

CRIMINAL LAW: Persons arrested without warrant may,  
SUPREME COURT RULE 21.14: during the twenty-hour detention  
period, apply to a judge or magistrate  
of a court having original jurisdiction to try criminal offenses  
in the county where such person is held for fixing of bail for  
subsequent appearance in the same or another court.



August 9, 1954

Honorable Stanley Wallach  
Prosecuting Attorney  
St. Louis County  
Clayton, Missouri

Attention: L. L. Bernschein, Assistant Prosecuting Attorney

Dear Sir:

Reference is made to your request for an official opinion  
of this department reading as follows:

"We would like your interpretation of  
Rule 21.14, Rules of Criminal Procedure,  
Missouri Supreme Court, with respect to  
one arrested without warrant suspected  
of a felony, being held within the Twenty  
hour period (no charge being formally  
filed). Can the subject detained, under  
this rule, apply by request to a Magistrate  
to set his bond for appearance at a desig-  
nated time for his release (assuming the  
offense is bailable) before the expiration  
of the Twenty hours.

"Your opinion and interpretation hereon  
will oblige."

Rule 21.14, Rules of Criminal Procedure of the Missouri  
Supreme Court, to which you have referred, reads as follows:

"All persons arrested and held in custody  
by any peace officer, without warrant, for

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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." (Emphasis ours.)

It is noted that the quoted rule relates generally to the same subject matter as that found in Section 544.170 RSMo 1949. However, it will be noted that the rule incorporates a provision with respect to admittance to bail which is not found in the statute mentioned. We believe that the underscored portion of the rule clearly indicates that a person so detained may, if the offense be a bailable one, be admitted to bail prior to the expiration of the twenty-hour period. We believe that the wording leads to this conclusion, even though no formal charge had in fact been filed.

It is true that the rule uses the language in the second underscored portion "if the offense". It might be contended that the incorporation of this language must be construed to mean that the provisions relative to bail become operative only after the filing of a formal charge. We do not believe this position to be tenable. However, in view of the first underscored language wherein reference is made to persons

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held for the alleged commission of a criminal offense, or on suspicion thereof, we believe that the word "offense," as used in the second underscored portion of the rule, is to be construed following the language found in the first underscored portion.

We find that under appropriate statutes original jurisdiction of criminal offenses amounting to misdemeanors has been conferred upon magistrates in the County of St. Louis. Therefore, such courts are within the purview of the rule in that they are courts of the nature therein referred to. We think it therefore necessarily follows that application for admittance to bail may be made to a magistrate in such county as well as to a judge of the circuit court. Of course, the condition of the bail bond must comply with the further requirements of the rule quoted.

#### CONCLUSION

In the premises, we are of the opinion that a person arrested without warrant for the alleged commission of a criminal offense, or on suspicion thereof, may, prior to the expiration of the twenty-hour period referred to in Rule 21.14, Rules of Criminal Procedure, Missouri Supreme Court, apply to any judge of the circuit court or to any magistrate in the county wherein such person is detained for admittance to bail, provided that the offense for which such person is detained is a bailable one.

We are further of the opinion that in the event such person is let to bail, the condition of the bail bond must require that the person so admitted will appear at a definite time and place before a court of appropriate jurisdiction, and shall further attend such court from time to time, as may be required by such court, to answer any complaint, indictment or information which may be filed therein charging such person with a criminal offense.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

John M. Dalton  
Attorney General