

SHERIFFS: Section 57.105, V.A.M.S., requires the sheriff to fingerprint and photograph only those persons taken into custody upon the execution of a warrant of arrest or placed in his custody by a commitment order of a court.

January 7, 1960



Hon. James E. Woodfill
Prosecuting Attorney
Vernon County
Nevada, Missouri

Dear Mr. Woodfill:

This is in response to your request for an opinion dated November 4, 1959, which reads as follows:

"I am writing for an official opinion in regard to the interpretation of Section 57.105 of the Revised Statutes of Missouri, the same dealing with the fingerprinting and photographing of prisoners.

"Does this section cover minor traffic and license violations?

"In Vernon County, the sheriff takes charge of persons convicted of traffic offenses for the sole purpose of collecting the fine and costs. It would seem to be an additional expense, and unnecessary, if the sheriff were required to photograph and fingerprint each person convicted of a traffic or license violation."

Section 57.105, V.A.M.S., which imposes a duty upon sheriffs of third and fourth class counties to take pictures and fingerprints in certain instances, reads as follows:

"The sheriff in each county of the third and fourth class, shall take pictures of and fingerprint any person accused of or convicted of a criminal offense when the person is taken into or placed in the custody of sheriff. The report shall contain the following information:

- (1) The name of the person;

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- (2) A description of the person, and any other data to identify the person;
- (3) The nature of the criminal offense; and
- (4) Whether the person was accused or convicted.

"The sheriff shall send a copy of the report, including a duplicate picture and fingerprints, to the main office of the state highway patrol, in Jefferson City. The report shall be filed in the office of the highway patrol, and copies of any report shall be available to any sheriff or law enforcement official upon the request of the sheriff or law enforcement official, when necessary in the performance of his official duties." (Emphasis ours.)

We believe that the language used in Section 57.105, supra, shows an intent on the part of the legislature not to require the sheriff to fingerprint and photograph a defendant in a routine traffic case where the defendant has voluntarily appeared in court in response to a summons issued by the arresting officer without the necessity of a warrant of arrest having to be issued and is found guilty and pays his fine and costs or is exonerated.

Section 57.105, supra, requires the sheriff to fingerprint and photograph any person who has been accused of or convicted of a criminal offense when the person is taken into or placed in the custody of the sheriff. It is to be noted that the mere fact that a person is accused of a criminal offense or is convicted of a criminal offense does not require photographing and fingerprinting. In addition to either one of the above mentioned, the person must also be taken into or placed in custody.

We believe that the phrase "criminal offense," as it is used in the statute, is broad enough to include both misdemeanors and felonies. As all traffic offenses are classified as either misdemeanors or felonies, they are necessarily included within the meaning of the phrase "criminal offense." However, as pointed out above, the act not only requires that a person be accused of or convicted of a criminal offense but it further requires that the person also be taken into or placed in the custody of the sheriff before the sheriff is required to photograph or fingerprint. It is our opinion that the phrase "accused of a criminal offense" requires that a formal complaint or information have been filed. United

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States v. Patterson, 150 U.S. 65. It is also our view that the phrase "taken into custody" is to be interpreted to mean that the person was arrested in execution of a warrant of arrest issued after the filing of a complaint or information. It is our further opinion that the phrase "placed in custody" should be interpreted to mean that the person is being held upon a commitment issued by a court either for failure to make bond or to pay a fine and costs imposed upon a conviction or is committed for the purpose of serving a sentence imposed by the court upon conviction.

In view of our holding hereinabove that the statute requires the sheriff to photograph and fingerprint only those persons whom he has taken into custody upon the execution of a warrant of arrest or have been placed in his custody by a commitment order of the court, we do not believe that the sheriff would be required to photograph or fingerprint a person found guilty of a traffic offense under the circumstances described in your request for this opinion. Apparently in the situation mentioned in your letter, the person is issued a summons and appears in court to answer to the summons and therefore is not arrested under a warrant issued by the court. Furthermore, it would appear that the person then enters a plea of guilty or is found guilty and then immediately pays the fine and costs to the sheriff. The fact that the law imposes a duty upon the sheriff to collect fines and costs does not mean that the sheriff in collecting fines and costs actually takes the person, against whom the fine and costs have been imposed, into custody. Should the person be unable to pay the fine and costs and the sheriff take him into custody pursuant to a judgment entered in accordance with the provisions of Section 546.830, RSMo 1949, in that event the person would be "placed in the custody of the sheriff" and he would be required to fulfill the duties required by Section 57.105. Likewise, should a warrant be issued for the arrest of a person charged with a traffic violation and a sheriff arrest such a person in execution of the warrant, he likewise would be required to fulfill the duties required by the statute and take photographs and fingerprints of the person so arrested.

CONCLUSION

It is the opinion of this department that Section 57.105, V.A.M.S., requires the sheriff to fingerprint and photograph only those persons taken into custody upon the execution of a warrant of arrest or placed in his custody by a commitment order of a court.

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The foregoing opinion, which I hereby approve, was prepared by my assistant, Calvin K. Hamilton.

Yours very truly,

JOHN M. DALTON
Attorney General

CKH/mlw