

CRIMINAL LAW  
ARRESTS

Sheriffs have authority to hold person under arrest without formal charge for a period not to exceed twenty hours; applies to misdemeanors as well as felonies; sheriffs have reasonable time to take persons arrested before magistrate.

March 31, 1947



Honorable Ralph H. Duggins  
Prosecuting Attorney  
Saline County  
Marshall, Missouri

Dear Sir:

We are in receipt of your recent request for an opinion, based on the following state of facts:

"1. Do sheriffs have authority to hold a person in custody for any period of time without charges being filed against the person so detained?

"2. Would it make any difference whether or not a misdemeanor or a felony charge was later filed against that individual?

"3. Must a resident be taken before a Magistrate and charges filed against him immediately upon his being taken into custody or is a reasonable time allowed for that procedure?"

The answer to your questions is found in Section 4346, Mo. R.S.A., which states 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."

An examination of this section leads to the conclusion that a sheriff does have the right to hold a person in custody for a period of time not to exceed twenty hours without a charge being filed; that it makes no difference that the charge when filed is a misdemeanor, and that under this section such sheriff would have a reasonable length of time, not to exceed twenty hours, to take a person under arrest before a magistrate.

The penalty for violation of this section is, as stated therein, a misdemeanor.

#### Conclusion.

It is, therefore, the opinion of this department that sheriffs have authority to hold a person in custody, without a charge being filed, for a period of time not to exceed

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twenty hours, and that authority applies to misdemeanors as well as felonies; that a reasonable length of time, not to exceed twenty hours, is allowed all sheriffs for taking a person before a magistrate having jurisdiction of the offense.

Respectfully submitted,

W. BRADY DUNCAN  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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