

OPINION NO. 93-003**Syllabus:**

A county sheriff has no duty to transport from a city police station located within his county to the county jail, individuals arrested by a city police officer without a warrant or pursuant to a warrant issued by a state or federal court, or the Governor of Ohio.

To: Frank Pierce, Belmont County Prosecuting Attorney, St. Clairsville, Ohio
By: Lee Fisher, Attorney General, February 26, 1993

You have requested an opinion regarding the transportation of individuals who are arrested by city police officers and taken to the city police station. Your concern is the transportation of these individuals from the city police station to the county jail. Specifically, your opinion request states:

1. A city police officer arrests a person "on sight" or in the act of committing a violation of the Ohio Revised Code. The state code criminal charge will be filed in the applicable county court division during the next business day. He takes the arrestee to the police station. The circumstances do not merit recognizance and the person cannot post bond. As between the county Sheriff and the city police department, who transports this arrestee to the county jail?
2. A city police officer stops a person on a traffic violation (or any other charge) which would normally result in only a citation, but finds out the defendant has a warrant for his arrest issued by a county court judge on an unrelated charge. He takes the defendant into custody at the station based on said warrant. Who transports the prisoner to the county jail, the city or the county? Does it make any difference if the warrant is issued by (a) the Common Pleas Court or (b) a Court of another county[,] state or a federal court, or (c) the Governor?

Transportation of Individuals Arrested Without a Warrant

No statutory provision expressly confers upon either the county sheriff or a city police officer a duty to transport from a city police station to the county jail an individual arrested by a city police officer without a warrant for a violation of a statute of the Ohio Revised Code. Therefore, an examination of the provisions of law providing for the custody of individuals arrested by peace officers is required in order to determine whether the General Assembly intended to delegate this duty to county sheriffs.¹ See generally *Henry v. Central Nat'l Bank*, 16 Ohio St. 2d 16, 242 N.E.2d 342 (1968) (syllabus, paragraph two) ("[t]he primary purpose

¹ The Attorney General is only authorized to give legal advice to state officers and boards, R.C. 109.12; R.C. 109.13, and county prosecuting attorneys, R.C. 109.14, concerning matters relating to their official duties. Since a county prosecuting attorney has no duty to advise municipal corporations or their officials, see R.C. 309.09(A); R.C. 3313.35; see also R.C. 733.51 (the city director of law shall serve the city directors and officers as legal counsel and attorney), the Attorney General is not authorized to determine the responsibilities of city police officers with respect to the transportation from a city police station to the county jail of

of the judiciary in the interpretation or construction of statutes is to give effect to the intention of the General Assembly, as gathered from the provisions enacted, by the application of well-settled rules of interpretation, the ultimate function being to ascertain the legislative will").

Under R.C. 2935.03, a city police officer is authorized to arrest an individual without a warrant and detain him until a warrant can be obtained. *See generally City of Cincinnati v. Alexander*, 54 Ohio St. 2d 248, 250, 375 N.E.2d 1241, 1243 (1978) ("a municipal police officer is a 'police officer' within the meaning of that term in R.C. 2935.03"). After making a warrantless arrest, a city police officer must take the individual before a court or magistrate having jurisdiction of the offense and file or cause to be filed an affidavit describing the offense for which the individual was arrested. R.C. 2935.05; Ohio R. Crim. P. 4(E)(2). Upon the filing of the affidavit, a judge, clerk, or magistrate issues a warrant. R.C. 2935.08; *see* Ohio R. Crim. P. 4(A). "All further detention and further proceedings shall be pursuant to such affidavit...and warrant." R.C. 2935.08. Accordingly, until a court or magistrate issues a warrant, a city police officer is authorized, pursuant to R.C. 2935.03, to detain an individual arrested by him without a warrant.

Moreover, until individuals arrested by city police officers are delivered and registered in the county jail, a county sheriff has no statutorily imposed duties with respect to the custody and transportation of individuals arrested by city police officers without a warrant.² *See* R.C. 2935.16 (when it comes to the attention of any judge or magistrate that an individual is being held in any jail or place of custody in his jurisdiction without commitment from a court or magistrate, the judge or magistrate may require the custodian of that jail to either produce the individual before the court or magistrate issuing the warrant or before him); *Cuyahoga County Hosp. v. City of Cleveland*, 15 Ohio App. 3d 70, 71, 472 N.E.2d 757, 759 (Cuyahoga County 1984) ("[t]he responsibility for the care and sustenance of a prisoner falls upon the one who exerts actual, physical dominion and control over the prisoner"). *See generally* R.C. 341.01 ("[t]he sheriff shall have charge of the county jail and all persons confined therein").

With respect to your first question, you indicate that an affidavit is filed with the county court after the individual is transferred to the county jail. Since a warrant is issued by a court after the filing of an affidavit, R.C. 2935.08; *see* Ohio R. Crim. P. 4(A), the individual is not detained pursuant to a court-issued warrant, but rather under the authority of R.C. 2935.03. Because of the fact that R.C. 2935.03 imposes upon a city police officer a duty to detain, until a warrant is obtained, an individual arrested by him without a warrant and the fact that a county sheriff is not delegated, prior to an individual's commitment to the county jail, any duties regarding the custody and transportation of an individual arrested by a city police officer, it must be concluded that the General Assembly did not intend the county sheriff to transport from a city police station to the county jail, an individual arrested by a city police officer without a warrant.

an individual arrested by a city police officer. However, a county sheriff as a county officer, *see* R.C. Chapter 311, is entitled to legal advice from the county prosecuting attorney. 1933 Op. Att'y Gen. No. 1750, vol. II, p. 1603; *see* R.C. 309.09(A). Therefore, this opinion is limited to whether a county sheriff has a duty to provide transportation from a city police station to the county jail to an individual arrested by a city police officer.

² It should be noted that your request letter references 1987 Op. Att'y Gen. No. 87-091. That opinion, however, concerns the transportation of individuals from the jail to a municipal court, and is therefore not helpful to this analysis.

Transportation of Individuals Arrested Pursuant to a Warrant

Your second question involves situations in which an individual is arrested pursuant to a warrant. You have specifically asked about warrants issued by a county court, court of common pleas, federal court and the Governor of Ohio. Ohio R. Crim. P. 4(E)(1) sets forth provisions, which are to be followed by all courts of this state in the exercise of criminal jurisdiction, Ohio R. Crim. P. 1(A), concerning the duties of an arresting officer when he makes an arrest pursuant to a court-issued warrant. Ohio R. Crim. P. 4(E)(1) provides, in part:

Where under a warrant a person is arrested either in the county from which the warrant issued or in an adjoining county, the arresting officer shall, except as provided in division (F),³ bring the arrested person without unnecessary delay before the court that issued the warrant. Where the arrest occurs in any other county, the arrested person shall, except as provided in division (F), be brought without unnecessary delay before a court of record therein, having jurisdiction over such an offense, and he shall not be removed from that county until he has been given an opportunity to consult with an attorney, or another person of his choice, and to post bail to be determined by the judge or magistrate of that court. (Footnote added.)

Thus, under Ohio R. Crim. P. 4(E)(1), a city police officer arresting an individual pursuant to a state court-issued warrant is required to take that individual before either the court that issued the warrant or a court of record which has jurisdiction over the offense set forth in the warrant. *See R.C. 2935.13*

Similarly, with respect to the custody of individuals arrested pursuant to a warrant issued by a federal court, Fed. R. Crim. P. 5(a) provides, in part:

An officer making an arrest under a warrant issued upon a complaint ... shall take the arrested person without unnecessary delay before the nearest available federal magistrate or, in the event that a federal magistrate is not reasonably available, before a state or local judicial officer authorized by 18 USC § 3041.

A city police officer, therefore, is required to take before a federal magistrate or a state or local judicial officer an individual arrested by him pursuant to a warrant issued by a federal court. Fed. R. Crim. P. 5(a). *See generally Bennett v. Campbell*, 564 F.2d 329, 331 n.1 (9th Cir. 1977) ("[u]nder the authority of Rule 5(a) and 18 U.S.C. 3041, 3043, [state] officers can 'without undue delay' take the person arrested before a federal magistrate or various state officials, should the federal magistrate be unavailable").

³ Ohio R. Crim. P. 4(F) provides, in part:

In misdemeanor cases where a person has been arrested with or without a warrant, the arresting officer, the officer in charge of the detention facility to which the person is brought or the superior of either officer, without unnecessary delay, may release the arrested person by issuing a summons when issuance of a summons appears reasonably calculated to assure the person's appearance.

In addition to situations involving court-issued warrants, you also ask about arrests made pursuant to warrants issued by the Governor of Ohio. Pursuant to R.C. 2963.07,

[i]f the governor decides that a demand for extradition should be complied with, he shall sign a warrant of arrest,....

Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to sections 2963.01 to 2963.27, inclusive, of the Revised Code, to the authorized agent of the demanding state.

R.C. 2963.07, thus, requires a city police officer arresting an individual pursuant to a warrant issued by the Governor of Ohio to deliver that individual to the authorized agent of a demanding state.

A review of the above indicates that Ohio R. Crim. P. 4(E)(1), Fed. R. Crim. P. 5(a), and R.C. 2963.07 require a city police officer making an arrest pursuant to a warrant to deliver the individual named in the warrant to a court, magistrate, or authorized agent of a demanding state. Depending upon the entity issuing the warrant and the circumstances arising after the arrest, a city police officer, who makes an arrest pursuant to a warrant, is required to deliver the individual named in the warrant before the court issuing the warrant, a court of record which has jurisdiction over the offense set forth in the warrant, a federal magistrate, a state or local judicial officer, or an authorized agent of a demanding state. Accordingly, an individual arrested by a city police officer pursuant to a warrant issued by a state or federal court or by the Governor of Ohio remains in the custody of that officer until taken before the appropriate court or agent.

Additionally, as stated above, the county sheriff has no duties with respect to an individual arrested by a city police officer until such time as the individual is delivered and registered in the county jail. Since an individual arrested by a city police officer pursuant to a warrant issued by a state or federal court or by the Governor of Ohio remains in the custody of that officer until taken before the appropriate court or agent and a county sheriff is not delegated, prior to an individual's commitment to the county jail, any duties regarding the custody and transportation of an individual arrested by a city police officer, it must be concluded that the General Assembly did not intend the county sheriff to transport from a city police station to the county jail, an individual arrested by a city police officer pursuant to a warrant issued by a state or federal court or by the Governor of Ohio.

Therefore, it is my opinion, and you are hereby advised, that a county sheriff has no duty to transport from a city police station located within his county to the county jail, individuals arrested by a city police officer without a warrant or pursuant to a warrant issued by a state or federal court, or the Governor of Ohio.