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FILE NO. S-543

CHILDREN:

Fingerprinting - Paternity

There is no authority, statutory or otherwise, that permits fingerprints and photographs to be taken of persons charged in a paternity action.

Honorable Jack Hoogasian
State's Attorney
Lake County
Waukegan, Illinois 60085

Dear Mr. Hoogasian:

I have the following comments to make relative to your recent inquiry which reads in part as follows:

"I would like your opinion as to whether or not it is proper for a law enforcement officer to fingerprint and photograph a person arrested on a warrant issued under the Paternity Act."

The use of fingerprints and photographs for evidentiary purposes can no longer be questioned in Illinois. Generally

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speaking, such information is lawfully procurable by the authorities as a result of transgression of criminal sanctions.

(Poyer v. Bonstead, 3 Ill. App. 2d 562). It is also well established that fingerprints may be utilized in areas other than where persons are charged or convicted of violations of the criminal law. (Young v. Chicago Housing Authority, 350 Ill. App. 287). It should be noted, however, that practically without exception the use of fingerprints and photographs sanctioned by the authorities have as their basis either the common law (criminal activity), statutory or legally authorized administrative approval.

Examination of a great many cases discloses that the principle upon which the authorities approve fingerprinting and photographing is for use as identification. See Collected Cases, vol. VIII, Wigmore on Evidence, sec. 2265, p. 387, et seq.; Cal. L. Rev., vol. VIII, pp. 25 through 40.

After extensive review of cases the author of the California Law Review has this to say:

"It will be observed that these cases go no further than to permit the taking of photographs and measurements of persons suspected

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of serious offenses, for the purpose of identification. They do not sanction the common practice of 'mugging' every suspect whose picture and measurements the police would like to have. Nor do these cases sustain the right to retain the prints and measurements after acquittal. In other words, that army of vagrants, hop-heads and degenerates in whose ranks are often to be found the most dangerous criminals, cannot under the above decisions be fingerprinted in order to fasten on them crimes of which they may have been guilty in other places, nor can their records be retained to aid in future apprehension. There are several decisions which do not even allow the power given to police officials in the foregoing cases."

The legislature has provided for the taking of fingerprints and photographs for the purpose of identification or apprehension of persons who have been arrested for the violation of "any penal statute of this state." (Ill. Rev. Stat., 1971, ch. 38, par. 206-5). The wording of this section makes it clear that it is confined to violations of the criminal law.

A proceeding under the Paternity Act is a civil action for collection of money. (See Collected Cases S.H.A., ch. 106 3/4, par. 54, n. 4). "Foundation of action is not to

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punish for an unlawful or immoral act but to compel a father to contribute to the support of his offspring." Hawkins v. People, 82 Ill. 193 (1876); People v. Humbracht, 215 Ill. App. 29; Sharf v. People, 134 Ill. 240.

The unique character of a paternity action is exemplified by the fact that such an action can be instituted only by the mother. Ill. Rev. Stat., 1971, ch. 106 3/4, par. 54; Jones v. People, 53 Ill. 366; People v. Dile, 347 Ill. 23.

This provision conclusively divorces the action from any semblance of a criminal proceeding, as well as any application of administrative regulation, having for their purpose, as they must, a means of identification.

I can see no reason for taking fingerprints or photographs for use in a paternity action. In my opinion such a practice is not permissible.

Very truly yours,

A T T O R N E Y G E N E R A L