

PREWARRANT APPLICATIONS

Frequently Asked Questions Concerning Pre-Warrant Applications

[Refer to O.C.G.A. 17-4-40 \(b\)](#)

WHAT IS A PRE-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. Should the determination be made that a hearing is necessary, the Clerk will mail a Notice and Order to all parties in interest, setting down the time, date, and location of the hearing.

How may 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 come to the Magistrate Court in the county where the alleged crime occurred. If the alleged criminal offense occurred in Monroe County, you would come to the Monroe County Magistrate Court. If the crime occurred in another county, you would go to the Magistrate Court of that County. You must first contact the law enforcement agency in the location where the offense occurred and report the alleged crime. Preferably, the law enforcement agency of the jurisdiction will investigate the allegations. However, if they choose not to prosecute and you have enough evidence that a crime has been committed by a specific person, you may file a pre-warrant application.

****You must also obtain an incident report to file along with the application in the Magistrate Court of the County where the alleged crime occurred.**

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

No. The law permits the opposing side to cross examine and confront witnesses. Both the court and the opposing side have the right under our laws to see and hear the witness in court. Further, the police to whom the incident was reported may not have been an eye witness to the crime.

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

No. The law permits the opposing side to cross examine and confront witnesses. You may not 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 testify. Generally, you cannot testify yourself about what another witness to the case said they saw or heard. That is “hearsay.” So, bring the proper witnesses to court. To be on the safe side, you should consider requesting a subpoena for all witnesses you intend to call. Subpoenas may be obtained in the Magistrate 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?

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, but is not required to, present evidence that probable cause does not exist for his or her arrest. The judge or other officer shall have the right to limit the presentation of evidence and the cross-examination of witnesses to the issue of probable cause. 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 or other officer finds that probable cause exists, the warrant may issue instant.