

Frequently Asked Questions Concerning Civilian Warrant Applications

What is a warrant application hearing?

When a civilian makes a written application for the issuance of a criminal arrest warrant, a Judge makes a determination as to whether the application should be set down for a hearing. If the Judge determines that the application should be set down for a hearing, this form is filled out stating the crime alleged and setting down the time, date, and location of the hearing. The Judge delivers one copy to the applicant at the time of the application. The Clerk of Court mails one copy to the defendant at the address provided by the applicant.

O.C.G.A. 17-4-40. (b) (1) If application is made for a warrant by a person other than a peace officer or law enforcement officer and the application alleges the commission of an offense against the penal laws, the judge or other officer shall schedule a warrant application hearing as provided in this subsection.

O.C.G.A. 17-4-40. (b) (4) At the warrant application hearing, the rules regarding admission of evidence at a commitment hearing shall apply. The person seeking the warrant shall have the customary rights of presentation of evidence and cross-examination of witnesses. The person whose arrest is sought may cross-examine the person or persons applying for the warrant and any other witnesses testifying in support of the application at the hearing. The person whose arrest is sought may present evidence that probable cause does not exist for his or her arrest. The judge ... shall have the right to limit the presentation of evidence and the cross-examination of witnesses to the issue of probable cause. **O.C.G.A. 17-4-40. (b) (5)** At the warrant application hearing, a determination shall be made whether or not probable cause exists for the issuance of a warrant for the arrest of the person whose arrest is sought. If the judge finds that probable cause exists, the warrant may issue instantly.

How can I apply for a criminal arrest warrant for an individual's arrest?

If you believe this is a case you can handle yourself, you would go to the respective Magistrate Court in the county where the alleged crime occurred. Therefore, if the criminal offense occurred in Pickens County, you would come to the Pickens County Magistrate Court. If the crime occurred in another county, you would go to that Magistrate Court. You are encouraged to

contact the law enforcement agency in the location where the offense occurred and obtain a report prior to coming to the Court to file your application for a warrant.

You would fill out a criminal arrest warrant application form. It is available on the website under the Criminal Forms section. There is a fee of \$ **20.00** which must be paid in cash. After application is made, a hearing will be set and the accused given a notice to appear unless there are circumstances that require immediate action on the part of the Court.

Under Georgia law,

O.C.G.A. 17-4-40 (b), Most civilian arrest warrant applications are set for a warrant application hearing. There are rare statutory circumstances when an immediate arrest warrant can be issued, but they are rare.

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Can I just bring the police report to show what happened?

No, the police report is "hearsay." It is not admissible.

The law permits the opposing side to cross examine and confront witnesses. No one has yet to be able to get a piece of paper to answer questions from the witness stand. Both the court and the opposing side have the right under our laws to see and hear the witness in court.

Can I just get the witness to sign an affidavit instead of coming to court?

No, the affidavit is "hearsay." It is not admissible.

The law permits the opposing side to cross examine and confront witnesses. No one has yet to be able to get an affidavit to answer questions from the witness stand. You can't use a witness's affidavit in place of their live testimony. Both the court and the opposing side have the right under our laws to see and hear the witness in court.

Which witnesses should I bring to the warrant application hearing?

You should bring all witnesses you wish to have testified. Generally, you cannot testify yourself about what another witness to the case saw or heard. That is "hearsay." So, bring the proper witnesses to court.

To be on the safe side, you should consider subpoenaing these witnesses. Subpoenas may be obtained in the clerk's office. They must be served by a person over the age of 18 years, not related to the case and an affidavit of service of the subpoena should be filed with the clerk at least 24 hours prior to the hearing date.

I am the victim; can I call the accused to the witness stand to testify in the warrant application hearing?

No, this is a criminal proceeding. Therefore, the accused cannot be compelled to give testimony.

While an accused in a criminal case MAY give testimony at a warrant application hearing, that will only occur after the judge has advised the accused of his/her rights connected with the hearing, including the right to remain silent.

What rules and rights apply to the warrant applicant and the accused at a warrant application hearing?

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I am the accused; can I apply for appointed counsel at this hearing?

Accused persons, who are indigent and are unable to afford counsel, may apply for court appointed counsel. You must immediately appear before a magistrate court judge to apply for appointed counsel in order to do so before the hearing.

Hearings will not be continued for the failure to timely apply for appointed counsel or hire counsel.