

1980 WL 121157 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 8, 1980

*1 Mr. Larry Batson
Legal Advisor
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221

Dear Mr. Batson:

You have requested an explanation of the procedures surrounding the detention of a prisoner who has been arrested without a warrant. Generally speaking, the procedures are as follows:

A law enforcement officer of this state may without a warrant arrest an individual who commits an offense in the presence of that officer. [Section 17-13-30 of the South Carolina Code of Laws \(1976\)](#). He may also arrest an individual for the commission of a felony without a warrant, Section 17-13-10. Once such an arrest is made Section 22-5-200 provides that the arrestee be taken forthwith before a magistrate at which time a warrant of arrest shall be procured and disposed of as the Magistrate might direct (emphasis added). The term forthwith for the purposes of Section 22-5-200 has been held to provide that the individual be taken before a magistrate within a reasonable time. 1962 Ops. Attorney General No. 1314B, p. 77; [Westbrook v. Hutchinson, 195 S.C. 101](#). While the definition of a reasonable period of time may not be given with any precision, it may be said that the rule does not prohibit delay, but rather prohibits only unnecessary delays. For example, the unavailability of a committing Magistrate, the extent of the delay before the arrested person is taken before a Magistrate, and the police justification, if any, for the delay may be considered in determining the length of delay in procuring a warrant. 6A C.J.S. Arrest, Section 64 at 147, 148.

If no warrant is procured by the arresting officer and no justification for such a delay is offered by the arresting officer, then the jail administrator may not release the prisoner but rather shall take the prisoner before a Magistrate forthwith. That is to say, that once the jail administrator learns that a warrant has not been procured and cannot establish a reason for the delay in procuring the warrant, then the jailer's only alternative is to then immediately take the prisoner before a Magistrate to seek the prisoner's arrest or release, as the Magistrate might determine.

Last, if such a prisoner is served with lawful process and procures bond, he should then, upon proof of process ordering his release, be released. You should bear in mind that such an individual may not necessarily be immediately released if his condition should pose a threat to the safety of the public or himself, i.e., an intoxicated condition. See 1967 Ops. Attorney General, No. 2268, p. 79; Attorney General's Opinion (December 5, 1974).

The above is a skeletal outline of the procedures surrounding the detention of a prisoner who has been arrested without a warrant. These procedures should not be considered all inclusive and, should further questions arise, this Office should be contacted with a request for an opinion.

Sincerely,

*2 Scott Elliott
State Attorney

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