

1974 WL 27529 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 5, 1974

***1 In Re: DUI—Four Hour Rule**

Joseph W. Board, Esquire
Attorney at Law
Court Street
Fickens, South Carolina

Dear Mr. Board:

Mr. McLeod has referred to your letter of December 2 inquiring about custodial retention of DUI arrestees for a short period of time after arrest for the purpose of insuring that such arrestees are not released while still under the influence of intoxicating liquor.

This Office has heretofore given several opinions to the effect that police agencies are under no affirmative duty to release a prisoner arrested on any criminal charge, including DUI, without an order from a court. The custom has evolved in most jurisdictions that on relatively minor charges the custodial officer will set and accept bond in lieu of bringing the defendant before a magistrate or other judge to get bond and order release. Such procedure is followed as a favor to the defendants, and is not a matter of right. Technically, a dice officer or custodial officer has no lawful right to set and accept bond and release a prisoner. [Exceptions in restricted circumstances for South Carolina Highway Patrol and Wildlife Division]. Such powers are entirely within the authority of the judiciary.

The South Carolina Supreme Court has held that although setting of and acceptance of bond by police and custodial officers is not technically within the authority of such officers, the released defendant has no valid reason to complain when such procedure is followed at his request. Thus, although the custom is not approved by the Supreme Court, it has been recognized as existing and was not condemned.

It is often argued that the Constitutional right to reasonable bail requires that a DUI defendant be released by police or custodial officers, without a court order, immediately upon offer by the defendant, or someone in his behalf, to post the customary bond. Such is not the law of State or the United States. A defendant in a non-capital case is antitled to release on reasonable bond within a reasonable time, or when his release is ordered [in writing] by a judge with jurisdiction to issue such an order.

Although all of us tend to think of DUI as a non-criminal offense, it is a misdemeanor under the law of the State, and there is no legal reason why DUI defendants have a different right to release from custody than other misdemeanants. It could not be argued seriously, for example, that a defendant charged with aggravated assault and battery [a misdemeanor] has a constitutional right to his immediate release from custody upon proffer of ball or bond. He has a right to be taken before a court for the setting of bond at a reasonable time after arrest.

The so-called four-hour rule is something that has developed in many areas of the State as a reasonable rule-of-thumb to permit a DUI defendant release before the opening of magistrate's or recorder's court the next morning, and, at the same time, to insure to a minimal degree that an arrestee still under the influence is not permitted to endanger the public or himself again before the influence of alcohol has been dissipated.

*2 In view of the foregoing, it is the opinion of this Office that enforcement of the so-called four-hour rule in DUI cases is a reasonable exercise of custodial authority.

Yours very truly,

Joseph C. Coleran
Deputy Attorney General

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