

August 2, 2019

The Honorable Joel Blue  
Guernsey County Prosecuting Attorney  
627 Wheeling Avenue  
Cambridge, Ohio 43725

SYLLABUS:

2019-025

In situations of jail overcrowding, a county sheriff is required to transport excess prisoners to another county jail, and the transporting county must pay the receiving county for the costs of housing such prisoners in accordance with R.C. 341.12-.14.



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OPINION NO. 2019-025

The Honorable Joel Blue  
Guernsey County Prosecuting Attorney  
627 Wheeling Avenue  
Cambridge, Ohio 43725

Dear Prosecutor Blue:

You have requested an opinion regarding the Guernsey County Sheriff's authority in handling prisoners at the county jail when the jail has exceeded its inmate capacity. You write that that jail is "permitted to house 78 inmates," but the jail population in recent weeks "has been in excess of 120" and may increase to 150 in the coming weeks. You further write that "[i]n researching this issue it appears that the jail is required to ship the excess prisoners to another facility and the cost shall be paid by the county." However, you indicate that the Sheriff "has been unable to locate any available bed space within a 100 mile radius of Guernsey County." In this context, you ask what the jail and sheriff may do with the excess inmates.

Ohio law is clear that the county sheriff must transport excess inmates to another county jail. R.C. 341.12 states, in relevant part, that "[i]n a county not having a sufficient jail or staff, ... the sheriff *shall convey* any person charged with the commission of an offense, sentenced to imprisonment in the county jail, or in custody upon civil process to a jail in any county the sheriff considers most convenient and secure." R.C. 341.12(A) (emphasis added). The use of the word "shall" in R.C. 341.12 emphasizes the mandatory nature of the sheriff's duty. *See Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph 1). Moreover, the sheriff of a county in Ohio who receives a prisoner "shall, on being furnished a copy of the process or commitment, receive the prisoner into custody[.]" assuming the receiving county jail has sufficient space. R.C. 341.13. "Each receiving sheriff shall receive from the treasury of the county from which the prisoner was removed, such fees as are allowed in other cases." *Id.* As you correctly indicate, the transporting county must pay the receiving county the "actual cost of keeping and feeding each prisoner so committed for the use of the jail of that county," on a weekly basis. R.C. 341.14(A).

Previous Attorney General opinions that have interpreted the above provisions, or similar versions of the above provisions, have uniformly concluded that a county sheriff has a duty to maintain prisoners in his or her county jail, and, if the jail is inadequate to house additional prisoners, the sheriff must effect the transport of those prisoners to another county jail. *See* 1995 Op. Att’y Gen. No. 95-011 (syllabus, paragraph 2) (“[w]here the jail of a county is insufficient to house an individual arrested without a warrant by a municipal police officer for any violation of the laws of this state, the county sheriff is required, pursuant to R.C. 341.12, to transport the individual to the jail of any county which the sheriff deems most convenient and secure”); 1986 Op. Att’y Gen. No. 86-105, at 2-576; 1981 Op. Att’y Gen. No. 81-042 (syllabus, paragraph 2) (“[w]here the jail of a county is insufficient to house prisoners of that county who have been sentenced to incarceration in jail, the county sheriff is authorized by R.C. 341.12 to determine where such sentence is to be carried out”). We have further acknowledged that a county sheriff receiving a prisoner from another county is not required to receive prisoners unless the transporting county pays the receiving county in accordance with R.C. 341.13-.14. *See* 1995 Op. Att’y Gen. No. 95-011, at 2-58; 1987 Op. Att’y Gen. No. 87-078 (syllabus) (“[f]ees charged under R.C. 341.13 for housing a prisoner of one county in the jail of another county are to be paid from the treasury of the county from which the prisoner was removed”).<sup>1</sup>

Courts, including the Ohio Supreme Court, have concurred with the conclusion that the sole remedy for an overcrowded jail is for the county sheriff to find, in his discretion, the most convenient and secure county jail to which the excess inmates may be transported. For example, the Supreme Court has concluded that, under R.C. 341.12, the sheriff of Mahoning County “has a duty to convey persons sentenced to imprisonment in the county jail to a jail in another county if Mahoning County has insufficient jail space or staff.” *State ex rel. Wellington v. Kobly*, 112 Ohio St. 3d 195, 2006-Ohio-6571, 858 N.E.2d 798, at ¶ 25. The Court has also noted its concern with the “growing societal problem” of jail overcrowding, which “has become increasingly difficult to remedy.” *State v. Zucal*, 82 Ohio St. 3d 215, 218, 694 N.E.2d 1341 (1998). Other courts have reaffirmed the general lesson of *Wellington* that “a county sheriff has no legal authority to release from the county jail a person who has not served his entire term of imprisonment based on concerns of jail overcrowding and budget shortfalls unless the early release has been ordered by a court or the governor.” *See, e.g., State v. Ventura*, 1st Dist. No. C-150495, 2016-Ohio-5151, 69 N.E.3d 189, at ¶ 26 (citing *Wellington*, 112 Ohio St. 3d 195, at

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<sup>1</sup> R.C. 341.14(A) states that the receiving county sheriff must receive “an amount equal to the actual cost of keeping and feeding each prisoner . . . committed for the use of the jail of that county,” on a weekly basis. R.C. 341.12(A), by contrast, governs compensation due to the sheriff and sheriff’s assistants *who perform the transport of prisoners*. That statute states that the county auditor of the transporting county shall establish a reasonable compensation for the sheriff and sheriff’s assistants who transport such prisoners. *See* R.C. 341.12(A). Accordingly, the two statutes deal with compensation for different situations: R.C. 341.14 for the cost of housing and feeding prisoners and R.C. 341.12 for the costs incurred by sheriffs and their assistants for transporting those prisoners.

¶ 24). If a county sheriff does in fact “have insufficient jail space or staff, he would have . . . a duty under R.C. 341.12 to convey any person sentenced to imprisonment in the county jail to a jail in another county.” *Ventura*, 69 N.E.3d 189, at ¶ 26. We see no rationale that permits us to depart from the conclusions in our prior opinions or the commands of statutory and case law.<sup>2</sup>

As are the courts, we are cognizant of the perennial and growing strain caused by jail overcrowding. The law, however, is clear that the only remedy available to a county sheriff in situations of jail overcrowding is to transport excess prisoners to another county jail and for the transporting county to pay the receiving county in accordance with R.C. 341.12-.14. The remedy to any difficulty caused by this clear legislative scheme must be sought through the General Assembly. 2014 Op. Att’y Gen. No. 2014-006, at 2-50 (“[i]f changes in statutory authority are desired, the remedy lies with the General Assembly”).

Based on the foregoing, it is our opinion, and you are hereby advised that, in situations of jail overcrowding, a county sheriff is required to transport excess prisoners to another county jail, and the transporting county must pay the receiving county for the costs of housing such prisoners in accordance with R.C. 341.12-.14.

Respectfully,



DAVE YOST  
Ohio Attorney General

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<sup>2</sup> The director of the Ohio Department of Rehabilitation and Correction (ODRC) is authorized to promulgate rules regarding jail standards, including rules for minimum security jails dedicated for use as a jail by a board of county commissioners. R.C. 5120.10(A); R.C. 341.34(B)(1); *see also* R.C. 341.34(C)(4). The director also has authority to grant variances to those standards at the request of a jail administrator, chief executive of a municipality, or board of county commissioners. R.C. 5120.10(C). The director has promulgated rules that establish minimum standards which apply to jails in Ohio, including county jails. *See* Ohio Admin. Code 5120:1-7-02(A). For example, the director has deemed it “important” that inmates in a double occupancy housing cell located in a full-service jail have one hundred square feet of space if the cell has stacked bunks. Ohio Admin. Code 5120:1-8-04(A)(2)(b); *see also* rule 5120:1-7-02(A)(1) (defining full service jail). If the number of inmates exceeds the minimum number established by the director of ODRC, the sheriff in charge of a county jail has the authority to determine that the county does not have sufficient jail space under R.C. 341.12(A), triggering the requirement that inmates be transported to another jail at the cost of the transporting county.