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FILE NO. S-1395

**CRIMINAL LAW AND PROCEDURE:
Furnishing the Department of
Law Enforcement With Fingerprints
and Descriptions of Persons Given
a Notice to Appear**

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Dear Mr. Doyle:

I have your letter which contains the following
two questions:

1. Must an arresting agency forward to the Department of Law Enforcement copies of fingerprints of all persons to whom notices to appear have been issued for felonies and Class A and B misdemeanors.
2. If fingerprints of such persons are required, would the requirements of Chapter 38, Paragraph 206-5 be satisfied if printing

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occurred in conjunction with the first court appearance on a date subsequent to the arrest, recognizing that some persons may fail to respond to the notice to appear."

Section 5 of "AN ACT in relation to criminal identification and investigation" (Ill. Rev. Stat. 1977, ch. 38, par. 206-5) provides:

"All policing bodies of this State shall furnish to the Department, daily, in the form and detail the Department requires, copies of finger prints and descriptions, of all persons who are arrested on charges of violating any penal statute of this State; * * * however, this Section does not apply to any of such offenses which are not classified as a felony or as a Class A or Class B misdemeanor. * * * "

The answer to your first question turns on the meaning of the phrase "all persons who are arrested". Although the Act was originally passed in 1931, the language of the first clause of section 5 was added by Public Act 76-444 in 1970. It is therefore appropriate to examine the use of the word "arrest", in the Code of Criminal Procedure of 1963. Ill. Rev. Stat. 1977, ch. 38, par. 100-1 et seq.

Section 102-5 of the Code (Ill. Rev. Stat. 1977, ch. 38, par. 102-5) states that "'Arrest' means the taking of a person into custody." Section 107-5 of the Code (Ill.

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Rev. Stat. 1977, ch. 38, par. 107-5) states:

"An arrest is made by an actual restraint of the person or by his submission to custody."

Also contained in the Code of Criminal Procedure of 1963 is the authority for the issuance of a notice to appear. Section 107-12 of the Code (Ill. Rev. Stat. 1977, ch. 38, par. 107-12) reads as follows:

"Whenever a peace officer is authorized to arrest a person without a warrant he may instead issue to such person a notice to appear."

* * *

(Emphasis added.)

The definition of a notice to appear is found in section 107-1(c) of the Code. (Ill. Rev. Stat. 1977, ch. 38, par. 107-1(c).)

"(c) A 'notice to appear' is a written request issued by a peace officer that a person appear before a court at a stated time and place." (Emphasis added.)

The person who is given a notice to appear is not taken into custody; nor is he, in any way, restrained. Under section 107-12 of the Code, if a person fails to honor a request to appear, a court may then issue a warrant for his arrest. A notice to appear is an alternative to arrest, and thus, by definition, a person who is given a notice to

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appear is not under arrest.

The use of the word "arrest" in the Code is consistent with its general meaning in the field of criminal law. The word "arrest" is derived from the French term "arreter" which means to stop or stay, and signifies the restraint of the individual. People v. Mirbell (1934), 276 Ill. App. 533.

The Illinois courts have held that where a law is plain and unambiguous, the legislature should be considered to have intended to mean what it plainly expressed, and consequently no room is left for construction. (Chicago Home for Girls v. Carr (1921), 300 Ill. 478.) The first clause of section 5 of "AN ACT in relation to criminal identification and investigation" applies only to those persons who have been arrested. A person who has been given a notice to appear has not been arrested. Accordingly, the term "arrested" in said section 5 does not, in my opinion, apply to persons who have only been given a notice to appear. To hold otherwise would mean rewriting the statute; not interpreting it.

Since my answer to question 1 is in the negative, the issue stated in question 2 does not arise.

Very truly yours,

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