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FINGERPRINTS—NO STATUTORY AUTHORITY IN CASES WHERE JUVENILES ARE FINGERPRINTED WITH CONSENT OF JUVENILE COURT TO PERMIT OR REQUIRE POLICE OFFICERS TO FORWARD IMPRESSIONS TO STATE BUREAU OF CRIMINAL IDENTIFICATION—PERMANENT FILES—BUREAU NOT AUTHORIZED TO PROCURE AND FILE FOR RECORD FINGERPRINTS OF JUVENILES IN ANY PLACE OF CONFINEMENT UNDER COMMITMENT BY JUVENILE COURT ON DELINQUENCY CHARGE—SECTIONS 1639-27, 1841-15 G. C.

## SYLLABUS:

There is no statutory authority, in cases where juveniles are fingerprinted with the consent of the juvenile court under the provisions of Section 1639-27, General Code, which would permit or require local police officers to forward the fingerprint impressions so made to the state bureau of criminal identification for inclusion in the bureau's permanent files; nor is the bureau authorized, under the provisions of Section 1841-15, General Code, to procure and file for record the fingerprints of juveniles who are in any place of confinement under a commitment by a juvenile court on a charge of delinquency.

Columbus, Ohio, September 2, 1952

Hon. J. H. Lamneck, Director, Department of Public Welfare  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Under the provisions of Sections 1841-13 to 1841-21, inclusive, of the General Code, there is established within the Department of Public Welfare a Bureau of Criminal Identification, located at the London Prison Farm. Under these sections the Superintendent is required to procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and such other information as may be pertinent of all persons within the State who are arrested or convicted of a felony.

“Under the provisions of Section 1639-27 of the General Code, it is provided: ‘No child shall be fingerprinted or caused or permitted to be fingerprinted or photographed by any officer or other person holding him in custody without the consent of the judge of the juvenile court. When the judge of the juvenile

court permits the fingerprinting of any child, the prints shall be taken on a civilian and not on a criminal card and shall be kept only in the civilian file. Provided, however, that any child recognized to the court of common pleas, under the provisions of Section 1639-32, shall not be exempt from fingerprinting and photographing. In every such case the officer taking such child into custody shall immediately report the fact to the court and the case shall then be proceeded with as provided in this chapter.'

"There is no segregation of the descriptions, photographs, and fingerprints of juvenile offenders sent to the Bureau from those of adults who have been convicted or charged with the commission of a felony.

"I am writing to inquire whether it is incumbent upon the Bureau of Criminal Identification to set aside a separate filing section wherein fingerprints of juveniles taken with the consent of the juvenile judge and sent to the Bureau must be maintained."

Before considering the question of how fingerprints of juveniles are required to be filed, it is proper first to examine the extent to which the statute is applicable to their procurement by the state bureau of criminal identification. The duties of the superintendent of the bureau in this connection are set out in Section 1841-15, General Code. This section reads as follows:

The superintendent shall procure and file for record photographs, pictures, descriptions, finger prints, measurements and such other information as may be pertinent, of all persons who have been or may hereafter be convicted of felony within the state, and of all well-known and habitual criminals from wherever procurable, and it shall be the duty of the person in charge of any state institution to furnish any such material to the superintendent of the state bureau of criminal identification upon the request of the superintendent. The superintendent shall cooperate with and assist sheriffs, chiefs of police and other law officers in the establishment of a complete state system of criminal identification and in obtaining finger prints and other means of identification of all persons arrested on charge of felony. He shall also file for record the finger print impressions of all persons confined in any workhouse, jail, reformatory, penitentiary, for the violation of state laws, and such other information as he may receive from law enforcement officials of the state and its subdivisions."

The duty of local police officers to take fingerprints and forward them to the state bureau is stated in Section 1841-18, General Code. This section reads in part:

“It is hereby made the duty of the sheriffs of the several counties of the state, the chiefs of police of cities and marshals of villages therein immediately upon the arrest of any person for any felony, to take his fingerprints according to the fingerprint system of identification on the forms furnished by the superintendent and forward the same, together with such other description as may be required and with the history of the offense committed, to the bureau to be classified and filed, but should any accused be found not guilty of the offense charged, then said fingerprints and descriptions shall be given to the accused upon his request. \* \* \*

“The provisions of this section shall not apply to violators of city ordinances or those arrested for misdemeanors, unless the officers have reason to believe that he is an old offender, or where it is deemed advisable for the purpose of subsequent identification, nor to any child under eighteen years of age except as provided in section 1639-27 of the General Code.”

These statutory provisions make it clear that the persons whose fingerprints the bureau is authorized to procure and file may be placed in two general categories. These are, first, those convicted of or arrested for any felony, and, second, those confined in any workhouse, jail, reformatory, or penitentiary, for the violation of a state law. It becomes necessary, therefore, to observe the extent to which either of these categories will include juveniles.

Under the Juvenile Court Code, Section 1639-1 et seq., General Code, special provision is made for the treatment of juvenile offenders. In examining this code it will be helpful first to note the definitions of “child,” and “delinquent child.” Section 1639-1, General Code, defines “child” as follows:

“The word ‘child’ includes any child under eighteen years of age, except that wherever reference is made in this chapter to a crippled or otherwise physically handicapped child the word ‘child’ shall include any person under twenty-one years of age.”

Section 1639-2, General Code, defines “delinquent child” as follows:

“For the purpose of this chapter, the words ‘delinquent child’ includes any child:

"1. Who violates any law of this state, the United States, or any ordinance or regulation of a subdivision of the state." \* \* \*

The special treatment which the court may accord in the case of delinquent children is set out in Section 1639-30, General Code, which reads in part as follows :

"\* \* \* If the court shall find that the child is delinquent, neglected, or dependent, it may by order duly entered proceed as follows :

"1. Place the child on probation or under supervision in its own home or in the custody of a relative or in an institution or in a certified foster home, wherever situate, upon such terms as the court shall determine; provided, however, that the court may place delinquent children on a free or wage basis in un-certified foster homes.

"2. Commit the child temporarily or permanently to the division of social administration of the state department of public welfare, or to a county department, board or certified organization, or to any institution or to any agency in Ohio or in another state authorized and qualified to provide or secure the care, treatment or placement, required in the particular case.

"3. If, in his judgment, it is for the best interest of a delinquent child, the judge may impose a fine upon such child not exceeding twenty-five dollars or costs, or both.

"4. Make such further disposition as the court may deem to be for the best interests of the child, except as herein otherwise provided.

"5. In case of a male child over sixteen years of age who has committed an act which if committed by an adult would be a felony, the judge may commit such child to the Ohio state reformatory." \* \* \*

The nature of proceedings in the juvenile court will be seen in the following provision in this section :

"The judgment rendered by the court under this section shall not impose any of the civil disabilities ordinarily imposed by conviction, in that the child shall not be deemed a criminal by reason of such adjudication, nor shall any child be charged or convicted of a crime in any court, except as provided in Section 1639-32, General Code. The disposition of a child under the judgment rendered or any evidence given in the court shall not be admissible as evidence against the child in any other case or proceeding in any other court, except that the judgment rendered

and the disposition of such child may be considered by any court only as applies to the matter of sentence or to the granting of probation. Such disposition or evidence shall not operate to disqualify a child in any future civil service examination, appointment or application."

The juvenile court may, however, order that the juvenile offender be held for trial as in other criminal cases. In this connection Section 1639-32, General Code, provides:

"In any case involving a delinquent child under the provisions of this chapter who has committed an act which would be a felony if committed by an adult, the judge after full investigation and after a mental and physical examination of such child has been made by the bureau of juvenile research, or by some other public or private agency, or by a person or persons, qualified to make such examination, may order that such child enter into a recognizance with good and sufficient surety subject to the approval of the judge, for his appearance before the court of common pleas at the next term thereof, for such disposition as the court of common pleas is authorized to make for a like act committed by an adult; or the judge may exercise the other powers conferred in this chapter in disposing of such case."

From the foregoing statutory provisions it would appear that the General Assembly has been quite careful to make clear its intent that, except as provided in Section 1639-32, *supra*, the proceedings in the case of juvenile offenders are not to be deemed criminal proceedings, nor are such persons to be deemed criminals. Of special significance is the reference in Section 1639-30, *supra*, to "an act which if committed by an adult would be a felony." This language, in my opinion, makes it clear that a juvenile offender in such case cannot be deemed guilty of a felony, nor even to have been charged with the commission of a felony. From this would follow that the detention of a juvenile in such case could not be considered to constitute "the arrest of any person for any felony" within the meaning of Section 1841-18, *supra*; and it would appear, therefore, that local police officers would not be authorized under this section to cause his fingerprints to be taken and forwarded to the bureau.

As pointed out in your inquiry, however, Section 1639-27, General Code, authorizes the juvenile court to consent to the fingerprinting of juveniles provided this is done on "civilian cards" and such cards are kept in "the civilian file." This statute does not, however, expressly provide that such cards shall be forwarded to the state bureau for filing,

and unless that procedure can be said to be required by implication therein, or found in some other statutory provision, it would appear to be improper. In this connection we may well refer again to the final proviso of Section 1841-8, supra. It is provided in the first paragraph of this section that local police officers shall take and forward fingerprints to the bureau "upon the arrest of any person for any felony." In the final proviso of this section we observe that "The provisions of this section shall not apply \* \* \* to any child under eighteen years of age except as provided in Section 1639-27 \* \* \*." The plain inference here is that if a child is arrested "for any felony," he must be fingerprinted, and prints so made forwarded to the bureau, to the extent that provision for such procedure is authorized in Section 1639-27, General Code.

The pertinent provisions of this section are set out in your inquiry, and they plainly relate to two distinct situations. The first is that in which a child under the jurisdiction of the juvenile court is fingerprinted with the consent of such court. The second is that in which a juvenile is recognized by the juvenile court to the common pleas court for trial therein under the provisions of Section 1639-32, supra.

In the first situation the child, being held for disposition by the juvenile court, is not deemed to be a criminal following a commitment order of such court, nor to be charged with a criminal offense during the consideration of his case by the court prior to its adjudication therein. In this situation, therefore, it cannot be said that such child is under arrest "for any felony," and this being the essential test of the applicability of the provisions of Section 1841-18, supra, it must be concluded that the exception in the final proviso in such section does not so operate as to comprehend juveniles of this category.

In the second situation, where a juvenile has been recognized for trial in the common pleas court, the status of the juvenile offender is wholly different. That status is indicated by the language in Section 1639-30, supra, providing "nor shall any such child be charged or convicted of a crime in any court, except as provided in Section 1639-32, General Code." This language plainly implies that when such a child is recognized for trial in the common pleas court, he is charged with a criminal offense, is tried on such charge, and if convicted is deemed to be a criminal. In such case he must be deemed also to have been placed under arrest for a felony. This being true, the essential test of the ap-

plicability of Section 1841-18, supra, is met. I conclude, therefore, that the sole purpose of the exception in the final proviso of Section 1841-18, supra, is to include within its provisions this category of juvenile offenders so held for trial on criminal charges; and that the General Assembly did not thereby intend so to include those juveniles not so held for trial. From this it follows that there is no authority, in cases where the juvenile court consents to the fingerprinting of a juvenile under such court's jurisdiction, for the forwarding of such fingerprints to the bureau for filing.

We may next inquire whether a juvenile offender, not recognized for trial in the common pleas court under the provisions of Section 1639-32, supra, falls within the category of persons "confined in any workhouse, jail, reformatory, penitentiary, for the violation of state laws," as this language is used in Section 1841-15, supra. Here, too, it would appear that the special nature of the proceedings in juvenile cases would require a negative answer. It is to be remembered that the children in such cases are not adjudged guilty of a criminal offense, but are adjudged delinquent. It would follow, therefore, that wherever they might thereafter be detained or confined, even in the Ohio state reformatory in the case of delinquents over sixteen years of age, they would not be deemed to be "confined \* \* \* for the violation of state laws." This being the case, I am impelled to the conclusion that there is no authority under the provisions of Section 1841-18, supra, for the bureau to procure, receive or file the fingerprints of a juvenile committed to a place of detention by a juvenile court even though such court has consented to have such fingerprints taken under the provisions of Section 1639-27, General Code.

In view of these conclusions, it becomes unnecessary to consider the precise question set out in your inquiry.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General