

## ANNOTATION

A railroad police officer, in the execution of his office, has authority, by virtue of this statute, to require suitable aid of any person. *La Chance v. Berlin Street R. Co.* (1919) 79 NH 291, 109 A 720.

## §94:7 ARREST ON WARRANT

An officer to whom a warrant for the arrest of an offender may be addressed has power to make the arrest at any time and in any place; and shall have, in any county, the same powers in relation to the process as an officer of that county.

Sources: RS 222:16, CS 237:16, GS 236:9, GL 254:9, PS 250:9, PL 264:12, RL 423:12.

THE COMMONWEALTH OF MASSACHUSETTS,  
DEPARTMENT OF PUBLIC SAFETY,  
Boston, January 2, 1962.

Mr. ROBERT V. MURRAY,  
Chief of Police,  
Washington, D.C.

DEAR CHIEF: This will acknowledge your letter of October 24, 1961, requesting his department's experience with matters relating to the questioning and detaining of suspects, arrest without a warrant, release of persons arrested, and permissible delay in bringing a defendant before a magistrate.

Our legislature has not enacted a version of the model Uniform Arrest Act. In this Commonwealth a police officer has the common law authority of sheriffs and constables to arrest without a warrant a person whom he has reasonable grounds to suspect of having committed a felony *Com. v. Phelps* 209 Mass. 396. He may also arrest without a warrant a person who commits in his presence any misdemeanor amounting to a breach of the peace *Com. v. Gorman* 288 Mass. 94. For statutory misdemeanors not amounting to a breach of the peace there is no authority to arrest without a warrant unless it is given by statute *Com. v. Wright* 158 Mass. 149, 159.

"Our law clearly requires that a defendant be brought into court as soon as reasonably possible after arrest \* \* \*. We do not consider the delay in bringing this defendant into court to have been unreasonable" *Com. v. Banuchi* 335 Mass. 649, 656. (Arrested at midnight on Sunday, brought into court Wednesday, 2 days and 9 hours later.)

Officers arresting without a warrant had the "duty to bring him before the court as soon as reasonably could be done. It cannot be said as a matter of law that their delay for an hour and a quarter was reasonable" *Keefe v. Hart* 213 Mass. 476, 482. (See footnote in *Culombe v. Connecticut* 367 U.S. 568, 584.)

"It was the duty of the arresting officers to bring him without delay before the court \* \* \*. But the criminal session was closed for the day \* \* \*. The fact that civil sessions were still open is immaterial \* \* \*. No undue delay was shown." *Com. v. DiStasio* 294 Mass. 273, 284.

(Defendant arrested on warrant at about 1 p.m. in Boston. Questioned in Cambridge at about 3 p.m. and made confession. Arraigned next day at Cambridge.)

An arrested person against whom no formal charges are brought is usually released after signing a voluntary agreement to waive all claims of damages. This is the option of the prisoner as "arrest can only be justified by bringing the prisoner before a magistrate. A complaint under oath is not required. It is sufficient to give the magistrate a full statement of the facts" *Wax v. McGrath* 255 Mass. 341.

The following chapter 276, section 33A, Massachusetts General Laws may be of interest:

"The police official in charge of the station or other place of detention having a telephone wherein a person is held in custody, shall permit the use of the telephone, at the expense of the arrested person, for the purpose of allowing the arrested to communicate with his family or friends, or to arrange for release on bail, or to engage the services of an attorney. Any such person shall be informed of his right to so use the telephone immediately upon being booked, and such use shall be permitted within 1 hour thereafter."

Our records reflect that for the year ending June 30, 1961, only 2 arrests of a total of more than 22,000 made by our Massachusetts State Police were booked as "suspicious person" and released without formal charges.