



STATE OF KANSAS

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August 7, 1985

ATTORNEY GENERAL OPINION NO. 85- 96

Mickey W. Mosier  
Saline County Attorney  
City-County Government Building  
300 West Ash, Room 315  
Salina, Kansas 67401

Re: Infants -- Juvenile Offenders Code -- "Custody"  
Requirement For Taking Juvenile Fingerprints  
For Felony-Type Offenses.

Synopsis: K.S.A. 1984 Supp. 38-1611 provides that juveniles taken into custody for felony-type offenses shall be fingerprinted. The issuance of a summons under K.S.A. 1984 Supp. 38-1625 fulfills the custody requirement of the former section. Cited herein: K.S.A. 22-2101, 22-2408; K.S.A. 1984 Supp. 38-1601; 38-1611; 38-1625; 38-1631.

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Dear Mr. Mosier:

As County Attorney for Saline County, Kansas, you request our opinion concerning the fingerprinting of juveniles. Specifically, you inquire as to whether a juvenile's fingerprints must be taken pursuant to the Kansas Juvenile Offenders Code, K.S.A. 1984 Supp. 38-1601 et. seq., if the juvenile is issued a summons for a felony-type offense.

K.S.A. 1984 Supp. 38-1611 provides in part:

"(a) Fingerprints or photographs shall not be taken of any juvenile who is taken into custody for any purpose, except that:

. . .

"(2) a juvenile's fingerprints shall be taken, and photographs of a juvenile may be taken, immediately upon taking the juvenile into custody for an offense which, if committed by a person 18 or more years of age, would make the person liable to be arrested and prosecuted for the commission of a felony as defined by K.S.A. 21-3505 and amendments thereto;." (Emphasis added.)

Your question centers on what constitutes the taking of a juvenile into custody. K.S.A. 1984 Supp. 38-1625 provides that, upon the filing of a complaint, the court shall proceed using one of the following methods: a) issue a summons; b) serve the juvenile a copy of the complaint at the detention hearing if there is one; or c) if the court lacks information to accomplish service of a summons, it may issue a warrant pursuant to K.S.A. 1984 Supp. 38-1631. Options b and c clearly fit within the custody requirement of K.S.A. 1984 Supp. 38-1611. We are of the opinion that the issuance of a summons under the Juvenile Offenders Code also meets the custody requirement.

No definition of "custody" exists in the code, nor is there a statute which equates a summons with custody. While a similar statute exists in the Code of Criminal Procedure for adult offenders (K.S.A. 22-2408), a summons under the Juvenile Offenders Code varies substantially from a notice to appear under the Code of Criminal Procedure, K.S.A. 22-2101 et. seq., which by definition is not custody. The differences may be summarized as follows. First, a juvenile summons covers acts which for adults would include both felony and misdemeanor charges, while a notice to appear is used solely for misdemeanors. Second, a notice to appear is used only if the offender is not immediately taken before a magistrate, while under the Juvenile Offenders Code the summons is used even if the juvenile is taken before a magistrate. In fact, the summons is the only option without a special detention hearing. Third, a notice to appear requires a signed promise by the offender that he will appear for court. The juvenile

summons has no comparable requirement, indicating that the court has more control over a juvenile offender than over a misdemeanor offender. Finally, it is a principle of the Juvenile Offenders Code (as expressed in K.S.A. 1984 Supp. 38-1601) that juvenile proceedings are an extension of the parental power of the state, and not criminal actions. Since there are major distinctions between a summons under the Juvenile Offenders Code and a notice to appear under the Kansas Code of Criminal Procedure, the terms cannot be used interchangeably. Therefore, a summons can still constitute taking a juvenile into custody.

Ballentine's Law Dictionary, p. 606 (1969), defines "in custody" as "under the direct or indirect restraint of an officer of the law armed with authority to restrain." Under a summons, a juvenile must appear at the time and place stated, or there will be a warrant issued under K.S.A. 1984 Supp. 38-1625. Each of the alternatives offered under this statute, include issuance of a summons, constitute a restraint on a juvenile's liberties, and therefore fits under the common-law definition.

In conclusion, K.S.A. 1984 Supp. 38-1611 requires the fingerprinting of juveniles taken into custody for felony-type offenses. Since a summons issued under the Juvenile Offenders Code differs from a notice to appear issued pursuant to the Code of Criminal Procedure, and "custody" is not defined in the Juvenile Offender's Code, a common law definition of "custody" must be used. Using such definition, a summons constitutes custody because it acts as a restraint on the juvenile, and requires law enforcement officials to fingerprint the juvenile.

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General

  
Brenda L. Braden  
Deputy Attorney General