



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

March 19, 2024

The Honorable Michael L. Prewitt
Municipal Judge, Cities of Greenville & Hollandale
Post Office Box 851
Greenville, Mississippi 38702-0851

Re: Mandatory Waiting Period in Domestic Violence Cases

Dear Judge Prewitt:

The Office of the Attorney General has received your request for an official opinion.

Background

In your request, you say that you have had officers tell you that a person must be held in jail for 24 hours on a domestic assault arrest, whether from a current incident or on a warrant, before a judge is to be contacted and the defendant allowed to bond out or be released. It has been your understanding that a judge must be contacted within 24 hours of arrest (not after some waiting period) to set the terms of the defendant's release.

Question Presented

Is there a mandatory waiting period for defendants being held in jail on a domestic violence charge?

Brief Response

No. While Mississippi Code Annotated Section 99-5-37 previously authorized a "twenty-four-hour cooling-off period," this language was removed by an amendment in 2012. Under current law the judge may, upon setting bail, impose a holding period of up to twenty-four hours that starts "from the time of the initial appearance or setting of bail." *Id.* at (2).

Applicable Law and Discussion

Mississippi Code Annotated Section 99-5-37 provides, in relevant part:

- (1) In any arrest for (a) a misdemeanor that is an act of domestic violence as defined in Section 99-3-7(5); (b) aggravated domestic violence as defined in Section 97-3-7(4) . . . no bail shall be granted until the person arrested has appeared before a judge of the court of competent jurisdiction. The appearance may be by telephone. Nothing in this section shall be construed to interfere with the defendant's right to an initial appearance or preliminary hearing.
- (2) Upon setting bail, the judge *may* impose on the arrested person a holding period not to exceed twenty-four (24) hours from the time of the initial appearance or setting of bail.

(emphasis added).

While Section 99-5-37 previously authorized a “twenty-four-hour cooling-off period” specifically, this language was removed by an amendment in 2012. As amended, the statute authorizes, but does not require, a holding period of up to twenty-four hours that begins “from the time of the initial appearance or setting of bail.” *Id.* at (2). We find no mandatory cooling-off or holding period for domestic violence offenders.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Abigail C. Overby

Abigail C. Overby
Special Assistant Attorney General