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ARIZONA ATTORNEY GENERAL
February 1, 1954
Opinion No. 54-16

- TO: The Honorable William P. Mahoney
President, Sheriffs' and County Attorneys'
Association of Arizona
Phoenix, Arizona
- RE: Duties and authorities of law enforcement
officers with regard to juveniles.
- QUESTION: (1) Are we, as Law Enforcement Officers,
permitted to fingerprint and photograph
a juvenile on the commission of a felonious
offense?
- (2) Where does the jurisdictional authority
of Law Enforcement end, and where does the
jurisdiction of the Juvenile Court begin?
- (3) Are we permitted to handcuff and shackle
a juvenile offender in the interest of
safety of the prisoner and society?
- (4) Are the records of juveniles as
defined in Section 46-119 and 46-130
confined only to records of the Juvenile
Court; or do those provisions include
the records of law enforcement agencies?

In answer to the above questions, logical order demands that the basic jurisdiction of the Superior Court over juveniles and members of the sheriff's office be first decided for such determinations will have an important bearing on the remaining questions.

The basic authority or jurisdiction of the superior court in regard to juveniles is set forth under Article 6, Section 6 of the Arizona Constitution:

"3 (Jurisdiction of superior courts)

The superior court shall have exclusive original jurisdiction in all proceedings and matters affecting dependent, neglected, incorrigible, or delinquent children, or children accused of crime, under the age of eighteen

years. The judges of said courts must hold examinations in chambers of all such children concerning whom proceedings are brought, in advance of any criminal prosecution of such children, and shall have the power, in their discretion, to suspend criminal prosecution for any offenses that may have been committed by such children. The powers of said judges to control such children shall be as prescribed by law. (Emphasis supplied)

The key expressions in the above article are "original jurisdiction" and "proceedings and matters." The meaning of the term "proceeding" is discussed in the case of STATE v. SUPERIOR COURT, 39 Ariz. 242, 5P. 2d, 192, 1931, wherein the court was faced with the question of the basic jurisdiction of the superior court. The court quoted with approval from the leading U. S. Supreme Court case of MUSKRAT v. UNITED STATES, 219 U.S. 348 at page 246 of their decision.

"The judicial article of the Constitution mentions cases and controversies. The term 'controversies' if distinguishable at all from 'cases,' is so in that it is less comprehensive than the latter, and includes only suits of a civil nature. Chisholm v. Georgia, 2 Dall. 431, 432, 1 L. Ed. 445, 446; 1 Tucker's Bl. Com. App. 420, 421. By cases and controversies are intended the claims of litigants brought before the courts for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs. Whenever the claim of a party under the Constitution, laws, or treaties of the United States takes such a form that the judicial power is capable of acting upon it, then it has become a case. The term implies the existence of present or possible adverse parties, whose contentions are submitted to the court for adjudication." (Italics ours.) (Italics underscored)

We agree with this definition of 'case', and we think in reason the term "proceeding" under our Constitution must possess the same qualities. Janin v. Logan, 209 Ky. 811, 273

S. W. 531. It cannot be contended that a 'case' in the ordinarily understood sense of the word was pending in the superior court at the time the motion upon which the order in question was based was filed, nor do we think that within the constitutional definition there was a "proceeding." It is obvious that a motion of this nature is merely a matter which, if it has any standing at all in court, is ancillary to some recognized proceeding already existing. On the face of the motion it appears that it was merely in aid of a proceeding pending in another court***. (Italics underscored)

A similar meaning was recognized in the case of STATE v. HALL, 57 Ariz. 63 at page 68, in which the court discussed the meaning of the term "original jurisdiction."

"It is plain upon an examination of section 6 of article 6, supra, that the 'cases and proceedings' referred to therein are only matters which by law are triable before some court. A disputed matter, therefore, does not become a 'case or proceeding' until the law provides for a hearing before a court. Blyew v. United States, 13 Wall. 581, 80 U.S. 581, 595, 20 L. Ed. 638; Osborn v. United States Bank, 9 Wheat. 738, 22 U.S. 738, 6 L. Ed. 204; Muskat v. United States, 219 U.S. 346, 31 Sup. Ct. 250, 55 L. Ed. 246. Thus it follows logically that when any matter is first judicially determined in a court of some nature, that court is said to have 'original' jurisdiction thereof.***" (Italics underscored)

Thus with regard to juveniles the jurisdiction of the court vests when a disputed matter either in the form of a complaint, petition or other similar document is lodged with the clerk of the superior court for judicial hearing and determination. The term "matter" as used in Article 6, Section 6, has never been before our courts, however, the normal meaning ascribed to it is contained in Volume 26a, Words and Phrases, at page 345:

"The term 'matter' as used in law, means a fact or facts constituting a whole or a part of a ground of action or defense. NELSON v. JOHNSON, 13 Ind. 329, 332."

Thus within a constitutional article, it is apparent that a "matter" would normally be collateral to a case or proceeding and incident thereof. It is further axiomatic in law that jurisdiction

with respect to any individual does not vest until such person has been brought before the court in accordance with due process of law. This principle was clearly stated in the case of SCHUSTER v. SCHUSTER, 75 Ariz. 20 at page 23:

"No court can be said to have acquired complete jurisdiction so as to hear and determine any cause until it has obtained through due process, prescribed by law, jurisdiction over both subject matter and the parties, and the power to render the particular judgment that was rendered. CITY OF PHOENIX v. GREER, 43 Ariz. 214, 29 P. 2d 1062; DUNCAN v. TRUMAN, 74 Ariz. 328, 248 P. 2d 879."

See also case of IN RE HINDI, 71 Ariz. 17.

Having discussed the general nature of jurisdiction as it pertains to juveniles under the Constitution, let us now turn to the specific code section detailing the manner in which such jurisdiction shall be acquired. Section 46-122, A.C.A. 1939, 1952 Sup. provides:

"46--122. Procedure. (a) Any person may, and any peace officer or probation officer shall, give to the juvenile court any information in his possession that a child is delinquent, neglected, or dependent. Thereupon the court shall make preliminary inquiry to determine whether the interest of the public or of the child requires further action. Whenever practicable, the inquiry shall include a preliminary investigation of the home and environment of the child, his previous history, his physical, mental, and moral well-being, and the circumstances of the offense committed, if any. If the court determines that formal jurisdiction should be acquired, it shall authorize a petition to be filed invoking its jurisdiction in such form as it may prescribe. The powers of the court may be exercised upon the filing of a petition by any resident of the county, or any peace officer or probation officer, alleging that a child is neglected, dependent, or delinquent, and needs the care and protection of the court, without alleging the facts.

(b) Whenever a child under the age of eighteen (18) years is charged with the commission of a crime or the violation of an ordinance before any magistrate or justice of the peace, the magistrate or justice of the peace shall certify that the child is so charged, and shall

transmit the records of the case to the clerk of the superior court, and thereupon the juvenile court shall exercise jurisdiction."

From the above, it noted that a distinction is drawn between formal jurisdiction and the preliminary inquiry of the court with regard to the exercising of jurisdiction. Formal jurisdiction is acquired over a particular juvenile delinquent's action when a petition is filed in the superior court or a complaint filed with a magistrate or justice of the peace and such complaint and records are transmitted to the clerk of the superior court. The inquiry prior to the filing of the formal petition is in the nature of an inquiry as to the exercise of jurisdiction over the subject matter. The court traditionally has the power to do all things necessary to determine whether the court has jurisdiction in a particular matter. *TAYLOR v. HUBBELL*, 188 Fed. 2d 106, 342, U.S. 818. Stated in a different manner, the court also has jurisdiction to decide the issue of jurisdiction. If such inquiry determines that the court should exercise jurisdiction, a petition must be filed and the child produced before the court in accordance with due process of law. When there is a unity of petition and appearance by the child before the superior court, original jurisdiction is complete and exclusive.

In summary, therefore, it is our conclusion that original jurisdiction of the superior court over juveniles is obtained when such child is brought before the court in accordance with due process of law in response to a petition, complaint or other document filed with the clerk of the superior court.

The position of the sheriff with respect to juvenile law must be considered in light of the above. In discussing the powers and duty of the sheriff to make arrests and take into custody those juveniles suspected of crime, it behooves us to inquire in the exact character of the sheriff's position in our scheme of government. The office of sheriff as described in the case of *SWEAT v. WALDON*, 167 S. 363, is one of great antiquity. Its creation goes back to the time of King Alfred of England and perhaps further. The holder of the office has always been the chief executive officer and conservator of the peace in his county. In the state of Arizona the sheriff is a constitutional officer under Article 12, Section 3 of the Arizona Constitution whose duties are prescribed by law under Chapter 17, A.C.A. 1939. The pertinent portion of that chapter outlining the sheriff's duties is found under Section 17--601 and is set forth as follows:

- "17-601. Duties of sheriff." The sheriff shall:
1. Preserve the peace; arrest and take before the nearest magistrate, for examination, all persons who attempt to commit or who have committed a public offense, and prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to his knowledge;
 2. Attend all courts, except justice and police courts, at their sessions held within his county, and obey their lawful orders and directions;"

The nature of the sheriff's position with regard to the superior court was discussed in the case of STATE v. SUPERIOR COURT, supra, at page 248.

"The third question is as to the power of the court over its own officers. It is undoubtedly true that attorneys and sheriffs are officers of the superior court in Arizona. But it is only when the act which the court seeks to control is one committed as an officer of the court that it has jurisdiction either to exercise control over the act or to discipline the officer for doing or not doing it. ***" (Italics underscored)

From the foregoing statutes and authority, it can be safely surmised that the sheriff is a constitutional officer whose primary duty is to the electorate in the administration of his office and that he is subject to the jurisdiction of the superior court only when executing a lawful order of that court or while attending court hearings.

The importance of determining when the jurisdiction of the superior court vests with regard to juvenile matters is disclosed by the fact that the powers to issue lawful orders and compel the enforcement of the same is dependent upon jurisdiction. Further quoting from the case of STATE v. SUPERIOR COURT at page 248:

"In considering, therefore, whether the court has the inherent power to do any particular thing, we must first ask: 'Has it jurisdiction over a certain matter or question?' If that be answered in the affirmative, then, and not until then, the second question may be asked; 'Is the power invoked necessary for the ordinary and efficient exercise of that jurisdiction?' Tested by this standard, it is obvious that the superior court had no inherent power to make the order in question, for

it had no jurisdiction of any 'case' or 'proceeding' wherein either the accused or the premises in question were involved."

Thus where the court has jurisdiction in a juvenile matter in conformance with our discussion above, the matter of executing a lawful order would be within the control of the court, however, the preliminary acts of the sheriff, prior to jurisdiction, as to the arrests of those who are apprehended while committing a public offense are within the discretion of his office subject only to such traditional and statutory safeguards as are imposed by law. With specific reference to juveniles Section, 46-124 provides as follows:

"46-124. Duties of peace officer.-Any peace officer, other than the probation officer, who arrests any child under the age of eighteen (18) years shall forthwith notify the probation officer, and shall make such disposition of the child as the probation officer may direct. This act shall not be construed to prohibit any peace officer from taking into custody any child who is found violating any law or ordinance, who is reasonably believed to be a fugitive from his parents or from justice, or whose surroundings are such as to endanger his health, morals, or welfare unless immediate action is taken."

The key word to the above section lies in the meaning of the word "forthwith." Our Supreme Court has had occasion to consider the meaning of this word in the case of *STATE v. McNUEN*, 42 Ariz. 385 at page 396, "the word 'forthwith' does not mean within any particular time, but substantially with as much speed as is reasonably possible under the circumstances of the case. *DICKERMAN v. NORTHERN TRUST CO.*, 176 U.S. 181."

Thus the sheriff's, or any peace officer for that matter, duty with respect to such children must be to follow the dictates of the probation officer as is reasonably expeditious under the circumstances. It is to be noted that the jurisdiction of the juvenile court normally would not be vested as of the time such probation officer is notified and thus such control and disposition is purely a creature of statute.

In reiteration and summary, it is the conclusion of the Department of Law that the preliminary acts of the sheriff in the apprehension of criminals when not acting in response to a court order are governed only by such traditional and statutory

safeguards as are imposed by law. He acts as an officer of the court only when executing the lawful orders thereof and while so acting is subject to the discipline and control of the court.

In answer to your remaining specific questions as to fingerprinting, handcuffing and destruction of records, the foregoing discussion of the basic jurisdiction of the court and the basic authority of the sheriff must be continually kept in mind. Fingerprinting is required by our statute under Section 45-206:

"45 -206. Identification data of arrested persons to be forwarded to bureau. -Within forty-eight (48) hours after their arrest, the sheriffs and constables of the various counties of the state and the chiefs of police and city marshals of all incorporated cities and towns within the state, shall forward to the bureau two (2) sets of finger and thumb prints, photographs, and other identification data, of:

- (a) All persons arrested for crime amounting to a felony or arrested because suspected of having committed a crime amounting to a felony;
- (b) Persons arrested as fugitives from justice or arrested because believed to be such;
- (c) Persons arrested in possession of firearms or other concealed weapons, burglar tools, high explosives without proper authority, or other appliances believed to be used solely for criminal purposes;
- (d) All persons arrested who are known vagrants or narcotic users of known criminal tendencies;
- (e) All persons arrested who are known to be or suspected of being habitual criminals."

The nature of fingerprinting and purposes is discussed by the annotator in 83 A.L.R. page 127:

*** The Bertillion system of identification, which includes photographs, fingerprints, and measurements of the body, is of a still more recent date. This system in criminal law has two main purposes. The first is the identification of an accused as the

person who committed the crime with which he is charged, and the second is the identification of an accused as the same person who has been charged with, or convicted of, other crimes. For this second purpose the police of most of the cities of this country and Europe attempt to keep the description of every person arrested by them, in permanent records.***

Of course, having photographs and fingerprints taken cannot be regarded as a penalty. If it were, such records could never be made. An accused cannot be punished before trial, nor, in the absence of special statutes, could such a 'penalty' be included in the sentence after conviction. In this regard, taking photographs and fingerprints must be considered the same as any other administrative procedure of the police to which an individual must, at times, be subjected for the common good.***

Although there is no specific statutory authority for the local retention of records the practice has been recognized by our court in the case of GARCIA v. STATE, 26 Ariz. 596, and more recently in the case of STATE v. BERG, 76 Ariz. 96 (July 1953). A reading of Section 45-206 discloses no distinction drawn between those crimes committed by juveniles and those committed by adults. The nature of the capacity to commit by a juvenile was discussed in the case of BURROWS v. STATE, 38 Ariz. 99 at page 111:

***"We hold, therefore, that the purpose of the Arizona Juvenile law is not to attempt to establish an arbitrary age below which the child is presumed to be ignorant of the consequences of his acts, but rather to provide a special method of treatment for minors under the age of eighteen who have violated the criminal law, and, even with such children, leaving the application of the juvenile or criminal code to the discretion of the trial court."

A crime, therefore, is none the less a crime be it committed by a juvenile or adult. Since the purpose of fingerprinting is not for the prosecution of a crime but the identification of those juveniles and persons suspected of crimes, such fingerprints

and photographs would be a necessary part of a sheriff's office to completely and adequately carry out his constitutional duties. Therefore, when a crime is committed within the purview of 45--206, supra, it is incumbent upon the sheriff to take fingerprints and photographs. There appears to be no conflict with the above quoted section of 46-124 as such records are necessary not only to properly enforce the criminal laws but to give effect to the juvenile code. These records are of a confidential nature and thus not subject to public inspection by virtue of Section 12-412, A.C.A. 1939. In the recent case of MATHEWS v. PYLE, 75 Ariz. 76, at page 80, the court limited the general applicability of our public record statute, Section 12-412, A.C.A. 1939, by allowing the agency head to withdraw certain confidential records from public inspection, subject always of course to review of such action by the court.

"It is our view that we may reasonably conclude that the documents received by the Governor in his official capacity were not intended to be classified by the legislature as public records, but they may fall within the classification of 'other matters', in section 12-412, supra, and therefore subject to inspection by an interested citizen unless they are confidential or of such a nature that it would be against the best interests of the state to permit a disclosure of their contents."
(Emphasis supplied)

The confidential nature of these records would take them out of the general right of inspection of public records under Section 12-412, A.C.A. 1939, and hence the spirit and intent of the juvenile code would not be abrogated by the necessary fingerprinting and photographing required under Section 45-206.

With respect to your question 3 above, whether a juvenile may be handcuffed, there is present statutory law governing this procedure. Section 44-122 provides as follows:

- "44-122. Arrest-How made.-(1) An arrest is made by an actual restraint of the person to be arrested, or by his submission to the custody of the person making the arrest.
(2) No unnecessary or unreasonable force shall be used in making an arrest, and the person

arrested shall not be subjected to any greater restraint than is necessary for his detention."

The general rule with regard to shackling and handcuffing is well stated in 6 C.J.S., Sec. 17, page 619. Portion quoted:

"As a general rule an officer is not justified in handcuffing a prisoner whom he has in charge unless it is necessary to do so to prevent an escape; but so long as the officer does not abuse his authority and discretion he may, when in his judgment necessity demands, handcuff accused for the purpose of preventing an escape or rendering more safe the keeping of accused in custody, although it may subsequently develop that the prisoner was inoffensive and reputable. ***"

Thus, in answer to your question, it is discretionary with the arresting officer whether the circumstances warrant the shackling and handcuffing of a juvenile at the time of the arrest, however, such discretion must be guided always by the rule announced above and in our statute.

In answer to your last question pertaining to the records of the sheriff's office, it is clear that both 46-119 and 46-130 pertain to those records to which the clerk of the superior court has custody. By way of clarification the pertinent portion of both sections are set out:

"46-119. Records.- The records of the proceedings of the juvenile court shall be kept in a docket separate from other proceedings, and shall not be opened for inspection or copy by anyone other than the parties in interest, the representatives of the court, and probation officers having an interest therein, except upon order of the court expressly permitting inspection or copy. No part of the record shall be published by any newspaper or other agency disseminating news or information, nor shall any newspaper or agency publish the name of any child charged in the juvenile court with being delinquent, neglected, or dependent."

"46-130. Destruction of record.-Upon the expiration of the period of probation or following the expiration of two (2) years after the discharge of a child from the institution to which he may have been committed, the judge of the juvenile court

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shall order the clerk to destroy the records of the proceeding, unless it appears that prior to the expiration of the prescribed period the child has been convicted of an offense under the laws of this or another state. The superintendent of the institution shall notify the clerk of the court which committed the child when two (2) years have expired after his discharge." (Emphasis supplied)

The "record of proceedings" referred to in Section 46-130 are the same records of proceedings referred to in 46-119 and under the terms of Section 46-119, are confined to "the records of the proceedings of the juvenile court." Thus, such information as the sheriff's office has in its position, would not normally fall under the terms of 46-130, supra.

We trust the above answers to your inquiries are to your satisfaction.

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