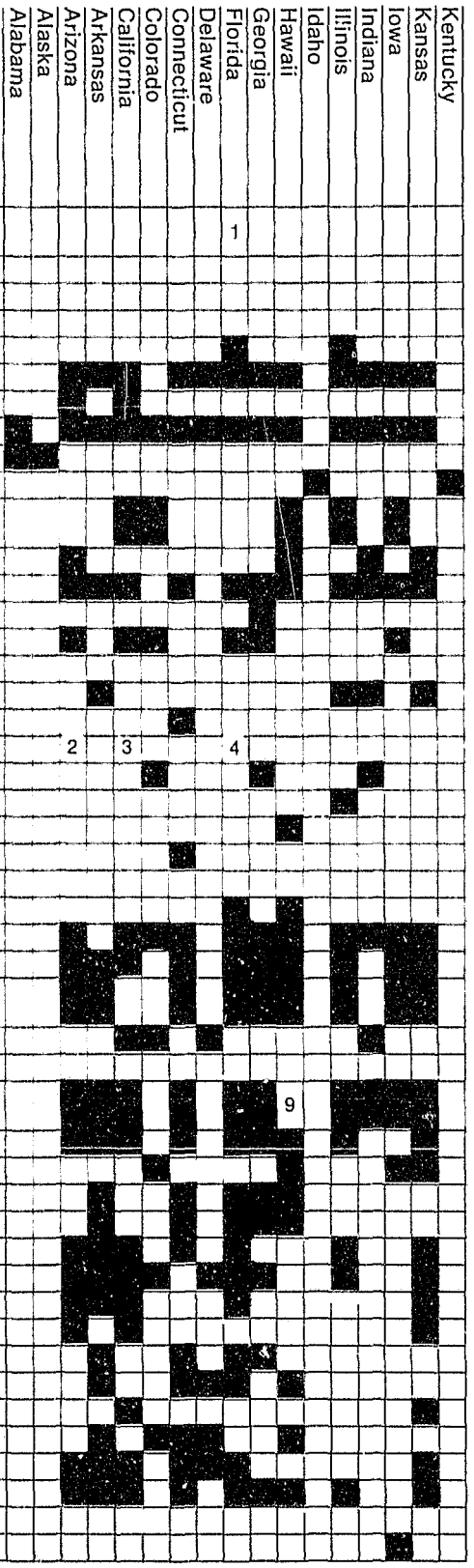
APPENDIX A

SUMMARY OF PRIVATE SECURITY STATEWIDE LEGISLATION

Source:

Private Security Task Force to the
National Advisory Committee on
Criminal Justice Standards and Goals
1976

Private Security Task Force To The National Advisory Committee on *Criminal Justice Standards and Goals*



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New Jersey
New Hampshire
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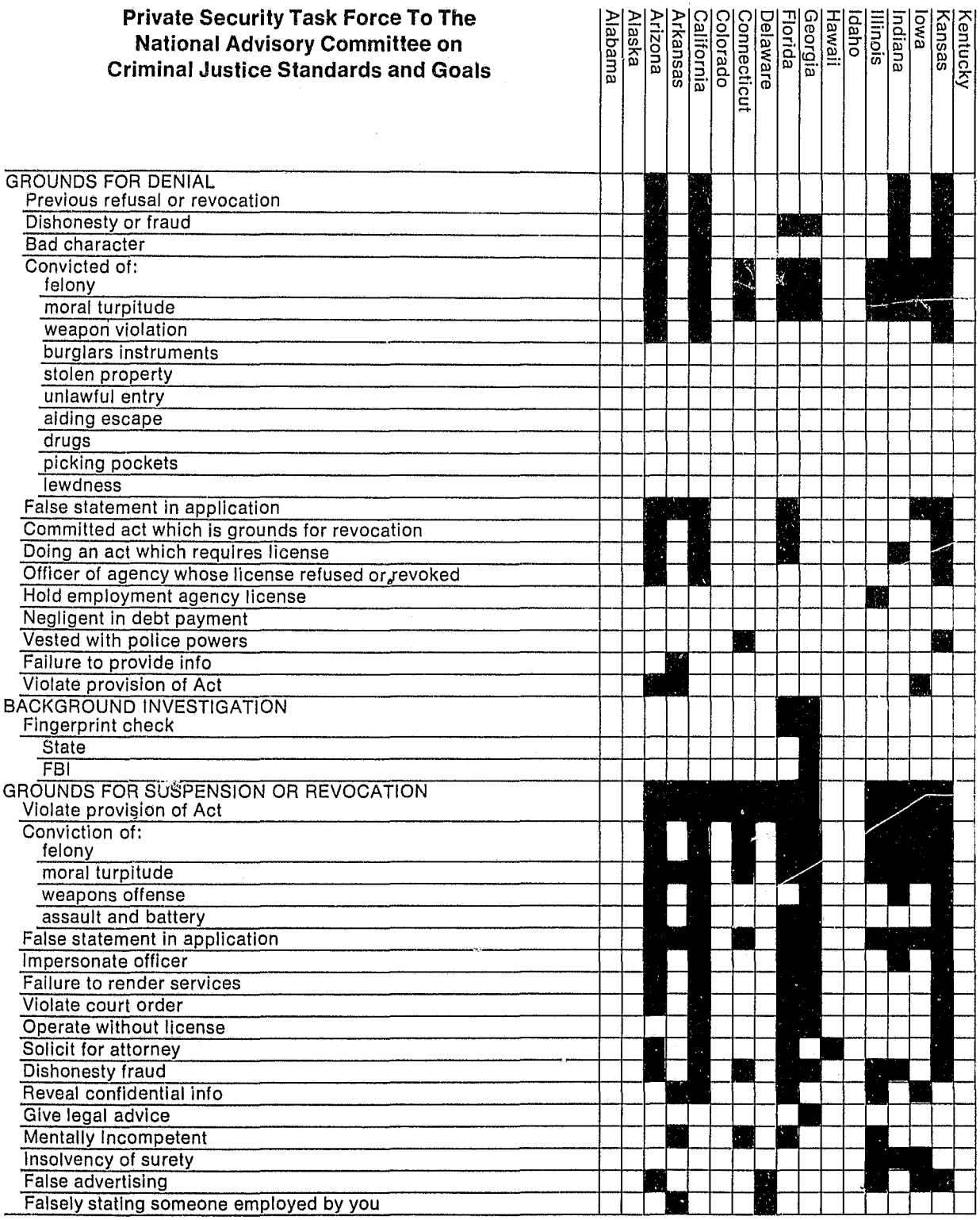
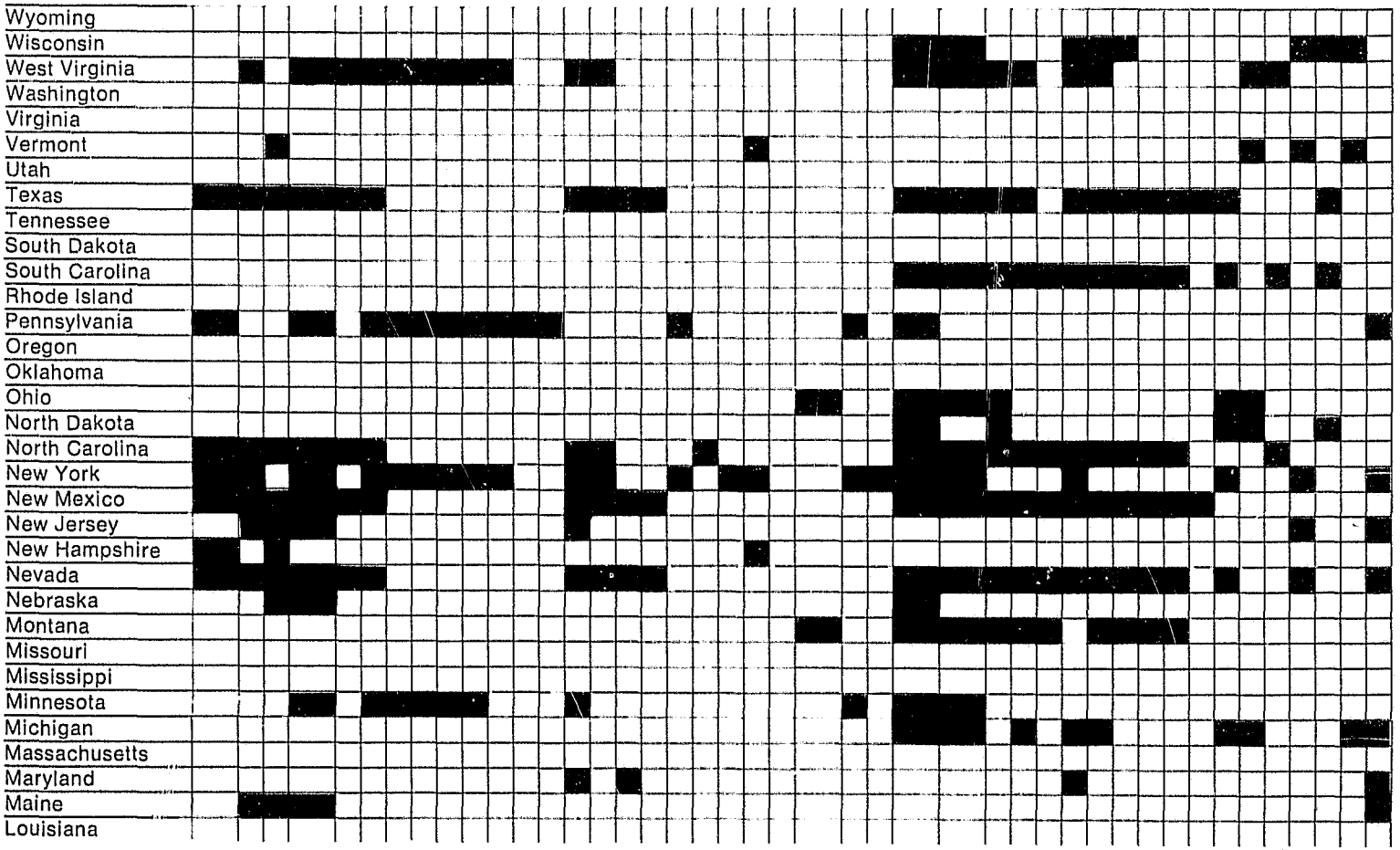
Private Security Task Force To The National Advisory Committee on Criminal Justice Standards and Goals

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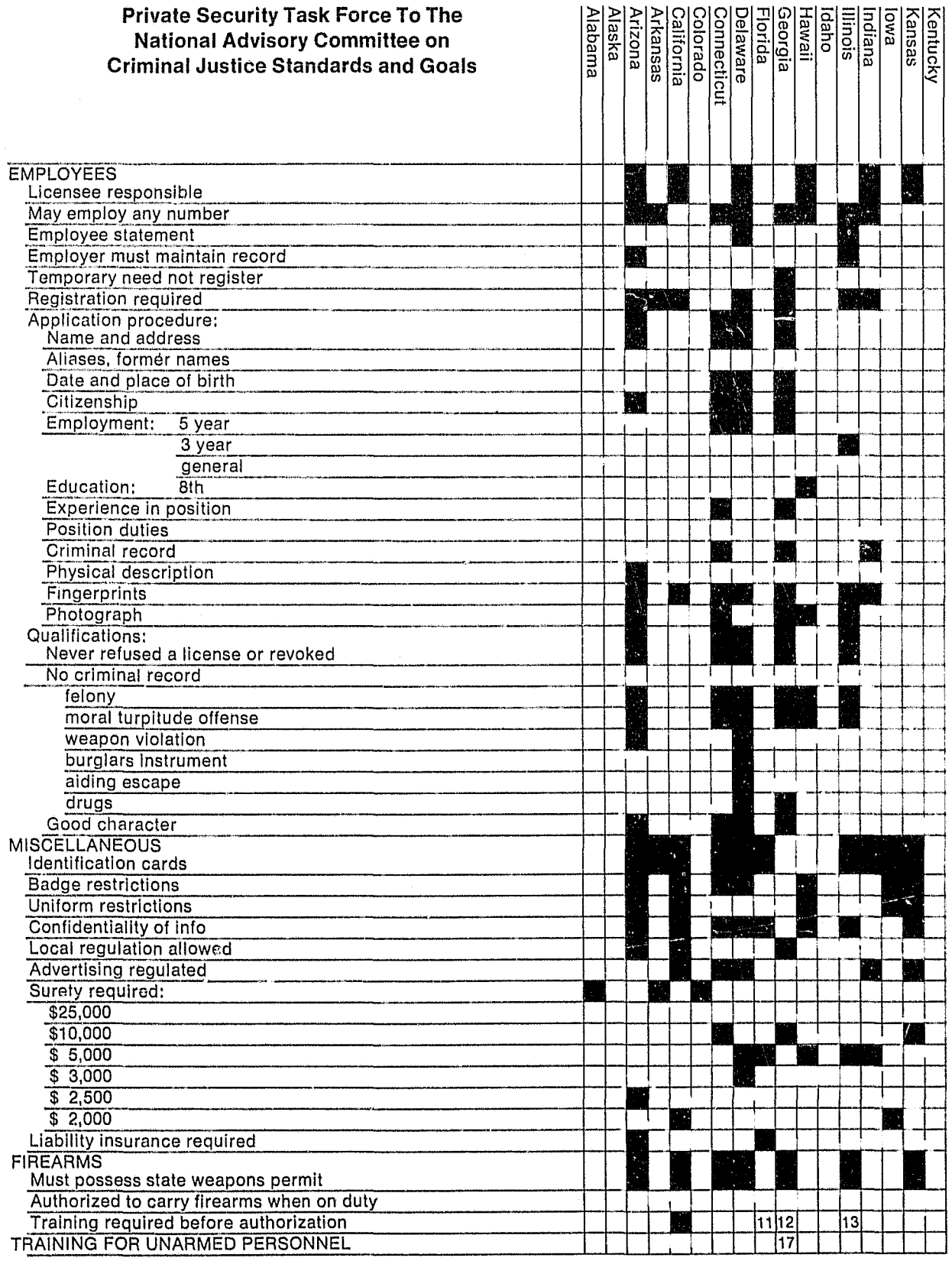
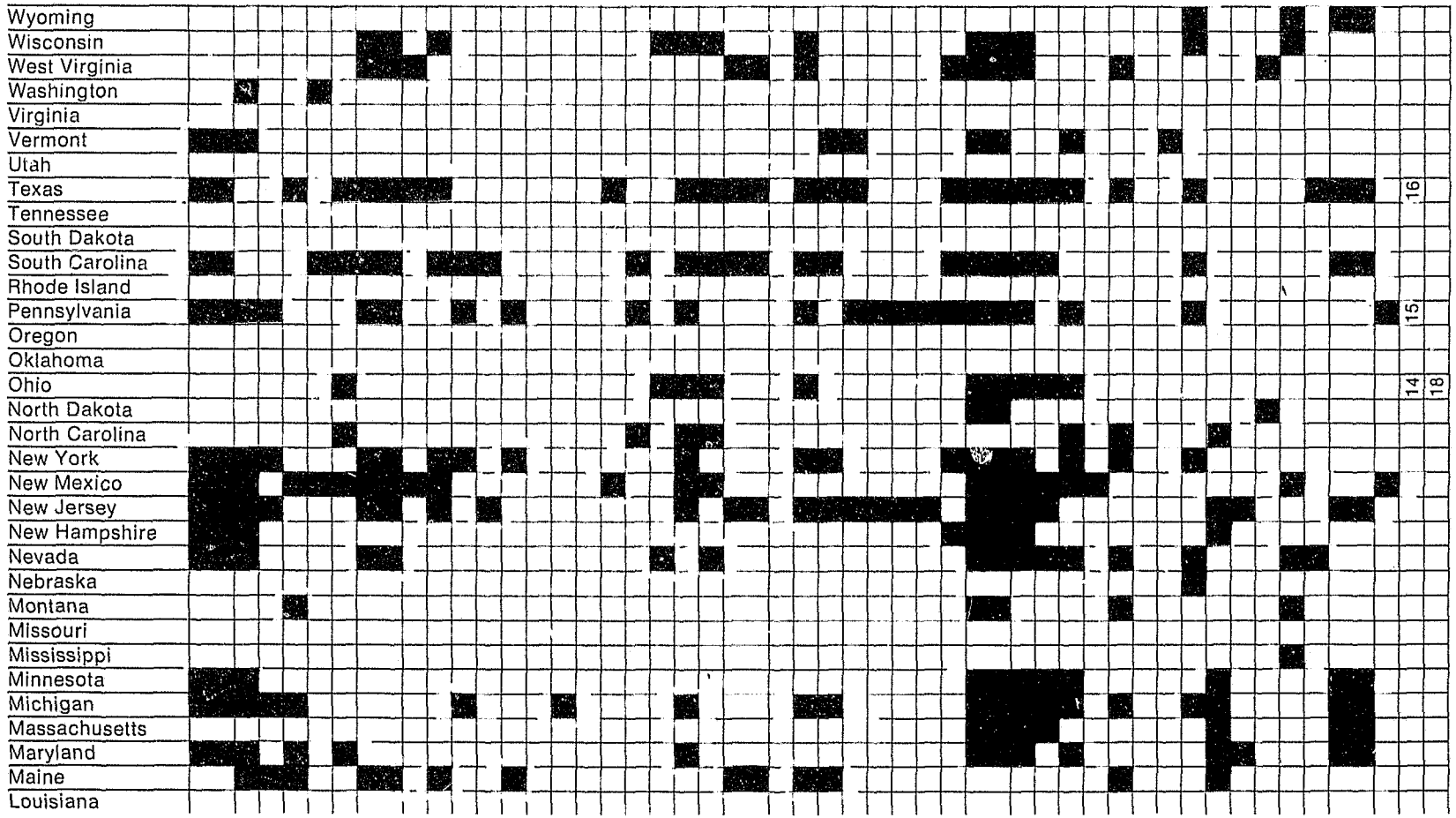
Louisiana

Private Security Task Force To The National Advisory Committee on Criminal Justice Standards and Goals

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North Dakota
North Carolina
New York
New Mexico
New Jersey
New Hampshire
Nevada
Nebraska
Montana
Missouri
Mississippi
Minnesota
Michigan
Massachusetts
Maryland
Maine
Louisiana
16
15
14
18

Key To Numbers Used In Summary Of Private Security Legislation

1. Exempt if regulated by public service commission

2. Require 1 year as guard or 3 years as policeman

3. Investigator must have 2 years related experience;
guard or watchman must have 1 year related experience

4. 1 year of the 3 year requirement must be met in Florida

5. Require 3 years as police investigator, 5 years as full-time licensed investigator, or 10 years as a police officer.

6. Require 2 years experience for investigator license;
require 1 year experience for private patrol operator license

7. Investigator must have 3 years related experience;
security patrol operator must have 2 years experience

8. Licensee must have 2 years experience in security or 3 years experience as policeman

9. Require photograph only

10. Require fingerprints only

11. Require a maximum of 10 hours

12. Armed security guards employed in a police capacity shall receive not less than 16 hours

13. Require 30 hours

14. Require 16 hours beyond the 97 hours required for security commission

15. Hours deemed necessary by the Board

16. Require minimum of 16 hours

17. Unarmed guard—4 hours;
in-house investigators—28 hours;
private detective—45 hours

18. A person employed by and compensated by a private organization for the purpose of enforcing the ordinances and laws they are empowered to enforce, to secure the premises of their employer and to enforce their rules must complete a 118 hour training program

Source: Responses to a questionnaire distributed by the Task Force staff in July 1975 to appropriate regulatory agencies in the States and/or to the attorney general of States where regulatory agencies did not exist.

APPENDIX B

STATEWIDE PRIVATE SECURITY REGULATORY BOARDS AND AGENCIES

Source:

Private Security Task Force to the
National Advisory Committee on
Criminal Justice Standards and Goals
1976

APPENDIX B

STATEWIDE PRIVATE SECURITY REGULATORY BOARDS AND AGENCIES

Private Investigator/Security Guard
Licensing Section
Department of Public Safety
2010 W. Encanto Blvd.
Phoenix, AZ 85009

Arkansas State Police
Department of Public Safety
P.O. Box 4005
Little Rock, AK 72204

Bureau of Collection and
Investigative Services
Department of Consumer Affairs
1127 11th Street, Suite 431
Sacramento, CA 95814

Licensing and Enforcement Division
Department of State
Daly Building--1576 Sherman Street
Denver, CO 80203

Department of State Police
100 Washington Street
P.O. Box 780
Hartford, CT 06101

Board of Examiners for Private Detectives
Delaware State Police
Box 430
Dover, DE 19901

Office of the Secretary of State
State Capitol Building
Tallahassee, FL 32302

Georgia Board of Private Detective and
Private Security Agencies
State Examining Boards
166 Pryor Street, S.W.
Atlanta, GA 30303

Board of Private Detectives and Guards
Professional and Vocational Licensing Div.
P.O. Box 3469
Honolulu, HI 96801

Licensing Branch
Department of Registration and Education
628 East Adams
Springfield, IL 62786

Indiana State Police
Private Detective Licensing Section
100 North Senate Avenue
Indianapolis, IN 46204

Department of Public Safety
Lucas State Office Building
Des Moines, IA 50319

The Attorney General
1st Floor-The State House
Topeka, KS 66612

Maine State Police
36 Hospital Street
Augusta, Maine 04330

Investigation Division
Maryland State Police
Pikesville, MS 21208

Massachusetts Department of Public Safety
1010 Commonwealth Avenue
Boston, MA 02215

M.O. and Licensing Section
Department of State Police
714 South Harrison Road
East Lansing, MI 48823

Private Detective and Protective Agent
Licensing Board
1246 University Avenue
St. Paul, MN 55104

Department of Professional and
Occupational Licensing
LaLonde Building
Helena, MT 59601

Secretary of State
State Capitol
Lincoln, NE 68509

Private Investigator's Licensing Board
Office of the Attorney General
Supreme Court Building
Carson City, NV 89701

Department of Safety
Division of State Police
Concord, NH 03301

Private Detective Unit
Division of State Police
P.O. Box 68
West Trenton, NJ 08625

Office of the Attorney General
P.O. Box 2246
Santa Fe, NM 87501

Department of State
Division of Licensing Services
270 Broadway
New York, NY 10007

Private Protective Service of North Carolina
421 North Blount Street
Raleigh, NC 27601

Office of the Attorney General
Bismarck, ND 58505

Department of Commerce
Division of Licensing
180 East Broad St., Room 1205
Columbus, OH 43215

South Carolina Law Enforcement Division
P.O. Box 21398
Columbia, SC 29221

Texas Board of Private Investigators and
Private Security Agencies
7600 Chevy Chase II, Suite 500
Austin, TX 78752

Board of Private Detective Licensing
Secretary of State's Office
Montpelier, VT 05602

Secretary of State
State Capitol
Charleston, WV 25305

Department of Regulation and Licensing
201 E. Washington Avenue
Madison, WI 53702

Note: In Pennsylvania licensing is administered at the county level through the Office of the Clerk of the Court of the county, and regulatory provisions are enforced by the County District Attorney.

APPENDIX C1

PRIVATE CITIZEN ARREST AUTHORITY

Source:

Daniel T. Clancy
School of Law
Case Western Reserve University
Cleveland, Ohio

Business and Industrial Security:
Practical Legal Problems--2d
Practicing Law Institute
New York City, 1972

STATE	ALABAMA	ALASKA	ARIZONA	ARKANSAS	CALIFORNIA
CODE CITATION	Code of Alabama Recompiled (1960) (Supp. 1969)	Alaska Stat. (1965)(Supp. 1971)	Ariz. Rev. Stat. (1956) (Supp. 1971)	Ark. Stat. (1947) (Supp. 1969)	Calif. Penal Code (West 1970) (Supp. 1971)
FELONY					
Committed in Presence			13-1404		
Felony Committed, But Not in Presence					Penal Code § 837
Felony Committed, Reasonable Cause to Believe Guilty	15 § 158	12.25.030	13-1404		Penal Code § 837
Reasonable Cause to Believe Suspect Committed				43-404	
Reasonable Cause to Believe Felony Committed and Suspect Guilty					
MISDEMEANOR					
Committed in Presence	15 § 158	12.25.030	13-1404 (Breach of Peace)		Penal Code § 337[1]
Offense Committed, Reasonable Cause to Believe Guilty					
FORCE					
Reasonable			43-602		
Deadly		11.15.100			

1-Includes Attempt

STATE	COLORADO	CONNECTICUT	DELAWARE	FLORIDA	GEORGIA
CODE CITATION	Colo. Rev. Stats. (1963)(Supp. 1968)	Conn. Gen. Stats. Ann. (1958)(Supp. 1971)	Del. Code Ann. (1953)(Supp. 1970)	Fla. Stats. Ann. (1965)(Supp. 1971)	Ga. Code Ann. (1961)(Supp. 1971)
FELONY					
Committed in Presence	39-2-20				
Felony Committed, But Not in Presence					
Felony Committed, Reasonable Cause to Believe Guilty				Common Law	27-211
Reasonable Cause to Believe Suspect Committed					
Reasonable Cause to Believe Felony Committed and Suspect Guilty					
MISDEMEANOR					
Committed in Presence	39-2-20			Common Law	27-211
Offense Committed, Reasonable Cause to Believe Guilty					
FORCE					
Reasonable					
Deadly	40-2-16				

STATE	HAWAII	IDAHO	ILLINOIS	INDIANA	IOWA
CODE CITATION	Ha. Rev. Stats. (1965) (Supp. 1971)	Ida. Code (1947) (Supp. 1971)	Ill. Ann. Stats. (1964) (Supp. 1971)	Ind. Admin. Rules & Reg. (1967) (Supp. 1970)	Iowa Code Ann. (1949) (Supp. 1971)
FELONY					
Committed in Presence	708-3				
Felony Committed, But Not in Presence		19-604(2)			
Felony Committed, Reasonable Cause to Believe Guilty		19-604(3)		Common Law	755.5
Reasonable Cause to Believe Suspect Committed					
Reasonable Cause to Believe Felony Committed and Suspect Guilty			107-3		
MISDEMEANOR					
Committed in Presence	708-3	19-604(1)[1]		Common Law	755.5(1)
Offense Committed, Reasonable Cause to Believe Guilty			107-3		
FORCE					
Reasonable	708-7				755.2
Deadly					

1-Reasonable cause to believe offense other than ordinary violation being committed

1-Includes Attempt

STATE	KANSAS	KENTUCKY	LOUISIANA	MAINE	MARYLAND
CODE CITATION	Kan. Stat. Ann. (1963) (Supp. 1965)	Baldwin's Ky. Rev. Stat. (1969)	La. Rev. Stat. (1970)	Maine Rev. Stat. Ann. (1965)(Supp. 1970)	Ann. Code of Md. (195 ;(Supp. 1971)
FELONY					
Committed in Presence			C.C.P. 5-214		
Felony Committed, But Not in Presence			C.C.P. 5-214		
Felony Committed, Reasonable Cause to Believe Guilty	Common Law	431.005(2)		Common Law	
Reasonable Cause to Believe Suspect Committed					
Reasonable Cause to Believe Felony Committed and Suspect Guilty					
MISDEMEANOR					
Committed in Presence	Common Law			Common Law	
Offense Committed, Reasonable Cause to Believe Guilty					
FORCE					
Reasonable	52-1204				
Deadly	21-404		14-20		

STATE	MASSACHUSETTS	MICHIGAN	MINNESOTA	MISSISSIPPI	MISSOURI
CODE CITATION	Mass. Gen. Laws Ann (1957)(Supp. 1970)	Mich. Stat. Ann. (1964)(Supp. 1971)	Minn. Stat. Ann. (1965)(Supp. 1971)	Miss. Code Ann. (1942)(Supp. 1971)	Ann. Mo. Stat. (1949)(Supp. 1971)
FELONY					
Committed in Presence		764.16(a)	629.37(1)[1]	11 § 2470[1]	
Felony Committed, But Not in Presence		764.16(b)	629.37(2)	11 § 2470	
Felony Committed, Reasonable Cause to Believe Guilty	Common Law		629.37(3)	11 § 2470	Common Law
Reasonable Cause to Believe Suspect Committed				11 § 2470	
Reasonable Cause to Believe Felony Committed and Suspect Guilty					
MISDEMEANOR					
Committed in Presence	Common Law		629.37(1)[1]	11 § 2470[1] (B/P)	Common Law
Offense Committed, Reasonable Cause to Believe Guilty					
FORCE					
Reasonable			609.06		544.190
Deadly					559.040(3)

1-Includes Attempt 1-Includes Attempt

STATE	MONTANA	NEBRASKA	NEVADA	NEW HAMPSHIRE	NEW JERSEY
CODE CITATION	Rev. Code of Mont. Ann. (1947)(Supp. 1971)	Rev. Stat. of Neb. (1943)(Supp. 1971)	Nev. Rev. Stat. (1967)	N.H. Rev. Stat. Ann. (1966)(Supp. 1971)	N.J. Stat. Ann. (1963)(Supp. 1971)
FELONY					
Committed in Presence	95-611(a)[1]				
Felony Committed, But Not in Presence					
Felony Committed, Reasonable Cause to Believe Guilty	95-611(b)	29-402	171-126		Common Law
Reasonable Cause to Believe Suspect Committed					
Reasonable Cause to Believe Felony Committed and Suspect Guilty					
MISDEMEANOR					
Committed in Presence	95-611(a)[1]		171-126		Common Law
Offense Committed, Reasonable Cause to Believe Guilty		29-402 (petit larceny)			
FORCE					
Reasonable	95-602				
Deadly	94-2513(4)		200.160		

1- Includes Attempt

STATE	NEW MEXICO	NEW YORK	NORTH CAROLINA	NORTH DAKOTA	OHIO
CODE CITATION	N. Mex. Stat. (1953)(Supp. 1971)	N.Y. (McKinney 1968) (Supp. 1971)	N.C. Gen. Stat. (1965)(Supp. 1971)	N.D. Cent. Code (1962)(Supp. 1971)	O. Rev. Code (1971)
FELONY					
Committed in Presence		C.P.L. § 140.30	15-40	29-06-20(1)[1]	
Felony Committed, But Not in Presence		C.P.L. § 140.30		29-06-20(2)	
Felony Committed, Reasonable Cause to Believe Guilty	Common Law		15-40	29-06-20(3)	2935.04
Reasonable Cause to Believe Suspect Committed					
Reasonable Cause to Believe Felony Committed and Suspect Guilty					2935.04
MISDEMEANOR					
Committed in Presence	Common Law	C.P.L. § 140.30	15-39 (Breach of Peace)	29-06-20(1)[1]	29-06-20(1)[1]
Offense Committed, Reasonable Cause to Believe Guilty					
FORCE					
Reasonable				29-06-12	
Deadly				12-27-05	

1-Includes Attempt

STATE	OKLAHOMA	OREGON	PENNSYLVANIA	RHODE ISLAND	SOUTH CAROLINA
CODE CITATION	Okla. Stat. Ann. (1970)(Supp. 1971)	Ore. Rev. Stat. (1969)	Penn. Stat. Ann. (1955)(Supp. 1971)	R.I. Gen. Laws (1970)	S.C. Code (1962) (Supp. 1969)
FELONY					
Committed in Presence	22 § 196	133.350[1]			17-251
Felony Committed, But Not in Presence		133.350			
Felony Committed, Reasonable Cause to Believe Guilty	22 § 196	133.350	Common Law	Common Law	
Reasonable Cause to Believe Suspect Committed					17-251
Reasonable Cause to Believe Felony Committed and Suspect Guilty					
MISDEMEANOR					
Committed in Presence	22 § 202	133.350[1]	Common Law	Common Law	17-251 (Larceny)
Offense Committed, Reasonable Cause to Believe Guilty					
FORCE					
Reasonable		133.290		12-7-8	
Deadly	21-733	163.100(2)			

1-Includes Attempt

STATE	SOUTH DAKOTA	TENNESSEE	TEXAS	UTAH	VERMONT
CODE CITATION	S.D. Compiled Laws (1967)(Supp. 1971)	Tenn. Code Ann. (1955)(Supp. 1971)	Tex. _____ Ann. (1966)(Supp. 1971)	Utah Code (1955) (Supp. 1971)	Vt. Stat. Ann. (1967)(Supp. 1971)
FELONY					
Committed in Presence	23-22-14 [1]		C.C.P. 14.01(a)	77-13-4(1) [1]	
Felony Committed, But Not in Presence	23-22-14	40-816(2)		77-13-4(3)	
Felony Committed, Reasonable Cause to Believe Guilty	23-22-14	40-816(2)		77-13-4(3)	Common Law
Reasonable Cause to Believe Suspect Committed					
Reasonable Cause to Believe Felony Committed and Suspect Guilty					
MISDEMEANOR					
Committed in Presence	23-22-14(1) [1]	40-816(1)	C.C.P. 14.01(a)	77-13-4(1) [1]	Common Law
Offense Committed, Reasonable Cause to Believe Guilty					
FORCE					
Reasonable	23-22-5		Art. 15-24		
Deadly				76-30-10	13 § 2305(2)

1-Includes Attempt

1-Includes Attempt

STATE	VIRGINIA	WASHINGTON	WEST VIRGINIA	WISCONSIN	WYOMING
CODE CITATION	Va. Code Ann. (1950)(Supp. 1971)	Rev. Code Wash. Ann. (1962)(Supp. 1971)	W. Va. Code (1971)	Wisc. Stat. Ann. (1971)	Wyo. Stat. (1957) (Supp. 1971)
FELONY					
Committed in Presence					
Felony Committed, But Not in Presence					
Felony Committed, Reasonable Cause to Believe Builty	Common Law	Common Law	Common Law		7-156
Reasonalbe Cause to Believe Suspect Committed					
Reasonable Cause to Believe Felony Committed and Suspect Guilty					
MISDEMEANOR					
Committed in Presence	Common Law	Common Law	Common Law		7-156 (petit larceny)
Offense Committed, Reasonable Cause to Believe Guilty	18.1-127 (shoplifting)				
FORCE					
Reasonable		9.11.040 (Felony)			
Deadly		9.48.170			

APPENDIX C2

PRIVATE CITIZEN ARREST AUTHORITY

Source:

Private Security Task Force to the
National Advisory Committee on
Criminal Justice Standards and Goals
1976

STATUTORY ARREST AUTHORITY OF PRIVATE CITIZEN

	MINOR OFFENSE											MAJOR OFFENSE												CERTAINTY OF CORRECT ARREST					
	Type of Minor Offense							Type of Knowledge Required				Type of Major Offense						Type of Knowledge Required											
	Crime	Misdemeanor amounting to a breach of the peace	Breach of the peace	Public offense	Offense	Offense other than an ordinance	Indictable offense	Presence	Immediate Knowledge	View	Upon reasonable grounds that is being committed	Felony	Larceny	Petit larceny	Crime involving physical injury to another	Crime	Crime involving theft or destruction of property	Committed in presence	Information a felony has been committed	View	Reasonable grounds to believe being committed	That felony has been committed in fact	In escaping or attempting	Summoned by peace officer to assist in arrest	Is in the act of committing	Reasonable grounds to believe person arrested committed	Probable cause		
Alabama				X				X				X										X				X			
Alaska	X							X				X										X				X			
Arizona		X						X				X										X				X			
Arkansas												X									X					X			
California				X				X				X										X				X			
Colorado	X							X								X		X											
Georgia					X			X	X			X											X			X			
Hawaii	X							X								X		X						X					
Idaho				X				X				X										X				X			
Illinois						X					X	X									X								
Iowa				X				X				X										X				X			
Kentucky												X										X				X			
Louisiana												X										X							
Michigan												X						X				X	X						
Minnesota				X				X				X										X				X			
Mississippi			X				X	X				X										X				X			
Montana					X			X				X										X				X			
Nebraska												X		X								X				X			
Nevada				X				X				X										X				X			
New York					X			X				X										X							
N. Carolina*			X									X			X		X						X				X		
N. Dakota				X				X				X										X				X			
Ohio												X									X					X			
Oklahoma				X				X				X										X				X			
Oregon	X							X								X		X									X		
S. Carolina												X	X						X	X									
S. Dakota				X				X				X										X				X			
Tennessee				X				X				X										X				X			
Texas			X					X		X		X						X		X									
Utah				X				X				X										X				X			
Wyoming												X		X								X				X			

*Statute eliminates use of word arrest and replaces with detention.

STATUTORY ARREST AUTHORITY OF PRIVATE CITIZENS

Code of Alabama Title 15, § 158 (1958).

A private person may arrest another for any public offense committed in his presence; or where a felony has been committed, and he has reasonable cause to believe that the person arrested committed it.

Alaska Statutes § 12.25.030 (1962).

A private person or peace officer without a warrant may arrest a person:

1) for a crime committed or attempted in his presence;
2) when the person has committed a felony, although not in his presence;
3) when a felony has in fact been committed and he has reasonable cause for believing the person to have committed it.

Arizona Revised Statutes Annotated § 13-1404 (Cum. Supp. 1975).

A private person may make an arrest:

1) when person to be arrested has in his presence committed a misdemeanor amounting to a breach of the peace or a felony.
2) when a felony has been in fact committed and he has reasonable ground to believe that the person to be arrested has committed it.

Arkansas Statutes Annotated § 43-404 (1947).

A private person may make an arrest where he has reasonable grounds for believing that the person arrested has committed a felony.

California General Laws Annotated PC § 837 (Deering 1971).

A private person may arrest another:

1) For a public offense committed or attempted in his presence.
2) When the person arrested has committed a felony, although not in his presence.
3) When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

Colorado Revised Statutes § 16-3-201 (1973).

A person who is not a peace officer may arrest another person when any crime has been or is being committed by the arrested person in the presence of the person making the arrest.

Georgia Code Annotated § 27-211 (Cum. Supp. 1975).

A private person may arrest an offender, if the offense is committed in his presence or within his immediate knowledge; and if the offense is a felony, and the offender is escaping, or attempting to escape, a private person may arrest him upon reasonable and probable grounds of suspicion.

Hawaii Revised Statutes § 708-3 (1965).

Any one in the act of committing a crime, may be arrested by any person present without a warrant.

Idaho Code Annotated § 19-604 (1947).

A private person may arrest another:

1) For a public offense committed or attempted in his presence.

2) When the person arrested has committed a felony although not in his presence.

3) When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

Illinois Revised Statutes ch 38, § 107-3 (1973).

Any person may arrest another when he has reasonable grounds to believe that an offense other than an ordinance violation is being committed.

Iowa Code Annotated § 755.5 (1973).

A private person may make an arrest:

1) For a public offense committed or attempted in his presence.

2) When a felony has been committed, and he has reasonable ground for believing that the person to be arrested has committed it.

Kentucky Revised Statutes § 431.005 (Baldwin 1969).

A private person may make an arrest when a felony has been committed in fact and he has reasonable grounds to believe that the person being arrested has committed it.

Louisiana Statutes Annotated CPC § 5-214 (West 1967).

A private person may make an arrest when the person arrested has committed a felony, whether in or out of his presence.

Michigan Compiled Laws Annotated § 764.16 (1968).

A private person may make an arrest:

a) For a felony committed in his presence;

b) When the person to be arrested has committed a felony although not in his presence;

c) When summoned by any peace officer to assist said officer in making an arrest.

Minnesota Statutes Annotated § 629.37 (1945).

A private person may arrest another:

1) For a public offense committed or attempted in his presence;

2) When such person has committed a felony, although not in his presence; or

3) When felony has in fact been committed and he has reasonable cause for believing the person arrested to have committed it.

Mississippi Code Annotated § 99-3-7 (1972).

Arrest when made without warrant:

An officer or private citizen may arrest any person without warrant, for an indictable offense committed, or a breach of the peace threatened or attempted in his presence; or when a person has committed a felony, though not in his

presence; or when a felony has been committed, and he has reasonable ground to suspect and believe the person proposed to be arrested to have committed it; or on a charge, made upon reasonable cause, of the commission of a felony by the party proposed to be arrested. And in all cases of arrests without warrant, the person making such arrest must inform the accused of the object and cause of the arrest, except when he is in the actual commission of the offense or is arrested on pursuit.

Revised Codes of Montana Annotated § 95-611 (Cum. Supp. 1975).

A private person may arrest another when:

1) he believes, on reasonable gounds, that an offense is being committed or attempted in his presence;
2) a felony has in fact been committed and he believes, on reasonable grounds, that the person arrested has committed it; or
3) he is a merchant, . . ., and has probable cause to believe the other is shoplifting in the merchant's store.

Revised Statutes of Nebraska § 29-402 (1964).

Any person not an officer may, without a warrant, arrest any person, if a petit larceny or a felony has been committed, and there is reasonable ground to believe the person arrested guilty of such offense, and may detain him until a legal warrant can be obtained.

Nevada Revised Statutes § 171.240 (1971).

A private person may arrest another:

1) For a public offense committed or attempted in his presence.

2) When the person arrested has committed a felony, although not in his presence.

3) When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

Consolidated Laws of New York CPL § 140.30 (McKinney 1971).

. . . any person may arrest another person (a) for a felony when the latter has in fact committed such felony, and (b) for any offense when the latter has in fact committed such offense in his presence.

General Statutes of North Carolina § 15 A-404 (1973).

No private person may arrest another except when requested to assist law enforcement officers in effecting arrest.

A private person may detain another person when he has probable cause to believe that the person detained has committed in his presence:

1) a felony,

2) a breach of the peace,

3) a crime involving physical injury to another person, or

4) a crime involving theft or destruction of property.

North Dakota Century Code Annotated § 29-06-20, 21 (1974).

A private person may arrest another:

1) For a public offense committed or attempted in his presence;
2) When the person arrested has committed a felony, although not in his presence;
3) When a felony has been in fact committed, and he has reasonable ground to believe that the person arrested committed it.

Ohio Revised Code Annotated § 2935-04 (Baldwin 1971).

When a felony has been committed, or there is reasonable ground to believe that a felony has been committed, any person without a warrant may arrest another whom he has reasonable cause to believe is guilty of the offense, and detain him until a warrant can be obtained.

Oklahoma Statutes Annotated § 202 (1969).

A private person may arrest another:

1) For a public offense committed or attempted in his presence;
2) When the person arrested has committed a felony although not in his presence;
3) When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

Oregon Revised Statutes § 133.225 (1975).

A private person may arrest another person for any crime committed in his presence if he has probable cause to believe the arrested person committed the crime.

Code of Laws of South Carolina § 17-251 (1962).

Upon a) view of a felony committed, b) certain information that a felony has been committed or c) view of a larceny committed, any person may arrest the felon or thief and take him to a judge or magistrate, to be dealt with according to law.

South Dakota Compiled Laws § 23-22-14 (1967).

A private person may arrest another:

1) For a public offense committed or attempted in his presence;
2) When the person arrested has committed a felony although not in his presence;
3) When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

Tennessee Code Annotated § 40-816 (1975).

A private person may arrest another:

1) For a public offense committed in his presence;
2) When the person arrested has committed a felony, although not in his presence;
3) When a felony has been committed, and he has reasonable cause to believe that the person arrested committed it.

Texas Statute Annotated CCP Art. 14.01 (Vernon 1968).

A peace officer or any other person, may, without warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony, or as an offense against the public peace.

Utah Code Annotated § 77-13-4,5 (1966).

1) For a public offense committed or attempted in his presence.
2) When the person arrested has committed a felony although not in his presence.
3) When a felony has been in fact committed and he has reasonable cause for believing the person arrested to have committed it.

Wyoming Statutes Title 7, § 156 (1957).

Any person not an officer, may, without warrant, arrest any person if a petit larceny or felony has been committed, and there is reasonable ground to believe the person arrested guilty of such offense, and may detain him until a legal warrant can be obtained.

APPENDIX D

ANALYSIS OF STATE SHOPLIFTING DETENTION STATUTES

Source:

Daniel T. Clancy
School of Law
Case Western Reserve University
Cleveland, Ohio

Business and Industrial Security:
Practical Legal Problems--2d
Practicing Law Institute
New York City, 1972

STATE	ALABAMA	ALASKA	ARIZONA	ARKANSAS	CALIFORNIA
CODE CITATION	Code of Alabama Recompiled (1960) 14 § 334(1)	Alaska Stat.(1965) (Supp. 1971) 11.20.277	Ariz. Rev. Stat. (1956)(Supp. 1971) 13-675	Ark. Stat. (1947) (Supp. 1969) 41-3942	Calif. Penal Code (West 1970)(Supp. 1971) None
WHO MAY DETAIN					
Merchant	X	X	X	X	
Employee	X	X	X	X	
Agent		X			
Peace Officer	X	X	X	X	
PURPOSE OF DETENTION					
Investigation		X			
Interrogation		X			
Search					
Recovery	X			X	
Arrest					
MANNER OF DETENTION					
Reasonable Manner	X	X		X	
Reasonable Time	X	X		X	
IMMUNITY					
Civil	X			X	
Criminal	X			X	
COMMENTS:			Statute makes "reasonable cause" a defense.		

STATE	COLORADO	CONNECTICUT	DELAWARE	FLORIDA	GEORGIA
CODE CITATION	Colo. Rev. Stats. (1963)(Supp. 1968) 40-5-31	Conn. Gen. Stats. Ann. (1958) None	Del. Code Ann. (1953)(Supp. 1970) 11 § 646	Fla. Stats. Ann. (1965)(Supp. 1971) § 11.022	Ga. Code Ann. (1961)(Supp. 1971) 105-1005
WHO MAY DETAIN					
Merchant	X		X	X	X
Employee	X			X	X
Agent					X
Peace Officer				X	
PURPOSE OF DETENTION					
Investigation					
Interrogation	X				
Search					
Recovery				X	
Arrest					
MANNER OF DETENTION					
Reasonable Manner	X		X	X	X
Reasonable Time			X	X	X
IMMUNITY					
Civil	X			X	X
Criminal				X	
COMMENTS:			Person Detaining Must Be Over 25 Years Old		Permits Detention or Arrest

STATE	HAWAII	IDAHO	ILLINOIS	INDIANA	IOWA
CODE CITATION	Ha. Rev. Stats. (1965)(Supp. 1971) 663-2	Ida. Code (1947) (Supp. 1971) None	Ill. Ann. Stats. (1964)(Supp. 1971) 38 § 10-3(4)	Ind. Admin. Rules & Reg.(1967)(Supp. 1970)10-3042 & 3044	Iowa Code Ann. (1949)(Supp. 1971) 709.24
WHO MAY DETAIN					
Merchant	X		X	X	X
Employee	X		X	X	X
Agent	X		X	X	
Peace Officer	X				X
PURPOSE OF DETENTION					
Investigation	X		X	X	
Interrogation	X				
Search					
Recovery					
Arrest					
MANNER OF DETENTION					
Reasonable Manner	X		X	X	
Reasonable Time	X		X	X	
IMMUNITY					
Civil	X		X	X	X
Criminal				X	X

COMMENTS:

STATE	KANSAS	KENTUCKY	LOUISIANA	MAINE	MARYLAND
CODE CITATION	Kan. Stat. Ann. (1963) (Supp. 1965) 21-535(b)	Baldwin's Ky. Rev. Stat. (1969) 433.236	La. Rev. Stat. (1970) 5-215	Maine Rev. Stat. Ann. (1965)(Supp. 1970) None	Ann. Code of Md. (1957)(Supp. 1971) 27 § 551A
WHO MAY DETAIN					
Merchant	X	X	X		X
Employee	X	X	X		X
Agent		X			X
Peace Officer		X	X		
PURPOSE OF DETENTION					
Investigation					
Interrogation			X		
Search					
Recovery		X			
Arrest					
MANNER OF DETENTION					
Reasonable Manner	X	X			
Reasonable Time	X	X			
IMMUNITY					
Civil	X				X
Criminal					

COMMENTS: Detention Can Be No Longer Than 60 Minutes; Detention or Arrest Authorized

STATE	MASSACHUSETTS	MICHIGAN	MINNESOTA	MISSISSIPPI	MISSOURI
CODE CITATION	Mass. Gen. Laws Ann (1957)(Supp. 1970) 231 § 94B	Mich. Stat. Ann. (1964)(Supp. 1971) 600.2917	Minn. Stat. Ann. (1965)(Supp. 1971) 629.366	Miss. Code Ann. (1942)(Supp. 1971) 2374-04	Ann. Mo. Stat. (1949)(Supp. 1971) None
WHO MAY DETAIN					
Merchant	X	X	X	X	
Employee	X		X	X	
Agent	X	X			
Peace Officer				X	
PURPOSE OF DETENTION					
Investigation					
Interrogation				X	
Search					
Recovery					
Arrest					
MANNER OF DETENTION					
Reasonable Manner	X	X			
Reasonable Time	X	X			
IMMUNITY					
Civil		X	X	X	
Criminal			X		
COMMENTS:			Detention is for purpose of delivering to police		

STATE	MONTANA	NEBRASKA	NEVADA	NEW HAMPSHIRE	NEW JERSEY
CODE CITATION	Rev. Code of Mont. Ann. (1947)(Supp. 1971) None	Rev. Stat. of Neb. (1943)(Supp. 1971) 29-402.01	Nev. Rev. Stat. (1967) 598.030	N.H. Rev. Stat. Ann. (1966)(Supp. 1971) None	N.J. Stat. Ann. (1963)(Supp. 1971) 2A:170-100
WHO MAY DETAIN					
Merchant		X	X		X
Employee		X			
Agent					
Peace Officer		X			X
PURPOSE OF DETENTION					
Investigation					
Interrogation					
Search					
Recovery		X	X		X
Arrest					
MANNER OF DETENTION					
Reasonable Manner		X	X		X
Reasonable Time		X	X		X
IMMUNITY					
Civil		X	X		X
Criminal		X	X		X
COMMENTS:					

STATE	NEW MEXICO	NEW YORK	NORTH CAROLINA	NORTH DAKOTA	OHIO
CODE CITATION	N. Mex. Stat.(1953) (Supp. 1971) 40A-16-22	N.Y. (McKinney 1968) (Supp. 1971) None	N.C. Gen. Stat. (1965)(Supp. 1971) 14-72.1	N.D. Cent. Code (1962)(Supp. 1971) 29-06-27	O. Rev. Code (1971) 2935.041
WHO MAY DETAIN					
Merchant	X		X	X	X
Employee			X	X	X
Agent			X		X
Peace Officer	X		X	X	
PURPOSE OF DETENTION					
Investigation					
Interrogation					
Search					
Recovery	X			X	X
Arrest					X
MANNER OF DETENTION					
Reasonable Manner	X		X	X	X
Reasonable Time	X		X	X	X
IMMUNITY					
Civil	X			X	
Criminal	X			X	

COMMENTS:

STATE	OKLAHOMA	OREGON	PENNSYLVANIA	RHODE ISLAND	SOUTH CAROLINA
CODE CITATION	Okla. Stat. Ann. (1970)(Supp. 1971) 22 § 1343	Ore. Rev. Stat. (1969) 164.392	Penna. Stat. Ann. (1955)(Supp. 1971) None	R.I. Gen. Laws (1970) 11-41-21	S.C. Code (1962) (Supp. 1969) 16-359.4
WHO MAY DETAIN					
Merchant	X	X			X
Employee	X	X			X
Agent	X				X
Peace Officer		X		X	
PURPOSE OF DETENTION					
Investigation	X				X
Interrogation	X	X			
Search	X				
Recovery	X				
Arrest					
MANNER OF DETENTION					
Reasonable Manner	X	X			X
Reasonable Time	X	X			X
IMMUNITY					
Civil	X	X			
Criminal	X	X			

COMMENTS:

STATE	SOUTH DAKOTA	TENNESSEE	TEXAS	UTAH	VERMONT
CODE CITATION	S.D. Compiled Laws (1967)(Supp. 1971) 22-37-24	Tenn. Code Ann. (1955)(Supp. 1971) 40-824	Tex. Ann. (1966)(Supp. 1971) PC 1436e	Utah Code (1955) (Supp. 1971) 77-13-36	Vt. Stat. Ann. (1967)(Supp. 1971) None
WHO MAY DETAIN					
Merchant	X	X	X	X	
Employee	X	X	X	X	
Agent			X	X	
Peace Officer		X		X	
PURPOSE OF DETENTION					
Investigation			X	X	
Interrogation					
Search					
Recovery		X		X	
Arrest					
MANNER OF DETENTION					
Reasonable Manner	X	X	X	X	
Reasonable Time	X	X	X	X	
IMMUNITY					
Civil	X	X	X	X	
Criminal	X	X		X	
COMMENTS:	Peace officer must be notified of detention				

STATE	VIRGINIA	WASHINGTON	WEST VIRGINIA	WISCONSIN	WYOMING
CODE CITATION	Va. Code Ann.(1950) (Supp. 1971) 18.1-127	Rev. Code Wash. Ann (1962)(Supp. 1971) 9.01.116	W. Va. Code (1971) 61-3A-4	Wisc. Stat. Ann. (1971) 943.50	Wyo. Stat. (1957) (Supp. 1971) 6-146.2
WHO MAY DETAIN					
Merchant	X	X	X	X	X
Employee	X	X	X	X	X
Agent	X	X	X		
Peace Officer		X	X		X
PURPOSE OF DETENTION					
Investigation		X	X		
Interrogation		X			X
Search					
Recovery					
Arrest					
MANNER OF DETENTION					
Reasonable Manner		X	X	X	X
Reasonable Time		X	X	X	X
IMMUNITY					
Civil	X		X		X
Criminal		X			X
COMMENTS:			Detention no longer than 30 minutes	Detention in order to deliver to police officer	

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END