

1979 WL 42968 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 2, 1979

*1 Mr. W. T. Yarborough
Director
Oconee Law Enforcement Center
South Church Street
Walhalla, South Carolina 29691

Dear Mr. Yarborough:

In a recent letter to this office you asked:

1. How long can or must we hold an individual before a warrant is served on the individual?
2. How long should we hold a suspect before he should be processed by the arresting officer? i.e., Photographed, Fingerprinted, etc?
3. If an individual pays his bond, is he to be released at that point regardless of his condition? i.e., Public drunk who posts bond but has not fully recovered according to the breathalyzer test chart?

In response to your first question, enclosed please find a previous opinion of this Office, 1965 Op. Att'y Gen. No 1789, p. 25, which indicated in part:

Whenever a suspected felon is arrested without a warrant, one should be obtained as soon as is reasonably possible. For instance, if the suspect is jailed at night, a warrant should be obtained from a magistrate soon after the beginning of normal office hours the following morning. No rigid rule of thumb can be set out, since circumstances in each case control what constitutes reasonable time in which to obtain a warrant.

Furthermore, the Supreme Court has indicated that as to the arrest of an individual without a warrant, the officers are required to take him before a judicial officer 'within a reasonable length of time thereafter.' However, the failure to do so does not merit a reversal of a defendant's conviction unless the defendant is deprived of a fair trial. [State v. Swilling](#), 249 S.C. 541 at 556 (1967); see also [State v. Gee](#), 262 S.C. 373 at 384 (1974).

As to your second question concerning processing a suspect i.e., photographing, fingerprinting, etc., the only suggestion is that such processing, of course, should be done as soon as possible. However, I would imagine that each individual situation and the personnel available to perform such duties dictate the timing of such duties.

In your remaining question as to whether an individual must be released as soon as his bond is paid regardless of his condition, you referenced the situation of an individual arrested for public drunkenness who posts bond but has not fully 'recovered' from his condition. Enclosed please find another opinion of this Office, 1965 Op. Att'y Gen. No. 1838, p. 93 which stated that an 'intoxicated person under arrest has no right to release on bond until he is sober.' Furthermore, [Section 17-15-40 of the 1976 Code](#) of Laws states in part that upon releasing an individual charged with a noncapital offense, 'the person released shall acknowledge his understanding of the terms and conditions of his release and the penalties and forfeitures applicable in the event of violation . . .' Presumably, a person still intoxicated would not be able to make such an acknowledgment.

Hopefully, the above is in full response to your inquiry.
Sincerely,

*2 Charles H. Richardson
Assistant Attorney General

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