

1980 S.C. Op. Atty. Gen. 154 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-102, 1980 WL 81984

Office of the Attorney General

State of South Carolina

Opinion No. 80-102

October 28, 1980

***1 SUBJECT: Arrest, Juvenile Delinquency**

(1) A juvenile may be taken into custody without a warrant for a criminal offense only where the offense has been committed in the presence of the arresting officer or where the arresting officer has observed facts and circumstances which give him probable cause to believe that a misdemeanor has been freshly committed. A juvenile may be taken into custody without a warrant where the arresting officer has reasonable grounds to believe that a felony has been committed and that the juvenile committed it.

(2) In cases of misdemeanors, the officer must view the offense or observe facts and circumstances which give him probable cause to believe a misdemeanor has been freshly committed by the juvenile before he may take a juvenile into custody.

(3) In order to take a juvenile back into custody after releasing him to a parent or other responsible adult but prior to adjudication, there must be issued a new arrest warrant.

To: Stephen S. Bartlett
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QUESTIONS:

1. When is it appropriate to take a juvenile into custody without a warrant?
2. In cases of misdemeanors, must the law enforcement officer view the actual violation or can he act on probable cause or a lesser standard of evidence?
3. After a juvenile has been released by law enforcement officials to his parents, what steps are necessary to take him back into custody pending adjudication?

STATUTES AND CASES:

[State v. Bell](#), 263 S.C. 239, 209 S.E.2d 890 (1974); [State In Interest of J. B.](#), 131 N.J.Super. 6, 328 A.2d 46 (1974); [State v. Martin](#), 275 S.C. 141, 268 S.E.2d 105 (1980); [State v. Mims](#), 263 S.C. 45, 208 S.E. 2d 288 (1974); 6A C.J.S. Arrest § 60 p. 136 (1975); 43 C.J.S. Infants § 42a p. 165 (1978).

DISCUSSION:

1. It is generally accepted that infancy provides no immunity from arrest for a crime or offense, and a child may be arrested if he violates a law in the presence of a police officer, notwithstanding that he may not be amenable to the procedures applicable to adults. Furthermore, a police officer may arrest a juvenile without a warrant when a felony in fact has been committed and he has reasonable cause to believe that the minor has committed it. In general, however, a juvenile may be taken into custody without a warrant only where there

is probable cause to believe that he has committed a criminal or delinquent act, and an arrest predicated on mere suspicion or whim and not on probable cause is invalid, at least where there is sufficient time to make application for authority to detain the juvenile. 43 C.J.S. Infants § 42a p. 165 (1978).

The criteria governing the taking into custody of a child for the commission of a crime are the same as those governing the arrest of an adult supplemented by any rules of court which pertain to juvenile offenses. [State In Interest of J. B.](#), 131 N.J. Super. 6, 328 A.2d 46 (1974). In South Carolina, an officer has the power and authority to arrest without a warrant where any violation of the criminal laws of this State has been committed within his view, [State v. Mims](#), 263 S.C. 45, 208 S.E.2d 288 (1974), or where the facts and circumstances observed by the officer give him probable cause to believe that a misdemeanor has been freshly committed. [State v. Martin](#), 275 S.C. 141, 268 S.E.2d 105 (1980). In addition, an officer may lawfully make an arrest without a warrant if he has reasonable grounds to believe that a felony has been committed and that the arrestee committed it. [State v. Bell](#), 263 S.C. 239, 209 S.E.2d 890 (1974). Since there are no statutes or court rules broadening or narrowing the above criteria regarding juveniles, they would control when the person being taken into custody is a juvenile.

*2 2. As stated above, a juvenile may be taken into custody for the commission of a misdemeanor only where the crime has been actually viewed by the officer or where facts and circumstances viewed by the officer give him probable cause to believe that a misdemeanor has been freshly committed by the juvenile.

3. In order to take a juvenile back into custody after releasing him to his parents, but prior to his hearing date, a new warrant must be issued. 'Generally, a peace officer must obtain a new warrant in order to arrest a person who has been released on bail. He has no right to rearrest him under the same process . . . ' 6A C.J.S. Arrest § 60 p. 136 (1975). Under the rationale of [State In Interest of J. B.](#), *supra*, a new warrant would therefore be required before a juvenile could be taken back into custody pending adjudication.

CONCLUSION:

1. A juvenile may be taken into custody without a warrant where he has committed an offense in the presence of the arresting officer, where the arresting officer observes facts and circumstances which give him probable cause to believe a misdemeanor has been freshly committed and the juvenile committed it, or where the arresting officer has reasonable grounds to believe a felony has been committed by the juvenile.

2. In cases of misdemeanors, the officer must view the offense or observe facts and circumstances which give him probable cause to believe a misdemeanor has been freshly committed by the juvenile before he may take a juvenile into custody.

3. In order to take a juvenile back into custody after releasing him to a parent or other responsible adult but prior to adjudication, there must be issued a new arrest warrant.

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