

954.03 Arrest without warrant. (1) When lawful. An arrest by a peace officer without a warrant for a misdemeanor or for the violation of an ordinance is lawful whenever the officer has reasonable grounds to believe that the person to be arrested has committed a misdemeanor or has violated an ordinance and will not be apprehended unless immediately arrested or that personal or property damage may likely be done unless immediately arrested. This subsection is supplemental to section 62.09(13) and shall not in any way limit any powers to arrest granted by that section.

(2) Arrest under warrant not in officer's possession. An arrest by a peace officer acting under a warrant is lawful even though the officer does not have the warrant in his possession at the time of the arrest, but, if the person arrested so requests, the warrant shall be shown to him as soon as practicable. An arrest may lawfully be made by a peace officer when advised by any other peace officer in the State that a warrant has been issued for the individual.

I believe that what you refer to as investigation arrests would come under our classification of "suspicion" of a specific charge. We do not make arrests solely for investigative purposes.

According to our statutes, an individual arrested on suspicion of a felony on information and belief, and probable cause, may be held incommunicado for a reasonable length of time. Ordinarily those incarcerated are held in the city jail until they can be arraigned at the next court session, which is the mornings of Monday through Friday.

Trusting this information suffices, I remain,

Very truly yours,

WILBUR H. EMERY, *Chief of Police.*

CHARLESTON, W. VA., May 17, 1961.

ROBERT V. MURRAY,
Chief of Police,
Metropolitan Police Department,
Washington, D.C.

DEAR CHIEF MURRAY: In answer to your inquiry of April 4, 1961, I first want to apologize for my delay in replying. Your letter is of much interest to all law-enforcement agencies.

We do not have any statute law of arrest for investigation of persons suspected of a crime. However, we have a practice of common usage in the State of West Virginia wherein we hold persons for investigation of felonies for 72 hours. Also, we have comparatively recently enacted a suspicious persons ordinance in the city of Charleston which we use under these circumstances and which states as follows:

"It shall be unlawful for any suspicious person to be found strolling, loitering, or lingering within the city.

"For the purposes of this section, a 'suspicious person' shall be deemed to be a person who, not being licensed or privileged by State and Federal law to possess it, is found with opium, opium pipe, cocaine, heroin, cannabis indica, cannabis sativa, marihuana, or other narcotic drug in his possession; and any person in whose possession shall be found concealed any device, tool, instrument, or thing for use in the commission of burglary, larceny, or other crime, or for picking locks or pockets, or for use in obtaining money or other property of value by swindle, trick, or false pretense; and any person who is known to obtain his living by criminal means and practices or who is known to be a companion and associate of criminals or other dissolute persons."

Our investigation arrest is generally described in volume 1 of Alexander's "The Law of Arrest in Criminal and Other Proceedings," published by Dennis & Co., Inc., Buffalo, N.Y., on probable cause and detain for questioning, and it is deemed, through common usage in the State of West Virginia, that 72 hours' detention is not unreasonable.

In view of your reference to the Supreme Court's opinion in the *Andrew Mallory* case, it would be absolutely impossible to have reasonable law enforcement and investigation if you were required to have all the evidence on a criminal before he is arrested, and I am afraid our departments would go wanting.

We are continuing under our regular practice and will do so until it is ruled otherwise to be illegal in the State of West Virginia.

Very truly yours,

DALLAS W. BIAS, *Chief of Police.*