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Document Title: **Legal Authority of Private Security Officers, Citizens, and Community Groups**

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Document Number: **173096**

Date Received: **December 1993**

Award Number: **91-IJ-CX-0018**

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Legal Authority of Private Security Officers,
Citizens, and Community Groups*

Final Report for National
Institute of Justice Grant #91-IJ-CX-0018

by Steven Puro and Roger Goldman, St. Louis University

submitted to: United States Department of Justice
National Institute of Justice

George Shollenberger, Project Director

December 1, 1993

*Supported under award #91-IJ-CX-0018 from the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the authors and do not necessarily represent the official position of the U.S. Department of Justice.

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TABLE OF CONTENTS

Abstract.	iii
Acknowledgements.	iv
I. Introduction.	1
II. Project Description	5
A. Methodology and Data.	6
B. Data Collection	8
III. Citizens' Legal Authority to Combat Crime	10
A. Citizens' Authority to Arrest	12
B. Citizens' Right to Search, Detain and Interrogate	14
C. Citizens'- Private Security Officers Carrying Weapons: A Comparison.	16
D. Merchants' Privilege: Enhanced.	17
Citizens' Authority	
IV. Private Security Officers: Authority and Regulation.	21
A. Private Security Officers and Citizens' Authority to Combat Crime: A Comparison.	21
B. State Regulation of Private Security Companies and Officers.	23
C. Private Security - Community Choice: An Example	28
D. New Forms of Private Security Activity: Sussex, New Jersey, and Green Island, New York.	31
V. Constitutional Restrictions on Citizens and Community Groups: State Action.	34
A. Introduction to "State Action" Concept.	34
B. Authority Derived from the State.	42
1. Private Persons as "Special Police Officers" or "Commissioned Officers".	42
2. Statutory Authority	42
a. Regulation and Authority Granted by State Statutes	42
b. Merchants' Privilege Statutes	43
3. Off-duty Police Officers.	44
C. Police Involvement with Private Actors.	44
1. Prearranged Plan with Police.	44
2. Joint Activity with Police.	45
D. Recognizing State Action Doctrine in Community Policing.	47
VI. Civil Liability of Citizens and Community Groups.	48
VII. Conclusion.	50
VIII. Future Directions	53
A. Policy.	53
B. Research.	56

Tables and Charts

Notes

Bibliography

Abstract

As citizens and community groups increase their involvement in crime-combating activities, there is a need to examine their legal authority as well as their liability for such activities. Citizens and community groups should be aware of legal limitations on their activities, as well as police departments and other community organizations who might utilize the services of such citizens and community groups.

This study describes private citizens' authority to arrest, search, carry weapons, interrogate, and detain persons suspected of certain crimes. It then examines the issue of liability which has arisen when private individuals engage in fighting crime, typically private security officers. These liabilities include a variety of torts, including false imprisonment and invasion of privacy. State regulation of private security agencies and officers is analyzed to determine whether a similar model of state regulation could be used for the crime-combating activities of private citizens and community groups.

State action was found to be an important issue which may limit the willingness of police departments to cooperate with community groups and private citizens. Substantial benefits can occur from police-private sector cooperation, but legal consequences both to the police and private individuals and groups must be considered. If police-private sector crime-combating relationships constitute state action and violate suspects' constitutional rights, then both the police and private actors may be liable under the "state action" doctrine. Some courts have held that prearranged plans and joint activity between the public and private sector can lead to a finding that the entire activity is regulated by constitutional norms, such as the fourth amendment's prohibition of unreasonable searches and seizures.

We conclude that the authority of citizens and community groups to combat crime is currently quite limited and that legislatures may want to expand the authority of community groups and citizens as they have in the area of merchants' privilege. If so, legislatures will have to consider new state laws and administrative regulations for both citizens and community groups as has been done in many states with respect to private security officers.

Acknowledgments

In this project, we incurred substantial intellectual debts to many individuals. Mr. George Shollenberger, Project Director at the National Institute of Justice, provided guidance and encouragement for our efforts. Individuals in the private security and police communities spoke openly about the potential for community policing. Colleagues at the St. Louis University Political Science Department and the School of Law were willing to discuss our project and its progress. The organizational and research skills of John Hall, Peter Leritz, Nancy McGee, Cindy Soper, Tom Horgan and Anthony Horvath shepherded the project through many phases. We thank them for their efforts.

I. Introduction

In the 1990's criminal justice agencies will increasingly depend upon the support of local communities to combat crime. Police recognize that the community's needs and concerns are central to deterring crime. Police cooperation with citizens and private security officers can increase community response to problems of crime and create accountability by both the community and the police. The 1990 Hallcrest Report supports this view and argues that the "responsibility for deterrence or reducing opportunities for crime is increasingly being assumed by private security, individuals, business, and citizen groups, sometimes with a coordinating function by the police." (Hallcrest II, pp. 107-108.) The ability of community-based organizations, whether citizens or a combination of citizens and private security, to achieve these goals is dependent upon their authority under existing state law to deter crime. As reliance on private security officers and citizens increases, government officials must be assured that citizens and officers have the authority to carry out these tasks.

Community policing involves a variety of intricate initiatives designed to provide solutions for modern day policing (Goldstein, 1993). Community policing recognizes a mutual interdependence between police and a much wider set of public and private agencies. This interdependence reflects a shift from reactive law enforcement practices by police to proactive involvement with the community to solve social or crime problems. Police have adopted reactive

practices to criminal behavior such as patrols, response to distress calls, and apprehension of criminals (Friedmann, 1992, p.18). Community policing changes that focus and emphasizes elements such as police-community reciprocity, problem-oriented policing, and decentralization of command which gives greater flexibility to local commanders to meet concerns of the citizens, such as a gang that has been destroying property in a neighborhood. Within the community-policing framework, both police and the community can be proactive in identifying problems and devising long-term solutions for recurrent criminal activity. Interdependence between the police and the community is a hallmark of community policing. Community policing involves changes in the cooperation, authority and expectations between police and private organizations. These expectations may involve reliance on formal and informal community forces in conjunction with police officials.

Community-based policing involves the transfer of law enforcement tasks to private sources or a cooperative effort between public and private organizations. Community policing is a non-traditional way for police and community groups to respond to the problems of high crime and limited resources by the contracting out of security services or supplementing public safety services. These responses may mitigate or solve crime problems. Communities increasingly use "private security products and services for neighborhoods, shopping malls...and virtually every residential setting...." (Hallcrest II, pp. 256-66.)

Private security officers are joining community groups to

confront directly the drug and crime problems faced in certain neighborhoods. For example, an article on SSI Patrol Services discusses attempts to free privately owned apartments from drug traffickers in the East New York section of Brooklyn (see New York Times, June 16, 1991, at A1). The traditional private security functions of protection of private property, observe and report, and deter criminal activities remain. However, the presence of proactive and cooperative private security services has increased in recent years. There are a variety of state and local programs which form cooperative relationships between the police and private security officers, see, e.g., Washington Law Enforcement Executive Forum and Downtown Detroit Security Executive Council. Increased privatization of police services, either through private security officers or other community-based activities, will make distinctions between police and other crime prevention agencies even harder to draw.

In the community-based policing framework, the police relinquish exclusive control of certain of their functions that deter or detect crime, delegating or sharing responsibility for those functions with non-law enforcement groups or individuals. When community groups become part of the battle against crime, a rethinking of legal rights, responsibilities, and liabilities of citizens' groups is necessary. Under these conditions, to what extent can community groups or other private parties supplement those functions? What restraints are placed on those private groups or individuals' activities? This study will identify citizens'

authority to combat crime through arrest, detention, interrogation, search of suspects and carrying of weapons. If citizens lack such authority, can they rely upon private organizations, such as private security officers and community groups, to fulfill those duties? These private organizations might have greater authority than the private citizen or a broader ability to cooperate with police. This study will compare the authority of private security officers and private citizens among the states and identify major patterns of that authority.

This study discusses the authority of citizens/community groups and private security officers and how that authority might be applied within the tenets of community policing. Generally, governments, especially states and localities, have paid little attention to the authority and regulation of community groups. First, this study considers the authority of citizens and private security officers to combat crime. The existing authority, based either in state statutes or common law, was examined. (See Secs. III and IV). Our analysis of community groups' authority is derived from those laws and court rulings concerning citizens and private security officers. Second, the study considers constitutional and statutory restraints on citizens/community groups/private security officers' ability to combat crime. (See Secs. V and VI). We found that if citizens/community groups/private security officers violate a citizen's rights, they may be liable under federal civil rights statutes, both civil and criminal. Moreover, they may be subject to tort suits under state

law for crime-combating activities, such as false imprisonment and assault. When these groups cooperate with police in community-policing activities, similar liability problems may occur. Furthermore, the police department and the municipality may also be liable for those citizens/community groups' actions which violate other citizens' rights. Third, this study considers future regulatory frameworks for the community-policing activities of citizens/community groups. (See Sec. VIII). Our analysis indicates when citizens/community groups assume additional duties to combat crime, increased legislative authorization for those activities might be necessary. This part of the study asks what legislative approaches can direct future plans for community-policing activities.

II. Project Description

Traditional legal frameworks for dealing with crime are under close scrutiny in the 1990's. Citizens groups and private security officers are exerting their authority to deter crime in local neighborhoods. Community-based organizations' ability to achieve community-policing goals to deter crime is strongly dependent upon their legal authority under existing state laws. Their new activities may extend beyond legally authorized boundaries. This research project, "Legal Authority of Private Security Officers, Citizens, and Community Groups" (91-IJ-CX-0018), investigated the legal authority of and restraints upon citizens, community groups, and private security officers to combat crime and engage in community policing. The study collected and analyzed

state statutes and case law to examine the legal authority of private security officers and private citizens to combat crime through such means as carrying weapons, arrest, detention, search and interrogation of suspects. The coordination of crime prevention activities among police, community groups, and other private and public agencies has been hampered because of uncertainty as to which organizations, other than the police, can take action against criminal suspects.

As reliance upon private security officers and citizens increases, government officials must be assured that citizens and private security officers have the authority to carry out these tasks. This research into the legal authority of and restraints upon citizens, community groups, and private security officers can help policy makers and citizens define appropriate mechanisms for community-based policing. These new approaches can define the boundaries of cooperative efforts to enhance security in communities.

A. Methodology and Data

Our analysis focuses upon citizens, community groups, and private security officers' ability to engage in both reactive and proactive actions concerning criminal activities. Similarities in their authority to act and specific differences between or among their authority, e.g., in carrying of concealed weapons, are examined. A variety of circumstances are considered ranging from citizens acting independently as individuals to cooperative efforts between citizens, community groups, private security officers and

police or police departments. These behaviors show differences and similarities in the individuals/groups' ability to combat crime and the legal consequences of their activities.

The study was designed to understand underlying patterns concerning the legal authority of citizens and private security officers to combat crime. Legal authority derives from common law decisions as well as from state statutes. By regulation, we mean statutory and administrative controls placed upon individuals who serve as private security officers, e.g., requiring minimum qualifications and training standards. The study collected and compared, as appropriate for each state, common law and state statutes concerning the authority of private security officers and citizens to carry weapons, make arrests, and to detain, search and interrogate individuals suspected of crime. Main patterns of citizen and private security officer authority were found. After the main patterns were found, recent case law was analyzed to determine if there were new developments or practices. We took particular note of instances where private security officer authority has substantially increased through statutory law.

Our analysis distinguished between police and private parties'--citizens, security officers, community groups--scope of authority to combat crime. Our analysis focused on the distinguishing features of citizens, private security officers and community groups' legal authority to conduct crime-combating activities. The project was not designed to study the activities of specific citizens or community groups.¹ Our concern is the

current state of the law regarding the authority of citizens and private security officers, and its implications for the ability of community groups to combat crime and engage in cooperative efforts with police. This study refers to a few examples of citizen, community group, and private security officer activities to indicate possibilities for deterring crime and the legal restraints which are placed on their actions.

B. Data Collection

Data collection focused on the legal authority of private security officers and private citizens. State statutes and common law governing this area were obtained through an examination of: published statutes, mail requests to state officials, LEXIS legal database as a source for recent statutory changes, court cases, American Law Reports (A.L.R.), law review articles, and other scholarly interpretations of community policing. Recent changes were also examined by tracking recent state legislative activities and examining pocket parts of state statutes. In addition, the investigators created LEXIS database searches to determine the statutes and administrative rules concerning citizens and private security officers' authority to perform crime-abating activities. Separate analyses were developed to find major cases concerning this authority of citizens and private security officers in each state.

The authority of citizens and private security officers to arrest and engage in other crime-combating activities was based upon state statutes or common law. States were compared within

their appropriate categories (See Tables 1 and 2). In addition, case law from each state was used to develop this basis of comparison. We found that common law interpretation of citizens' authority to arrest is also important in statutory states. Many state courts rely upon common law even where the state has codified its law of citizens arrest. Problems occurred concerning a direct comparison of private security officers' authority. Some state laws directly address private security officers' authority. Where this was not discussed in state law the study says private security officers authority is similar to citizens authority to arrest. The examination of the data in this manner provides a nationwide basis for analyzing this area of law.

State statutes and administrative rules for individuals to serve as private security officers were collected. The statutes and rules concerned such matters as selection criteria for officers, use of firearms, and required hours of training. In 11 states, there are no such statutes for regulating private security officers.² Some states that do not regulate private security officers have local regulations. [E.g., MO. REV. STAT. sec. 84.340 (1992) referring to St. Louis City.] An analysis of state requirements for private security companies was conducted to determine their basis for operating within their respective states (See Table 2). Recent state and federal court rulings concerning citizen and private security officer authority to combat crime were examined by creating searches of the LEXIS/NEXIS databases and consulting law review and other scholarly articles.

The court rulings indicate new developments and boundaries for citizen and private security officer activities derived from constitutions and statutes. Federal civil rights statutes, both civil and criminal, may cause citizen/community groups to be liable for cooperative efforts with the police under the "state action" doctrine. Court rulings, both state and federal, will indicate under what circumstances citizens/community groups/private security officers are liable for wrongful crime-combating activities, such as false imprisonment.

III. Citizens' Legal Authority to Combat Crime

Citizens' legal authority to combat crime is an important resource for solving community crime problems. A central tenet of community policing is the ability of citizens and police to work together in a proactive manner to solve problems, such as drugs or gang violence in a neighborhood. The Portland (OR) Police Bureau argues: "Together the community takes responsibility with the Police Bureau for identification of significant issues and works in partnership with government to address them." (Community Policing Transition Plan, p. 6.) Citizens' willingness to engage in crime-prevention and crime-combating activities is often restricted because of their lack of knowledge of permitted activities under state law.

Citizens' authority to arrest was based on either 1) statutory and common law or 2) common law alone (See Table 1). Twelve states base citizens' authority to arrest on common law alone. The initial basis for citizens to conduct an arrest is the

English common law practice requiring able-bodied men to join in the pursuit and arrest of a felon. In the United States, common law authority for citizens arrest extended to felonies, particularly to protect public safety, and misdemeanors where immediate apprehension was necessary to preserve public order.³ The latter category particularly applies to a misdemeanor constituting a breach of the peace. Many states have statutorily adopted the common law of citizens arrest. Table 1 also shows other major distinctions between common law and statutory states. These distinctions include the type of offense, type of knowledge required by the citizen, and citizens' certainty of a correct arrest. Some of these factors will be discussed below.

Our analysis shows that citizens have a right to arrest subject to certain restrictions designed to prevent a citizen's abuse of other citizens. For example, a citizen conducting an arrest can use force to detain the arrested person. However, if excessive or unreasonable force is used, the arrester could be sued. Citizens' ability to search, detain, and perform other crime-abating activities stems mainly from the citizens' ability to arrest, e.g., obtaining evidence incident to a lawful citizens arrest,⁴ in contrast, a search may be illegal because the citizens arrest is illegal.⁵ Evidence can be used from a private citizen's search against another person in a criminal trial; the evidence can be admitted because the fourth amendment does not apply. The fourth amendment prohibits only unreasonable searches and seizures by government officials. The private citizen's search and seizure

can be illegal despite the admissibility of the evidence in the criminal trial. Citizens face risks in engaging in such searches, such as the liability for civil or criminal trespass,⁶ and damage action for wrongfully taking private property.⁷ We show below that most states give citizens the power to arrest, either by statute or case law. Only California permits citizens the power to search by statute, and then only for weapons. [CAL. Penal Code sec. 846 (1990)].

A. Citizens' Authority to Arrest

In both statutory and common law states, private citizens' ability to arrest is mainly for felonies. Table 1 indicates, as noted earlier, the main pattern for a citizen to arrest for a felony has two elements; first, it requires that a felony was, in fact, committed by the suspect and that the felony took place in the citizen's presence, and, second, the citizen must have reasonable grounds to believe the particular suspect committed it. With respect to the first element, six states permit citizens' to use a probable cause standard to believe a felony has been committed instead of the actual committing of a felony -- four of thirty-eight statutory states (Arizona, Illinois, Montana, and Ohio) and two common law states (Maryland and Massachusetts). More than 65% (25 of 38 states) of the statutory states permit citizens arrest for crimes less than a felony, e.g., a misdemeanor constituting a public offense. Our analysis found judicial recognition of an aspect of citizens' legal authority in common law states, e.g., the concept of citizen arrest for a misdemeanor

amounting to a breach of the peace. Five of twelve common law states and four statutory states have adopted this practice (see Table 1). Simple thefts of personal property are not normally considered breaches of the peace.

Citizens arrest statutes generally delineate the circumstances under which a citizen may conduct a lawful arrest. In these statutes, it is often not clear whether a citizen may detain, search, or interrogate a suspect. Most citizens arrest statutes do not specifically authorize a search or interrogation of the suspect. This authority has more often been addressed in case law. In some states, upon a citizens arrest, the citizen must without unreasonable delay take the suspect to the police or to some other authority such as a judge or magistrate. (See, e.g., statutes in Alabama, Georgia, Minnesota, Montana, and Tennessee).⁸ Generally, states also require that a citizen performing a citizens arrest inform the person to be arrested of the cause of the arrest. An exception is when the person is in the actual commission of an offense, or arrested in hot pursuit.

In the majority of states, the primary differences between a citizen and a law enforcement officer's power to arrest are, first, for the former to arrest, the crime must be committed in the citizen's presence while that is unnecessary for the law enforcement officer; second, a citizen will be liable for false arrest if a felony was not, in fact, committed,⁹ while a law enforcement officer need only have probable cause to believe a felony was committed. If it turns out that a felony was not, in

fact, committed, the officer is not liable for false arrest so long as there was probable cause to believe a felony was committed.¹⁰ Recognizing these stringent standards, some states permit citizens to arrest when they have reasonable grounds, or probable cause, to believe a felony has been committed. (See Table 1 and state names noted above.) In those states, citizens are governed by the same standards as law enforcement officers in terms of the degree of certainty necessary to arrest.

B. Citizens' Right to Search, Detain and Interrogate

Citizens searching, questioning and detention of other citizens usually involve a combination of state statutes and court rulings. We found state statutes that specify citizen practices while detaining, searching, or arresting individuals. The statutes often specify the amount of force the arresting citizen may apply,¹¹ the amount of time that an individual may be detained,¹² and the "reasonableness" of the citizen's behavior.¹³ Many of these citizen activities are derived from court rulings. Courts have consistently ruled that a search conducted by a private citizen does not constitute a search within the meaning of the U.S. Constitution's fourth amendment. In some states, citizens can search the suspect and the immediate surrounding area if that search is incident to a lawful arrest, including a search for weapons. Some courts have held that a private citizen may search incident to a citizens arrest for the same reasons a law enforcement officer may search incident to an arrest. These searches should not be confused with the limited

searches authorized by merchants' privilege statutes discussed below. (See Table 3).

We did not find cases involving the tort of "unlawful search", but such searches did play a part in other tort claims, such as invasion of privacy, made by the persons searched. If a citizen is engaged in an unreasonable or overly intrusive search of a person or that person's property, the citizen could be sued for such torts as trespass, battery, invasion of privacy, and assault. A tort claim for false imprisonment or false arrest could arise if a citizen or a security officer wrongfully detained a suspect after a search.

Detention and interrogation of suspected criminals have received limited attention from courts and legislatures as compared to citizens arrest. In citizens' crime-combating activities the detention of a suspect must be in a "reasonable" manner.¹⁴ If citizens incorrectly detain an individual, they may be subject to the liabilities mentioned above concerning citizens incorrect arrest, e.g. false arrest or false imprisonment. Only North Carolina distinguishes between citizens' authority to detain and hold people for the police to arrest. In this state, citizens can detain suspects but arrest only in situations where there is a request for assistance from a police officer.¹⁵

Courts have held that questioning by private citizens and private security officers does not trigger the constitutional protections of the Miranda rule.¹⁶ We were unable to find cases or statutes which specifically authorized citizens and security

officers to interrogate or imposed tort liability for questioning by citizens or security officers. This is not surprising since a person is free to refuse to answer any questions posed to him. Tort liability for false imprisonment or false arrest could arise if a citizen or security officer forcibly detained a suspect for the purposes of interrogation. State legislatures have granted merchants, under merchants' privilege statutes, the authority to detain and question suspected persons in their retail establishment. (Further discussion of merchants' privilege statutes is found in Section D, below).

C. Citizens -Private Security Officers Carrying of Weapons:

A Comparison

Within and among the states there are differing laws concerning private citizens' and private security officers' ability to carry weapons, either openly or concealed. In many states, private security officers have greater authority than citizens to openly carry weapons by virtue of their employment status. Almost all states permit security officers openly to carry a weapon,¹⁷ while seven states and the District of Columbia prohibit private citizens from doing so.¹⁸ Only 32 states require that private security officers must complete firearms training in order to carry a firearm for his/her employment. However, local or municipal laws may require such training. Some states do not distinguish between private security officers and citizens carrying weapons either in an open or concealed fashion. Eighteen states allow security officers to carry concealed weapons: eleven states do so without

requiring a license, and seven others require a permit. Four of these eighteen states do not mandate any firearms training for security officers.¹⁹ Among the eighteen states allowing private security officers to carry concealed weapons, five states prohibit citizens from doing so (Illinois, Kansas, Kentucky, Oklahoma, and Wyoming).

A major concern is that states, in some situations, have given security officers greater authority to combat crime than citizens while not at the same time regulating the officers to insure that they are properly trained and have minimum qualifications, such as no felony convictions. The statutes dealing with carrying a weapon, either openly or concealed, do not address the question of citizens use of the weapon, for example, whether an individual could use a weapon to detain a suspected criminal. Private security officers can use weapons in this manner in the scope of his/her employment.

D. Merchants' Privilege: Enhanced Citizens' Authority

A majority of state legislatures have enacted merchants' privilege statutes which increase the merchants' ability to arrest and detain suspected shoplifters by giving the merchant a qualified immunity from civil liability for false arrest and other torts. (See Table 3) The merchants' privilege statute, also called merchants' protection statute, merchants' detention statute and shoplifting statute, is an example of legislatures giving greater authority to the private sector to respond to criminal activity than was previously permitted by the common law of arrest.

Principles underlying merchants' privilege statutes can be utilized by legislatures to give community groups greater authority to combat crime in their neighborhoods.

Although the merchants' privilege statutes vary from state to state, they all in some manner permit merchants or their employees or agents to detain in good faith any person they have reasonable grounds to believe is shoplifting, so long as the detention is carried out in a reasonable manner and for a reasonable time. If the statutory criteria are met, the merchant is immunized, or at least provided with an affirmative defense, from tort liability for false arrest, false imprisonment or unlawful detention. In addition, several states have specifically exempted the merchant from liability for assault and battery committed during a reasonable detention or alternatively, have given a blanket exemption from all types of liability resulting from the reasonable detention of a shoplifter. (For example, see statutes in New Jersey and New Mexico.)²⁰

The majority of the merchants' privilege statutes give merchants and their employees more protection and greater latitude in making a citizens arrest than is generally allowed other private persons. The privilege resides in the merchants or their agents and is connected to the location of the store. Typically, the statutes allow a merchant to stop, take into custody, and detain anyone in the store about whom the merchant has "probable cause" or "reasonable grounds" to believe has committed the crime of theft of property. Table 3 shows that merchants may detain a person for

several reasons: until the police arrive (19 states); to attempt recovery of goods taken (17 states); to question about suspected activity (16 states); and to identify the person suspected of a crime. Fourteen state statutes permit merchants to detain suspected shoplifters for a "theft investigation". The statutes do not define what that term entails. This term probably applies to the "reasonable" actions by the merchant or their employees. (See below for a further discussion).

The statutes do not require that the offense be committed in the presence of the merchant or employee detaining the suspect. The merchant need only have probable cause that the offense was committed; the crime need not, in fact, have been committed.²¹ As noted, if the statutory criteria are met, the merchant or his employees will be shielded from tort liability for false arrest and false imprisonment if the detention was reasonable in time and manner.²²

In a typical instance, a shopper is detained by the merchant or his employees, who could be private security officers, and accused of shoplifting. Forty-seven states require the merchant or their employees' detention of an individual be in a "reasonable" manner in order to protect the shopper or customer. (See Table 3) If the shopper is forced to undergo indignities or humiliation, including an intrusive search of his person and effects, then the individual can bring a civil suit for invasion of privacy, defamation, slander and other intentional torts. Judges or juries are generally willing to award damages to a plaintiff who has

suffered degradation or humiliation at the hands of private security officers or the merchants' employees. Citizens received favorable judgments especially in instances of assaults,²³ public ridicule in the form of verbal accusation in front of others,²⁴ being "paraded" through the store in handcuffs while in the company of security personnel,²⁵ or female shoppers being forced to partially disrobe in a private area of the store.²⁶ Merchants and their employees should be wary of conducting these searches. Excessive searches or coercive interrogations, as noted above, can lead to liability and large damage awards.

Some statutes provide that a suspect may be detained by the merchant solely for the purpose of summoning a law enforcement officer. (See statutes in Minnesota,²⁷ Delaware,²⁸ and South Dakota²⁹). Other statutes either permit merchants to "cause an arrest"³⁰ or declare that they shall not be liable for "causing such an arrest".³¹ If there are planned activities between the merchant and the police to detain or arrest suspected shoplifters, those activities may constitute state action (see below for a further discussion).

Under the merchants' privilege statutes, state legislatures have permitted merchants or their employees within the area of their establishment to have greater crime-combating authority than other private citizens. The increased authority was in areas of detention, search, and arrest. Using the merchants' privilege statutes as precedent, state legislatures may find that there are similarly compelling reasons to give greater authority to citizens

or community groups concerned about crime in their neighborhoods by modifying the common law of arrest.

IV. Private Security Officers: Authority and Regulation

A. Private Security Officers and Citizens' Authority to Combat Crime: A Comparison

Private security is an increasing presence in maintaining social order in America. Private security officers' ranks have grown rapidly in the last two decades, primarily in response to retail and industrial crime. Moreover, there has been a rapid increase in private security officers' use in a wide variety of situations, from small and medium size suburbs to urban housing developments. Private security officers are also found on college or university campuses, office complexes, industrial facilities, theme parks, and airports. Of course, private security officers are regularly found at shopping malls. There are approximately 1.5 million private security officers in the U.S. Between 1980 and 1990, the number of U.S. private security firms has nearly doubled; in 1990 there were 57,000 firms compared to 30,000 a decade ago. In State v. Buswell, 460 N.W.2d 614 (Minn. 1990), the Supreme Court of Minnesota noted that private security officers have been increasingly used to supplement the police by performing functions similar to police officers.

Generally, private security officers are considered private citizens for purposes of authority to arrest. Some states, e.g., Alaska, explicitly limit the security officer's arrest authority to

that of the citizen. Other states do not expressly limit an officer's arrest authority. But case law indicates private security officers have no greater authority to arrest than private citizens.³² This study found several exceptions exist to the general rule of equivalent authority between the security officers and the citizens. In some states, university campus officers and security officers employed by certain public institutions are granted the same authority as peace officers to arrest.³³ Other notable exceptions occur in selected states which permit security officers' increased authority to arrest, carry weapons, question, and detain. A few states--e.g., Delaware and South Carolina--give private security officers greater authority than private citizens to arrest. The Delaware statute allows private detectives the power to arrest on warrants.³⁴ In South Carolina, statutes and case law place private security officers in the "shoes of the sheriff" on property they are hired to protect.³⁵ Other states grant more authority to certain classes of security officers such as campus police, airport security and railroad police. Still other states allow municipalities (e.g., Chicago) or county governments to create "special policemen" with powers less than police but greater than citizens.³⁶

The scope of our study did not include extensive investigation of these specialized statutes. It is instructive that state legislatures have regularly created "special policing authority" for a variety of individuals especially in specified geographic regions or modes of transportation. State legislatures could grant

such special crime-combating authority to individuals or groups in specified neighborhoods.

B. State Regulation of Private Security Companies and Officers

State laws and administrative rules regulating private security officers and companies were examined to understand patterns within the states. An additional rationale was that in many states private security officers and citizens have equivalent authority to combat crime. Perhaps laws and administrative rules regulating private security officers and companies can be applied to individuals, community groups, or community organizations engaged in community policing. Whether or when community groups should be considered as providing security services is an important question for the definition of community group activities within community policing. If community groups are considered as providing security services, should these groups be registered, trained and have particular levels of accountability?

Among the thirty-nine states which regulate either private security officers or companies or both there is no uniform regulation. (See Charts on State Regulation of Private Security Companies and Officers.) In the 103rd Congress, 1st Session, two bills were proposed to provide national regulation of private security officers (HR 2656 and HR 1534). (See below for further discussion of these bills). Some states regulate neither companies nor officers (see, e.g., Missouri) while others regulate one or the other (e.g., Kentucky regulates only the agency, not the individual

officers). The regulation of the company usually involves restrictions on any owner or entity who applies for a security agency license (See Table 2). The owner of the security company and the company officers must meet standards such as no felony convictions within the last ten years (see, e.g., Alaska).³⁷

In many states companies must establish proof of financial responsibility, usually a surety bond. The amount of the bond ranges from \$2,000 to \$25,000; in a number of states, either a bond or general liability insurance with minimum coverage from \$25,000 to \$300,000 is required.

State requirements and licensing of security companies appear to have developed from companies' abuses in the performance of their duties. There is evidence of a growing concern among state legislators that only responsible companies/persons should be granted licenses. Similarly, state legislators might be concerned about which community groups should be permitted to combat crime.

Licensure and examination for officers is a limited phenomenon among the states, in twelve and four states respectively. States have established statutory criteria which the officers must meet to be registered. These criteria usually include no felony convictions, at least an eighth grade education, a minimum age (18 or over), being a U.S. citizen or a legal alien, good moral character, and training (See Table 2). The most nearly universal requirements are those mandating a lack of felony convictions (31 states) and those requiring the applicant to be "of good moral character" (29 states). In more than half the states the age

requirements are between 18 and 24 years old. Some states require no alcoholism or drug addiction (e.g., Montana). Statutes regulating private security officers usually are distinct from statutes giving officers authority to combat crime.

States distinguish between the regulation of contract and proprietary security officers. Both contract and proprietary security officers can perform the same functions. Contract security is provided by an individual or an organization on a contractual basis. In contrast, proprietary security are personnel employed by a private entity for its exclusive protection, i.e., in-house security. For example, a department store which had its own security force as part of its organization would have proprietary security. Hallcrest II estimated for 1990 that 35% of private security officers were proprietary³⁸ and 35% were contract officers (p. 196). Other categories of security personnel include armored car, alarm company, and locksmiths. State statutes which address issues of officer authority usually are silent concerning whether differences of authority exist among contract and proprietary officers. Many states specifically exempt proprietary security officers from state laws and administrative rules governing private security.³⁹ A typical statute will exempt:

Any person or persons, watchman or guard employed exclusively and regularly by one employer in connection with the affairs of such employer only and there exists an employer-employee relationship. [S.H.A. 225 ILL. COMP. STAT. ch. 445/5(f) (1993)].

Most state statutes also exempt employers of proprietary security from state regulations.

If private security officers violate the statutory provisions, generally the penalty is revocation of the license. In some cases criminal penalties may be imposed. Reports from the Illinois Department of Professional Regulation reveal that the most common violation is the individual's failure to disclose a criminal record in applying for a license. When the Department discovers this non-disclosure, it usually places the applicant on probation ranging from six months to five years.

Our analysis shows broad state-by-state variations in laws and administrative rules concerning private security officers and companies. (See Table 2) When regulations are imposed, what type of state agency/department will review and approve the applications of security officers? Among those states that regulate private security officers or agencies a state review board is the most common method. Some states permit the employer to conduct much of the background review of private security officers, although state or federal criminal record checks currently must be conducted by state law enforcement agencies. In the latter case, the employer usually must certify to the state board/department that the reviewed employees meet the established criteria. An extension of our study is what regulations will community groups be required to meet in order to engage in community-policing activities?

In the recent U.S. Congress, 103rd Congress, 1st session, two bills were introduced concerning the regulation of private security officers. HR 2656--Security Officers Employment Standards Act of 1993--encourages states to ensure the quality of private security

services, and the competence of private security officer personnel, by authorizing funds for that purpose. To obtain employment as a private security officer, states would require security officers to have a registration permit. Moreover, states would be able to suspend or revoke security officers' licenses or registration, and penalize security contractors for violation of training standards and other state requirements. The second bill, HR 1534--Private Security Officers Quality Assurance Act of 1993--requires states to ensure the quality of private security services and the competence of private security officer personnel as a condition of eligibility to receive funds under Title II of the Juvenile Justice and Delinquency Prevention Act of 1974. This proposed bill sets forth requirements for states' training of private security officers and preempts the laws of political subdivisions of such states to the extent that they regulate private security officers' services. As of September 30, 1993, the U.S. House of Representatives Subcommittee on Human Resources approved an amended version of this bill for consideration by the House Committee on Education and Labor. The U.S. Congress is giving attention to issues of the regulation of private security officers.

C. Private Security-Community Choice: An Example

Police and neighborhood residents may hire private security officers to assist in neighborhood crime fighting, thereby establishing new public-private and private-private relationships in their local communities. Private security agencies/officers are

visible, established organizations whose purposes are to prevent and combat criminal activities. The police have relied upon private security officers to perform certain duties. Recently, neighborhoods have sought protection by private security officers who have similarities to the members of that neighborhood or such officers whose social, ethnic background was similar to those individuals committing crimes.

The hiring of Nation of Islam Security Agency (N.O.I.) is an excellent example of communities seeking their own private security services. In the fall of, 1988, N.O.I. signed contracts with management firms at two drug-infested HUD housing projects in Washington, D.C.--Mayfair Mansion and Paradise Manor--while also patrolling a drug-infested Bedford-Stuyvesant (Brooklyn, New York) housing complex. (Washington Post, April 26, 1988, at D1). N.O.I., a Black Muslim organization, is an unarmed security force which conducts surveillance patrols, provides emergency phone lines, often religious instruction, and claims it has the respect of the black community. In the late 1980's, N.O.I. was known for its tough approach to clean up drugs and violence-ridden areas in several cities, and in the 1990's it is attempting to spread its program into other communities throughout the nation (Los Angeles Times, January 15, 1992, at B1).

In Los Angeles, the hiring of the Nation of Islam patrols capped an eighteen-month effort by tenants to obtain a security force⁴⁰ to rid their Venice, California housing complex, of rampant drug dealing, crime and gang activities. The fifteen

buildings are privately owned but largely occupied by tenants receiving federal rent subsidies. The area was once predominantly occupied by Blacks, but has recently become heavily Latino, and along the area's gentrifying edges, Anglo. (Los Angeles Times, Sept. 16, 1992, at B3; New York Times, Los Angeles Complex Calls In Muslim Guards, October 11, 1992 sec. 1, at 38). N.O.I. was selected because of its prior reputation on the East Coast and it was also the low bidder for the contract. The N.O.I. security firm began its patrol on November 1, 1992.

In Los Angeles, the N.O.I. is within a distinctive category of private security responsibilities, i.e., "a private patrol service." The Los Angeles Police Commission gave the N.O.I. a permit and the authority to patrol (Commission Investigation Division, Office of Operations: Private Patrols and Security Officers, January 19, 1983, p. 2). The "private patrol service" has no more authority than a private citizen. However, those officers have distinctive uniforms and defined responsibilities. A Los Angeles Times article said that the Nation of Islam is serving as a visual deterrent and persuading gang members and drug dealers to leave the neighborhood (Dec. 27, 1992, at B1). This situation represents an atypical group conducting security services with the permission of both state and local police authorities. In this instance, the U.S. Department of Housing and Urban Development mandated that the apartment complex management provide a new security service. HUD is paying for most of these services through rent subsidy payments.

The Nation of Islam security firm has faced difficulties concerning claims of heavy-handed tactics and intimidation and an inability to stem drug dealing in one of the Venice, California buildings. At a Pittsburgh housing project, police had to establish ground rules with N.O.I. to prevent violence between residents and the guards. (For further information see UPI, Police Set Ground Rules with Black Muslim Security Guards, July 26, 1991). Ten months after their security service began, the N.O.I. security firm was fired from one of the fifteen buildings in the Venice, California housing complex. The apartment management team claimed N.O.I. security officers were negligent in their duties and were intimidated by the drug-dealers. In this one building N.O.I. was replaced by a 24-hour armed security force. (Los Angeles Times, September 16, 1993, at B1).

D. New Forms of Private Security Activity: Approximating Police Functions: Sussex, N.J. and Green Island, New York.

Can cities, municipalities, or towns replace their police force with private security officers? The answer to this question has importance concerning societal definitions of police and private security officers' authority. The borough of Sussex, New Jersey, which is one mile-square with 2,200 residents in the rural northwestern part of the state, raised these issues by disbanding its four-member police force after a corruption scandal and replacing it with a six-month contract with a private security firm. (See New York Times, July 31, 1993, at A23). The firm also

had federal contracts to conduct security services at Newark, N.J., housing projects. Beginning in June, 1993 the uniformed armed security officers began patrolling Sussex, New Jersey. The firm told "Essex County (N.J.) Superior Court Judge Peter Cooper that while on duty in Sussex, guards would be detaining suspects, securing crime scenes, responding to robberies, assaults, narcotics, domestic violence, bank robberies, shootings and stabbings." (New Jersey Law Journal, July 26, 1993, at 5). These activities are closer to police functions than to activities of a uniformed neighborhood watch. If the security officers find criminal violations, they call the state police.

Twenty days after the security firm began its patrols, the State of New Jersey filed suit to disband the security firm's activities and prevent the town from reviving the idea. The state claimed that the security officers are not trained to act as police officers, but the Sussex officials are placing security officers in the place of police officers. Further, the use of security officers places both public officials and security officers at risk for wrongful arrest and detention and other torts, as well as criminal prosecution. (See below for further discussion of civil and criminal liabilities). "The state claimed egregious abuses by the security officers, . . . such as entering parked cars and apartments illegally, handcuffing detainees, improperly conducting motor vehicle searches and writing tickets. . . ." (Ibid). Private citizens cannot enforce state law or municipal ordinances, and by the above reasoning, neither can private security officers. As

noted above, in general, private citizens and private security officers' authority is equal.

Security companies' willingness to engage in such "policing" activities may place them at risk for a full range of liabilities. If security officers physically detain an individual and the detainee has not in fact committed the crime, both the officers and the company can be liable both civilly and criminally. Police officers can arrest an individual when they have probable cause to believe the suspect has committed a crime; if it turns out the suspect has not committed a crime the police have a qualified immunity from suit.

On July 30, 1993 New Jersey Superior Court Judge Reginald Stanton ordered Sussex, N.J. to terminate its contract with the private security firm.⁴¹ He stated that the "uniformed and armed guards were being relied upon for general police services" and "although there was no law forbidding such an arrangement, the contract violated a general regulatory scheme put in place over many years by the legislature to regulate the qualifications, training and accountability of police officers."⁴² Local officials could not preempt state government's regulation of the provision of police services. Judge Stanton noted that while the security firm was "well above average" for the state, its training program was inadequate compared to training for a municipal police officer in New Jersey. He ordered the borough of Sussex to find other ways for local police protection, e.g., a regional compact with other municipalities.⁴³

In New York v. Stormer (1987)⁴⁴ private security officers acted as a private police force. The private security officers were doing more than deterring crime; they were concerned with solving crime, by investigating thefts, questioning and searching. In this case, the security force for the Sagamore Hotel, a resort located on Green Island in Lake George, N.Y., informed the Warren County Sheriff's Department "that routine patrols by [the Department] on Green Island were unnecessary and further that their presence on the island would be required only upon a special request."⁴⁵ The private security force conducted a search of a hotel employee's automobile without her consent or knowledge and seized evidence connected to a criminal investigation.

The New York County Court found that because of the distinctive circumstances, the Sagamore private security force was engaged in what amounts to a "public function". This "public function" test was applied because local law enforcement agencies could not go to the resort except by request. The court found that the security force's search of the individual's automobile and seizure of evidence constituted "state action" and violated the fourth amendment to the U.S. Constitution and the applicable provision of the New York State Constitution (art. I, sec. 12). This set of circumstances may be applicable to "private communities" which hire their own security force and bar the entry of local police except upon request. Maxwell sees broader implications for private security from this decision. He argues: "Given...the gradual transfer of police tasks to private security

and continuing budgetary problems, might not this discussion (Stormer) be a forerunner of things to come?"⁴⁶

V. Constitutional Restrictions on Citizens and Community Groups:
State Action

A. Introduction to "State Action" Concept

Many activities of community policing will involve joint activity by the police and the community. These activities help the police and the community work more closely to detect and prevent crime. Greene and Decker (1989) argue: "The goals of this cooperation include the reduction of citizen fear of crime, removal of vagrants and other 'undesirables' from neighborhoods" (106-107). Some police departments are involving citizens, community groups and private security officers in joint crime-combating activities. (See, e.g., Portland Police Bureau, Community Policing Transition Plan.) A central tenet of community policing is the private and public sector actively working together.

Police and private sector cooperative efforts may constitute "state action". There are substantial benefits to this cooperation but legal consequences both to the police and the private individuals or groups must be considered. The cooperative efforts will not result in liability unless they violate citizens' constitutional rights. However, if the relationship between the police and private sector constitutes state action and their actions violate the constitutional rights of persons who are the subjects of the crime-combating activities, then both police and

private actors may be liable under the "state action" doctrine. To minimize the possibilities for liability, the police and the private sectors must understand the legal consequences of state action as well as the constitutional limitations upon crime-combating activities. Our analysis explores the applicability of state action to community policing.

One of the major distinctions between actions taken by the police and those taken by the private sector--private security officers, private citizens or community groups--is that the actions of the former are governed by constitutional restraints, federal or state, while the actions of the latter are governed by non-constitutional sources of law, usually private tort law. For police officers, if a search made in violation of the fourth amendment were conducted by the police against a person suspected of crime, that person could invoke the "exclusionary rule" and the evidence would not be admitted in his criminal trial, with the result that he might be set free despite his commission of a crime. In addition, the police officers, the police department and municipality could be held civilly liable for the officers' actions under the Civil Rights Act, 42 U.S.C. sec. 1983. Finally, the officer could be found guilty of the federal crime of intentionally depriving a person of his civil rights under 18 U.S.C. sec. 242.

If private actors conducted a search against a person suspected of crime, such U.S. constitutional limitations as the fourth amendment's prohibition of unreasonable searches and seizures, the fifth amendment's protection from compelled self-

incrimination, and the fourteenth amendment's due process clause which prohibits coerced confessions would be inapplicable to their actions. In short, constitutional restraints apply only where "state action" is present.

For example, in Canlis v. San Joaquin Sheriff's Posse Comitatus, 641 F.2d 711 (9th Cir. 1981), a group of private citizens formed an unincorporated association by filing a charter with the county recorder to act as a sheriff's posse. They were sued under the Civil Rights Act, but the court found there was no "state action" since "neither the filing of a charter with the county recorder's office, nor the association's self-proclaimed authority to act as a posse rendered its actions taken 'under color of state law' within the Civil Rights Act." Accordingly, if a citizens group is formed to fight neighborhood crime, the group's action would not be subject to constitutional restrictions.⁴⁷

Focusing on the concept of "state action" opens a new window for evaluating community policing. So long as private citizens or groups act on their own, they are subject to restraint, in general, only by state law, common law or statutory law. They are not subject to constitutional restrictions, state or federal. However, as discussed below, when the police and the private sector have a common plan of action in certain situations, i.e., a prearranged plan, they may be subject to constitutional constraints since courts may find their activities constitute "state action". In that event, criminal defendants may invoke the exclusionary rule, and the police and the private individuals and groups may face civil

and criminal penalties under the Civil Rights Acts.

Throughout the nation, in response to the growing crime rate in their neighborhoods, citizens have formed "neighborhood watch groups", the primary purpose of which is to be alert to and report suspicious activities in the neighborhood and to watch over one another's home. This casual contact between citizens and representatives of the local police department is not likely to constitute the police-citizen prearranged plan sufficient to trigger a finding of state action.

The existence of state action has several consequences:

....police departments may refuse to cooperate with community groups;

....if they do cooperate, the police departments may require that the group take steps to insure the competence of the group's members in terms of qualifications (e.g., no felony convictions) and training;

....liability insurers of police departments may refuse to insure any joint police community-group activities;

....citizens groups may be unwilling to form relationships with the police if they risk civil or criminal liability under the Civil Rights Acts.

It is therefore imperative that both the police and community

groups become knowledgeable about what kinds of joint efforts constitute state action prior to taking any crime-combating actions.

The law of state action, which has developed in U.S. Supreme Court cases over the past 50 years, has been adopted by most states in interpreting what constitutes state action for purposes of their constitutions. State action will generally not be found unless a private group acts jointly with governmental officials. As more fully articulated by the Supreme Court in Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982), the conduct being challenged must be "fairly attributable" to the state, that is, "the deprivation must be caused by the exercise of some right or privilege created by the State" and that "the party charged with the deprivation must be a person who may fairly be said to be a state actor. . . because he is a state official, because he has acted together with or obtained significant aid from state officials, or because his conduct is otherwise chargeable to the state." Lugar, 457 U.S. at 937.

The United States Supreme Court has developed two distinct tests to determine when the actions of private individuals constitute state action: the "public function" test and the "nexus" test. The public function test focuses on the nature of the activity engaged in: if the activities are "traditionally and exclusively" performed by the state, there is state action.⁴⁸ The nexus test analyzes the relationship between the private parties and public officials: the closer the relationship, the more likely there will be a finding of state action. As discussed below, pre-

arranged plans or joint activities between the police and the private sector will likely result in a finding of state action under the nexus test.

Nexus issues focus on the parameters of independence and interdependence between private parties--citizens, community groups, private security officers--and law enforcement officers. Two kinds of independent behavior that regularly occur in community policing are: 1) mere police approval or acquiescence in private parties' crime-combating initiatives, and 2) a citizens arrest of another citizen. Neither of these behaviors constitutes state action. As noted, most cases finding state action under the nexus test involve joint activity or a prearranged plan between the police and private sector.

Another issue arising in cases involving the nexus test is whether the government required or encouraged or endorsed the private action. In Skinner v. Railway Labor Executives' Association, 489 U.S. 602 (1989) the Federal Railroad Administration (FRA) required private railroad companies to administer drug and urine test to employees following an accident. These tests were judged to be "searches" within the scope of the fourth amendment. The FRA also authorized, but did not require, railroads to administer breath or urine tests to covered employees who violate certain safety rules. The Court found the government agency not only permitted but actively encouraged the tests and wished to be informed of the results. These tests were also considered "searches" under the fourth amendment and the private

railroads were engaged in "state action". Based on Skinner and other Supreme Court cases, if government coerces or significantly encourages crime-combating activities by private persons, then the private persons are engaged in "state action". Our analysis envisions situations where police actively encourage private security agencies or community groups to perform either proactive or reactive law-enforcement duties. The nexus test is dependent upon the specific factors of each case. In some cases both the public function and the nexus tests may be utilized.

If private security officers are engaging in activities similar to the police, the private security officers may be involved in a "public function". When a private security force has a strong interest in obtaining convictions, detaining defendants for eventual criminal prosecution, and regularly undertaking searches and seizures that lead to criminal investigations, the security agency may be performing a "public function" within the state action doctrine. In New York v. Stomer, discussed above, the court found the security agency was engaging in a public function.

People v. Zelinski, 594 P.2d 1000 (Cal. 1979), considered whether private security officers' normal activities constituted a "public function." The California Supreme Court held that private security officers, acting pursuant to a state statute which allowed them to make arrests when they believed a person was shoplifting in a store, were subject to state constitutional restraints when they searched a suspect. Zelinski was subsequently overruled by a state

constitutional amendment in California and has generally not been followed in other states.

Generally, the determination of whether a private person's activities are considered state action is a question of fact determined on a case-by-case basis. However, there are three general areas where the action of a private person will be transformed into state action. First, if a private person is commissioned as a special peace officer and acts pursuant to state authority, he will generally be considered a state actor, Griffin v. Maryland, 378 U.S. 130 (1964). Second, if the private citizen and the police have a prearranged or customary plan, there will be state action. Finally, state action will likely be found when it is established that a private citizen has acted jointly or in a conspiracy with law enforcement officers, as in the recent U.S. Supreme Court case of Soldal v. Cook County, Ill., 113 S.Ct. 538 (1992), where deputy sheriffs stood by while a landlord's agents removed a tenant's mobile home from the landlord's mobile home park.

B. Authority Derived from the State

1. Private Persons as "Special Police Officers" or
"Commissioned Officers"

The commissioning of a private security officer as a special deputy sheriff has resulted in a finding of state action, Griffin v. Maryland, 378 U.S. 130 (1964). State action has also been found where campus police were delegated by the legislature the same

powers as municipal police⁴⁹ and where a store detective had been previously appointed as a Special Patrolman.⁵⁰ It does not matter that the individual would have acted the same way in a purely private capacity, nor that his action was in violation of state law. However, if the person acts for purely private reasons independent of state authority or police direction, there will not be a finding of state action, for example, where private security officers at Disney World were found to have acted in a purely private capacity, United States v. Francoeur, 547 F.2d 891 (5th Cir. 1977).

2. Statutory Authority

a. Regulation and Authority Granted by State Statutes

Actions taken by private security officers regulated by the state, combined with a statutory grant of police authority, did constitute state action when a security officer arrested plaintiff pursuant to statutory authority on the employer's premises, Thompson v. McCoy, 425 F.Supp. 407 (D.S.C. 1976). In contrast, the mere licensing of security officers by the state does not constitute state action if the actions taken by the officer are not pursuant to specific statutory authority, Chiles v. Crooks, 708 F. Supp. 127 (D.S.C. 1989).

b. Merchants' privilege statutes

Courts have generally held that actions taken by the store or its employees under the authority granted by merchants' privilege statutes, as discussed above, does not constitute state action. In

City of Grand Rapids v. Impens, 327 N.W. 2d 278 (1982), the Michigan Supreme Court held that private security officers do not have to give Miranda warnings, and can apprehend, detain, and question suspected shoplifters when furthering the store's interest and not in compliance with the instructions of the police. To trigger a finding of state action, the officers or store managers must act in concert with police officers or pursuant to customary procedures agreed to by the police departments. For example, a police officer was summoned by security officers concerning a shoplifter. The police officer escorted the individual to the store security office and waited outside while store security officers questioned the person and obtained a confession. In People v. Jones, 393 N.E. 2d 443 (N.Y. 1979), the confession was ruled invalid because joint private security-police participation required Miranda warnings; in particular, the police involvement established custody.

3. Off-duty Police Officers

Courts will often find state action when an off-duty police officer is involved.⁵¹ Generally, if an off-duty police officer serving as a private security officer, identifies himself as a police officer⁵² or shows police identification,⁵³ or takes action related to his work as a police officer⁵⁴ it will be considered state action. Courts, however, generally will not find state action if the off-duty officer, serving as a private security officer, makes no pretense of acting as a police officer. In these circumstances, the off-duty police officer is treated similarly to

a private security officer or private citizen for purposes of arrest, detention, or questioning.

C. Police Involvement with Private Actors

1. Prearranged Plan with Police

Courts will often find state action when private persons act pursuant to customary procedures agreed to by police departments or to prearranged plans with the police. When there is official participation in the planning and implementation of the overall operation, the subsequent acts of private citizens can be considered "state action". [See Stapleton v. Superior Court of Los Angeles County, 447 P.2d 967 (Cal. 1969) and Murray v. Wal Mart, Inc., 874 F. 2d 555 (8th Cir. 1989)]. For example, state action has been found where it is the store manager's practice to work with the police departments in prosecuting shoplifters, detaining suspects for the police, or using a standard form for filing complaints with the police. Security officers' agreements with the police to carry out police directions will involve "state action". The prearranged plans permit the security officers to exercise the state's authority. [See Carr v. City of Chicago, 669 F. Supp. 1418 (N.D. Ill. 1987).] ⁵⁵ Yet, where the governmental involvement is limited to responding to requests for arrests and discussions concerning arrest procedure, state action was not found, State v. Buswell, 460 N.W.2d 614 (Minn. 1990).

In addition to claims brought under 42 U.S.C. sec. 1983, the existence of a prearranged plan between citizens or community groups and the police may also give rise to claims under state law

against police departments under the doctrine of respondeat superior, also known as vicarious liability. Under this doctrine, the employer is responsible for torts of the employee within the scope of his employment.

2. Joint Activity with Police

Police and citizens/community groups may engage in case-by-case efforts to combat criminal activities. Where private citizens are "willful participants" in such "joint activity" with the police, their conduct may be considered state action. United States v. Price, 383 U.S. 787 (1966). Unlike the "prearranged plan" discussed above, "joint activity" need not involve an agreement prior to action being undertaken by the police and the private groups. However, "joint activity" involves a common goal or conspiracy between private parties and state officials. In the first of the two leading U.S. Supreme Court cases involving joint activities, United States v. Price, state action was found when private individuals conspired with police to release civil rights workers from a county jail and kill them. In the other case, Adickes v. Kress and Co., 398 U.S. 144 (1970), a white civil rights worker was refused service at a private lunch counter. The owner was liable due to the joint course of action where the private party and state have a common understanding to deprive an individual of constitutional rights.

The Adickes case provides a connection between private parties and the police. A decade and a half later the U.S. Court of Appeals for the Seventh Circuit states that Adickes

has become the basis for a rule that shopkeepers are engaged in "state action" when they strike a deal with the police under which the police simply carry out the shopkeepers' directions. If the police promise to arrest anyone the shopkeeper designates, then the shopkeeper is exercising the state's function and is treated as if he were the state.⁵⁶

The police and security officers may follow a policy where the police allow the security officer to substitute his judgment for that of the police. In this type of cooperation the private security officer is engaged in "state action".⁵⁷

Even if the private actor is largely passive, there may still be a finding of state action through joint action. For example, in Fries v. Barnes, 618 F.2d 988 (2nd Cir. 1980), the plaintiff was in the hospital for a gunshot wound received in the commission of a crime. While the plaintiff was unconscious, his clothes and other evidence of the crime were turned over to police by the doctors and nurses. In a section 1983 case, the doctors and nurses were found to have violated the plaintiff's fourth amendment rights to be free from unreasonable searches and seizures because they complied with the police officers' request to hand over the evidence.

The discussion of private sector prearranged plans or joint activities with the police has significance in light of community-policing activities and the decline in police department budgets and manpower. Currently, police and private security are increasingly developing a new partnership involving cooperation and teamwork in criminal and civil matters.⁵⁸ The court rulings concerning police-private security cooperation, either prearranged plans or joint activity, might also be applicable to community groups and private citizens working with the police.

D. Recognizing State Action Doctrine in Community Policing

A summary of this entire section indicates that in planning community-policing activities, one must recognize the constraints imposed by the state action doctrine. A key element in community policing is prearranged or cooperative activities between police and the private sector. Cooperative arrangements are part of the dynamics of change implicit in the shift toward community policing. The legal consequences of customary procedures or prearranged plans are an important part of the range of cooperative relations between the police and citizens' groups. Many issues concerning the ability of the private and public sector to cooperate have not yet reached the courts. At this time, courts have found that private actors--individual citizens, community groups and private security officers and agencies--are considered "state actors" in the following situations:

1. When they are granted specific police powers, particularly the power to arrest;
2. When they and the police have a prearranged plan which significantly interferes with the movement of persons, such as the power to detain criminal suspects until the arrival of the police;
3. When they are acting in an interdependent manner with the police and actually assist them in such crime-combating activities as searching or arresting, even in the absence of a prearranged plan;
4. When public officials require or significantly encourage private parties to conduct criminal investigations, detain, or

arrest.

VI. Civil Liability of Citizens and Community Groups

When a citizen engaged in crime-combating activities acts beyond the scope of his lawful authority, he may be liable in a damage suit for his actions. Most of the cases decided by the courts involve torts⁵⁹ committed by private security officers but as the activities of citizens and community groups increase, the same reasoning would apply to their actions. The cases which have been decided involve a great variety of tortious conduct.

The most common tort claim is false imprisonment. For example, in Latek v. K Mart Corp., 401 N.W.2d 503 (Neb. 1987), a customer at defendant's store was mistaken for a suspected shoplifter. He was apprehended by store security personnel, physically restrained and confined in an office for approximately 20 minutes. Because the customer's confinement was continued even after his innocence was established, the security officer and the department store were liable since the detention was unreasonable and beyond the scope of the state merchants' privilege statute which permitted only those detentions conducted in a reasonable manner and for a reasonable time. Were the detention to occur in a state without a merchants' privilege statute or in a location other than a retail establishment, a private citizen or security officer could not make even the initial stop of a suspected shoplifter. The stop alone would give rise to a tort of false arrest.

In addition to false imprisonment or arrest, plaintiffs have

brought actions for physical and sexual assault, battery, invasion of privacy, negligent hiring and retention of officers, emotional and psychological distress, negligent use of firearms, loss of consortium, wrongful death, and slander.

In tort law, when a person commits a tort, liability extends to the person who commits the tort and also to any person who controls his activity, typically the person's employer. Private security companies providing security services to retail stores, or other private concerns, are liable for all of the acts of their employees. The employer, i.e. hirer, of a private security agency is not liable when the employer lacks discretion over the work performed or control over personnel supplied. However, intentional torts, not merely negligent acts, committed by security personnel can create liability for the hirer. If the retail store or hirer retains discretion or control over the guards, the store may be liable for negligent guards' actions.⁶⁰ Applying this reasoning to a community group providing security to a housing project or neighborhood, courts would uphold liability against citizens, the community group, and the housing project for the security 'forces' intentional torts. Moreover, liability exists for negligent acts when the community group has control over the security force's activities.

VII. Conclusion

Police departments recognize that the community's needs are central to deterring crime. This approach places increased emphasis on citizens/community groups' responsibility and response

to problems of crime. State statutes vary substantially on these issues, and states have an important role in expanding or limiting citizens' crime-combating authority. A substantial amount of citizens' authority to combat crime through search, detention, and interrogation is derived from citizens' authority to arrest. Citizens arrest statutes are quite limited and do not address modern crime problems. Citizens must exercise care in their crime-combating activities. If they violate the rights of other citizens, they may be subject to civil and criminal liabilities under; and if there is state action under federal law.

Citizens' legal authority is a significant base for examining the authority of private security officers and community groups. Much of private security officers' authority rests upon their status as individual citizens. Our findings indicate citizens and private security officers have almost the same legal authority to combat crime through arrest, search, detention, and interrogation. A similar logic applies to citizens acting within a community group. Members of a community group are a collection of individual citizens, and the community group will not have any greater authority than the individual citizen unless state statutes or case law grant them that authority.

Private security officers are more likely to exercise this authority because their employment or tasks bring them more frequently into contact with criminal activity than is the case statistically for individual citizens. Sometimes, security officers have special authority to carry weapons, and additional

authority to arrest through state statutes, e.g., campus police. In many of these instances, private security officers receive specific training to effectively perform these tasks, in addition to meeting statutorily-mandated minimum training and personal requirements, e.g. minimum age and no felony convictions, that are required by a number of states and/or the company or other entity for whom services are performed.

Before citizens or community groups engage in crime-combating activities, additional state laws might be advisable. State laws would give others confidence in citizens/community groups' professionalism and reduce these groups' possible liabilities. Just as legislatures regulate private security officers, so could they enact laws to insure proper training, qualifications, and fiscal responsibility of citizens/community groups. State legislatures can also provide broader authority for citizens/community groups to combat crime. Part of that broader authority is to limit their liability for those activities.

In the environs of the business establishment, merchants and their employees, who may be security officers, have broader authority to arrest and detain suspected individuals than an ordinary citizen. Concomitantly, citizens wrongfully detained are more restricted in their ability to bring a successful lawsuit against the merchant than against an ordinary citizen. Legislatures can give broader authority to citizens/community groups to detain or arrest individuals. In most states, citizens may arrest only for felonies that actually occur in their presence.

Legislatures could give properly trained citizens/community groups broader powers to arrest in a limited, specifically designated area such as a housing complex. Within these geographical confines, legislatures could authorize citizens or community groups to arrest upon probable cause for felonies and permit arrest even if the felony was not committed in the presence of a member of the authorized citizens/community group.

The concept of "state action" opens a new window for evaluating cooperative activities between the police and the private sector in community policing. There are substantial benefits to this cooperation but legal consequences to both police and private individuals must be considered. The cooperative efforts constituting state action must be combined with a violation of citizens' constitutional rights in order to result in liability. Citizens violation of the constitutional rights of persons who are the subjects of crime-combating activities can give rise to civil and criminal liability. The planning of community-policing activities must recognize the "state action" doctrine. The existence of state action may create resistance both by police and community groups to engage in prearranged plans. Police and community groups who engage in joint efforts must be knowledgeable about the rights of suspects prior to taking crime-combating actions. The "state action" doctrine should alert police to the risks of the cooperation with or the encouragement they give to community groups in pursuit of community policing.

VIII. Future Directions

A. Policy

Legislative initiatives at the state and local levels will be necessary to permit and protect individuals engaging in community policing. Our analysis suggests new policies concerning police and private parties' accountability for community-policing actions. Moreover, legislative support may be necessary to expand citizens/community groups' authority for permissible crime-combating actions. Our analysis found few elements of legal accountability specifically directed at police-community arrangements. Policy prescriptions concerning civilian or police review of community-policing practices should be part of the organizational design concerning community-policing groups. Public accountability for community policing will improve other community organizations' perceptions of both the police and community policing.

We found the law of citizens arrest was developed without the needs of community policing in mind. In contrast, merchants' privilege statutes were responsive to the felt needs of retail merchants who found that public policing and citizens' arrest statutes did not adequately address the problem of shoplifting. Similar pressures will arise in the future as community groups seek for increased crime-combating authority. State legislatures will be asked to grant additional authority to individuals and groups to fight neighborhood crime by expanding the authority to arrest, detain, search and question individuals suspected of crimes. Should legislatures grant that additional authority to individuals

and groups, they will need to enact state laws and administrative rules for regulation of such individuals and groups.

Both the Christopher Commission Report on the Los Angeles Police Department (1991) and the Kolts Commission Report on the Los Angeles County Sheriff's Department (1992) recommend community-based policing as the best cure for an ingrained problem of excessive force by police. The latter report views community policing as "a philosophy of law enforcement that builds up from a base of partnerships created and nurtured at the station level by (sheriff's officials) with community organizations and individuals." (pp. 285-286) Individuals within citizens/community groups or private security agencies may use excessive force, harass or abuse individuals, or mistakenly identify them as suspects. Excessive use of force or authority by community groups against citizens can create substantial problems for police control of crime, strain relationships between the police and communities, and create a negative reputation for community policing.

If citizens/community groups engage extensively in community-policing activities, state legislatures might permit these groups to purchase liability insurance from a state-created liability insurance pool. The absence of insurance protection would expose these individuals and groups to large damage judgments, and may lead community groups to cease operations due to financial losses from such suits.

Police and community groups should examine their cooperative arrangements, because these arrangements might be found to

constitute "state action". Some policy/legal consequences of a finding of state action are the exclusion of evidence in criminal trials, liability in civil damage suits under 42 U.S.C. sec. 1983 suits and criminal liability under 18 U.S.C. sec. 242. Liability can extend to police departments, community groups, political subdivisions, such as counties or cities, and individuals. The possibilities for liability stemming from community-policing activities must be considered. The absence of such consideration may result in large damage awards against community groups, police departments and political subdivisions, as well as unsuccessful prosecution of persons who engage in unlawful behavior due to the exclusion of evidence.

B. Research

Research should be conducted into communities assuming greater responsibility for their protection from crime in two areas: the applicability of the "state action" doctrine to citizen/community group cooperation with the police; and the states' increasing authority for community group crime-combating activities and the means to regulate those activities. Both research areas suggest that states should consider new relationships with the private sector when community policing is used.

Further research into the "state action" doctrine should determine its applicability to citizen/community group cooperation with the police. This research should assess which prearranged plans or joint activities between the police and the private sector

will constitute "state action". An examination of these cooperative activities will help police/citizens/community groups/private security officers understand what are the legal consequences of the arrangements among them.

Research should be conducted into the types of laws and administrative rules which should be applicable to community groups engaged in community policing. Community groups are assuming a growing authority, sometimes with the sanction of local law enforcement agencies, without a concomitant increase in state regulation of the groups. Research should be conducted concerning which type of laws and administrative regulations that apply to private security officers could be applied to community groups. Under this approach, a model state law concerning the authority and responsibility of community groups might be developed. Innovative community-policing policies might require state laws and administrative rules that are distinctive. The impact of such laws applied to community groups' crime-combating activities might be suggested and investigated.

A troubling aspect of crime-combating activities by community groups is their potential for treading upon the rights and liberties of other citizens. Our study found that private security officers may be held liable for assault, battery, false arrest, invasion of privacy and other torts. In most states, their authority and liability rest upon their status as private citizens. Research should be conducted into the number and outcome of liability suits against citizens/community groups engaged in

community policing. In a related area, state practices that limit the liability of citizens/community groups should be studied. This research about different state practices would indicate innovative states in the community-policing field.

1. Other grantees under the NIJ Community-Policing Program are studying specific community groups involved in community -policing activities.
2. New York State passed a law concerning private security officers in 1992. It did not take effect until June, 1993. The regulations for implementation of the law are not yet complete, and compliance will not be required until after the completion of the administrative rule-making process.
3. See Note, "The Law of Citizen's Arrest" 65 Columbia Univ. Law Review 502 (1965).
4. People v. Alvarado, 25 Cal. Rptr. 437 (Ct. App. 1962); Collins v. State, 143 So. 2d 700 (Fla. Dist. Ct. App. 1962); Montana v. Long, 216 Mont. 65 (1985).
5. See e.g., People v. Martin, 36 Cal. Rptr. 924 (Ct. App. 1964).
6. Stapleton v. Superior Court of Los Angeles County, 447 P. 2d 967 (1969).
7. Montana v. Hyem, 193 Mont. 51 (1981).
8. See ALA. CODE sec 15-10-7 (e) (1975 and Supp. 1992); GA. CODE ANN. sec. 17-4-61 (a) (1990); MINN STAT. sec. 629.364 (1983 and Supp. 1993); MONT. CODE ANN. sec. 46-6-502 (2) (1991); and TENN. CODE ANN. sec. 40-7-113 (a) (1990).
8. For misdemeanors, if the misdemeanor was not committed, the arresting citizen would be subject to liability for false arrest.
10. For discussions of the scope of immunity from suit under the Civil Rights Act, 42 U.S.C. sec. 1983, compare Malley v. Briggs, 475 U.S. 335 (1986) (qualified immunity for police officers) with Wyatt v. Cole, 112 S.Ct. 1827 (1992) (no immunity for private individuals).
11. ALA. CODE sec. 15-10-7 (d) (1975 and Supp. 1992); IDAHO CODE sec. 19-606 (1987).
12. See, e.g., IND.CODE sec. 35-33-6-2 (1985); LA. CODE CRIM. PROC. ANN. art. 215 (A) (1) (West 1991).
13. LA. CODE CRIM. PROC. ANN. art. 215 (c) (West 1991), and ME. REV. STAT. ANN. tit. 17-A, sec. 107 (4) (A,B) (West 1983 and Supp. 1992).
14. See e.g., ALA. CODE sec. 15-10-14 (a) (1975 and Supp. 1992); and ALASKA STAT. sec. 11.46.230 (1) (1989).

15. This provision and the provision in the sentence above are found in N.C. GEN. STAT. sec. 15A-404-405 (1988).
16. See La Fave and Israel, Search and Seizure: A Treatise on Search and Seizure, sec. 6.10 (b) and People v. In re Deborah C., 635 P.2d 446 (Cal. 1981).
17. In 3 states--Oregon, Rhode Island and South Dakota--no statutes were found pertaining to security personnel and weapons. Nebraska and Ohio provide an affirmative defense for persons engaged in a lawful business to carry firearms.
18. California, Florida, Illinois, Minnesota, South Carolina, Texas, Vermont.
19. Indiana, Kentucky, Minnesota, Wyoming.
20. New Jersey: N.J. STAT. ANN. sec. 2C:20-11 (e) (West 1982 and Supp. 1993) "A merchant who causes the arrest of a person for shoplifting, as provided for in this section, shall not be criminally or civilly liable in any manner or to any extent whatsoever where the merchant has probable cause for believing that the person arrested committed the offense of shoplifting."

New Mexico: N.M. STAT. ANN. sec. 30-16-23 (Michie 1984) "Such taking into custody or detention shall not subject the officer or merchant to any criminal or civil liability."
21. DEL. CODE ANN. tit. 11, sec. 849 (c) (1987).
22. GA.CODE ANN. sec. 51-7-60 (1990).
23. Woodward and Lothrop v. Hillary, 598 A.2d 1142 (D.C. Ct. App. 1991).
24. Wal-Mart Stores, Inc. v. Dolph, 825 S.W.2d 810 (Ark. 1992).
25. Caldor, Inc. v. Bowden, 625 A. 2d 959 (MD. 1993).
26. City Stores Co. v. Gibson, 263 A.2d. 252 (D.C. Ct. App. 1970); Codner v. Toone, 581 P.2d 387 (Kan. 1978).
27. MINN. STAT. ANN. sec. 629.366 (West 1983 and Supp. 1993).
28. DEL. CODE ANN. tit. 11, sec. 840 (c) (1987).
29. S.D. CODIFIED LAWS ANN. sec. 22-30A-19 (1988).
30. N.M. STAT. ANN. sec. 51-7-60 (1990), MD. CODE ANN., CTS and JUD. PROC. sec. 5-307 (1989), VA.CODE ANN. sec. 18.2-105 (Michie 1988).

31. GA. CODE ANN. sec. 51-7-60 (1990), MD. CODE ANN., CTS. AND JUD. PROC. sec. 5-307 (1989), VA.CODE ANN. sec. 18.2-105 (Michie 1988).
32. See People v. Lee, 204 Cal. Rptr. 667 (App. Dep't Super. Ct.1984); People v. Alberta, 237 N.Y.S.2d 51 (County Ct. 1962); Commonwealth v. Corley, 491 A.2d 829 (Pa. 1985); Radloff v. National Food Stores, Inc., 123 N.W. 2d 570 (Wis. 1963).
33. FLA. STAT. ANN. sec. 240.268 (West 1989); CAL. PENAL CODE sec. 830.2 (1990); ILL. REV. STAT. cl. 144, para. 658 (1992); DEL. CODE ANN. tit. 2, sec. 909 (1987).
34. DEL. CODE ANN. tit. 11, sec. 6563 (1987).
35. S.C. CODE ANN. sec. 40-17-130 (Law. Co-op. 1986); City of Easley v. Cartee, 424 S.E.2d 491 (S.C. 1992).
36. City of Chicago Municipal Code Chap. 38, sec. 107-3; People v. Perry, 327 N.E. 2d 167 (Ill. App. 1975).
37. See e.g., ALASKA ADMIN. CODE tit. 13, sec. 60.010 (b).
38. Hallcrest II's 35% proprietary category covers all types of proprietary security e.g., locksmith, not just proprietary security. It is important to note that even where proprietary security officers are subject to state regulatory authority, not all of the 35% are covered by those statutes in all states.
39. As noted earlier the 1992 New York State law concerning private security officers gives equal regulatory treatment to proprietary and contract officers.
40. Residents of the Queensbridge Houses housing development in Queens, New York, 3100 families in the city's largest low-income public housing project, "demanded the New York City Housing Authority hire the Nation of Islam security guards to patrol the project." (New York Times, July 12, 1992, at A27).
41. The decision was not published , but it was reported in the New York Times, July 31, 1993, at A23 and the Wall Street Journal August 4, 1993, at B5. We contacted Judge Stanton's chambers and found that there is a videotape of this oral decision.
42. New York Times, *ibid.*
43. In Flagg Bros., Inc. v. Brooks, 436 U.S. 149 (1978), the Supreme Court observed that it "has never considered the private exercise of traditional police functions" nor the "constitutional status of private police forces", *id.* at 163-64, n. 14. In that case, the Court found it unnecessary to

decide whether "a city or State might be free to delegate to private parties the performance of such functions [as police protection] and thereby avoid the strictures of the Fourteenth Amendment." *Id.* at 164. The Court distinguished Griffin v. Maryland from the case of a purely private security guard because in Griffin, the Court held that the guard "purported to exercise the authority of a deputy sheriff." 378 U.S. 130, 135 (1964).

44. 518 N.Y.S. 2d 351 (Warren County Ct. 1987).
45. *Id.* at 352.
46. Maxwell, Private Security Law: Case Studies (1993) (Boston: Butterworth-Heinemann) p. 312.
47. In Yeager v. City of McGregor, 980 F.2d 337 (5th Cir. 1993), the court held that a volunteer fire department in Texas did not meet the public function test of state action. The court was concerned that volunteer fire departments would then be subject to lawsuits under section 1983.
48. Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974).
49. See generally, Henderson v. Fisher, 631 F. 2d 1115 (3rd Cir. 1980).
50. See generally, People v. Eastway, 241 N.W. 2d 249 (Mich. App. 1976); State v. Murillo, 824 P. 2d 326 (N.M. Ct. App. 1991).
51. See generally, State v. Murillo, 824 P.2d 326 (N.M. Ct. App. 1991); Lusby v. T.G.&Y. Stores, Inc., 749 F.2d 1423 (10th Cir. 1984).
52. Owen v. State, 490 N.E. 2d 1130 (Ind. Ct. App. 1986).
53. Traver v. Meshriy, 627 F. 2d 934 (9th Cir. 1980).
54. Commonwealth v. Eshelman, 383 A.2d 838 (Pa. 1978).
55. See also, El Fundi v. Deroche, 625 F. 2d 195, 196 (8th Cir. 1980); Duriso v. K-Mart, 559 F. 2d 1274, 1277 (5th Cir. 1977).
56. Gramenos v. Jewel Companies, Inc., 797 F. 2d 432, 434-435 (7th Cir. 1986); see also, El Fundi v. Deroche, 625 F. 2d 195 (8th Cir. 1980).
57. Lusby v. T.G.&Y. Stores, Inc., 749 F. 2d 1423, 1432 (10th Cir. 1984), cert. den. 474 U.S. 805 (1985).

58. Ralph Blumenthal, Private Guards Cooperate in Public Policing, N.Y. Times, July 13, 1993, at B1.
59. At least one court has held that an injured customer may have a contract claim as a third party beneficiary of the contract between a security agency and a store, Brown v. National Supermarkets, Inc., 679 S.W. 2d 307 (Mo. Ct. App. 1984). Other courts have rejected these contract claims, e.g., Jones v. Williams, 408 N.W. 2d 426 (Mich. Ct. App. 1987); Carrini v. Supermarkets General Corp., 550 N.Y.S. 2d 710 (N.Y. App. Div. 1990).
60. Dupree v. Piggly Wiggly Shop Rite Foods, Inc., 542 S.W. 2d 882 (Tex. Ct. App. 1976); Peachtree-Cain Co. v. McBee, 316 S.E. 2d 9 (Ga. Ct. App. 1984). See also, 38 A.L.R. 3d 1332 (1971) for the general rule.

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TABLE 1*

State Authority of Citizens to Arrest:

Statutory
and
Common Law Provisions
1992

*The design of this table is derived from Bassouni, *Citizen's Arrest* at page 95 (Charles C. Thomas, 1976). Data from 1976-1992 was collected by the authors.

STATUTORY PROVISIONS			AL	AK	AZ	AR	CA	CO	GA	IB	ID	IL	IN	IA	KS	KY	LA	ME	MI	MN	MS		
MINOR OFFENSE	TYPE OF MINOR OFFENSE	Crime		X				X		X													
		Misdemeanor Amounting to Breach of Peace			X									X									
		Breach of the Peace																				X	
		Offense							X														
		Public Offense	X				X				X				X						X		
		Offense Not Covered by Ordinance											X										
		Indecent Offense																				X	
	TYPE OF KNOWLEDGE REQUIRED	Premeditation	X	X	X		X	X	X	X	X			X	X						X	X	
		Immediate Knowledge							X														
		View																					
		Upon Reasonable Grounds That Crime is Being Committed											X										
	MAJOR OFFENSE	TYPE OF MAJOR OFFENSE	Felony	X	X	X	X	X		X		X	X	X	X	X	X	X		X	X	X	
			Larceny																				
Pick Larceny																							
Crime Involving Physical Injury to Another																							
Crime									X		X												
Crime Involving Theft or Destruction of Property																							
TYPE OF KNOWLEDGE REQUIRED		Committed in Premises			X				X	X	X			X									
		Information that a Felony Has Been Committed																					
		View																					
		Reasonable Grounds to Believe a Felony is Being or has been Committed				X 1							X 2										
		The Felony Has Been Committed in Fact	X	X	X		X				X			X	X	X	X	X		X	X	X	
		The Felony is Executing or Attempting to Execute								X									X				
CERTAINTY OF CORRECT ARREST		Summoned by Peace Officer to Assist in Arrest														X			X	X			
	The Police is in Act of Committing									X													
	Reasonable Grounds/ Cause to Believe Person Arrested Committed Crime	X	X	X	X	X			X		X			X						X	X		
	Probable Cause												X		X	X							

STATUTORY PROVISIONS																						
			AL	AK	AZ	AR	CA	CO	GA	IB	ID	IL	IN	IA	KS	KY	LA	ME	MI	MN	MS	
MINOR OFFENSE	TYPE OF MINOR OFFENSE	Crime		X				X		X												
		Misdemeanor Amounting to Breach of Peace			X								X									
		Breach of the Peace																			X	
		Offense							X													
		Public Offense	X				X				X			X							X	
		Offense Not Covered by Ordinance											X									
		Indicible Offense																			X	
	TYPE OF KNOWLEDGE REQUIRED	Presume	X	X	X		X	X	X	X	X		X	X							X	X
		Immediate Knowledge							X													
		View																				
		Upon Reasonable Grounds That Crime is Being Committed											X									
	MAJOR OFFENSE	TYPE OF MAJOR OFFENSE	Felony	X	X	X	X	X		X		X	X	X	X	X	X	X		X	X	X
			Larceny																			
Pick Larceny																						
Crime Involving Physical Injury to Another																						
Crime									X		X											
Crime Involving Theft or Destruction of Property																						
TYPE OF KNOWLEDGE REQUIRED		Committed in Presence			X				X	X	X			X								
		Information that a Felony Has Been Committed																				
		View																				
		Reasonable Grounds to Believe a Felony is Being or has been Committed				X 1							X 2									
		The Felony Has Been Committed in Fact	X	X	X		X				X		X	X	X	X	X	X		X	X	X
		The Police is Escaping or Attempting Escape								X									X			
CERTAINTY OF CORRECT ARREST			Suspected by Peace Officer to Assist in Arrest													X			X	X		
	The Police is in Act of Committing										X											
	Reasonable Grounds/ Cause to Believe Person Arrested Committed Crime		X	X	X	X	X			X		X		X							X	X
	Probable Cause													X		X	X					

STATUTORY PROVISIONS

			MT	NB	NY	NH	NI	NY	NC	ND	OH	OK	OR	RI	SC	SD	TH	TX	UT	WV	WY
MINOR OFFENSE	TYPE OF MINOR OFFENSE	Crime											X								
		Misdemeanor Amounting to Breach of Peace																			
		Breach of the Peace							X3									X			
		Offense	X				X	X						X							
		Public Offense			X					X		X				X	X		X		
		Offense Not Covered by Ordinance																			
		Indictable Offense																			
	TYPE OF KNOWLEDGE REQUIRED	Presence			X		X	X		X		X	X	X		X	X	X	X		
		Immediate Knowledge																			
		View																			
		Upon Reasonable Grounds That Crime is Being Committed																			
MAJOR OFFENSE	TYPE OF MAJOR OFFENSE	Felony		X	X	X	X	X	X3	X	X	X			X	X	X	X	X		X
		Larceny													X						X
		Pick Larceny		X																	
		Crime Involving Physical Injury to Another							X3												
		Crime											X	X						X	
		Crime Involving Theft or Destruction of Property							X3												X
	TYPE OF KNOWLEDGE REQUIRED	Committed in Presence											X	X				X			X
		Information that a Felony Has Been Committed													X					X	
		View													X						
		Reasonable Grounds to Believe a Felony is Being or has been Committed	X1 A1								X1										
		That Felony Has Been Committed in Fact		X	X	X	X	X		X		X				X	X		X		X
		The Felon is Escaping or Attempting Escape				X															
CERTAINTY OF CORRECT ARREST		Summoned by Peace Officer to Assist in Arrest				X			X1												
		The Felon is in Act of Committing												X1							
		Reasonable Grounds to Believe Person Arrested Committed Crime		X	X	X				X	X	X					X		X	X	
		Probable Cause	X						X3				X			X					X

Common Law Provisions	Type of Minor Offense	Type of Knowledge Required		Type of Major Offense	Type of Knowledge Required-					Certainty of Correct Arrest		
		Presence	Personal Observation		Presence	Felony Has Been Committed in Fact	Probable Cause to Believe Felony Was Committed	Reasonable Grounds to Believe Felony Was Committed	Information of Facts From Credible Source	Probable Cause	Reasonable Grounds to Believe Person Arrested Committed Crime	Representative or Leading Case
Connecticut	Misdemeanor Amounting to Breach of Peace	X	X									Malley v. Lane, 97 Conn. 133 (1921)
Delaware		X	X	X		X						State v. Hodgson, 200 A.2d 567 (1964)
Florida 4				X	X	X				X		Phoenix v. State, 455 So.2d 1024 (1984)
Maryland				X				X	X	X	X	Stevenson v. State, 413 A.2d 1340 (1980)
Massachusetts 4				X			X			X		Commonwealth v. Dise, 583 N.E.2d 271 (1991)
Missouri 4				X		X					X	State v. Gay, 629 S.W.2d 470 (1982)
New Mexico		X	X	X	X	X						Los Alamos v. Johnson, 776 P.2d 1252 (1989)
Pennsylvania		X	X	X		X					X	Penn. v. Corley, 491 A.2d 829 (1985)
Vermont		X	X									State v. Barber, 596 A.2d 337 (1980)
Virginia				X		X					X	Hall v. Virginia, 389 S.E.2d 921 (1990)
Washington		X	X	X	X							State v. Gonzales, 604 P.2d 168 (1979)
Wisconsin 4		X 5	X									Radloff v. Nat'l Food, 123 N.W.2d 570 (1963)

FOOTNOTE	
1	HAS BEEN
2	IS BEING
3	IN N.C. CITIZENS MAKE DETENTIONS, NOT ARRESTS
4	THESE COMMON LAW STATES HAVE STATUTES THAT GIVE CITIZENS THE SAME AUTHORITY TO ARREST AS A POLICE OFFICER WHEN COMMANDED OR REQUESTED TO MAKE THE ARREST BY THE OFFICER
5	THE BREACH OF THE PEACE MUST BE AN ACT WHICH INVOLVES, THREATENS, OR INCITES VIOLENCE

TABLE 2

SECURITY COMPANY/ GUARD LICENSURE REQUIREMENTS

[illegible]

[illegible]

[illegible]

[illegible]

TABLE 3
MERCHANT'S PRIVILEGE

MERCHANT'S PRIVILEGE		AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO	TOTAL
STATUTE EMPOWERS:																											
	MERCHANT	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	25
	EMPLOYEE	X	X	X	X	X	X	X	X	X	X	X				X	X	X	X	X	X	X		X	X	X	21
	AGENT		X	X		X		X	X	X	X	X			X		X	X			X	X	X			X	15
	POLICE	X	X		X		X			X		X				X		X	X						X		10
MAY:																											
	DETAIN										X					X					X		X				4
	ARREST										X										X						2
	SEARCH					X										X											2
	DETAIN FOR POLICE			X				X	X	X			X	X	X					X				X			9
	DETAIN TO ATTEMPT RECOVERY	X			X	X				X			X					X								X	7
	DETAIN TO QUESTION		X	X		X	X					X							X			X			X		8
	DETAIN FOR I.D.					X		X						X	X					X							5
	DETAIN FOR THEFT INVESTIGATION					X						X		X	X		X								X		6
LENGTH OF DETENTION:																											
	REASONABLE	X	X	X	X	X			X	X	X	X	X	X		X	X	X				X	X	X		X	18
	SPECIFIC (TIME IN HOURS)														2				1	0.5							3
DETENTION MUST BE IN A REASONABLE MANNER		X	X	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X		X	X	X	X	X	23
PROVIDES IMMUNITY FROM CIVIL ACTIONS		X			X		X		X	X	X				X	X	X				X		X	X	X	X	14
PROVIDES IMMUNITY FROM CRIMINAL ACTIONS		X			X		X		X	X	X				X	X	X							X		X	11
PROVIDES DEFENSE TO SUITS			X	X		X		X				X		X							X						7

MERCHANT'S PRIVILEGE																													
			MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	TOTAL	ALL TOTAL
STATUTE EMPOWERS:																													
	MERCHANT		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X*****	X	X	X	X	X	X	X	25	50
	EMPLOYEE			X	X		X		X	X		X	X	X	X		X	X	X		X		X	X	X	X	18	39	
	AGENT				X	X	X		X	X		X	X		X		X		X		X		X	X	X		14	29	
	POLICE			X			X	X	X	X	X			X	X	X			X		X		X	X		X	14	24	
MAY:																													
	DETAIN		X					X		X		X											X				5	9	
	ARREST		X					X		X													X				4	8	
	SEARCH												X														1	3	
	DETAIN FOR POLICE		X			X					X	X	X		X	X		X	X		X	X					11	19	
	DETAIN TO ATTEMPT RECOVERY			X	X		X	X			X	X	X		X			X	X		X	X					10	17	
	DETAIN TO QUESTION		X					X					X	X					X		X		X			X	8	16	
	DETAIN FOR I.D.		X								X				X	X			X		X	X					7	12	
	DETAIN FOR THEFT INVESTIGATION		X					X					X				X			X	X		X	X			8	14	
LENGTH OF DETENTION:																													
	REASONABLE			X	X		X	X	X	X	X	X	X	X	X		X	X	X	X	X	X		X		X	19	37	
	SPECIFIC (TIME IN HOURS)		.5*			***										1							1		0.5		5	8	
DETENTION MUST BE IN A REASONABLE MANNER			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	24	47	
PROVIDES IMMUNITY FROM CIVIL ACTIONS			X	X	X		X	X		X	X		X		X			X****	X				X		X		13	27	
PROVIDES IMMUNITY FROM CRIMINAL ACTIONS			X	X	X**		X	X		X	X		X		X			X****	X								11	22	
PROVIDES DEFENSE TO SUITS								X						X		X	X				X			X		X	7	18	
* unless person is to be turned over to a police officer																													
** notice must be displayed in order to get immunity																													
*** as long as neccessary																													
**** must sign complaint and testify to get coverage																													
***** statute says "person"																													

PROPERTY OF
National Criminal Justice Reference Service (NCJRS)
Box 6000
Rockville, MD 20849-6000