December 30, 1993

OPINION NO. 93-080

Reginald A. Wilkinson, Director
Department of Rehabilitation and Correction
1050 Freeway Drive, North
Columbus, Ohio 43229

Dear Director Wilkinson:

You have requested an opinion concerning the Interstate Agreement on Detainers ("IAD"). Specifically, you ask:

1. Under the [Interstate] Agreement on Detainers (ORC 2963.30) is a prosecutor who accepted temporary custody of a prisoner obligated to return the prisoner to the sending state immediately after prosecution or can the prisoner be committed to the Department of Rehabilitation and Correction "for processing"?

2. If there is no authority for a county to commit the prisoner to the Department of Rehabilitation and Correction "for processing", retake custody and return him to the sending state, what action should the Reception Center take if an attempt is made to commit to the Department a prisoner against whom such a sentence was imposed? Should the Reception Center refuse to accept custody of the prisoner from the Sheriff? Should the prisoner be accepted and held by the Department of Rehabilitation and Correction "until the term of imprisonment expires, he is pardoned or paroled, or he is transferred under the laws permitting the transfer of prisoners" as required by ORC 2949.12? Should the Reception Center accept custody of the prisoner and return custody of the prisoner to the sheriff as ordered in the Journal Entry"?

3. If the prisoner can be admitted "for processing" and this Department receives a prisoner with sentences from two separate counties, one ordering him returned to the sending state to continue serving his sentence and the other ordering him committed to this Department for a term of years "or until otherwise pardoned, paroled, or released according to law," what action do we take?

4. If the prisoner is committed to the Department of Rehabilitation and Correction, returned to the custody of the sheriff and transported to a facility in the other state, is

the Department of Rehabilitation and Correction or any of its employees subject to suit for false imprisonment under Section 2725.25 of the Revised Code? If a suit for false imprisonment is brought against an employee for "aiding or assisting" in the transport out-of-state, will the employee be represented by the office of the Attorney General and be indemnified for any judgment rendered against the employee?

5.If the prisoner is committed to the Department, returned to the custody of the sheriff, and transported out-of-state to serve his Ohio sentence, what is the process to enforce the return of the prisoner to Ohio to serve the balance of his Ohio sentence?

6.If the prisoner is committed to the Department of Rehabilitation and Correction to serve an indeterminate sentence but is transported out-of-state to serve that sentence, is the Parole Board obligated to conduct a parole release hearing at such time as the prisoner has served sufficient time to be eligible for parole consideration?

The Interstate Agreement on Detainers

In 1969, Ohio entered into the Interstate Agreement on Detainers ("IAD"). *See* R.C. 2963.30; 1969-1970 Ohio Laws, Part I, 1067 (Am. S.B. 356, eff. Nov. 18, 1969). The IAD is a compact among the states, the District of Columbia, and the federal government created to promote the expeditious and orderly disposition of charges outstanding against an individual already incarcerated in another jurisdiction, and to determine the proper status of any and all detainers[1] based on untried indictments, informations, and complaints. Interstate Agreement on Detainers, art. I. The IAD provides two methods of disposing of untried indictments, informations, and complaints and their related detainers. Under the IAD, a prisoner against whom a detainer is lodged may make a request for a final disposition of the indictment, information, or complaint on which the detainer is based. *Id.* art. III(a). Similarly, the appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending may obtain temporary custody of a prisoner by first lodging a detainer against the prisoner and then presenting a written request for temporary custody over him. *Id.* art. IV(a). In response to a request under articles III or IV of the IAD, the appropriate authority in a state in which a prisoner is incarcerated shall offer to deliver temporary custody of the prisoner to the appropriate authority in a state where an indictment, information, or complaint is pending against the prisoner in order that speedy and efficient prosecution may be had. *Id.* art. V(a).

A Prosecuting Attorney Who Accepts Temporary Custody of a Prisoner Must Return

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[1] A detainer is a notice to prison authorities that charges are pending against an inmate elsewhere, requesting the custodian to notify the sender before releasing the inmate. *Stroble v. Anderson*, 587 F.2d 830, 835 (6th Cir. 1978), *cert. denied*, 440 U.S. 940 (1979); Dauber, *Reforming the Detainer System: A Case Study*, 7 Crim. L. Bull. 669, 670 (1971).

the Prisoner to the Sending State Immediately After Prosecution

Your first question asks whether a prosecuting attorney who accepts temporary custody of a prisoner is obligated to return the prisoner to the sending state[2] immediately after prosecution or instead to commit the prisoner to the Department of Rehabilitation and Correction ("Department") "for processing." The IAD specifically provides that "[a]t the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state." *Id.* art. V(e).

As noted above, the purpose of the IAD is to encourage the expeditious and orderly disposition of charges outstanding against a prisoner and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. *Id.* art. I. A sending state offers to deliver temporary custody of a prisoner to a receiving state in order that speedy and efficient prosecution may be had. *Id.* art. V(a). The temporary custody referred to in the IAD is "*only for the purpose of permitting prosecution* on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction." *Id.* art. V(d) (emphasis added).

Because the temporary custody referred to in the IAD is only for the purpose of permitting prosecution of an individual by a receiving state, and an individual must be returned to the sending state at the earliest practicable time consonant with that purpose, it is reasonable to conclude that an individual must be returned to the sending state upon completion of the prosecution in the receiving state. *See generally Wooster Republican Printing Co. v. Wooster*, 56 Ohio St. 2d 126, 132, 383 N.E.2d 124, 128 (1978) ("[i]t is a well-settled principle of statutory construction that statutory provisions must be construed together. In essence, the doctrine requires that the Revised Code be read as an interrelated body of law" (footnote omitted)). Resolution of your first question, accordingly, turns on whether committing an individual to the Department "for processing" is part of the prosecution of that individual.

"Prosecution" is not defined for purposes of the IAD. In the absence of a legislative definition, a word should be accorded its natural, literal, common, or plain meaning. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983). *Black's Law Dictionary* 1221 (6th ed. 1990) defines "prosecution" as follows:

A criminal action; a proceeding instituted and carried on by due course of law, before

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[2] As used in the Interstate Agreement on Detainers ("IAD"), "sending state" means "a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III [of the IAD] or at the time that a request for custody or availability is initiated pursuant to Article IV [of the IAD]." Interstate Agreement on Detainers, art. II(b). "Receiving state" means "the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV [of the IAD]." *Id.* art. II(c).

> a competent tribunal, for the purpose of determining the guilt or innocence of a person charged with crime. The continuous following up, through instrumentalities created by law, of a person accused of a public offense with a steady and fixed purpose of reaching a judicial determination of the guilt or innocence of the accused. (Citation omitted.)

The term "prosecution," for purposes of the IAD, thus means the institution and continuance of a criminal suit involving the process of bringing formal charges against an individual before a court of law and pursuing those charges to final judgment.

In Ohio, the prosecution of a criminal offender is commenced by filing a complaint, indictment, or information, *see* Crim. R. 4; Crim. R. 7, and terminates upon the return of a verdict and imposition of a sentence by a court, if applicable, *see* R.C. 2947.23 ("[i]n all criminal cases ... the judge or magistrate shall include in the sentence the costs of prosecution"); R.C. 2949.09 ("[w]hen a judge or magistrate renders judgment for a fine, an execution may issue for such judgment and costs of prosecution"). After a guilty verdict is returned and sentence imposed, the trial court or magistrate shall, if no appeal is filed, if leave to file an appeal or certification of a case is denied, if the judgment of the trial court is affirmed on appeal, or if post-conviction relief under R.C. 2953.21 is denied, carry into execution the sentence which had been pronounced against the individual. R.C. 2949.05.

Because an individual is committed to the Department after sentencing, *see* R.C. 2949.12; R.C. 5120.16; R.C. 5143.07, committing an individual to the Department "for processing" is not part of the prosecution. Accordingly, committing a prisoner in the temporary custody of a county prosecuting attorney to the Department for processing, rather than immediately returning such prisoner to the sending state, is not consistent with the limited purpose for which temporary custody has been granted under the IAD, which is to permit prosecution on pending charges. Consequently, upon completion of the prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints that form the basis of the detainer or detainers, or any other charge or charges arising out of the same transaction, a county prosecuting attorney who accepts temporary custody of a prisoner under the IAD is required to return the prisoner without delay to the sending state. Accordingly, a prisoner should not be transferred to the custody of the Department "for processing" before being returned to the sending state.

The Department Must Comply with a Court Order that Requires the Department to Process a Prisoner Prior to the Prisoner's Return to the Sending State

Your second question asks, if there is no authority for a county to commit to the Department, "for processing," a prisoner who is in the temporary custody of a county prosecuting attorney pursuant to the IAD, what action should the Department take if an attempt is made to commit such a prisoner to the Department. Information provided in conjunction with your request indicates that you are specifically concerned with a situation in which a court has entered a journal entry that orders the county sheriff to deliver a prisoner into the custody of a reception facility of the Department for processing, and directs the Department to return custody of the prisoner to the sheriff

for the purpose of transporting the prisoner back to the sending state upon completion of the prisoner's processing.

It is a well-settled principle of law in Ohio that when an agency of the state is the subject of a court order, the agency may: (1) obey that order; (2) seek to have the order changed by the courts; or (3) disobey the order at its peril. *See* 1992 Op. Att'y Gen. No. 92-072 at 2-306; *see also* 1993 Op. Att'y Gen. No. 93-028, slip op. at 4-5. An officer or employee of a state agency who disobeys or resists a court order directed at the agency may be subject to a contempt proceeding. *See* R.C. 2705.02(A); Op. No. 93-028, slip op. at 5; Op. No. 92-072 at 2-306. Prior opinions of the Attorney General also have stated that "an opinion of the Attorney General regarding a court's authority cannot authorize a public official to disregard any order of that court." 1990 Op. Att'y Gen. No. 90-009 at 2-39; *see, e.g.*, Op. No. 92-072 at 2-306.

If a court orders the Department to process a prisoner prior to the prisoner's return to the sending state, therefore, the Department must process the prisoner. Failure to obey the court's order may be the basis for a contempt proceeding against the Department. Although there are arguments that the Department may make in its defense if such a contempt proceeding is instituted by a court,[3] unless and until the order is changed by orderly and proper proceedings, the court's order is binding on the Department and must control its conduct.

The Department May Process a Prisoner and, upon Completion of the Processing, Transfer Physical Custody of the Prisoner to the Sending State

Your third question asks, if the Department receives for processing a prisoner with sentences from two separate counties, one ordering the prisoner returned to the sending state and the other ordering him committed to the Department for a term of years or until otherwise pardoned, paroled, or released according to law, what action should the Department take.[4] As indicated above, a court order directed at the Department controls the Department's conduct until the order is changed by orderly and proper proceedings. The Department, therefore, must, if possible, comply with both court orders.

Your question appears to suggest that there may be a conflict between the two court orders, insofar as one order requires the prisoner to be returned to the sending state and the other order requires the prisoner to be committed to the Department for a term of years or until otherwise

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[3] "An individual against whom an order of a court is directed may violate such order and properly urge in his defense in a contempt proceeding that the order is void." *In re Green*, 172 Ohio St. 269, 273, 175 N.E.2d 59, 62 (1961), *rev'd on other grounds*, 369 U.S. 689 (1962); *see* 1990 Op. Att'y Gen. No. 90-009. "An order of the court is void when the court lacks either the jurisdiction or the authority to enter the order." Op. No. 90-009 at 2-39 (footnote omitted).

[4] It is assumed that the sentencing orders appear on their face to be valid and within the jurisdiction of the courts that have issued them.

pardoned, paroled, or released according to law. Nothing in the language of either court order, however, indicates that the issuing courts intended the Department to act in a manner that is inconsistent with the Department's obligations under the IAD or any other law related to the custody of prisoners in an Ohio penal institution. An examination of these obligations and laws discloses that the orders are not in conflict since the Department is required, pursuant to R.C. 2949.12 and the IAD, to return to a sending state a prisoner who is in the temporary custody of Ohio under the IAD.

Pursuant to R.C. 2949.12, an individual committed to the Department for a term of years or until otherwise pardoned, paroled, or released according to law must serve his term of imprisonment within an institution or place under the control and management of the Department or in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, if authorized pursuant to R.C. 5120.161, "*until* the term of his imprisonment expires, he is pardoned or paroled, or *he is transferred under laws permitting the transfer of prisoners*." (Emphasis added.) *Accord* R.C. 5120.16. R.C. 2949.12 thus authorizes the Department to transfer under laws permitting the transfer of prisoners a prisoner committed to the Department for a term of years or until otherwise pardoned, paroled, or released according to law. *Accord* R.C. 5120.16.

As noted above, the IAD requires that a prisoner who is in the temporary custody of an authorized authority pursuant to the IAD be returned to the sending state as soon as the prosecution on the charge or charges which form the basis of the detainer or detainers or the prosecution on any other charge or charges arising out of the same transaction is complete. Since the IAD requires the authorities of Ohio who accept temporary custody of a prisoner under the IAD to return the prisoner to the sending state upon completion of prosecution in Ohio, the IAD is a law that permits the Department to transfer a prisoner in the Department's custody back to a sending state.

Because R.C. 2949.12 authorizes the Department to transfer in accordance with the laws of this state a prisoner committed to its custody, and insofar as the IAD, which is a law permitting the transfer of prisoners, requires the Department to return a prisoner to a penal institution of the sending state, the Department is required to return a prisoner to the sending state, notwithstanding that an Ohio court has ordered the prisoner committed to the Department for a term of years or until otherwise pardoned, paroled, or released according to law. Accordingly, when the Department acts in accordance with the provisions of R.C. 2949.12 and the IAD and transfers a prisoner back to the sending state, the Department does not act contrary to a court order directing that a prisoner be committed to the Department for a term of years or until otherwise pardoned, paroled, or released according to law. Therefore, when the Department is ordered by one court to process a prisoner and thereafter return that prisoner to the sending state, and by a second court to incarcerate the prisoner, the Department may process the prisoner and, upon completion of the processing, transfer physical custody of the prisoner to the original place of imprisonment.[5]

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[5] As indicated in footnote eleven, *infra,* the Department may place a detainer on a prisoner incarcerated in a sending state in order to extradite him upon completion of his sentence of imprisonment in the sending state to the State of Ohio.

When the Department Returns a Prisoner to a Sending State, the Department Does Not Violate R.C. 2725.25

Your fourth question asks, if a prisoner is committed by a court to the Department for processing and subsequently transported back to a sending state, is the Department or any of its employees subject to suit for false imprisonment under R.C. 2725.25. R.C. 2725.25 provides as follows:

> No person shall be sent as a prisoner to a place out of this state, for a crime or offense committed within it.
> A person imprisoned in violation of this section may maintain an action for false imprisonment against the person by whom he was so imprisoned or transported, and against a person who contrives, writes, signs, seals, or countersigns a writing for such imprisonment or transportation, or aids or assists therein.

R.C. 2725.25 expressly prohibits the transfer of an individual from Ohio to another state if the individual committed his crime or offense in the State of Ohio. *Accord* Ohio Const. art. I, §12 ("[n]o person shall be transported out of the state, for any offense committed within the same").

A prisoner who is in the temporary custody of Ohio pursuant to the IAD remains in the custody and subject to the jurisdiction of the sending state. Interstate Agreement on Detainers, art. V(g). The transfer of the prisoner from Ohio back to a sending state thus is for a crime or offense committed within the sending state, rather than for a crime or offense committed in Ohio. As such, a prisoner who is transported back to a sending state is not sent to a place out of this state for his crimes or offenses committed within the State of Ohio. Therefore, neither the Department nor any of its employees violate R.C. 2725.25 when the Department transports a prisoner back to a sending state in accordance with the provisions of the IAD.

You have also asked, if a suit for false imprisonment is brought, pursuant to R.C. 2725.25, against an employee of the Department for "aiding or assisting" in the transport of a prisoner from this state to a sending state as required by the IAD, will the employee be represented by the office of the Attorney General and be indemnified for any judgment rendered against the employee. R.C. 9.86 provides that no state officer or employee shall be liable in any civil action that arises under the laws of this state:

> Except for civil actions that arise out of the operation of a motor vehicle and civil actions in which the state is the plaintiff, no officer or employee shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the officer's or employee's actions were manifestly outside the scope of his employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

Consistent with the terms of R.C. 9.86, where the acts of a state officer or employee are not

manifestly outside the scope of his employment or official responsibilities, he is not liable in a civil action under state law, except in a civil action arising out of the operation of a motor vehicle, or in an action in which the state is the plaintiff, for damages or injury caused in the performance of his duties, unless he acted "with malicious purpose, in bad faith, or in a wanton or reckless manner." R.C. 9.86. Thus, a Department employee acting pursuant to the IAD cannot be held liable for false imprisonment under R.C. 2725.25.

With respect to representation by the Attorney General, R.C. 109.361 states, in pertinent part: "Upon the receipt of a written request by any officer or employee, the attorney general, except as provided in [R.C. 109.362], except under the circumstances described in [R.C. 120.06(E)], and except for civil actions in which the state is the plaintiff, shall represent and defend the officer or employee in any civil action instituted against the officer or employee." Thus, except as provided in R.C. 120.06(E)[6] and R.C. 109.362[7] and except for civil actions in which the state is the plaintiff, a state officer or employee is entitled to be represented by the Attorney General in a civil action instituted against the officer or employee.

Because individuals employed by the Department are "officers or employees" for purposes of R.C. 9.86 and R.C. 109.361, *see* R.C. 109.36(A) (defining the phrase "officer or employee" for

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[6] R.C. 120.06(E) authorizes the State Public Defender to contract for private legal counsel to represent certain state officers and employees and certain attorneys in specified malpractice and civil actions.

[7] R.C. 109.362 states in part:

> (A) Prior to undertaking any defense under [R.C. 109.361], the attorney general shall conduct an investigation of the facts to determine whether the requirements of this section have been met. If the attorney general determines that any officer who holds an elective state office was acting manifestly outside the scope of his official responsibilities or that any other officer or employee was acting manifestly outside the scope of his employment or official responsibilities, with malicious purpose, in bad faith, or in a wanton or reckless manner, the attorney general shall not represent and defend the officer or employee....
> (B) The attorney general shall also deny a request for representation upon a determination that the requesting officer or employee is covered by a policy of insurance purchased by the state requiring the insurer to provide counsel in the action and that the amount of the claim against the officer or employee is not in excess of the amount of coverage under the policy of insurance. If the amount of the claim against the officer or employee is in excess of the amount of coverage under the policy of insurance, the state is not the plaintiff, and the officer or employee is not otherwise prohibited by this section from being represented and defended by the attorney general, the attorney general shall represent and defend the officer or employee for the amount of the claim in excess of the amount of coverage.

purposes of R.C. 109.361-.366 as "any person who, at the time a cause of action against him arises, is serving in an elected or appointed office or position with the state; is employed by the state");[8] *see also* R.C. 9.85 (for purposes of R.C. 9.86 and R.C. 9.87, the phrase "officer or employee" has the same meaning as in R.C. 109.36(A)), they are entitled to the civil immunity prescribed by R.C. 9.86 and representation by the Attorney General as set forth in R.C. 109.361. However, whether an employee of the Department is, in a particular case, entitled to the civil immunity prescribed by R.C. 9.86 or to representation by the Attorney General as set forth in R.C. 109.361 presents issues of fact that are more appropriately decided on a case-by-case basis. *See generally* 1987 Op. Att'y Gen. No. 87-082 (syllabus, paragraph three) (R.C. 109.14 does not authorize the Attorney General to decide issues of fact by means of an opinion). Accordingly, when the facts so warrant it, employees of the Department are entitled to civil immunity as provided in R.C. 9.86 and to representation by the Attorney General as provided in R.C. 109.361.[9]

The Department May Obtain Custody of a Prisoner Incarcerated in a Sending State by Extradition

Your fifth question asks, if a prisoner is returned to a sending state, what is the process to enforce the return of the prisoner to Ohio to serve the balance of his Ohio sentence. The IAD does not explicitly set forth the process by which a receiving state obtains custody of a prisoner from a sending state following completion of the prisoner's term of incarceration in the sending state.

It is well-established, however, that, "the right of one state to demand and the duty of another state to award extradition of fugitives from justice rests primarily upon section 2 of article 4 of the constitution of the United States." *Thomas v. Evans*, 73 Ohio St. 140, 143-44, 76 N.E. 862, 863 (1905); *accord State ex rel. Gilpin v. Stokes*, 19 Ohio App. 3d 99, 100, 483 N.E.2d 179, 181-82 (Hamilton County 1984). Article IV, §2 of the United States Constitution provides, in part, as follows:

> A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime.

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[8] R.C. 109.36(B) defines "state," as used in R.C. 109.36, as meaning: "the state of Ohio, including but not limited to, ... all departments ... of the state of Ohio."

[9] Except as provided in R.C. 9.87(B), the state is required to indemnify a state officer or employee from liability incurred in the performance of his duties in a civil action arising under federal law, the law of another state, or the law of a foreign jurisdiction. R.C. 9.87(A). R.C. 9.87 does not, however, require the state to indemnify an officer or employee from liability incurred in the performance of his duties by paying any judgment in, or amount negotiated in settlement of, any civil action arising under state law, and a civil action for false imprisonment that is brought pursuant to R.C. 2725.25 clearly arises under state law.

The United States Congress has implemented this constitutional provision through 18 U.S.C. §3182 (1988), which reads as follows:

> Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

Accord R.C. 2963.20 ("[w]henever the governor demands a person charged with crime ... from the executive authority of any other state ... he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged and convey such person to the proper officer of the county in which the offense was committed").[10] Accordingly, if a prisoner returned to a sending state is a "fugitive from justice," as that phrase is used in 18 U.S.C. §3182 (1988), the Governor may demand the executive authority of the sending state to deliver the prisoner into the custody of an official from the Department.

The phrase "fugitive from justice" is not defined for purposes of 18 U.S.C. §3182 (1988). It is, however, definitively and conclusively settled that, "a person charged within the demanding state of committing a crime prohibited by its laws and who thereafter has left that state, no matter for what purpose or under what belief, is a fugitive from justice." *In re Rowe*, 67 Ohio St. 2d 115, 119, 423 N.E.2d 167, 170-71 (1981); *see Chamberlain v. Celeste*, 729 F.2d 1071 (6th Cir. 1984). Also, it is uniformly recognized that an individual charged with a crime who has not satisfied the judgment against him is a fugitive from justice. *Carpenter v. Jamerson*, 69 Ohio St. 2d 308, 432 N.E.2d 177 (1982); *Chamberlain v. Celeste*. Consequently, a prisoner who is convicted and sentenced by an Ohio court and who is returned to a sending state prior to the execution of that sentence is subject to extradition as a fugitive because, as an individual with an unexpired sentence, he remains criminally charged. *See Chamberlain v. Celeste; cf. United States ex rel. Moulthrope v. Matus*, 218 F.2d 466 (2nd Cir. 1954) (an individual forcibly extradited from Florida to Connecticut was a fugitive from

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[10] "[W]hen interstate extradition is sought upon the basis that one has committed an offense in the demanding state and fled therefrom to an asylum state, federal law, both constitutional and statutory, insofar as it is applicable, is controlling." *In re Rowe*, 67 Ohio St. 2d 115, 117, 423 N.E.2d 167, 169 (1981); *accord In re Sanders*, 24 Ohio Law Abs. 605, 31 N.E.2d 246 (Franklin County 1937).

justice as against contention that by honoring Connecticut's demand for extradition Florida has given the individual an irrevocable right of asylum in Connecticut); *Ex parte Anthony*, 198 Wash. 106, 87 P.2d 302 (1939) (an individual who was sentenced by a federal court in California and taken to penitentiary in Washington for imprisonment and who was sought to be extradited on his release from Washington penitentiary by California authorities was a fugitive from justice within the meaning of the Constitution and laws of the United States and was subject to extradition).

Because a prisoner who is convicted and sentenced by an Ohio court following compliance with the appropriate procedural requirements of the IAD, and who is returned to a sending state prior to the execution of the Ohio sentence, is a "fugitive from justice," as that phrase is used in 18 U.S.C. §3182 (1988), the Governor may demand the executive authority of the sending state to deliver the prisoner into the custody of an official from the Department. Thus, pursuant to article IV, §2 of the United States Constitution and 18 U.S.C. §3182 (1988), the Governor may demand the executive authority of a state to deliver into the custody of an official from the Department a prisoner who was convicted and sentenced by an Ohio court, was subsequently returned to the sending state under the IAD prior to the execution of the Ohio sentence, and has served his sentence of imprisonment in the sending state.[11]

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[11] Prior to the adoption of the IAD, if a prisoner incarcerated in a state penal institution was wanted by law enforcement officials from another state to be a witness, to face pending criminal charges, to serve another sentence already imposed, or for any one of a number of more or less compelling reasons, the officials filed a detainer. Dauber, *Reforming the Detainer System: A Case Study*, 7 Crim. L. Bull. 669 (1971). A detainer is a notification filed with the institution in which a prisoner is serving a sentence, requesting that incarcerating authority to hold the prisoner for the law enforcement officials of the requesting state or notify such officials when the prisoner is to be released. *Id.* Thus, under common law rules, the law enforcement officials of a requesting state could place a detainer on a prisoner incarcerated in another state in order to extradite him upon completion of his sentence of imprisonment in a detaining state to the requesting state to serve an unexpired sentence of imprisonment.

It is well-settled that

> [s]tatutes are to be read and construed in the light of and with reference to the rules and principles of the common law in force at the time of their enactment, *and in giving construction to a statute the legislature will not be presumed or held, to have intended a repeal of the settled rules of the common law unless the language employed by it clearly expresses or imports such intention.* (Emphasis added.)

State ex rel. Morris v. Sullivan, 81 Ohio St. 79, 90 N.E. 146 (1909) (syllabus, paragraph three); *accord State ex rel. Hunt v. Fronizer*, 77 Ohio St. 7, 16, 82 N.E. 518, 521 (1907). Hence, if the language of a statute does not clearly import an intention to abrogate a settled rule of the common law, the rule will be given force and effect.

There is no language in the IAD evidencing a legislative intention to abrogate the rule of the common law authorizing the law enforcement officials of a requesting state to place a detainer on a prisoner incarcerated in another state in order to extradite him upon completion of his sentence of

However, if a prisoner against whom a detainer is lodged made a request, pursuant to article III of the IAD, for final disposition of the indictment, information, or complaint on which the detainer is based, the request for final disposition is deemed "a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state." Interstate Agreement on Detainers, art. III(e). Because a request for final disposition made by a prisoner pursuant to article III of the IAD is deemed a waiver of extradition, it is unnecessary for the Governor to demand the executive authority of a sending state to deliver the prisoner into the custody of an official from the Department. Rather, a sending state must deliver the prisoner into the custody of an official from the Department upon completion of the prisoner's sentence of imprisonment in the sending state.[12]

In light of the foregoing, it must be concluded that under article IV, §2 of the United States Constitution and 18 U.S.C. §3182 (1988), the Governor may demand the executive authority of a sending state to deliver into the custody of an official from the Department a prisoner who was convicted and sentenced by an Ohio court, was subsequently returned to the sending state prior to the execution of the Ohio sentence, and has served his sentence of imprisonment in the sending state. However, if the prisoner initiated a request for final disposition pursuant to article III of the IAD, it is unnecessary for the Governor to demand the executive authority of the sending state to deliver the prisoner into the custody of an official from the Department; rather, the sending state must deliver the prisoner into the custody of an official from the Department upon completion of the prisoner's sentence of imprisonment in the sending state.

Authority of the Parole Board to Conduct a Parole Release Hearing

Your final question asks, if a prisoner is returned to a sending state, is the Parole Board obligated to conduct a parole release hearing when the prisoner has served sufficient time to be eligible for parole consideration. Pursuant to R.C. 2929.41,

> (A) Except as provided in division (B) of this section, a sentence of imprisonment shall be served concurrently with any other sentence of imprisonment imposed by a court of this state, another state, or the United States. In any case, a sentence of imprisonment for misdemeanor shall be served concurrently with a sentence of

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imprisonment in a detaining state to the requesting state to serve an unexpired sentence of imprisonment. The rule thus remains in full force and effect. Accordingly, the Department may place a detainer on a prisoner incarcerated in a sending state in order to extradite him upon completion of his sentence of imprisonment in the sending state to the State of Ohio to serve his Ohio sentence.

[12] As indicated in footnote eleven, the Department may place a detainer on a prisoner incarcerated in a sending state requesting the sending state to hold the prisoner until custody of the prisoner is transferred to the Department.

> imprisonment for felony served in a state or federal penal or reformatory institution.
> (B) A sentence of imprisonment shall be served consecutively to any other sentence of imprisonment, in the following cases:
> (1) When the trial court specifies that it is to be served consecutively;
> (2) When it is imposed for a violation of division (A)(2), (3), or (4) of section 2907.21, division (B) of section 2917.02, section 2907.321, section 2907.322, division (B) (5) or (6) of section 2919.22, section 2921.34, or division (B) of section 2921.35 of the Revised Code, for a violation of section 2907.22 of the Revised Code that is a felony of the second degree, or for a violation of section 2903.13 of the Revised Code for which a sentence of imprisonment is imposed pursuant to division (C)(2) of that section;
> (3) When it is imposed for a new felony committed by a probationer, parolee, or escapee;
> (4) When a three-year term of actual incarceration is imposed pursuant to section 2929.71 of the Revised Code;
> (5) When a six-year term of actual incarceration is imposed pursuant to section 2929.72 of the Revised Code.

Thus, an Ohio sentence of imprisonment may be served either concurrently with or consecutively to another sentence of imprisonment imposed by a court of another state or the United States.

You have not indicated whether the Ohio sentence of imprisonment is to be served concurrently with or consecutively to the sentence of imprisonment imposed by the sending state. If the Ohio sentence of imprisonment is to be served concurrently with the sentence of imprisonment imposed by the sending state, the prisoner's minimum and maximum term, in the case of an indefinite or definite sentence, is reduced by the total number of days that the prisoner was incarcerated in the sending state. If the Ohio sentence of imprisonment is to be served consecutively to the sentence of imprisonment imposed by the sending state, the prisoner's minimum and maximum term, in the case of an indefinite sentence or definite sentence, is not reduced by the total number of days that the prisoner was incarcerated in the sending state; rather, the prisoner must be returned to Ohio upon completion of his sentence of imprisonment in the sending state to begin serving his Ohio sentence.

Because an individual is not eligible for parole until he has served his minimum term or definite sentence, diminished as provided by law, *see* R.C. 2967.13; R.C. 2967.25; *see also* R.C. 2967.19; R.C. 2967.193; R.C. 5145.11; R.C. 5145.12, a prisoner who is serving his Ohio sentence of imprisonment consecutively to a sentence of imprisonment imposed by the sending state will not become eligible for parole on his Ohio sentence of imprisonment until he begins serving his Ohio sentence and serves the minimum amount of time necessary before parole becomes a consideration. A prisoner who is serving his Ohio sentence of imprisonment concurrently with a sentence of imprisonment imposed by the sending state may, however, become eligible for parole on his Ohio sentence of imprisonment while he is serving his sentence of imprisonment imposed by the sending state. Because a prisoner who is serving his Ohio sentence of imprisonment consecutively to a sentence of imprisonment imposed by the sending state cannot become eligible for parole on his

Ohio sentence while serving his sentence of imprisonment imposed by the sending state, it is assumed, for purposes of this opinion, that the Ohio sentence of imprisonment is to be served concurrently with the sentence of imprisonment imposed by the sending state.

Under rule 5120-2-04(I), if a prisoner receives a sentence to the Department

> *concurrent* with a sentence in an institution in another state or a federal institution, *no action will be taken towards considering him for parole or otherwise terminating his sentence until the inmate is physically committed to the custody of this department.* At that time, the inmate's minimum and maximum or definite sentence shall be reduced pursuant to this rule by the total number of days confined for the crime as certified by the court and the sheriff. (Emphasis added.)

This rule provides that no action is to be taken towards considering for parole a prisoner serving an Ohio sentence of imprisonment concurrent to a sentence of imprisonment that the prisoner is serving in a penal institution of another state until the prisoner is physically committed to the custody of the Department. Under Ohio law, "reasonable rules promulgated by an administrative body under a valid grant from the Legislature have the force and effect of law." *State ex rel. Kildow v. Industrial Comm'n*, 128 Ohio St. 573, 580, 192 N.E. 873, 876 (1934); *accord Doyle v. Ohio Bureau of Motor Vehicles*, 51 Ohio St. 3d 46, 554 N.E.2d 97 (1990) (syllabus, paragraph one). Pursuant to rule 5120-2-04(I), therefore, the Parole Board is not required to conduct a parole release hearing at the time that a prisoner, who is serving an Ohio sentence of imprisonment concurrent with a sentence of imprisonment that the prisoner is serving in a penal institution of another state, has served sufficient time to be eligible in Ohio for parole consideration.

Conclusions

Based upon the foregoing, it is my opinion, and you are hereby advised that:

1. Upon completion of the prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints that form the basis of the detainer or detainers, or any other charge or charges arising out of the same transaction, a county prosecuting attorney who accepts temporary custody of a prisoner under the Interstate Agreement on Detainers is required to return the prisoner without delay to the state that detained him at the time that he initiated a request for final disposition pursuant to Article III of the Interstate Agreement on Detainers or a request for custody or availability was initiated pursuant to Article IV of the Interstate Agreement on Detainers.

2. The Department of Rehabilitation and Correction must comply with a court order that requires the Department to process a prisoner prior to the prisoner's return to the state that detained him at the time that he initiated a request for final disposition pursuant to Article III of the Interstate Agreement on Detainers or a request for custody or availability was initiated pursuant to Article IV of the

Interstate Agreement on Detainers.

3.When the Department of Rehabilitation and Correction is ordered by one court to return a prisoner to the state that detained him at the time that he initiated a request for final disposition pursuant to Article III of the Interstate Agreement on Detainers or a request for custody or availability was initiated pursuant to Article IV of the Interstate Agreement on Detainers, and by a second court to incarcerate the prisoner, the Department may process the prisoner and, upon completion of the processing, transfer physical custody of the prisoner to the original place of imprisonment.

4.Neither the Department of Rehabilitation and Correction nor any of its employees violate R.C. 2725.25 when the Department transports a prisoner back to the state that detained him at the time that he initiated a request for final disposition pursuant to Article III of the Interstate Agreement on Detainers or a request for custody or availability was initiated pursuant to Article IV of the Interstate Agreement on Detainers.

5.Subject to statutory exceptions, employees of the Department of Rehabilitation and Correction are entitled to civil immunity as provided in R.C. 9.86 and representation by the Attorney General as provided in R.C. 109.361 when sued for violating R.C. 2725.25.

6.Pursuant to article IV, §2 of the United States Constitution and 18 U.S.C. §3182 (1988), the Governor may demand the executive authority of a state to deliver into the custody of an official from the Department of Rehabilitation and Correction a prisoner who was convicted and sentenced by an Ohio court, was subsequently returned to the original state of incarceration under the Interstate Agreement on Detainers prior to the execution of the Ohio sentence, and has served his sentence of imprisonment in the sending state. However, if the prisoner initiated a request for final disposition pursuant to Article III of the Interstate Agreement on Detainers, it is unnecessary for the Governor to demand the executive authority of that state to deliver the prisoner into the custody of an official from the Department; rather, the state in which the prisoner is incarcerated must deliver the prisoner into the custody of an official of the Department upon completion of the prisoner's sentence of imprisonment in that state.

7.Pursuant to 17 Ohio Admin. Code 5120-2-04(I), the Parole Board is not required to conduct a parole release hearing at the time that a prisoner has served sufficient time to be eligible for parole consideration if that prisoner is serving an Ohio sentence of imprisonment concurrent with a sentence of imprisonment in a penal institution of another state.

Respectfully,

LEE FISHER
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December 30, 1993

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SYLLABUS: 93-080

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7.Pursuant to 17 Ohio Admin. Code 5120-2-04(I), the Parole Board is not required to conduct a parole release hearing at the time that a prisoner has served sufficient time to be eligible for parole consideration if that prisoner is serving an Ohio sentence of imprisonment concurrent with a sentence of imprisonment in a penal institution of another state.