S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

July 5, 2006

Opinion No. 06-107

Prohibition of law enforcement from videotaping or digitally recording a juvenile during an investigation of a delinquent act.

QUESTION

Whether the provisions of Tenn. Code Ann. § 37-1-155(a)(1) prohibit law enforcement authorities from videotaping or digitally recording a juvenile while performing a field sobriety test after a valid traffic stop.

OPINION

Yes, it is the opinion of this Office that in addition to photographing or fingerprinting, Tenn. Code Ann. § 37-1-155(a)(1) prohibits law enforcement from videotaping or digitally recording a juvenile while performing field sobriety tests following a valid traffic stop.

ANALYSIS

Tenn. Code Ann. § 37-1-155(a)(1) provides that no person under the age of eighteen (18)[1] shall be photographed or fingerprinted during the investigation of a delinquent act except under very limited and clearly defined circumstances. The statute provides in pertinent part:

> No child shall be fingerprinted or photographed in the investigation of delinquent acts without the permission of the court, unless the child is charged with a delinquent act that, if committed by an adult, would constitute a felony, in which case the child shall be fingerprinted and photographed at the time the child is taken into custody and such fingerprint file may be maintained in an automated fingerprint identification system.

[1]See Tenn. Code Ann. § 37-1-102(b)(4)(A).

There is no case authority in this or other jurisdictions[2] addressing the issue of whether law enforcement is prohibited from videotaping a field sobriety test involving a juvenile driver. Although "photography," "fingerprinting," "videotaping," and "digital recording," are not terms defined in Title 37, there is support elsewhere in the Code for concluding that videotapes are classified or categorized as photographs. For instance, in Title 47, photographs are defined as any:

> Photographic reproduction, still or moving, or any *videotape* or live television transmission, of any individual, so that the individual is readily identifiable.

Tenn. Code Ann. § 47-25-1102(5) (Emphasis added). In addition, the Tennessee Rules of Evidence treats photographs and videotapes alike for purposes of evidentiary matters.

> "Photographs" include still photographs, x-ray films, *video tapes*, and motion pictures.

Tenn. R. Evid. 1001(2)(Emphasis added).

The statute is clear that, without court permission, photographs may be taken only if the juvenile driver is charged with committing a delinquent act otherwise considered a felony if committed by an adult. While "delinquent acts" are defined in Tenn. Code Ann. § 37-1-102(b)(9) and include driving while under the influence of an intoxicant or drug, our legislature has specifically designated the offense of underage driving while impaired in Tenn. Code Ann. § 55-10-415. According to Tenn. Code Ann. § 55-10-415, driving while impaired constitutes a "delinquent act;" however, the offense is a Class A misdemeanor if committed by an adult. Tenn. Code Ann. § 55-10-415(d)(1), (e).

Furthermore, if a juvenile driver commits a delinquent act that amounts to a felony, the language in Tenn. Code Ann. § 37-1-155(a)(1) indicates that photographing shall occur only after the juvenile is taken into custody.

Accordingly, it is the opinion of this Office that, under Tenn. Code Ann. § 37-1-155(a)(1), law enforcement is prohibited from videotaping or digitally recording juveniles while performing field sobriety tests.

---

[2]One state, California, appears to permit the videotaping of juveniles while performing field sobriety tests. In a case involving a juvenile convicted of driving under the influence, the court acknowledged viewing the videotape of the juvenile-appellant in affirming the juvenile court's judgment. *In re Lauren N.*, No. GO34208. 2006 WL 226199, at *1, *3 fn. 2 (Cal. App. 4 Dist. Jan. 31, 2006)(*perm. app. denied* Apr. 12, 2006)(Unpublished)(Copy attached).

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

SOPHIA S. LEE
Assistant Attorney General

Requested by:

Honorable Vince Dean
State Representative
107 War Memorial Building
Nashville, Tennessee 37243-0130