

## 1401. False Arrest Without Warrant by Peace Officer—Essential Factual Elements

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*[Name of plaintiff]* claims that *[he/she]* was wrongfully arrested by *[name of defendant]*. To establish this claim, *[name of plaintiff]* must prove all of the following:

1. That *[name of defendant]* arrested *[name of plaintiff]* without a warrant;
  2. That *[name of plaintiff]* was [actually] harmed; and
  3. That *[name of defendant]*'s conduct was a substantial factor in causing *[name of plaintiff]*'s harm.
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*New September 2003*

### Directions for Use

Give CACI No. 1402, *False Arrest Without Warrant—Affirmative Defense—Peace Officer—Probable Cause to Arrest*, if applicable, immediately after this instruction.

If plaintiff is seeking nominal damages as an alternative to actual damages, insert the following paragraph above element 2:

If you find the above, then the law assumes that *[name of plaintiff]* has been harmed and *[he/she]* is entitled to a nominal sum such as one dollar. *[Name of plaintiff]* is also entitled to additional damages if *[he/she]* proves the following:

The second sentence of the above paragraph, along with the final two elements of this instruction, should be omitted if plaintiff is seeking nominal damages only. Read “actually” in the second element only if nominal damages are also being sought.

### Sources and Authority

- Penal Code section 834 provides: “An arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person.”
- “[F]alse arrest’ and ‘false imprisonment’ are not separate torts. False arrest is but one way of committing a false imprisonment, and they are distinguishable only in terminology.” (*Collins v. City and County of San Francisco* (1975) 50 Cal.App.3d 671, 673 [123 Cal.Rptr. 525].)

- Government Code section 820.4 provides: “A public employee is not liable for his act or omission, exercising due care, in the execution or enforcement of any law. Nothing in this section exonerates a public employee from liability for false arrest or false imprisonment.”
- A person is liable for false imprisonment if he or she “ ‘authorizes, encourages, directs, or assists an officer to do an unlawful act, or procures an unlawful arrest, without process, or participates in the unlawful arrest . . . .’ ” (*Du Lac v. Perma Trans Products, Inc.* (1980) 103 Cal.App.3d 937, 941 [163 Cal.Rptr. 335], internal citation omitted.) Where a defendant “knowingly [gives] the police false or materially incomplete information, of a character that could be expected to stimulate an arrest” . . . “such conduct can be a basis for imposing liability for false imprisonment.” (*Id.* at p. 942.)
- “It has long been the law that a cause of action for false imprisonment is stated where it is alleged that there was an arrest without process, followed by imprisonment and damages. Upon proof of those facts the burden is on the defendant to prove justification for the arrest.” (*Cervantez v. J.C. Penney Co.* (1979) 24 Cal.3d 579, 592 [156 Cal.Rptr. 198, 595 P.2d 975].)
- Penal Code section 830 and following provisions define who are peace officers in California.

### ***Secondary Sources***

5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 434–440

3 Levy et al., California Torts, Ch. 42, *False Imprisonment and False Arrest*, § 42.23 (Matthew Bender)

22 California Forms of Pleading and Practice, Ch. 257, *False Imprisonment* (Matthew Bender)

1 California Civil Practice: Torts (Thomson Reuters West) § 13:20

## 1402. False Arrest Without Warrant—Affirmative Defense—Peace Officer—Probable Cause to Arrest

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**[Name of defendant] claims the arrest was not wrongful because [he/she] had the authority to arrest [name of plaintiff] without a warrant.**

**[If [name of defendant] proves that [insert facts that, if proved, would constitute reasonable cause to believe that plaintiff had committed a crime in defendant's presence], then [name of defendant] had the authority to arrest [name of plaintiff] without a warrant.]**

*[or]*

**[If [name of defendant] proves that [insert facts that, if proved, would establish that defendant had reasonable cause to believe that plaintiff had committed a felony, whether or not a felony had actually been committed], then [name of defendant] had the authority to arrest [name of plaintiff] without a warrant.]**

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*New September 2003*

### Directions for Use

In the brackets, the judge must insert the fact or facts that are actually controverted and that may be necessary to arrive at the probable cause determination. There may be one or more facts or combinations of facts that are necessary to make this determination, in which case they can be phrased in the alternative.

If a criminal act is alleged as justification, it may be necessary to instruct whether the crime is a felony, misdemeanor, or public offense.

Penal Code section 836 provides, in part, that a warrantless arrest may be made if a person has committed a felony, although not in the officer's presence. While the requirement of probable cause is not explicitly stated, it would seem that the officer must always have probable cause at the time of the arrest and that subsequent conviction of a felony does not sanitize an improper arrest.

If the first bracketed paragraph is used, the judge should include "in the officer's presence" as part of the facts that the jury needs to find if there is a factual dispute on this point.

### Sources and Authority

- Penal Code section 836(a) provides, in part:

A peace officer . . . without a warrant, may arrest a person whenever any of the following circumstances occur:

  - (1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.
  - (2) The person arrested has committed a felony, although not in the officer's presence.
  - (3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.
- Penal Code section 15 provides: "A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: (1) death; (2) imprisonment; (3) fine; (4) removal from office; or, (5) disqualification to hold and enjoy any office of honor, trust, or profit in this State."
- Penal Code section 17(a) provides: "A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions."
- Penal Code section 830 and following provisions define who are peace officers in California.
- "An officer is not liable for false imprisonment for the arrest without a warrant of a person whom he has reasonable grounds to believe is guilty of a crime. The question of the existence of probable cause to believe that one is guilty of a crime must be determined as a matter of law from the facts and circumstances of the case." (*Allen v. McCoy* (1933) 135 Cal.App. 500, 507–508 [27 P.2d 423].)
- "It has long been the law that a cause of action for false imprisonment is stated where it is alleged that there was an arrest without process, followed by imprisonment and damages. Upon proof of those facts the burden is on the defendant to prove justification for the arrest. Considerations of both a practical and policy nature underlie this rule. The existence of justification is a matter which ordinarily lies peculiarly within the knowledge of the defendant. The plaintiff would encounter almost insurmountable practical problems in attempting to prove the

negative proposition of the nonexistence of any justification. This rule also serves to assure that official intermeddling is justified, for it is a serious matter to accuse someone of committing a crime and to arrest him without the protection of the warrant process.” (*Cervantez v. J. C. Penney Co.* (1979) 24 Cal.3d 579, 592 [156 Cal.Rptr. 198, 595 P.2d 975], footnote and internal citations omitted.)

- “The existence of probable cause depends upon facts known by the arresting officer at the time of the arrest.” (*Hamilton v. City of San Diego* (1990) 217 Cal.App.3d 838, 844 [266 Cal.Rptr. 215], internal citations omitted.)
- “If the facts that gave rise to the arrest are undisputed, the issue of probable cause is a question of law for the trial court. When, however, the facts that gave rise to the arrest are controverted, the trial court must instruct the jury as to what facts, if established, would constitute probable cause. ‘The trier of fact’s function in false arrest cases is to resolve conflicts in the evidence. Accordingly, where the evidence is conflicting with respect to probable cause, “ ‘it [is] the duty of the court to instruct the jury as to what facts, if established, would constitute probable cause.’ ” . . . The jury then decides whether the evidence supports the necessary factual findings.’ ” (*Levin v. United Air Lines, Inc.* (2008) 158 Cal.App.4th 1002, 1018–1019 [70 Cal.Rptr.3d 535], internal citations omitted.)
- “ ‘Presence’ is not mere physical proximity but is determined by whether the offense is apparent to the officer’s senses.” (*People v. Sjosten* (1968) 262 Cal.App.2d 539, 543–544 [68 Cal.Rptr. 832], internal citations omitted.)

### ***Secondary Sources***

5 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 436, 438

3 Levy et al., California Torts, Ch. 42, *False Imprisonment and False Arrest*, § 42.23 (Matthew Bender)

22 California Forms of Pleading and Practice, Ch. 257, *False Imprisonment*, § 257.20 (Matthew Bender)

10 California Points and Authorities, Ch. 103, *False Imprisonment*, § 103.65 et seq. (Matthew Bender)

1 California Civil Practice: Torts (Thomson West) §§ 13:22–13:24