

1974 WL 27171 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 19, 1974

***1 In Re: DUI Defendants, Holding in Custody Until Reasonably Sober, So-called 4-hour Practice**

Honorable David W. Keller, Jr.
Member
House of Representatives
Box 109
Florence, South Carolina 29501

Dear Representative Keller:

It has been the opinion of this Office for a long period of time that custodial personnel, being responsible in some degree for the welfare of persons lawfully in their custody, are justified in retaining custody of a DUI arrestee until such time as the arrestee appears to be in reasonably normal condition.

The foregoing is not applicable, of course, when a judge with proper jurisdiction has approved bond and ordered the release of the arrestee.

Although there is no statute specifically permitting such practice, the setting of bond and release of persons lawfully arrested is a judicial function—not an administrative duty of the police. Even though it is customary for police to set bond and release prisoners in minor cases without affirmative action by a court, it is not their duty to do so.

It is the opinion of this Office that all criminal defendants, except in certain capital cases, have the right pending trial to release from custody upon reasonable bond within a reasonable time—but that there is no such right to immediate release except upon proper court order.

Very truly yours,

Joseph C. Coleman
Deputy Attorney General

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