

01-013

COURTS NOT OF RECORD: JUVENILE AND DOMESTIC RELATIONS COURTS.

CRIMES AND OFFENSES GENERALLY: CRIMES INVOLVING HEALTH AND SAFETY – DRUGS.

CRIMINAL PROCEDURE: ARREST.

Fingerprints of juveniles may be taken only when juvenile is taken into custody. Juvenile who has been issued summons by law-enforcement officer for possession of marijuana and is not taken into custody may not be fingerprinted.

The Honorable Edward DeJ. Berry
Judge, Juvenile and Domestic Relations District Court
June 19, 2001

You ask whether a juvenile who is issued a summons for possession of marijuana may be fingerprinted when the charge is disposed of under § 16.1-278.8(A)(5) of the *Code of Virginia*.

You present a hypothetical situation in which a juvenile is issued a summons for a delinquent act that would constitute a violation of § 18.2-250.1 for an adult.¹ The juvenile then requests disposition under § 16.1-278.8(A)(5), which is similar to the deferred disposition of sentence for adults set forth in § 18.2-251. Section 18.2-251 provides that an adult may be placed on probation only after the court is satisfied that a finding of guilt is justified. When an adult on probation under § 18.2-251 violates a condition of probation, the court may make an immediate adjudication of guilt and proceed to sentence the offender. When a juvenile is found to be delinquent, the juvenile and domestic relations district court ("juvenile court") or the circuit court has several available options with regard to making "orders of disposition for [the juvenile's] supervision, care and rehabilitation."² One of those options is to defer disposition of the matter for a period of time and place the juvenile on probation pursuant to § 16.1-278.8(A)(5).

The juvenile courts have exclusive original jurisdiction over juveniles charged with criminal offenses.³ In juvenile court proceedings, the welfare of the child is a paramount concern of the State.⁴ The Attorney General has long concluded that proceedings in a juvenile court are civil in nature.⁵ Consequently, a juvenile is not charged with a criminal act and the finding of delinquency is not a "conviction" of a crime in a juvenile court.⁶ Finally, "[t]he jurisdiction, practice, and procedure of the juvenile ... courts are entirely statutory,"⁷ and are set forth in the Juvenile and Domestic Relations District Court Law, §§ 16.1-226 through 16.1-361.

Section 16.1-299(A) is the only statute that applies to the fingerprinting of juveniles. Section 16.1-299(A) provides that "any juvenile who is taken into custody" may be fingerprinted. The hypothetical situation you present involves a juvenile who has been issued a summons for possession of marijuana. Section 19.2-76 details the procedure for the execution of an arrest warrant and summons, and provides that "[a] warrant ... shall be executed by the arrest of the accused, and a summons shall be executed by delivering a copy to the accused personally." Therefore, when a law-enforcement officer issues a summons, the accused has not been taken into custody.

The Supreme Court has stated that "[t]he manifest intention of the legislature, clearly disclosed by its language, must be applied."⁸ Section 16.1-246 clearly specifies the circumstances in which a juvenile may be taken into custody.⁹ Section 16.1-299(A) permits the fingerprints of juveniles to be taken only when the juvenile "is taken into custody."¹⁰ When a juvenile is issued a summons by a law-enforcement officer, the juvenile clearly is not "taken into custody."

The law under which the juvenile courts operate is entirely statutory, and the relevant statutes make no provision for a juvenile who has received a summons to be fingerprinted, yet § 16.1-299(A) provides such authority for fingerprinting when the juvenile has actually been taken into custody. Accordingly, I must conclude that a juvenile who has been issued a summons and is not taken into custody may not be fingerprinted.¹¹

¹Although the stated inquiry involves a juvenile who is charged with possession of marijuana under § 18.2-250.1 and is seeking disposition of such charge under § 18.2-251, I must assume that any charge will be for a delinquent act that would have been a crime under § 18.2-250.1 had the juvenile been an adult.

²Va. Code Ann. § 16.1-278.8 (Michie Supp. 2000).

³Section 16.1-241 conveys on each juvenile court "exclusive original jurisdiction ... over all cases, matters and proceedings involving:

"A. The custody, visitation, support, control or disposition of a child:

"1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent, except where the jurisdiction of the juvenile court has been terminated or divested"

⁴See Va. Code Ann. § 16.1-227 (Michie Repl. Vol. 1999); *Peyton v. French*, 207 Va. 73, 79, 147 S.E.2d 739, 743 (1966); *Lewis v. Commonwealth*, 214 Va. 150, 153, 198 S.E.2d 629, 632 (1973) (noting that juvenile proceedings are for protection of child and society).

⁵Op. Va. Att'y Gen.: 1978-1979 at 83, 84; 1975-1976 at 198, 199; *id.* at 199, 199; *see also* *Lewis v. Commonwealth*, 214 Va. at 153, 198 S.E.2d at 632; Op. Va. Att'y Gen.: 1976-1977 at 322; 1975-1976 at 187; *id.* at 194 (proceedings in juvenile court are not criminal in nature); *id.* at 195; *id.* at 198 (juvenile court does not deal with charges involving juveniles as either felonies or misdemeanors).

⁶See Va. Code Ann. § 16.1-308 (Michie Repl. Vol. 1999); Op. Va. Att'y Gen.: 1978-1979 at 83 (juvenile court finding of "not innocent" on marijuana charge does not bar person from probation as first-time offender for later adult offense); 1977-1978 at 203 (delinquency adjudication is not "conviction" of crime for purposes of § 19.2-305.1(A)); 1976-1977 at 138, 139 ("not innocent" finding does not subject juvenile to additional court costs under § 19.2-368.18); 1975-1976 at 194, 195 (juvenile is not subject to civil disabilities attached to felony conviction); *id.* at 195, 196 (juvenile sentenced to jail is not convicted of felony or misdemeanor); 1974-1975 at 227, 228 (juvenile court dispositions do not have attendant civil disabilities associated with adult convictions); 1972-1973 at 241; 1960-1961 at 175, 176 (adjudication by juvenile court is not considered conviction for crime).

⁷*Walker v. Dept. of Public Welfare*, 223 Va. 557, 562, 290 S.E.2d 887, 890 (1982).

⁸Barr v. Town & Country Properties, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990) (quoting Anderson v. Commonwealth, 182 Va. 560, 566, 29 S.E.2d 838, 841 (1944)).

⁹Section 16.1-246 provides that "[n]o child may be taken into immediate custody except:

"....

"B. When a child is alleged to be in need of services or supervision and (i) there is a clear and substantial danger to the child's life or health or (ii) the assumption of custody is necessary to ensure the child's appearance before the court"

¹⁰Va. Code Ann. § 16.1-299(A) (Michie Supp. 2000).

¹¹You ask a second question regarding whether fingerprint cards must be submitted to the Central Criminal Records Exchange for storage. Since I conclude that a juvenile who has been issued a summons for a delinquent act may not be fingerprinted, I do not need to reach this question.

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