

## **Alabama Rules of Criminal Procedure**

### **Rule 4. Arrest and initial appearance.**

#### *Rule 4.1. Arrest without a warrant.*

(a) ARREST BY A LAW ENFORCEMENT OFFICER.

(1) A law enforcement officer may arrest a person without a warrant if:

(i) The law enforcement officer has probable cause to believe that a felony has been committed, or is being committed, and that the person to be arrested committed it, or

(ii) Any offense has been committed in the law enforcement officer's presence or view, or

(iii) The arrest is otherwise authorized by statute, such as Ala.Code 1975, §§ 32-5-171, 32-5A-191, 15-10-3.

(2) The law enforcement officer shall inform the person arrested of the officer's authority and the cause of the arrest, except when the person is arrested in the actual commission of the offense or during pursuit immediately thereafter.

(b) ARREST BY A PRIVATE PERSON.

(1) A private person may arrest another without a warrant if:

(i) A felony has in fact been committed, and the arresting person has probable cause to believe that the person to be arrested committed it, or

(ii) The person to be arrested committed an offense, other than a felony, in the presence of the arresting person.

(2) A private person making an arrest shall inform the person arrested of the cause of the arrest, except when such person is arrested in the actual commission of the offense or during pursuit immediately thereafter. A private person making an arrest shall deliver the person arrested without unnecessary delay to a judge, magistrate, or law enforcement officer. If the person arrested is taken to a law enforcement officer, the officer shall proceed as provided in Rule 4.3(a).

(c) ARREST ON ORDER OF JUDGE OR MAGISTRATE. When a public offense is committed in the presence of a judge or magistrate, he may, by oral or written order, command any person to arrest the offender and, when the offender has

been arrested, may thereupon proceed as if such offender had been brought before him on an arrest warrant.

**Committee Comments as Amended  
Effective August 1, 1997**

Except as otherwise provided by law, this rule shall govern arrests in Alabama for criminal offenses, whether classified as violations, misdemeanors, or felonies. Among the exceptions to the rule are minor traffic offenses, which shall continue to be governed by §32-1-4, Ala.Code 1975, and the violation of certain municipal ordinances pursuant to §11-45-9.1 for which release on personal recognizance is provided. Custodial arrest is authorized only for traffic offenses (1) involving DUI; (2) causing or contributing to an accident that results in injury or death; (3) in which the arresting officer has “good cause to believe” the offender committed a felony; or (4) where the person charged refuses to sign the Uniform Traffic Ticket and Complaint promising to appear in court or refuses to comply with the ticket provisions and instructions. § 32-1-4, Ala.Code 1975; *Morton v. State*, 452 So.2d 1361 (Ala.Crim.App.1984); see also *Hays v. City of Jacksonville*, 518 So.2d 892 (Ala.Crim.App.1987), and *Vickers v. State*, 547 So.2d 1191 (Ala.1989).

In recognition of the enactment of Act No. 89-857 (effective May 17, 1989), amending § 15-10-3, Ala.Code 1975, the rule was written to specifically provide that the provisions of § 15-10-3 would not be superseded by the rule, but rather, should be read in *pari materia* with the provisions of that statute. See Rule 4.1(a)(1)(iii).

In defining what is “probable cause to believe,” the Court of Criminal Appeals in *Knight v. State*, 346 So.2d 478, 481 (Ala.Crim.App.1977), stated:

“Probable cause exists where the facts and circumstances within the officer’s knowledge and of which he had reasonable trustworthy information are sufficient to warrant a man of reasonable caution in the belief that an offense has been or is being committed. *Yeager v. State*, 281 Ala. 651, 207 So.2d 125 (1967); *Draper v. United States*, 358 U.S. 307, 79 S.Ct. 329, 3 L.Ed.2d 327 (1959); *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).”

The Alabama Supreme Court has further stated:

“ [A]n officer cannot justify an arrest on the ground that he [had] reasonable cause to believe the person arrested had committed a felony, unless he has information of facts derived from credible sources or from persons reasonably presumed to know them, which, if submitted to the

judge or magistrate having jurisdiction, would require the issue of a warrant of arrest.’ ”

*Duncan v. State*, 278 Ala. 145, 160, 176 So.2d 840, 854 (1965), quoting *Berry v. State*, 27 Ala.App. 507, 511, 175 So. 407, 409 (1937). This decision is in accord with *Giordenello v. United States*, 357 U.S. 480, 78 S.Ct. 1245, 3 L.Ed.2d 1503 (1958), and *Whitley v. Warden, Wyoming State Penitentiary*, 401 U.S. 560, 91 S.Ct. 1031, 28 L.Ed.2d 306 (1971). See also *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). *Payton* held that “the Fourth Amendment ... prohibits police from making warrantless and nonconsensual entry into a suspect’s home in order to make a routine felony arrest.” See *Avant v. State*, 405 So.2d 159 (Ala.Crim.App.1981), which upheld a warrantless nonconsensual entry to make a routine felony arrest two hours after the incident, distinguishing *Payton*.

Rule 4.1(b) is based on Ala.Code 1975, § 15-10-7. Changes have been made in the language of this Code section; however, there is no provision within Rule 4.1(b) comparable to § 15-10-7(d), which provides that a private person may “[i]f he is refused admittance, after notice of his intention, and the person to be arrested has committed a felony, ... break open an outer or inner door or window of a dwelling house.”

Rule 4.1(c) is based on § 15-10-6, and, with the exception of a minor wording change (reference to “oral” order rather than “verbal” order), the provisions of Rule 4.1(c) are identical to the statute.