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THE FINGERPRINTING OF JUVENILES

E. Kenneth Friker*

In Illinois today there is no specific statute authorizing the taking of an individual's fingerprints upon arrest. There is, however, implied authority granted to law enforcement officials for such procedure. The Illinois Code of Criminal Procedure provides:

The sheriffs of several counties of this state and the chief police officers of all cities, villages, and incorporated towns in this state shall furnish to the Department of Public Safety, daily, copies of finger prints on standardized eight by eight inch cards, and descriptions . . . of all persons arrested on charges enumerated in Articles 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 of the “Criminal Code of 1961”, approved July 28, 1961, as amended, and of all persons arrested on charges of violating the “Uniform Narcotic Drug Act”, approved July 11, 1957, as amended, or “An Act to regulate the possession, delivery, sale or exchange of hypodermic syringes, hypodermic needles, and similar instruments”, approved July 11, 1955, as amended; provided that this section does not apply to any offenses enumerated in the above articles for which the only penalties provided by law are a fine or a sentence of not more than 10 days.1

Obviously the police must have authority to record fingerprints in order to comply with their statutory duty to forward fingerprint records to the Department of Public Safety.

In addition to the implied authority to take and record fingerprints many courts have recognized the importance of and justification for fingerprinting.2 In the case of United States v. Kelly,3 the court, through Judge Augustus N. Hand, said:

We find no ground in reason or authority for interfering with a method of identifying persons charged with crime which has now become widely known and frequently practiced both in jurisdictions where there are statutory provisions regulating it and where it has no sanction other than the common law.4

* B.A., Northern Illinois University. J.D., Chicago-Kent College of Law. Mr. Friker is a member of the Illinois Bar and is associated with the Chicago law firm of Klein, Thorpe, Kasson and Jenkins.

2 For a complete and detailed discussion of the right to record fingerprints, see Moenssens, Admissibility of Fingerprint Evidence and Constitutional Objections to Fingerprinting Raised in Criminal and Civil Cases, 40 Chi.-Kent L. Rev. 85 (1963).
3 55 F.2d 67 (2d Cir. 1932).
4 Id. at 70.
The court went on to say:

We prefer, however, to rest our decision upon the general right of the authorities charged with the enforcement of the criminal law to employ finger printing as an appropriate means to identify criminals and detect crime.\(^5\)

Similarly, the courts of Illinois have not found the lack of specific statutory authority to record fingerprints to bar such a practice. In *Poyer v. Boustead*,\(^6\) the Illinois Appellate Court held that an Illinois chief of police was within his rights in fingerprinting individuals arrested for misdemeanors.

**Fingerprinting Juveniles in Illinois**

Given the power, then, to record fingerprints the problems presented in fingerprinting juveniles must be viewed. The reported cases have not distinguished between the fingerprinting of juveniles and adults in the absence of a controlling statute. In this context consideration must be given to the new Illinois Juvenile Court Act\(^7\) which became effective on January 1, 1966.

Illinois was the first state to create a separate court for young people when, in 1899, the Juvenile Court of Cook County was created by statute.\(^8\) In 1955, the Juvenile Court Law was retitled the Family Court Act.\(^9\) Then, in 1963, the Citizens Committee appointed by the Circuit Court of Cook County adopted the recommendation of the National Council on Crime and Delinquency to revise the Act to reflect current thinking in Juvenile Court legislation.\(^10\)

Under the 1965 Act a "delinquent" is defined as a boy who prior to his 17th birthday or a girl who prior to her 18th birthday violates or attempts to violate any federal or state law or municipal ordinance or violates a lawful court order made under the Act.\(^11\)

\(^{5}\) *Ibid.*


\(^{8}\) The Juvenile Court Law of Illinois was approved April 21, 1899, and became effective July 1, 1899. It was entitled, "An Act to Regulate the Treatment and Conduct of Dependent, Neglected, and Delinquent Children." See Ill. Laws 1899, p. 131, § 1 et seq.

\(^{9}\) Ill. Laws 1955, p. 2098, § 1.


The Act neither prohibits nor specifically authorizes the recording of a juvenile's fingerprints. At this point it must be remembered that section 206-5 of the Illinois Code of Criminal Procedure,\textsuperscript{12} in requiring police officials to furnish copies of fingerprints daily to the Department of Public Safety, gives implied authority to fingerprint certain arrestees, making no distinction between the fingerprints of adults and those of juveniles. However, the Juvenile Court Act does qualify section 206-5 by providing:

No law enforcement officer or other person or agency may knowingly transmit to the Department of Public Safety or to the Federal Bureau of Investigation any fingerprint or photograph relating to a boy or girl who has been arrested or taken into custody before his 17th birthday or her 18th birthday, unless the court in proceedings under this Act authorizes the transmission or enters an order under Section 2-7 permitting the institution of criminal proceedings.\textsuperscript{13}

It appears that, although the fingerprints of juveniles may not be transmitted to certain agencies without court permission, implied authority is granted to law enforcement officers to fingerprint juveniles of any age. However, it should be noted that in many instances juveniles, as a matter of policy, are not generally fingerprinted. For example, the Chicago Police Department will not fingerprint a juvenile unless consent is given by the Director of the Youth Division, or in his absence, the Area Youth Division Commander, and then only for a specific instance of identification; afterwards, the fingerprint record is destroyed.

In line with the purpose of the Juvenile Court Act to provide treatment of juvenile law violaters separate from adult offenders, section 702-8(3) provides that the records kept by law enforcement officers of boys under 17 and girls under 18 must be maintained separate from the arrest records and are not to be made public except with court permission.

### States Expressly Authorizing Juvenile Fingerprinting

Although Illinois was the first state to create a separate court for youthful law violaters, a number of other states have legislatively preceded Illinois in dealing with the fingerprinting of juveniles. Three states specifically authorize law enforcement officials


\textsuperscript{13} Ill. Rev. Stat. ch. 37, § 702-8(2) (1965).
THE FINGERPRINTING OF JUVENILES

The fingerprinting of juveniles. The New Jersey Juvenile and Domestic Relations Court Act of 1948 provides that:

Any person of the age of 17 years and under the age of 18 years, who shall have been arrested and charged with the commission of any offense which, except for the provisions of this chapter, would be an indictable offense, may be fingerprinted, but if in case such person is found not to be guilty of such offense or such charge is dismissed, the state bureau of identification or any police department having possession of the same shall deliver such fingerprints to the juvenile and domestic relations court having jurisdiction of said proceedings, upon demand, and they thereupon shall be destroyed.14

It should be noted that the provision dealing with the return of records upon a finding of not guilty or a dismissal of the charge is not self-executing. Demand must be made before the agency having the fingerprints incurs the duty to turn the records over to the court for destruction.15

Oklahoma also specifically authorizes, in certain instances, the recording of juvenile fingerprints. The Children's Court Act of 1957 provides that state, county, city or town police officers are not to be prevented from fingerprinting “any child of the age of sixteen (16) or more where there is reasonable or probable cause to believe a felony has been committed.”16

The authority granted in the New Jersey and Oklahoma statutes to fingerprint juveniles above a certain age appears to impliedly prohibit the fingerprinting of juveniles below that age. "Whether this view is generally shared by attorneys general, prosecutors, or law enforcement agencies remains doubtful."17

Finally, the Minnesota statutes provide for the fingerprinting of juveniles who have committed felonies but there is no minimum age set out in this act.18 The Minnesota Attorney General rendered an opinion in 1948 in which it was stated if the minor has com-

15 In Oberg v. Dept. of Law and Public Safety, 41 N.J. Super. 256, 124 A.2d 618 (Juv. & Dom. Rel. Ct. 1965), the court had jurisdiction to require that minor's fingerprints be turned over to the court for destruction when taken, without authority, upon his arrest for murder.
mitted a felony the consent of the minor's parents is not necessary before the recording of the minor's fingerprints. 19

**States Providing Limited Authority to Fingerprint Juveniles**

Seven states provide limited authority to fingerprint juveniles. 20 Most of these statutes require approval of a judge before fingerprints of juveniles are taken. Typical is the Delaware statute that provides, "No peace officer or police officer, justice of the peace or committing magistrate shall photograph or fingerprint any child, except with the approval of a Judge, Master or the Director of the State Board of Corrections first had and obtained in each instance; . . ." 21

Similarly, the Washington Juvenile Courts and Delinquent Act provides that, "Neither the fingerprints nor a photograph shall be taken of any child under the age of eighteen years taken into custody for any purpose without the consent of the juvenile court." 22

Florida takes a strict view in providing that a special order of the juvenile court judge is required before a child taken into custody may be fingerprinted or photographed. When such an order is obtained the police must turn over these records to the juvenile court and neither the original records nor a copy may be kept by the police. 23

The states of Georgia, Kansas and Ohio have provisions requiring the consent of a judge before a juvenile's fingerprints are recorded and if consent is obtained the juvenile's records must be kept separate from adult records, 24 or must be filed as civilian records. 25 As previously noted, the new Illinois Juvenile Court Act

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21 Del. Code Ann., 10 § 977(a)(1) (1963 Supp.). At 10 § 901 "child" is defined as a person under the age of eighteen.
likewise provides that juvenile records are to be kept separate from adult records.\textsuperscript{28}

The statutes of Ohio have an apparent inconsistency in the provisions dealing with the fingerprinting of juveniles. Chapter 5149 dealing with the Bureau of Criminal Identification and Investigation requires all peace officers to immediately record the fingerprints of any person arrested for a felony.\textsuperscript{27} It is further stated in the section that, "This section shall not apply to any child under eighteen years of age except as provided in section 2151.31 of the Revised Code."\textsuperscript{28} Then looking at section 2151.31, which is part of the Ohio Juvenile Court Act, it appears that if a child commits a felony under section 2151.26, that child is not exempt from fingerprinting. It would seem that any person committing a felony in Ohio, whether he be child or adult, is to be fingerprinted notwithstanding the age limit provided in Chapter 5149. A remaining provision in section 2151.31 requires the consent of the Juvenile Court judge before anyone is permitted to fingerprint or photograph a child following the child's arrest.\textsuperscript{29} If consent is given, the prints must be recorded on a civilian and not a criminal card and must be retained only in the civilian file.

In 1952, the Ohio Attorney General rendered an opinion that the state bureau of criminal identification is not authorized to procure and retain the fingerprints of juveniles who are confined under a commitment by a juvenile court on a delinquency charge.\textsuperscript{30}

The California Penal Code, like the Illinois Criminal Code, requires local law enforcement agencies to furnish daily to the Bureau of Criminal Identification and Investigation the fingerprints of persons arrested for felonies or certain other offenses.\textsuperscript{31} The California act makes no exception for juveniles. However, the California Welfare and Institutions Code, section 504, prohibits the Bureau from knowingly transmitting any information relating to an arrest or detention of a minor under the age of 18

\textsuperscript{27} Ohio Rev. Code Ann., Title 51, ch. 49, § 60, referred to as § 5149.06.
\textsuperscript{28} Ibid.
\textsuperscript{29} Title 21, ch. 51, § 01(B-1) defines a "child" as a person under eighteen years of age.
\textsuperscript{31} West's Ann. Calif. Codes, Penal Code, § 11112 (Stats. of 1949 as amended).
years at the time of arrest to any person or agency unless such
information includes the disposition of the case. The Code further
provides that:

This section shall not be construed to prohibit the Bureau
of Criminal Identification and Investigation from transmitting
fingerprints or photographs of a minor under the age of 18 years
to a law enforcement agency for the purpose of obtaining identi-
fication of a minor or for requesting from such agency the history
of the minor.32

The states not dealt with thus far either have no statute spe-
cifically providing for the fingerprinting of juveniles, or wherein
case law furnishes the only authority, or have a general finger-
printing statute containing no exception in the case of juveniles.33
In the absence of conflicting court orders or rules, states in the latter
category authorize the fingerprinting of all persons who have com-
mitted specified offenses and juveniles who have reached the age
where they can be legally held accountable for their acts will be
fingerprinted in the same manner as adult offenders.

CONCLUSIONS

A study of the various state statutes reveals no state which
prohibits the fingerprinting of juveniles in all instances. As pre-
viously noted, some states place absolutely no restriction on the
fingerprinting of a juvenile while others allow it only when the
juvenile has been charged with one of the offenses specified by
statute and still others require the prior consent of a judge. There
are arguments, however, which do arise questioning the authority
to fingerprint a juvenile even when all of the statutory require-
ments are met. It may be contended that in a state having an "age-
of-consent" law the fingerprinting of a juvenile whose age is under
that specified in the statute should be considered involuntary and
therefore inadmissible as evidence. In response to this argument
it must be said that the courts generally agree that fingerprinting
incident to a lawful arrest involves no self-incrimination, depriva-
tion of due process or unwarranted invasion of privacy.34 In addi-

33 For a complete study of the various state fingerprinting statutes, see Moenssens,
The Right to Finger Print Arrestees Before Conviction—A Study of Statutory and Com-
mon Law Authorities, 46 Finger Print and Identification Magazine 3 (Nov. 1964).
34 See Moenssens, Admissibility of Fingerprint Evidence and Constitutional objections
tion, a number of courts have held that compulsory fingerprinting abridges none of a person's constitutionally protected rights.\textsuperscript{55}

The rule requiring the suppression of evidence obtained from the accused while being confined for an unnecessary length of time prior to arraignment, espoused in the cases of \textit{McNabb v. United States}\textsuperscript{36} and \textit{Mallory v. United States}\textsuperscript{37} has furnished the basis for suppressing a juvenile's fingerprints. In the case of \textit{United States v. Smith},\textsuperscript{38} the McNabb-Mallory doctrine was the basis for suppressing the fingerprints of the juvenile defendant, taken with his consent, while he was confined and interrogated for over 60 hours without benefit of counsel before being taken before the commissioner.

It is apparent from the maze of statutes, court orders, court rules and occasional court decisions that there is little uniformity among the states on the subject of fingerprinting juveniles. The state legislatures and courts are faced with, on the one hand, the necessity for fingerprinting as a reliable and widely accepted means of identification in criminal cases, and on the other hand the desire to treat the youthful offender different from the adult criminal as a step toward correction and rehabilitation. However, it is difficult to see how the mere act of recording a juvenile's fingerprints will in any way retard the rehabilitation process since fingerprinting in itself carries no stigma of guilt\textsuperscript{39} and is widely used in non-criminal areas as, for example, a condition of employment in certain industries and occupations.\textsuperscript{40} Of particular interest is a Maine statute passed in 1945 requiring the fingerprinting of all children attending public schools for civilian identification.\textsuperscript{41} Pres-
ently, all public school students in Maine are being fingerprinted as they reach the fifth grade.

It cannot be disputed that juveniles are responsible for a substantial share of the serious misdemeanors and felonies being committed daily throughout the United States. Inasmuch as the courts have ruled that no stigma of guilt attaches to fingerprinting itself it appears incongruous for a state legislature to impede the police agencies in the solution of these crimes by restricting their authority to fingerprint juveniles. Indeed, if rehabilitation of the youthful offender is of prime importance then there is all the more reason for allowing fingerprints to aid in bringing the juvenile within the care and control of the state's corrective facilities.