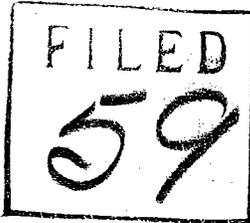


CRIMINAL PROCESS:  
CUSTODY:

A person arrested without warrant may not be held beyond the twenty hour period unless charges are preferred against him by a person competent to testify against the accused, and a warrant issued. When such twenty hour period expires on Sunday, a magistrate may entertain charges filed by a person competent to testify against the accused, and issue such warrant.



March 1, 1954

Honorable Roy W. McGhee, Jr.  
Prosecuting Attorney  
Wayne County  
Greenville, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"I would appreciate an opinion from your office on the following matter.

"Sec. 544.170, RSMo. 1949, specifies, in part, as follows:

'All persons arrested and confined.... without warrant or other process,.... shall be discharged from said custody within twenty hours from the time of such arrest, unless they shall be charged with a criminal offense by the oath of some credible person, and be held by warrant to answer to such offense;....

"Sec. 476, 250, RSMo. 1949, specifies, in part, as follows:

'No court shall be open or transact business on Sunday, unless it be for the purpose of receiving a verdict or discharging a jury;....but this section shall not prevent the exercise of the jurisdiction of any magistrate, when it shall be necessary in criminal cases, to preserve the peace or arrest the offender,....

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"A question arises as to the applicability of these two sections when an alleged criminal offender is arrested on a Saturday. Specifically, is it necessary that a warrant be issued before Monday? Is this matter discretionary or mandatory with the magistrate?"

Section 544.170, RSMo. 1949, referred to by you, reads in full as follows:

"All persons arrested and confined in any jail, calaboose or other place of confinement by any peace officer, without warrant or other process, for any alleged breach of the peace or other criminal offense, or on suspicion thereof, shall be discharged from said custody within twenty hours from the time of such arrest, unless they shall be charged with a criminal offense by the oath of some credible person, and be held by warrant to answer to such offense; and every such person shall, while so confined, be permitted at all reasonable hours during the day to consult with counsel or other persons in his behalf; and any person or officer who shall violate the provisions of this section, by refusing to release any person who shall be entitled to such release, or by refusing to permit him to see and consult with counsel or other persons, or who shall transfer any such prisoner to the custody or control of another, or to another place, or prefer against such person a false charge, with intent to avoid the provisions of this section, shall be deemed guilty of a misdemeanor."

The language of the above section is perfectly clear. It states that any person arrested and confined without warrant "shall be discharged from such custody within twenty hours from the time of such arrest" unless they are charged with a criminal offense and are held by warrant to answer such offense. There are no qualifications attached to the above statement of the law. Thus, if a person were arrested without warrant at 10:00 o'clock on Saturday night he would, if no charge was preferred against him, be entitled to discharge twenty hours later, which would be 6:00 o'clock Sunday evening. So much is clear. You inquire whether a magistrate may disregard the twenty hour

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statute and wait beyond the expiration period of twenty hours before issuing a warrant. In view of our holding above, that a person held for twenty hours without charges being preferred against him is entitled to release, we hold that it is mandatory upon the magistrate to issue such a warrant before the twenty hour period expires if the person arrested is to be held.

On this point Supreme Court Rule No. 21.14 states:

"All persons arrested and held in custody by any peace officer, without warrant, for the alleged commission of a criminal offense, or on suspicion thereof, shall be discharged from such custody within twenty hours from the time of arrest, unless they be held upon a warrant issued subsequent to such arrest. While so held in custody, every such person shall be permitted to consult with counsel or other persons in his behalf. If the offense for which such person is held in custody is bailable and the person held so requests, he may be admitted to bail in an amount deemed sufficient by a judge or magistrate of a court of such county or of the City of St. Louis having original jurisdiction to try criminal offenses. Such admission to bail shall be governed by all applicable provisions of these Rules. The condition of the bail bond shall be that the person so admitted to bail will appear at a time and place stipulated therein (which shall be a court having appropriate jurisdiction) and from time to time as required by the court in which such bond is returnable, to answer to a complaint, indictment or information charging such offense as may be preferred against him."

In regard to this matter the Missouri Supreme Court, in the case of State v. Miller, 289 S.W. 898, at l.c. 903, has stated:

"Under the provisions of section 3200, R.S. 1919, the person arrested by a peace officer without warrant on suspicion of having committed a criminal offense is required to be discharged from such custody within 20 hours, unless he shall be charged with a criminal offense by the oath of a credible person, and be held by a warrant to answer for such

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offense. The jurisdiction of the magistrate over such person accrues by the concurrence of a complaint, made as provided by law, and the custody of the person complained against. The jurisdiction of the magistrate over money or property taken by the officer from the person arrested, and jurisdiction over such officer in respect thereto, arise upon the concurrent facts that a criminal cause has been instituted before the magistrate, and that the party charged has been taken into custody."

Section 476.250, RSMo. 1949, to which you refer, reads in full as follows:

"No court shall be open or transact business on Sunday, unless it be for the purpose of receiving a verdict or discharging a jury; and every adjournment of a court on Saturday shall always be to some other day than Sunday, except such adjournment as may be made after a cause has been committed to a jury; but this section shall not prevent the exercise of the jurisdiction of any magistrate, when it shall be necessary in criminal cases, to preserve the peace or arrest the offender, nor shall it prevent the issuing and service of any attachment in a case where a debtor is about fraudulently to secrete or remove his effects."

It will be noted that the above section excepts from its prohibition of open courts on Sunday "any magistrate, when it shall be necessary in criminal cases, to preserve the peace or arrest the offender. . . ."

The above, we believe, is ample authority for a magistrate to issue a warrant on Sunday.

#### CONCLUSION

It is the opinion of this department that a person arrested without warrant may not be held beyond the twenty hour period unless charges are preferred against him by a person competent to testify against the accused, and a warrant issued. It is our further opinion that when such twenty hour period expires on Sunday, a magistrate may entertain charges filed by a person

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competent to testify against the accused, and issue such warrant.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

John M. Dalton  
Attorney General

HPW/vtl