

**OPINION NO. 2005-026****Syllabus:**

1. A county sheriff may not release from the county jail a person who has not served his entire term of imprisonment unless the early release has been ordered by a court or the Governor.
2. Pursuant to R.C. 2937.32, a county sheriff may not release from the county jail a person accused of committing a criminal offense when the person does not offer sufficient bail for his release. (1988 Op. Att’y Gen. No. 88-060, syllabus, paragraph three, approved and followed.)
3. A county sheriff may not refuse to admit and confine in the county jail, or confine in another jail or detention facility that the county sheriff is authorized to use, a person who has been sentenced by a court to a term of imprisonment in the county jail.

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**To: Thomas F. Grennan, Brown County Prosecuting Attorney, Georgetown, Ohio**

**By: Jim Petro, Attorney General, June 29, 2005**

You have requested an opinion concerning the confinement of persons in a county jail managed and operated by a county sheriff.<sup>1</sup> In your letter you explain

<sup>1</sup> Because “[t]he Attorney General is not empowered to provide authoritative interpretations of federal law[.]” 1989 Op. Att’y Gen. No. 89-001 at 2-1 n.1, it is

that because of overcrowding and budget shortfalls the county sheriff is proposing to release from the county jail persons who have not finished serving their terms of imprisonment or who were imprisoned for failing to offer sufficient bail.<sup>2</sup> In addition, the sheriff has refused to admit and confine in the county jail persons sentenced by a court to a term of imprisonment in the county jail. In light of these actions by the county sheriff, you wish to know the following:

assumed, for the purpose of this opinion, that the persons confined in the county jail have been charged with, or convicted of, or pleaded guilty to, a criminal offense under a state statute or a municipal ordinance, but not a law of the United States. *See generally* R.C. 341.21(A) (“[t]he board of county commissioners may direct the sheriff to receive into custody prisoners charged with or convicted of crime by the United States, and to keep those prisoners until discharged”); R.C. 1905.35 (“[i]mprisonment under the ordinances of a municipal corporation shall be in the workhouse or other jail of the municipal corporation[,]” unless the county jail is being used by the municipal corporation “for the purpose of imprisonment”); R.C. 2949.08 (a person who is sentenced for committing a felony or misdemeanor offense under state law may be confined in the county jail); R.C. 5120.161 (the Department of Rehabilitation and Correction may house prisoners convicted of certain fourth or fifth degree felonies under state law in a county jail).

<sup>2</sup> You have informed us that the sheriff does not plan to release persons from the county jail for the purpose of confining them in another jail or detention facility until they are discharged by due course of law or transferred back to the county jail. *See, e.g.*, R.C. 341.12 (authorizing a county sheriff to use the jail of another county); R.C. 2963.30 (an officer of another state in which a criminal charge is pending against a person is entitled to lodge a detainer for temporary custody of the person for the purpose of permitting prosecution on the charge or charges which form the basis of the detainer). Also, the persons will not be released from the county jail for any purpose in which the persons remain in the legal custody of, or subject to the control and supervision of, a law enforcement agency or probation agency. *See, e.g.*, R.C. 2929.24(B) (“[a] court that sentences an offender to a jail term under this section may permit the offender to serve the sentence in intermittent confinement or may authorize a limited release of the offender as provided in [R.C. 2929.26(B)]”); R.C. 2951.06 (a person may be released from physical custody within the county jail to serve a community control sanction under the control and supervision of a probation agency); R.C. 5147.28 (the court of common pleas and each municipal and county court in a county may establish a work-release program whereby a person may be allowed to temporarily leave the county jail to go to his place of employment). Finally, the persons will not be released because they have received a pardon, commutation, or reprieve authorizing their early release from a term of imprisonment in the county jail. *See generally* Ohio Const. art. III, § 11 (the Governor may grant reprieves, commutations, and pardons). Accordingly, the term “release,” as used throughout this opinion, means a situation in which a person is discharged from the county jail by the county sheriff and is no longer in the legal custody or under the control and supervision of a law enforcement agency or probation agency.

1. May a county sheriff release from the county jail a person who has not served his entire term of imprisonment when there is no order from a court or the Governor granting the person an early release from his term of imprisonment?<sup>3</sup>
2. May a county sheriff release from the county jail a person accused of committing a criminal offense when the person does not offer sufficient bail for his release?
3. Is a county sheriff authorized to refuse to admit and confine in the county jail a person who has been sentenced by a court to a term of imprisonment in the county jail?<sup>4</sup>

For the reasons that follow, a county sheriff may not release from the county jail a person who has not served his entire term of imprisonment unless the early release has been ordered by a court or the Governor, nor may he release from the county jail a person accused of committing a criminal offense when the person does not offer sufficient bail for his release. Moreover, a county sheriff may not refuse to admit and confine in the county jail, or confine in another jail or detention facility that the county sheriff is authorized to use, a person who has been sentenced by a court to a term of imprisonment in the county jail.

<sup>3</sup> As part of your first question, you also ask whether a person who has been released from the county jail by the county sheriff before serving his entire term of imprisonment can still be required to serve the remaining time on his sentence of imprisonment. It is beyond the scope of the opinion rendering function of the Attorney General to determine a person's constitutional and statutory rights in a criminal proceeding. That determination involves questions of fact that cannot be resolved by means of an opinion of the Attorney General. *See generally* 1993 Op. Att'y Gen. No. 93-033 (syllabus, paragraph one) (questions of fact "cannot be determined by means of an Attorney General opinion").

Although we are unable to address this part of your first question, we note the general rule that, "[a]ny failure by the court *or the sheriff* to accomplish their duties [does] not limit the state's power to enforce the conviction." *State v. Dawley*, No. 50974, 1986 Ohio App. LEXIS 8401, at \*3 (Cuyahoga County Sept. 25, 1986) (emphasis added); *accord Guerrieri v. Maxwell*, 174 Ohio St. 40, 45, 186 N.E.2d 614 (1962); *Norton v. Green*, 173 Ohio St. 531, 535, 184 N.E.2d 401 (1962); *State v. Wobler*, 10 Ohio App. 3d 155, 156, 461 N.E.2d 927 (Paulding County 1983); *see also In re Silverman*, 69 Ohio App. 128, 132-33, 42 N.E.2d 87 (Hamilton County 1942), *appeal dismissed*, 140 Ohio St. 335, 43 N.E.2d 238 (1942); 1946 Op. Att'y Gen. No. 1025, p. 438, at 444. *But see generally* Ohio R. Crim. P. 32(A) ("[s]entence shall be imposed without unnecessary delay").

<sup>4</sup> You also ask whether there is any situation in which a county sheriff may, on his own initiative, release a person imprisoned in the county jail. Our answers to your first two questions resolve this question, and so we need not separately address this question.

### **A County Sheriff That Operates and Manages a County Jail Is Responsible for the Custody of Persons Confined in the County Jail**

Before turning to your specific questions, it is helpful to review the custodial duty imposed upon a county sheriff who operates and manages a county jail. R.C. 307.01(A) authorizes a board of county commissioners to provide a county jail “when, in its judgment, [it is] needed.” “The county jail, formerly called the common [gaol], is for the confinement of persons lawfully committed thereto by some competent tribunal and for the use of peace officers and others who are authorized to make arrests for the purpose of holding the persons arrested until commitment by such competent tribunal may be procured.” 1927 Op. Att’y Gen. No. 972, vol. III, p. 1702, at 1705; *see* 2004 Op. Att’y Gen. No. 2004-024 at 2-205 and 2-206; 1995 Op. Att’y Gen. No. 95-011; 1988 Op. Att’y Gen. No. 88-060; 1928 Op. Att’y Gen. No. 2246, vol. II, p. 1505.

Pursuant to R.C. 341.01, the management and operation of a county jail is vested in the county sheriff, unless the board of county commissioners enters into a contract under R.C. 9.06 for the private operation and management of the county jail:

*The sheriff shall have charge of the county jail and all persons confined therein. He shall keep such persons safely, attend to the jail, and govern and regulate the jail according to the minimum standards for jails in Ohio promulgated by the department of rehabilitation and correction.*

The sheriff’s responsibilities under this section do not extend to a jail or workhouse that is the subject of a contract entered into under [R.C. 9.06]. (Emphasis added.)

*See* R.C. 311.20 (the county sheriff shall annually “prepare and submit to the board of county commissioners a budget estimating the cost of operating the jail and feeding its inmates for the ensuing fiscal year”); R.C. 341.04 (“[t]he sheriff shall visit the county jail and examine the condition of each prisoner, at least once during each month”); R.C. 341.05(A) (“[t]he sheriff shall assign sufficient staff to ensure the safe and secure operation of the county jail”); *see also* R.C. 341.35 (“[t]he board of county commissioners of a county with a county jail ... may enter into a contract under [R.C. 9.06] for the private operation and management of that facility, but only if the facility is used to house only misdemeanor inmates”). *See generally* R.C. 341.34(D) (all persons confined in a county minimum security jail, which is considered to be part of the county jail, shall be and shall remain, in all respects, under the control of the county authority that has responsibility for the management and operation of the county jail).

When a county sheriff operates and manages a county jail, the sheriff is required to maintain a jail register, which sets forth the name of each person confined in the jail, the date and cause of the person’s confinement, and the date and manner of the person’s discharge. R.C. 341.02; *see also* 15 Ohio Admin. Code 5120:1-8-01(A); 15 Ohio Admin. Code 5120:1-10-01(A); 15 Ohio Admin. Code 5120:1-12-01(A). *See generally* 2004 Op. Att’y Gen. No. 2004-024 at 2-210 (“when a person

is confined in a city jail, a booking and identification record must be made of that person's confinement in the jail"). In addition, the sheriff is required to report the escape of a person from the county jail to various government officials and a newspaper of general circulation in the county. R.C. 341.011(A).

In light of the foregoing, it follows that a county sheriff that operates and manages a county jail is responsible for the custody of a person confined in the county jail. *See* R.C. 2949.08(A) (a person serving a term of imprisonment in the county jail is in the custody of the county sheriff); 1987 Op. Att'y Gen. No. 87-062 at 2-382 ("a person who is arrested for a misdemeanor violation and who is brought to the jail is transferred to the custody and control of the sheriff when he is booked"); 1980 Op. Att'y Gen. No. 80-084 at 2-333 ("[w]hen confined in a county jail, a parolee comes within the management and control of the county sheriff"); 1965 Op. Att'y Gen. No. 65-204 at 2-448 ("[o]nce a sentence has gone into execution, the sheriff has custody of the prisoner for the term of the sentence and is responsible for the safe keeping of the prisoner in the county jail" (citations omitted)); *see also* 2004 Op. Att'y Gen. No. 2004-024 at 2-210 ("[u]pon confinement in a city jail, the person is under the control of the city officials operating the city jail").

#### **A County Sheriff May Not Release from the County Jail a Person Who Has Not Served His Entire Term of Imprisonment**

Let us now turn to your first question, which asks whether a county sheriff may release from the county jail a person who has not served his entire term of imprisonment when there is no order from a court or the Governor granting the person an early release from his term of imprisonment. Because a county sheriff is responsible for the custody of a person confined in the county jail until the person has served his entire term of imprisonment, the sheriff may not release from the county jail a person who has not served his entire term of imprisonment unless the early release has been ordered by a court or the Governor.

A county sheriff, as a creature of statute, *see* R.C. 311.01, has only those powers expressly provided by statute or as may exist by necessary implication. 1987 Op. Att'y Gen. No. 87-099 at 2-657; 1986 Op. Att'y Gen. No. 86-105 at 2-575; 1986 Op. Att'y Gen. No. 86-023 at 2-120. In accordance with this principle, a county sheriff may not release a person from the county jail absent express or implied statutory authority to do so.

No statute expressly authorizes a county sheriff to release from the county jail a person who has not served his entire term of imprisonment.<sup>5</sup> Thus, unless there is implied statutory authority, such an early release is not permitted.

<sup>5</sup> We are aware that R.C. 2949.08(C)(1) authorizes a county sheriff to reduce a person's term of imprisonment as follows:

If the person is sentenced to a jail for a felony or a misdemeanor, the jailer in charge of a jail shall reduce the sentence of a person delivered into the jailer's custody pursuant to [R.C. 2949.08(A)] by the total

In assessing the existence of implied authority, we note that R.C. 2949.08(A) provides as follows:

When a person who is convicted of or pleads guilty to a felony is sentenced to a community residential sanction in a community-based correctional facility pursuant to [R.C. 2929.16] or when a person who is convicted of or pleads guilty to a felony or a misdemeanor is sentenced to a term of imprisonment in a jail, the judge or magistrate shall order the person into the custody of the sheriff or constable, and the sheriff or constable shall deliver the person with the record of the person's conviction to the jailer, administrator, or keeper, *in whose custody the person shall remain until the term of imprisonment expires or the person is otherwise legally discharged.* (Emphasis added.)

R.C. 2949.08(A) thus indicates that a person who is sentenced to a term of imprisonment in the county jail must remain in the custody of the county sheriff until the person has served his entire term of imprisonment or the person is otherwise legally discharged.

As stated above, no statute authorizes a county sheriff to discharge from his custody a person who has not served his entire term of imprisonment. Instead, the authority to grant a person an early release from a term of imprisonment is conferred upon the courts and the Governor. *See, e.g.*, Ohio Const. art. III, § 11 (the Governor may grant a reprieve, commutation, or pardon to a person who has been convicted of, or pleaded guilty to, a criminal offense); R.C. 2929.20(B) (“a sentencing court may reduce the offender’s stated prison term through a judicial release in accordance with this section”); R.C. 2929.25(A)(1)(b) (a sentencing court may “[i]mpose a jail term under [R.C. 2929.24] from the range of jail terms authorized under that section for the offense, suspend all or a portion of the jail term imposed, and place the offender under a community control sanction or combination of community control sanctions authorized under [R.C. 2929.26, R.C. 2929.27, or R.C. 2929.28]”); R.C. 2947.151 (a court may authorize the reduction of a person’s term of imprisonment in the county jail for work done in the kitchen, in the jail offices,

number of days the person was confined for any reason arising out of the offense for which the person was convicted and sentenced, including confinement in lieu of bail while awaiting trial, confinement for examination to determine the person’s competence to stand trial or to determine sanity, and confinement while awaiting transportation to the place where the person is to serve the sentence.

R.C. 2949.08(C)(1) does not, however, authorize a county sheriff to release a person confined in the county jail before the person has served his entire term of imprisonment. Instead, this provision simply requires the sheriff to reduce the amount of time the person is required to serve in the county jail under a term of imprisonment by the amount of time that the person was confined in another place for any reason arising out of the offense for which the person was convicted and sentenced.

on the jail premises, or elsewhere); R.C. 2951.06 (“[u]pon entry in the records of the judge or magistrate of the sentence of a community control sanction provided for in [R.C. 2929.15 or R.C. 2929.25], the defendant shall be released from custody as soon as the requirements and conditions required by the judge supervising the community control sanction have been met”); R.C. 2953.21(G) (if a petition for post-conviction relief is granted, a court may discharge the petitioner); *see also*, e.g., 28 U.S.C. § 2242 (authorizing the filing of an application for a writ of habeas corpus). Consequently, by statute, the courts and the Governor, rather than a county sheriff, have the power to order the release of a person who has not served his entire term of imprisonment. *Cf. Municipal Court of Toledo v. State ex rel. Platter*, 126 Ohio St. 103, 184 N.E. 1 (1933) (syllabus, paragraph three) (“[t]he trial courts of this state do not have the inherent power to suspend execution of a sentence in a criminal case and may order such suspension only as authorized by statute”).

Accordingly, in the absence of either express or implied statutory authority, a county sheriff may not release from the county jail a person who has not served his entire term of imprisonment unless the early release has been ordered by a court or the Governor. *See generally* 1982 Op. Att’y Gen. No. 82-077 (syllabus) (“[a] county sheriff may not transfer persons sentenced to incarceration in the county jail to a city workhouse without a specific order from the sentencing judge providing for workhouse incarceration”).

#### **A County Sheriff May Not Release from the County Jail a Person Who Does Not Offer Sufficient Bail for His Release**

Your second question asks whether a county sheriff may release from the county jail a person accused of committing a criminal offense when the person does not offer sufficient bail for his release. Pursuant to R.C. 2937.32, a county sheriff may not release from the county jail a person accused of committing a criminal offense when the person does not offer sufficient bail for his release.

R.C. 2937.22 states that “[b]ail is security for the appearance of an accused to appear and answer to a specific criminal or quasi-criminal charge in any court or before any magistrate at a specific time or at any time to which a case may be continued, and not depart without leave.” *See* R.C. 2937.31; R.C. 2963.14; Ohio R. Crim. P. 46; Ohio Traf. R. 4(A); *see also* R.C. 2935.27; R.C. 2937.221; R.C. 2937.23(A)(3); R.C. 2937.35. Unless an Ohio driver’s or commercial driver’s license is used as bail, *see* R.C. 2935.27; R.C. 2937.221, the type of bail a person must post in a criminal proceeding is established by the courts, R.C. 2935.15; R.C. 2935.27(A)(2); R.C. 2937.22; R.C. 2937.23; R.C. 2963.14; Ohio R. Crim. P. 46; Ohio Traf. R. 4. Any of the following types of bail in the amount set by the court may be posted:

- (1) The personal recognizance of the accused or an unsecured bail bond;
- (2) A bail bond secured by the deposit of ten percent of the amount of the bond in cash. Ninety percent of the deposit shall be returned upon compliance with all conditions of the bond;

(3) A surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the defendant.

Ohio R. Crim. P. 46(A); *see* R.C. 2937.22.

When a person confined in the county jail posts the bail required by the court, the county sheriff is required to release the person from the county jail. *See* R.C. 2937.29; R.C. 2937.30; R.C. 2937.34; Ohio R. Crim. P. 46; 1988 Op. Att’y Gen. No. 88-060 at 2-302. However, “[i]f an offense is notailable, if the court denies bail to the accused, or *if the accused does not offer sufficient bail, the court shall order the accused to be detained.*” R.C. 2937.32 (emphasis added). R.C. 2937.32 thus requires a court to order the confinement of a person who fails to offer sufficient bail for his release.

1988 Op. Att’y Gen. No. 88-060 at 2-303 examined R.C. 2937.32, and advised that a commitment to the county jail under this statute “would control the duty of the sheriff to detain a prisoner awaiting trial” and impose a duty upon the sheriff to detain the prisoner. Although R.C. 2937.32 has been amended since the issuance of 1988 Op. Att’y Gen. No. 88-060, *see* 1999-2000 Ohio Laws, Part IV, 8197, 8200 (Sub. S.B. 8, eff. July 29, 1999), the opinion’s advice continues to be supported by the language of R.C. 2937.32, as amended. Therefore, pursuant to R.C. 2937.32, a county sheriff may not release from the county jail a person accused of committing a criminal offense when the person does not offer sufficient bail for his release. *Accord* 1988 Op. Att’y Gen. No. 88-060 (syllabus, paragraph three) (“[a] sheriff has a duty to detain in the county jail a prisoner committed to it for failure to post bond under R.C. 2937.32 during the period between his commitment and trial on a state misdemeanor charge”).

**A County Sheriff May Not Refuse to Admit and Confine in the County Jail, or Confine in Another Jail or Detention Facility That the County Sheriff Is Authorized to Use, a Person Who Has Been Sentenced by a Court to a Term of Imprisonment in the County Jail**

Your final question asks whether a county sheriff is authorized to refuse to admit and confine in the county jail a person who has been sentenced by a court to a term of imprisonment in the county jail. After reviewing the relevant law, we conclude that a county sheriff may not refuse to admit and confine in the county jail, or confine in another jail or detention facility that the county sheriff is authorized to use, a person who has been sentenced by a court to a term of imprisonment in the county jail.

As explained previously, R.C. 2949.08(A) requires a court to order a person who has been convicted of, or pleaded guilty to, a criminal offense and sentenced to a term of imprisonment in the county jail into the custody of the county sheriff or a constable for delivery to the county jail for confinement until the term of imprisonment expires or the person is otherwise legally discharged. Under this statute, a county sheriff is required to accept and maintain custody of a person who is sentenced to a term of imprisonment in the county jail until the term of imprisonment expires or the person is otherwise legally discharged. *Accord* 1965 Op. Att’y Gen. No. 65-204 at 2-448.

However, it is significant to note that, if there is an agreement between a county and another political subdivision authorizing the county sheriff to confine persons sentenced to a term of imprisonment in the jail or other detention facility of the subdivision, the sheriff may confine persons in his custody in the political subdivision's jail or detention facility instead of the county jail. *See, e.g.*, R.C. 307.15 (authorizing a board of county commissioners to enter into an agreement with another governmental entity whereby that governmental entity undertakes to perform a service or function on behalf of the county); R.C. 341.23(A) (“[t]he board of county commissioners of any county or the legislative authority of any municipal corporation in which there is no workhouse may agree with the legislative authority of any municipal corporation or other authority having control of the workhouse of any other city, or with the directors of any district of a joint city and county workhouse or county workhouse, upon terms on which persons convicted of a misdemeanor by any court or magistrate of a county or municipal corporation having no workhouse, may be received into that workhouse, under sentence of the court or magistrate”); R.C. 341.32 (a county not having a county rehabilitation work camp may enter into an agreement to use the rehabilitation work camp of another county for the rehabilitation of persons who have been convicted of a misdemeanor); R.C. 341.34(B) (the board of county commissioners may affiliate with another county or municipal corporation for the use of a minimum security jail); R.C. 753.16(A) (“[a]ny city or district having a workhouse may receive as inmates of the workhouse persons sentenced or committed to it from counties other than the one in which the workhouse is situated, upon the terms and during the length of time agreed upon by the boards of county commissioners of those counties, or by the legislative authority of a municipal corporation in those counties and the legislative authority of the city, or the board of the district workhouse, or other authority having the management and control of the workhouse”); R.C. 2947.19(A) (“[i]n a county that has no workhouse but in which is located a city that has a workhouse maintained by the city, the board of county commissioners may agree with the proper authorities of that city upon terms under which persons convicted of misdemeanors shall be maintained in the city workhouse at the expense of the county”); *see also* 2004 Op. Att’y Gen. No. 2004-024 at 2-214 n.12 (a county may enter into a contract with a city for the confinement in the city jail of persons arrested for violating a law of this state).

Moreover, the General Assembly has set forth procedures for the confinement of prisoners sentenced to a term of imprisonment in the county jail when the county jail is full or understaffed. In such a situation, R.C. 341.12 requires the county sheriff to make arrangements to convey persons confined in his county jail to a jail in any county. *See* 1995 Op. Att’y Gen. No. 95-011 at 2-58 and 2-59; 1981 Op. Att’y Gen. No. 81-042 at 2-170; *cf. Tomko v. McFaul*, 133 Ohio App. 3d 742, 747, 729 N.E.2d 832 (Cuyahoga County 1999) (pursuant to R.C. 341.12, a county sheriff may “house prisoners in local municipal jail facilities within Cuyahoga County”), *appeal not allowed*, 87 Ohio St. 3d 1429, 718 N.E.2d 447 (1999).

R.C. 341.12, provides, in part:

In 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 which the sheriff considers most convenient and secure.

*See also* R.C. 341.13 (“[t]he sheriff of the county to which a prisoner has been removed as provided by [R.C. 341.12] shall, on being furnished a copy of the process or commitment, receive such prisoner into his custody, and shall be liable for escapes or other neglect of duty in relation to such prisoner, as in other cases. Such sheriff shall receive from the treasury of the county from which the prisoner was removed, such fees as are allowed in other cases”); R.C. 341.14(A) (“[t]he sheriff of an adjoining county shall not receive prisoners as provided by [R.C. 341.12] unless there is deposited weekly with the sheriff an amount equal to the actual cost of keeping and feeding each prisoner so committed for the use of the jail of that county, and the same amount for a period of time less than one week”). R.C. 341.12 thus requires a county sheriff to convey a person who has been sentenced by a court to a term of imprisonment in the county jail to a jail in any county when the sheriff’s jail is full or understaffed. *See generally* 1995 Op. Att’y Gen. No. 95-011 (syllabus, paragraph two) (“[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”).

Reading R.C. 2949.08(A) together with R.C. 341.12 and the statutes authorizing a county to use the jail of another political subdivision, it is apparent that the General Assembly intends a county sheriff to either accept and confine in the county jail a person who has been sentenced by a court to a term of imprisonment in the county jail or arrange for the confinement of the person in another jail or detention facility that the county sheriff is authorized to use. Accordingly, in response to your third question, we conclude that a county sheriff may not refuse to admit and confine in the county jail, or confine in another jail or detention facility that the county sheriff is authorized to use, a person who has been sentenced by a court to a term of imprisonment in the county jail. *See generally State ex rel. Schwartz v. Haines*, 172 Ohio St. 572, 179 N.E.2d 46 (1962) (syllabus, paragraph two) (“[w]here the Juvenile Court, after a proper hearing, determines that a minor requires state institutional care and guardianship and commits the minor to the care and custody of the Department of Mental Hygiene and Correction, the Director of Mental Hygiene and Correction is under a clear legal duty to accept the minor as a ward of the department, and the department becomes vested with the exclusive guardianship of such minor”); 1981 Op. Att’y Gen. No. 81-053 (syllabus, paragraph two) (“[t]he head of a public hospital may not refuse, on the basis of lack of space, to admit any person whom a court has properly committed to such hospital”).

### Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. A county sheriff may not release from the county jail a person who

has not served his entire term of imprisonment unless the early release has been ordered by a court or the Governor.

2. Pursuant to R.C. 2937.32, a county sheriff may not release from the county jail a person accused of committing a criminal offense when the person does not offer sufficient bail for his release. (1988 Op. Att'y Gen. No. 88-060, syllabus, paragraph three, approved and followed.)
3. A county sheriff may not refuse to admit and confine in the county jail, or confine in another jail or detention facility that the county sheriff is authorized to use, a person who has been sentenced by a court to a term of imprisonment in the county jail.