

1978 S.C. Op. Atty. Gen. 186 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-154, 1978 WL 22622

Office of the Attorney General

State of South Carolina

Opinion No. 78-154

August 15, 1978

***1 SUBJECT: Fingerprinting and photographing of juveniles.**

Juveniles under the jurisdiction of the family court ¹ may be fingerprinted and photographed when authorized by order of the court pursuant to Section 14-21-30.

TO: William W. Wilkins, Jr.
Circuit Solicitor
Thirteenth Judicial Circuit

QUESTIONS:

- (1) What is necessary in order to have a juvenile photographed in a criminal matter?
- (2) What is necessary in order to have a juvenile fingerprinted in a criminal matter?

STATUTES AND CASES:

South Carolina Code of Laws (1976) as amended, Sections 14-21-30, 14-21-510(c), 14-21-540; Act No. 609 of 1978 Acts & Joint Resolutions; [United States v. Wade](#), 388 U.S. 218, 18 L.ed.2d 1149, 87 S.Ct. 1926 (1976).

DISCUSSION:

1. The controlling statute in this area is [Section 14-21-30 of the South Carolina Code](#) of Laws (1976) which provides: The name or picture of any child under the jurisdiction of the court shall not be made public by any newspaper, radio or TV station, except as authorized by order of the court, nor shall the fingerprints of any child be taken without an order from the judge.

The statute prohibits the release of a photograph of a juvenile under the jurisdiction of the court without a court order authorizing it, but the language of the statute falls just short of requiring that an order be obtained to photograph the juvenile. Although a literal interpretation of the statute does not require an order of the purpose of photographing a juvenile, in view of the Legislature's intent to protect the juvenile from unnecessary public exposure and to make all records in a juvenile case privileged information, it is the opinion of this office that it is in the best interest of the juvenile to obtain a court order before photographing a juvenile in a criminal matter.

2. The statute is explicit in requiring that a court order be issued before fingerprints of a juvenile under the jurisdiction of the court may be taken. Whether the order is one for photographing or fingerprinting a juvenile, it must, like any order, rest on sufficient findings. The government has a legitimate interest in knowing for an absolute certainty the identity of a juvenile charged with a crime and an order permitting photographing or fingerprinting of a juvenile under the jurisdiction of the court for identification and law enforcement investigative purposes is sufficient. There is no statutory requirement

that the juvenile in such a situation be given an opportunity to be heard before the order is issued. While there is no case law directly on point, the law is replete with cases which recognize that photographing or fingerprinting persons validly arrested or properly charged with crime does not violate any constitutional rights. The general law in the area views photographing and fingerprinting as routine procedures performed primarily for identification and the intrusion resulting from the procedures simply not formidable enough to involve the requirements of due process. See Federal Practice Digest, Constitutional Law, Section 266. The United States Supreme Court in the case of [U.S. v. Wade, 388 U.S. 218 \(1967\)](#) has gone so far as to find that the taking of photographs or fingerprints is not a critical stage of the prosecution at which the accused has a right to the presence of counsel.

CONCLUSION:

- *2 1. An order of the court is not required by [Section 14-21-30](#) in order to photograph a juvenile under the jurisdiction of the court, but such procedure is advisable.
2. An order of the court based on sufficient findings is always required before a juvenile under the jurisdiction of the court may be fingerprinted. A hearing is not required by statute or existing case law.

B. J. Willoughby
STAFF ATTORNEY

Footnotes

- 1 The phrase ‘under the jurisdiction of the court’ as used throughout this opinion refers to the jurisdiction of the family court. The requirements of [Section 14-21-30](#) do not apply to the following situations: where the jurisdiction of a juvenile has been waived to general sessions in the case of rape and murder under Section 14-21-510(c); where the family court decides to waive jurisdiction over the juvenile in the case of a child sixteen years of age or older charged with an offense which would be a misdemeanor or felony if committed by an adult (Section 14-21-540); or where the family court does not have jurisdiction in the case of a traffic violation (Act No. 609 of 1978 Acts & Joint Resolutions). In all of the above situations where the juvenile is treated as an adult and family court does not have jurisdiction, an order from the family court is not necessary for fingerprinting or photographing.

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