

Though a peace officer use unreasonable force in making an arrest, yet if the person assaulted resist, not in self-defense, but with intent of resisting arrest, he is guilty of an offense. *Id.*

One may repel unreasonable violence used by a peace officer in arresting him by such force only as is reasonably necessary to repel it. *Id.*

If an officer in arresting a prisoner in the first instance uses undue violence, the prisoner may, in self-defense, use so much force as is necessary to repel it, and no more. *Id.*

SEC. 1906. ARREST WITHOUT WARRANT

(a) An arrest by a peace officer without a warrant for a misdemeanor is lawful whenever he has reasonable ground to believe that the person to be arrested has committed a misdemeanor—

(1) in his presence; or

(2) out of his presence and without the State, and if Law enforcement officers of the state where the misdemeanor was committed request an arrest and the accused will not be apprehended unless immediately arrested.

(b) An arrest by a peace officer without a warrant for a felony, whether committed within or without the State is lawful whenever—

(1) he has reasonable ground to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed; or

(2) a felony has been committed by the person to be arrested although before making the arrest the officer had no reasonable ground to believe the person committed it.

HISTORY AND SOURCE OF LAW

DERIVATION:

48 Del. Laws, Ch. 304. Code 1935, Sec. 5343-F.

1951 AMENDMENT:

48 Del. Laws, Ch. 304, amended Code 1935, by adding these provisions as section 5343-F.

CROSS REFERENCES

Arrest, see section 701 of Title 21, Motor Vehicles.

Intoxicated persons, arrest with or without warrant, see section 611 of this title.

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1. Common law

At common law, peace officers had authority to arrest without warrant on reasonable suspicion that felony had been committed. *Rickards v. State*, 77, A.2d. 199 (1951).

2. Generally

Where one person arrested another without a warrant it was at his own peril. *State v. Clark*, 2 Del. CAS. 210 (1804).

3. Presence of officer

The words "in his presence," as used in connection with an officer's authority to make an arrest without a warrant for an offense committed "in his presence," cannot be construed technically or strictly; it being sufficient to justify an arrest if the officer knows the offense was committed, which knowledge he may obtain, not only by seeing but by accused's admissions before arrest. *State v. Gulczynski*, 2 W.W. Harr. 120, 32 Del. 120, 120 A.88 (1922).

An arrest without warrant being valid if for an offense committed in the officer's presence or view, where accused upon being accosted by an officer and asked what he had in a package, finally replied "liquor, two gallons," his subsequent arrest was valid. *Id.*

A police officer may, without a warrant, arrest a person whom he finds engaged in a breach of the peace or any criminal offense within his view or within his hearing. *State v. Mills*, 6 Penn. 497, 22 Del. 497, 69 A. 841 (1908). See, also *State v. Wyatt*, 4 Boyce, 473 89 A. 217 (1913).