

PAROLE:

An alleged parole violator may be held for re-arrest for a reasonable time.

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Honorable Donald W. Bunker  
Director  
Probation and Parole  
Jefferson City, Missouri

Dear Mr. Bunker:

This Department is in receipt of your request for an official opinion, which reads as follows:

"The attached 'Parole and Conditional Commutation Violation Warrant' is in use by the State Probation and Parole Officers. You will note that the warrant is in agreement with 'the provisions of Chapter 48, Article 8, R.S. Missouri, 1939, and especially Section 9162 thereof.'

"The Board of Probation and Parole should like to have an opinion from you as to the length of time a parolee may be held under any and all circumstances by a Peace Officer of the State on the Parole and Conditional Commutation Violation Warrant signed and submitted by a State Probation and Parole Officer?

"I should like to cite a hypothetical case to explain how the Violation Warrant is now used. For example, the State Probation and Parole Officer in the St. Louis District receives an arrest sheet from the St. Louis Police Department each morning. This morning the arrest sheet gave the information that John Doe had been arrested after he was discovered by the police to be burglarizing a dwelling house. The St. Louis Officer thereupon issued a Violation Warrant and sent it to the Chief of Police ordering the arrest of John Doe and his

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detention subject to the order of the Board of Probation and Parole. The District Parole Officer will submit a violation report and recommendation for revocation of parole in the case of John Doe to the Board of Probation and Parole. We should expect to receive the report no later than the day following the arrest. In this particular case we may anticipate the revocation of the parole on order of the Governor within a period of one week.

"Some of our rural districts in which the State Probation and Parole Officers have large areas to cover a period of thirty days lapses between the time the Violation Warrant is served, the report received by the Central Office in Jefferson City, the recommendation made to the Governor, and the revocation order received back in the Central Office of the Board of Probation and Parole. It is felt that a period of thirty days in view of the circumstances outlined in the preceding sentence would be a reasonable length of time to hold on the Parole and Conditional Commutation Violation Warrant."

Section 9162, R.S. Mo. 1939, which is a part of Article 8, Chapter 48, of the Revised Statutes of Missouri, 1939, which deals with the Board of Probation and Parole, provides as follows:

"The parole officers and other employees of the Board shall perform such duties as may be prescribed by said Board. The Board and the parole and probation officers appointed under this article shall have jurisdiction co-extensive with the boundaries of this state, and may make arrests anywhere in the state in the course of their duties under this article. Upon request of the Board

or any parole or probation officer, all peace officers of this state are authorized and required to make arrests and to hold a person so arrested subject to the order of the Board or any parole or probation officer."

(Underscoring ours.)

Section 9160, R.S. Mo. 1939, provides, in part, as follows:

"The Board of Probation and Parole shall have authority and it shall be its duty \* \* \* \* \* to recommend to the Governor the revocation of paroles or conditional pardons when their conditions have been violated. \* \* \* \* \*".

From the above statutes it will be seen that a parolee whom the Board of Probation and Parole believes has broken the conditions of his parole, may be arrested upon a warrant of the Board, and held, pending the determination by the Governor as to whether his parole should be revoked or not. The question presented by your request is, how long may the parolee be held after having been arrested, under the authority of Section 9162, supra.

This question has never been passed upon by the Courts of this state. However, the procedure under Sections 9160 and 9162, supra, for the re-arrest and return of a paroled prisoner for violation of the parole, is similar to that followed by the Federal Government. Under title 18 of the U.S. Code, Sections 717, 719 and 723 c, a Federal prisoner who has been paroled may for alleged breach of the conditions of his parole, be arrested upon a warrant issued by the Chairman of the United States Parole Board, and he is returned to a designated institution where he is entitled to a hearing by the Parole Board, as to whether he should be released, or his parole revoked. As to the length of time that such a prisoner may be held, the Circuit Court of Appeals of the 10th Circuit in Adams vs. Hudspeth, 121 F. (2d) 270, l.c. 272, said:

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"The appellant cannot complain of the failure of the Board to grant a hearing within six days after his arrest on the warrant. The right to a hearing, granted by Section 719, supra, contemplates a reasonable time. MacAboy v. Klecka, D.C., 22 F. Supp. 960 and United States ex rel. Rowe v. Nicholson, 4 Cir., 78 F. 2d 468, certiorari denied, 296 U.S. 573, 56 S. Ct. 118, 80 L. Ed. 405. Clearly no such reasonable time elapsed between the arrest on the warrant and the filing of the application for the writ. \* \* \*".

Therefore, a parolee arrested for alleged violation of the conditions of his parole may be held for a reasonable time.

What is a reasonable time depends upon the circumstances of each particular case. Smith vs. Pelton Water Wheel Co., 90 P. 934, 935, 151 Cal. 394; Salmon vs. Helena Box Company, 147 F. 408, 77 C.C.A. 586, and is such time as "a prudent man should exercise or employ in or about his own affairs." Therefore, no set rule may be laid down as to what would be a reasonable time in each case of a parolee being re-arrested for alleged violation of his parole. However, under the facts given in your request, if the District Parole Officers, the Board of Probation and Parole, and the Governor, all acting diligently and expeditiously, require from seven to thirty days in which to determine whether the conditions of a parole have been violated or not, then we believe that such period is a reasonable time, and that the alleged parole violator may be held for such a period.

#### CONCLUSION.

It is, therefore, the opinion of this Department that a parolee arrested under Section 9162, R.S. Mo. 1939, for an alleged parole violation, may be held for a reasonable time, and what is a reasonable time depends upon the facts in each case.

Respectfully submitted,

APPROVED:

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