

May 5, 2006

The Honorable Robin N. Piper  
Butler County Prosecuting Attorney  
Government Services Center, 11th Floor  
P.O. Box 515  
315 High Street  
Hamilton, Ohio 45012-0515

SYLLABUS:

2006-017

1. The clerk of the court of common pleas may issue to the county sheriff a warrant under Ohio R. Crim. P. 4 for the arrest of a person charged with violating a law of this state, provided the clerk is not required by law to issue the warrant to another law enforcement officer.
2. A law enforcement officer is required to issue a summons pursuant to Ohio R. Crim. P. 4(A)(2) or arrest a person charged with violating a law of this state when the law enforcement officer is aware of a warrant issued to the county sheriff under Ohio R. Crim. P. 4 for the arrest of the person.
3. When a law enforcement officer arrests a person charged with violating a law of this state on the basis of an arrest warrant issued to the county sheriff under Ohio R. Crim. P. 4, the law enforcement officer executes the warrant, and as such, the officer's arrest of the person is made upon the warrant.
4. When a person charged with violating a law of this state is arrested by a law enforcement officer in the county from which a warrant for the person's arrest was issued to the county sheriff under Ohio R. Crim. P. 4, Ohio R. Crim. P. 4(E)(1) requires the release of the person in accordance with Ohio R. Crim. P. 4(F) or Ohio R. Crim. P. 46 or the delivery of the person to the court issuing the warrant.



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OFFICE OF THE ATTORNEY GENERAL  

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OPINION NO. 2006-017

The Honorable Robin N. Piper  
Butler County Prosecuting Attorney  
Government Services Center, 11th Floor  
P.O. Box 515  
315 High Street  
Hamilton, Ohio 45012-0515

Dear Prosecutor Piper:

You have requested an opinion concerning the issuance and execution of a warrant for the arrest of a person charged with violating a law of this state. Your letter presents the following six questions:

1. May the clerk of the court of common pleas issue to the county sheriff a warrant under Ohio R. Crim. P. 4 for the arrest of a person charged with violating a law of this state when the clerk is not required by law to issue the warrant to another law enforcement officer?
2. Is a law enforcement officer required to execute a warrant issued to the county sheriff under Ohio R. Crim. P. 4 for the arrest of a person charged with violating a law of this state when the law enforcement officer is aware of the warrant?
3. If a law enforcement officer arrests a person charged with violating a law of this state on the basis of a warrant issued to the county sheriff under Ohio R. Crim. P. 4, is the officer's arrest of the person considered made without a warrant?
4. If a law enforcement officer's arrest on the basis of a warrant issued to the county sheriff under Ohio R. Crim. P. 4 of a person charged with violating a law of this state is considered made without a warrant, does the duty or power of the law enforcement officer to make the arrest vary depending upon whether the offense charged in the warrant is a felony or misdemeanor?
5. If a law enforcement officer is not required to execute a warrant issued to the county sheriff under Ohio R. Crim. P. 4 for the arrest of a person

charged with violating a law of this state when the law enforcement officer is aware of the warrant, may the law enforcement officer detain the person until the county sheriff is able to execute the warrant or a new arrest warrant is issued to the law enforcement officer?

6. If a law enforcement officer elects to detain, rather than arrest, a person on the basis of a warrant issued to the county sheriff under Ohio R. Crim. P. 4 for the arrest of the person for violating a law of this state, is the law enforcement officer required to transport the person to the county jail or is the county sheriff required to arrange for the person's transportation to the county jail when the arrest occurs in the county from which the warrant issued?

For the reasons that follow, it is our opinion that the clerk of the court of common pleas may issue to the county sheriff a warrant under Ohio R. Crim. P. 4 for the arrest of a person charged with violating a law of this state, provided the clerk is not required by law to issue the warrant to another law enforcement officer. A law enforcement officer is required to issue a summons pursuant to Ohio R. Crim. P. 4(A)(2) or arrest a person charged with violating a law of this state when the law enforcement officer is aware of a warrant issued to the county sheriff under Ohio R. Crim. P. 4 for the arrest of the person. When a law enforcement officer arrests a person charged with violating a law of this state on the basis of an arrest warrant issued to the county sheriff under Ohio R. Crim. P. 4, the law enforcement officer executes the warrant, and as such, the officer's arrest of the person is made upon the warrant. Finally, when a person charged with violating a law of this state is arrested by a law enforcement officer in the county from which a warrant for the person's arrest was issued to the county sheriff under Ohio R. Crim. P. 4, Ohio R. Crim. P. 4(E)(1) requires the release of the person in accordance with Ohio R. Crim. P. 4(F) or Ohio R. Crim. P. 46 or the delivery of the person to the court issuing the warrant.

#### **Provisions of Law Governing the Issuance and Execution of a Warrant for the Arrest of a Person Charged with Violating a Law of this State**

Before we address your specific questions, we must first review the provisions of law governing the issuance and execution of a warrant under Ohio R. Crim. P. 4 for the arrest of a person charged with violating a law of this state.<sup>1</sup> Criminal Rule 4 authorizes judges,

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<sup>1</sup> Although Ohio R. Crim. P. 4 provides for the issuance and execution of warrants for the arrest of persons charged with violating a law of this state, various statutes authorize court officials and law enforcement officers to issue and execute, respectively, arrest warrants. *See, e.g.*, R.C. 2333.11 (issuance and execution of a warrant requiring the arrest of a judgment debtor); R.C. 2933.02 (issuance and execution of an arrest warrant to keep the peace); R.C. 2933.31 (issuance and execution of a warrant authorizing the arrest of persons violating or attempting to violate the laws relating to or affecting animals); R.C. 2949.06 (issuance and execution of a warrant for the arrest of a person escaping after sentence and before confinement

magistrates, clerks of court, and other officers of the court designated by a judge to issue arrest warrants upon a finding of probable cause to believe that an offense has been committed.<sup>2</sup>

(A) **Issuance.**

(1) Upon complaint.<sup>3</sup> If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed, and that the defendant has committed it, a warrant for the arrest of the defendant, or a summons in lieu of a warrant, shall be issued by a judge, magistrate, clerk of court, or officer of the court designated by the judge, to any law enforcement officer authorized by law to execute or serve it.

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in a state correctional institution or jail); R.C. 2950.06(G)(2)(b) (issuance and execution of a warrant for the arrest of a person who violates R.C. 2950.06(F)). In addition, judges may issue bench warrants to law enforcement officers for the arrest of persons who have been held in contempt, have disobeyed a subpoena, or have failed to appear for a hearing or trial. *See* 2004 Op. Att’y Gen. No. 2004-024 at 2-215; 1999 Op. Att’y Gen. No. 99-029 at 2-197; 1984 Op. Att’y Gen. No. 84-004 at 2-9 n.4. Because your specific questions concern the issuance and execution of arrest warrants under Ohio R. Crim. P. 4, we do not consider in this opinion matters pertaining to the issuance and execution of bench warrants or other types of arrest warrants.

<sup>2</sup> The Ohio Supreme Court has adopted the Ohio Rules of Criminal Procedure pursuant to Ohio Const. art. IV, § 5(B), which states that “[t]he supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right[,]” and that “[a]ll laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.” In accordance with this constitutional provision, “if a conflict exists between a statute and one of the rules, the rule will control the statute on matters of procedure, and the statute will control the rule on matters of substantive law.” 1986 Op. Att’y Gen. No. 86-003 at 2-11 n.1. Because the issuance and execution of arrest warrants are procedural matters, Ohio R. Crim. P. 4 supersedes any conflicting statute with respect to such matters. *Id.*

<sup>3</sup> As used in Ohio R. Crim. P. 4, “[t]he complaint is a written statement of the essential facts constituting the offense charged.” Ohio R. Crim. P. 3. *See generally* R.C. 2935.09 (“[i]n all cases not provided by [R.C. 2935.02-.08] in order to cause the arrest or prosecution of a person charged with committing an offense in this state, a peace officer, or a private citizen having knowledge of the facts, shall file with the judge or clerk of a court of record, or with a magistrate, an affidavit charging the offense committed, or shall file such affidavit with the prosecuting attorney or attorney charged by law with the prosecution of offenses in court or before such magistrate, for the purpose of having a complaint filed by such prosecuting or other authorized attorney”).

(B) **Multiple issuance; sanction.** More than one warrant or summons may issue on the same complaint. If the defendant fails to appear in response to summons, a warrant or alias warrant shall issue. (Footnote added.)

*See* R.C. 2935.10.

With respect to the execution of an arrest warrant issued under Ohio R. Crim. P. 4, division (D) of this rule states, in part:

(1) By whom. Warrants shall be executed and summons served by any officer authorized by law.

(2) Territorial limits. Warrants may be executed or summons may be served at any place within this state.

(3) Manner. Except as provided in division (A)(2) of this rule, warrants shall be executed by the arrest of the defendant. The officer need not have the warrant in the officer's possession at the time of the arrest. In such case, the officer shall inform the defendant of the offense charged and of the fact that the warrant has been issued. A copy of the warrant shall be given to the defendant as soon as possible.

....

(4) Return. The officer executing a warrant shall make return of the warrant to the issuing court before whom the defendant is brought pursuant to [Ohio R. Crim. P. 5]. At the request of the prosecuting attorney, any unexecuted warrant shall be returned to the issuing court and cancelled by a judge of that court.

....

At the request of the prosecuting attorney, made while the complaint is pending, a warrant returned unexecuted and not cancelled, or a summons returned unserved, or a copy of either, may be delivered by the court to an authorized officer for execution or service.

*See* R.C. 2935.02; R.C. 2935.18.

In addition, an arrest warrant may be issued and executed under Ohio R. Crim. P. 4 upon indictment or information as follows:

(A) **Issuance.** Upon the request of the prosecuting attorney the clerk shall forthwith issue a warrant for each defendant named in the indictment or in the information. The clerk shall issue a summons instead of a warrant where the defendant has been released pursuant to [Ohio R. Crim. P. 46] and is indicted for the same offense for which he was bound over pursuant to [Ohio R. Crim. P. 5]. In addition, the clerk shall issue a summons instead of a warrant upon the request of the prosecuting attorney or by direction of the court.

Upon like request or direction, the clerk shall issue more than one warrant or summons for the same defendant. He shall deliver the warrant or summons to

any officer authorized by law to execute or serve it. If a defendant fails to appear in response to summons, a warrant shall issue.

(B) **Form of warrant and summons.**

(1) Warrant. The form of the warrant shall be as provided in [Ohio R. Crim. P. 4(C)(1)] except that it shall be signed by the court or clerk. It shall describe the offense charged in the indictment or information. A copy of the indictment or information shall be attached to the warrant which shall command that the defendant be arrested and brought before the court issuing the warrant without unnecessary delay.

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(C) **Execution or service; return.**

(1) Execution or service. Warrants shall be executed or summons served as provided in [Ohio R. Crim. P. 4(D)] and the arrested person shall be treated in accordance with [Ohio R. Crim. P. 4(E)(1)].

(2) Return. The officer executing a warrant shall make return thereof to the court.

....

At the request of the prosecuting attorney made at any time while the indictment or information is pending, a warrant returned unexecuted and not cancelled, or a summons returned unserved, or a copy thereof, may be delivered by the clerk to the sheriff or other authorized person for execution or service.

Ohio R. Crim. P. 9; *see* R.C. 2941.36; R.C. 2941.37; R.C. 2941.40; R.C. 2941.41.

An arrest warrant may also be issued and executed under Ohio R. Crim. P. 4 when a person fails to appear in response to a citation or summons. R.C. 2935.11; R.C. 2935.26(F); Ohio R. Crim. P. 4(A) and (B); Ohio R. Crim. P. 4.1(F); Ohio R. Crim. P. 9(A). Criminal Rule 4 thus empowers a judge, magistrate, clerk of court, or other officer of the court designated by a judge to issue a warrant for the arrest of a person charged with violating a law of this state. In addition, the rule authorizes the execution of an arrest warrant by a law enforcement officer authorized by law to execute the warrant.

**The Clerk of the Court of Common Pleas May Issue an Arrest Warrant to the County Sheriff**

We will now turn to your first question, which asks whether the clerk of the court of common pleas may issue to the county sheriff a warrant under Ohio R. Crim. P. 4 for the arrest of a person charged with violating a law of this state when the clerk is not required by law to issue the warrant to another law enforcement officer. The clerk of the court of common pleas may issue to the county sheriff a warrant under Ohio R. Crim. P. 4 for the arrest of a person charged with violating a law of this state, provided the clerk is not required by law to issue the warrant to another law enforcement officer.

Criminal Rule 4(A)(1) states that, if it appears from a complaint or an affidavit or affidavits filed with the complaint and there is probable cause to believe that an offense has been committed by the defendant, “a warrant for the arrest of the defendant ... shall be issued by a ... clerk of court ... to any law enforcement officer authorized to execute ... it.” *See* Ohio R. Crim. P. 9(A). For purposes of this rule, the term “clerk of court” includes any “duly elected or appointed clerk of any court of record or the deputy clerk.” Ohio R. Crim. P. 2(I). Because the clerk of the court of common pleas is a duly elected or appointed clerk of a court of record, *see* Ohio Const. art. IV, § 6(B); R.C. 302.09; R.C. 305.02; R.C. 2303.01; *see also* 1965 Op. Att’y Gen. No. 65-21 at 2-55, such a clerk is authorized to issue a warrant under Ohio R. Crim. P. 4 for the arrest of a person charged with violating a law of this state to “any law enforcement officer authorized to execute” the warrant.

Pursuant to Ohio R. Crim. P. 2(J), a county sheriff is a law enforcement officer for purposes of Ohio R. Crim. P. 4. *See also* R.C. 2901.01(A)(11)(a). Moreover, R.C. 311.07(A) requires, except as provided in R.C. 311.07(C),<sup>4</sup> a county sheriff to “execute all warrants ... directed to [him] by any proper and lawful authority of this state.” *See also* R.C. 311.08(A) (“the sheriff shall, except as provided in [R.C. 311.08(B)]<sup>5</sup>, execute every summons, order, or other process directed to him by a proper and lawful authority of this state or issued by a proper and lawful authority of any other state”). *See generally* R.C. 2151.19 (warrants of the juvenile court, which is a division of the court of common pleas, may be issued to county sheriff for execution). As such, a county sheriff is a law enforcement officer authorized to execute arrest warrants directed to him by any proper and lawful authority of this state. *See* 1986 Op. Att’y Gen. No. 86-003 at 2-13 (“[t]he sheriff executes arrest warrants for the court of common pleas”); *see also* R.C. 2941.36 (when an arrest warrant is “directed to the sheriff of the county where such indictment was found or information or affidavit filed, he may pursue and arrest the accused in any county and commit him to jail or present him in open court, if court is in session”). Accordingly, the clerk of the court of common pleas may issue to the county sheriff a warrant under Ohio R. Crim. P. 4 for the arrest of a person charged with violating a law of this state, provided the clerk is not required by law to issue the warrant to another law enforcement officer. *See* 2005 Op. Att’y Gen. No. 2005-045 at 2-491 (“[p]ursuant to Ohio R. Crim. P. 4, a court may issue arrest warrants to law enforcement officers, including county sheriffs”).

#### **A Law Enforcement Officer Is Required to Execute an Arrest Warrant Not Issued to the Officer or His Department**

Your second question asks whether a law enforcement officer is required to execute a warrant issued to the county sheriff under Ohio R. Crim. P. 4 for the arrest of a person charged

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<sup>4</sup> Division (C) of R.C. 311.07 concerns the authority of a county sheriff to execute process that is issued in a state other than Ohio.

<sup>5</sup> R.C. 311.08(B) concerns the authority of a county sheriff to execute process that is issued in a state other than this state.

with violating a law of this state when the law enforcement officer is aware of the warrant. A law enforcement officer is required to issue a summons pursuant to Ohio R. Crim. P. 4(A)(2) or arrest a person charged with violating a law of this state when the law enforcement officer is aware of a warrant issued to the county sheriff under Ohio R. Crim. P. 4 for the arrest of the person.

Criminal Rule 4(D)(3) states that, except when a law enforcement officer issues a summons in accordance with Ohio R. Crim. P. 4(A)(2),<sup>6</sup> arrest warrants issued under this rule are to be executed by the arrest of the person named therein. *See* R.C. 2935.02; R.C. 2935.18; Ohio R. Crim. P. 9(B)(1) and (C)(1). Thus, when a warrant for the arrest of a person charged with violating a law of this state is issued to a county sheriff, the sheriff is required to arrest the person or issue the person a summons pursuant to Ohio R. Crim. P. 4(A)(2). A county sheriff who executes an arrest warrant issued under Ohio R. Crim. P. 4 is required to “make return of the warrant to the issuing court before whom the defendant is brought pursuant to [Ohio R. Crim. P. 5].” Ohio R. Crim. P. 4(D)(4); *accord* Ohio R. Crim. P. 9(C)(2); *see* R.C. 311.08(A). *See generally* Ohio R. Crim. P. 4(A)(2) (when a summons is issued in lieu of an arrest, “[t]he officer issuing the summons shall note on the warrant and the return that the warrant was executed by issuing summons”).

However, if the sheriff does not arrest the person or issue a summons, the warrant remains unexecuted. *See* Ohio R. Crim. P. 4(A)(2); Ohio R. Crim. P. 4(D)(3). An unexecuted warrant remains valid and may be executed until it is cancelled. *See* Ohio R. Crim. P. 4(D)(4) (“[a]t the request of the prosecuting attorney, made while the complaint is pending, a warrant returned unexecuted and not cancelled, or a summons returned unserved, or a copy of either, may be delivered by the court to an authorized officer for execution or service”); Ohio R. Crim. P. 9(C)(2) (“[a]t the request of the prosecuting attorney made at any time while the indictment or information is pending, a warrant returned unexecuted and not cancelled, or a summons returned unserved, or a copy thereof, may be delivered by the clerk to the sheriff or other authorized

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<sup>6</sup> Criminal Rule 4(A)(2) provides as follows:

By law enforcement officer with warrant. In misdemeanor cases where a warrant has been issued to a law enforcement officer, the officer, unless the issuing authority includes a prohibition against it in the warrant, may issue a summons in lieu of executing the warrant by arrest, when issuance of a summons appears reasonably calculated to ensure the defendant’s appearance. The officer issuing the summons shall note on the warrant and the return that the warrant was executed by issuing summons, and shall also note the time and place the defendant shall appear. No alias warrant shall be issued unless the defendant fails to appear in response to the summons, or unless subsequent to the issuance of summons it appears improbable that the defendant will appear in response to the summons.

person for execution or service”). *See generally* R.C. 2935.10(F) (“[w]hen the offense charged is a misdemeanor, and the warrant or summons issued pursuant to this section is not served within two years of the date of issue, a judge or magistrate may order such warrant or summons withdrawn and the case closed, when it does not appear that the ends of justice require keeping the case open”); Ohio R. Crim. P. 4(D)(4) (“[a]t the request of the prosecuting attorney, any unexecuted warrant shall be returned to the issuing court and cancelled by a judge of that court”).

While no statute or criminal rule explicitly requires a law enforcement officer to execute a warrant under Ohio R. Crim. P. 4 for the arrest of a person charged with violating a law of this state that is issued to a county sheriff, but not executed by the sheriff, a review of Ohio R. Crim. P. 4 and R.C. 2935.18 discloses that a law enforcement officer must execute such a warrant when he is aware of the warrant. Criminal Rule 4(C)(1), which sets forth the contents of an arrest warrant, provides:

Warrant. The warrant shall contain the name of the defendant or, if that is unknown, any name or description by which the defendant can be identified with reasonable certainty, a description of the offense charged in the complaint, whether the warrant is being issued before the defendant has appeared or was scheduled to appear, and the numerical designation of the applicable statute or ordinance. A copy of the complaint shall be attached to the warrant.

*See* R.C. 2935.10(E) (“[a]ny warrant ... shall state the substance of the charge against the person arrested”); Ohio R. Crim. P. 9(B)(1) (an arrest warrant upon an indictment or information “shall be as provided in [Ohio R. Crim. P. 4(C)(1)] except that it shall be signed by the court or clerk. It shall describe the offense charged in the indictment or information. A copy of the indictment or information shall be attached to the warrant”).

Nothing in the description of an arrest warrant set forth in Ohio R. Crim. P. 4(C)(1) indicates that an arrest warrant may be executed by only the county sheriff or other law enforcement officer to whom it is issued. In contrast, R.C. 2935.18, which sets forth provisions concerning the issuance and execution of arrest warrants analogous to the provisions of Ohio R. Crim. P. 4, specifically requires an arrest warrant to be directed to, and executed by, a particular peace officer<sup>7</sup> or department:

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<sup>7</sup> The terms “peace officer,” as used in R.C. 2935.18, and “law enforcement officer,” as used in Ohio R. Crim. P. 4 are defined differently. *See generally* 2004 Op. Att’y Gen. No. 2004-028 at 2-250 n.9 (“[a]s a general matter, the terms ‘law enforcement officer’ and ‘peace officer’ are not synonymous”). As used in R.C. 2935.18, “[p]eace officer” means:

[E]xcept as provided in [R.C. 2935.081], a sheriff; deputy sheriff; marshal; deputy marshal; member of the organized police department of any municipal corporation, including a member of the organized police department of a

A warrant, summons, or notice of a peace officer shall either contain a copy of the affidavit or recite the substance of the accusation. *A warrant shall be*

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municipal corporation in an adjoining state serving in Ohio under a contract pursuant to [R.C. 737.04]; member of a police force employed by a metropolitan housing authority under [R.C. 3735.31(D)]; member of a police force employed by a regional transit authority under [R.C. 306.05(Y)]; state university law enforcement officer appointed under [R.C. 3345.04]; enforcement agent of the department of public safety designated under [R.C. 5502.14]; employee of the department of taxation to whom investigation powers have been delegated under [R.C. 5743.45]; employee of the department of natural resources who is a natural resources law enforcement staff officer designated pursuant to [R.C. 1501.013], a forest officer designated pursuant to [R.C. 1503.29], a preserve officer designated pursuant to [R.C. 1517.10], a wildlife officer designated pursuant to [R.C. 1531.13], a park officer designated pursuant to [R.C. 1541.10], or a state watercraft officer designated pursuant to [R.C. 1547.521]; individual designated to perform law enforcement duties under [R.C. 511.232, R.C. 1545.13, or R.C. 6101.75]; veterans' home police officer appointed under [R.C. 5907.02]; special police officer employed by a port authority under [R.C. 4582.04 or R.C. 4582.28]; police constable of any township; police officer of a township or joint township police district; a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended; the house sergeant at arms if the house sergeant at arms has arrest authority pursuant to [R.C. 101.311(E)(1)]; and an assistant house sergeant at arms; officer or employee of the bureau of criminal identification and investigation established pursuant to [R.C. 109.51] who has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the officer's or employee's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program and who is providing assistance upon request to a law enforcement officer or emergency assistance to a peace officer pursuant to [R.C. 109.54 or R.C. 109.541]; and, for the purpose of arrests within those areas, for the purposes of [R.C. Chapter 5503], and the filing of and service of process relating to those offenses witnessed or investigated by them, the superintendent and troopers of the state highway patrol.

R.C. 2935.01(B).

*directed to a specific officer or to a department designated by its chief, and shall command such officer or member of department to take the accused and bring the accused forthwith before the magistrate or court issuing such warrant to be dealt with according to law. (Emphasis added.)*

See also R.C. 2935.02 (“[i]f an accused person flees from justice, or is not found in the county where a warrant for his arrest was issued, the officer holding the same may pursue and arrest him in any county in this state, and convey him before the magistrate or court of the county having cognizance of the case. If such warrant directs the removal of the accused to the county in which the offense was committed, the officer holding the warrant shall deliver the accused to a court or magistrate of such court”).

Because the provisions of Ohio R. Crim. P. 4 concerning the execution and issuance of arrest warrants control over any conflicting provisions in R.C. 2935.18, see note two, *supra*, it follows that an arrest warrant issued under Ohio R. Crim. P. 4 does not operate to command a specific law enforcement officer or department to execute the warrant. See generally 1 Lewis R. Katz *et al.*, *Criminal Law* 152 (2d ed. 2003) (Ohio R. Crim. P. 4 “does not require that the warrant or summons be issued to a specific department or officer, as required under [R.C.] 2935.18”). In fact, various provisions of Ohio R. Crim. P. 4(D) support this conclusion.

Criminal Rule 4(D)(1) states that “[w]arrants shall be executed and summons served by any officer authorized by law.” (Emphasis added.) See Ohio R. Crim. P. 9(A) (a warrant for the arrest of a person named in an indictment or information shall be delivered to “any officer authorized by law to execute ... it”). See generally R.C. 2921.44(A) (no law enforcement officer shall negligently “[f]ail to serve a lawful warrant without delay”). In addition, a law enforcement officer “need not have the warrant in the officer’s possession at the time of the arrest.” Ohio R. Crim. P. 4(D)(3). Instead, the officer informs the person named in the warrant of the offense charged in the warrant and that a warrant has been issued. *Id.* In such a situation, a copy of the arrest warrant must be given to the person as soon as possible. *Id.* Also, Ohio R. Crim. P. 4(D)(4) provides that, “[a]t the request of the prosecuting attorney, made while the complaint is pending, a warrant returned unexecuted and not cancelled, ... or a copy [thereof], may be delivered by the court to an authorized officer for execution.” (Emphasis added.) See also Ohio R. Crim. P. 9(C)(2) (“[a]t the request of the prosecuting attorney made at any time while the indictment or information is pending, a warrant returned unexecuted and not cancelled, or a summons returned unserved, or a copy thereof, may be delivered by the clerk to the sheriff or other authorized person for execution or service”). These provisions of Ohio R. Crim. P. 4 thus indicate that the Ohio Supreme Court intends that an unexecuted arrest warrant that has not been cancelled must be executed by a law enforcement officer authorized by law to execute the warrant even when the warrant was not issued to the officer or his department, provided, however, that the officer is aware of the warrant. See generally 1 Lewis R. Katz *et al.*, *Criminal Law* 155 (2d ed. 2003) (“[b]ecause a probable cause determination has already been made at the time [an arrest] warrant was issued, an officer who is aware of the existing warrant should not forgo an opportunity to arrest in this context”).

This conclusion is also in accord with action taken by the General Assembly to provide for the distribution and execution of arrest warrants statewide. Pursuant to R.C. 5503.10, the General Assembly has established a Law Enforcement Automated Data System (LEADS), which is a program that provides “computerized data and communications to the various criminal justice agencies of the state.”<sup>8</sup> See 1999 Op. Att’y Gen. No. 99-029 at 2-192. As explained in 1994 Op. Att’y Gen. No. 94-046 at 2-233:

The information available through LEADS is from several different data bases. Some of the information is actually entered directly into LEADS and becomes a part of the system. These data bases, known as “LEADS specific” files, include stolen vehicle and license files, “wanted,” missing, and unidentified persons files, towed vehicles files, and road condition and weather files. Other data bases, while not directly entered into LEADS as part of that system, are accessible through LEADS.

Moreover, one of the data bases that is accessible through LEADS is the National Crime Information Center (NCIC), which is a computerized information system operated by the Federal Bureau of Investigation. 1999 Op. Att’y Gen. No. 99-029 at 2-192; see 10 Ohio Admin. Code 4501:2-10-09; see also 28 U.S.C. § 534; 28 C.F.R. § 20.31(a). Information in NCIC includes, *inter alia*, criminal history record information and wanted, missing, and unidentified persons. 1999 Op. Att’y Gen. No. 99-029 at 2-192.

LEADS thus serves as a communication network by which a law enforcement officer may obtain information on a person. *Id.* Under LEADS, a law enforcement officer is able to determine whether a warrant for the arrest of a person charged with violating a law of this state has been issued. *Id.*

Similarly, R.C. 2935.24 authorizes sending a copy of an arrest warrant to a law enforcement officer not named in the warrant for the purpose of having that officer execute the warrant:

A judge of a court of record may, by an endorsement under his hand upon a warrant of arrest, authorize the service thereof by telegraph, teletype, wire photo, or other means whereby a written or facsimile copy may be transmitted, and thereafter a copy of such warrant may be sent by any such means to any law enforcement officer. Such copy is effectual in the hands of any law enforcement officer and he shall proceed in the same manner under it as though he held the original warrant issued by the court making the endorsement, except that a state university law enforcement officer shall not arrest for a minor misdemeanor on the basis of a written or facsimile copy of a warrant of arrest. Every officer

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<sup>8</sup> The Law Enforcement Automated Data System is administered by the Superintendent of the State Highway Patrol. R.C. 5503.10.

causing copies of warrants to be sent pursuant to this section, shall certify as correct and file in the office from which such warrant was sent, a copy of such warrant and endorsement thereon, and shall return the original with a statement of his action thereunder.

LEADS and R.C. 2935.24 thus provide for the circulation of arrest warrants statewide. If a law enforcement officer is not required to execute a warrant issued to the county sheriff under Ohio R. Crim. P. 4 for the arrest of a person charged with violating a law of this state, the General Assembly would not have enacted provisions providing for the distribution of arrest warrants statewide. By doing so, the General Assembly intends a law enforcement officer to execute an arrest warrant not issued to him or his department when the officer is aware of the warrant. *See generally State ex rel. Cleveland Elec. Illum. Co. v. City of Euclid*, 169 Ohio St. 476, 479, 159 N.E.2d 756 (1959) (“the General Assembly is not presumed to do a vain or useless thing, and ... when language is inserted in a statute it is inserted to accomplish some definite purpose”), *appeal dismissed*, 362 U.S. 457 (1960). Accordingly, a law enforcement officer is required to issue a summons pursuant to Ohio R. Crim. P. 4(A)(2) or arrest a person charged with violating a law of this state when the law enforcement officer is aware of a warrant issued to the county sheriff under Ohio R. Crim. P. 4 for the arrest of the person.

### **The Arrest of a Person on the Basis of a Warrant Is Made Upon the Warrant**

Your third question asks whether a law enforcement officer’s arrest of a person charged with violating a law of this state is considered made without a warrant when the law enforcement officer arrests the person on the basis of a warrant issued to the county sheriff under Ohio R. Crim. P. 4. When a law enforcement officer arrests a person charged with violating a law of this state on the basis of an arrest warrant issued to the county sheriff under Ohio R. Crim. P. 4, the law enforcement officer executes the warrant, and as such, the officer’s arrest of the person is made upon the warrant.

As concluded above, a law enforcement officer is required to execute a warrant issued to the county sheriff under Ohio R. Crim. P. 4 for the arrest of a person charged with violating a law of this state when the law enforcement officer is aware of the warrant. Except as provided in Ohio R. Crim. P. 4(A)(2), an arrest warrant issued pursuant to Ohio R. Crim. P. 4 is executed by the arrest of the person named therein. Ohio R. Crim. P. 4(D)(3); *see* R.C. 2935.02; R.C. 2935.18; Ohio R. Crim. P. 9(B)(1) and (C)(1). A law enforcement officer does not have to have the arrest warrant in his possession at the time he executes the warrant. Ohio R. Crim. P. 4(D)(3). As such, a law enforcement officer has a duty to execute a warrant for the arrest of a person whenever he is aware of the warrant.

In addition, Ohio R. Crim. P. 4(E) sets forth the following procedures for safeguarding the rights of a person arrested upon a warrant:

- (1) Arrest upon warrant.
  - (a) Where a person is arrested upon a warrant that states it was issued before a scheduled initial appearance, or the warrant is silent as to when it was

issued, the judicial officer before whom the person is brought shall apply [Ohio R. Crim. P. 46].<sup>9</sup>

(b) Where a person is arrested upon a warrant that states it was issued after an initial appearance or the failure to appear at an initial appearance and the arrest occurs either in the county from which the warrant issued or in an adjoining county, the arresting officer shall, except as provided in [Ohio R. Crim. P. 4(F)],<sup>10</sup> where the warrant provides for the posting of bail, permit the arrested person to post a sum of cash or secured bail bond as contained in the warrant with the requirement that the arrested person appear before the warrant issuing court at a time and date certain, or bring the arrested person without unnecessary delay before the court that issued the warrant.

(c) Where a person is arrested upon a warrant that states it was issued after an initial appearance or the failure to appear at an initial appearance and the arrest occurs in any county other than the county from which the warrant was issued or in an adjoining county, the following sequence of procedures shall be followed:

(i) Where the warrant provides for the posting of bail, the arrested person shall be permitted to post a sum of cash or secured bail bond as contained in the warrant with the requirement that the arrested person appear before the warrant issuing court at a time and date certain.

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<sup>9</sup> Criminal Rule 46 sets forth provisions governing the granting of bail to a person charged with violating a law of this state. *See also* R.C. 2937.22; R.C. 2937.23. *See generally* Ohio Const. art. I, § 9 (“[a]ll persons shall be bailable by sufficient sureties, except for a person who is charged with a capital offense where the proof is evident or the presumption great, and except for a person who is charged with a felony where the proof is evident or the presumption is great and where the person poses a substantial risk of serious physical harm to any person or to the community”).

<sup>10</sup> Criminal Rule 4(F) states:

**Release after arrest.** 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. The officer issuing such summons shall note on the summons the time and place the person must appear and, if the person was arrested without a warrant, shall file or cause to be filed a complaint describing the offense. No warrant or alias warrant shall be issued unless the person fails to appear in response to the summons.

(ii) The arrested person may in writing waive the procedures in division (E)(1)(c)(iii) of this rule after having been informed in writing and orally by a law enforcement officer of those procedures, and consenting to being removed to the warrant issuing court without further delay. This waiver shall contain a representation by a law enforcement officer that the waiver was read to the arrested person and that the arrested person signed the waiver in the officer's presence.

(iii) Where the warrant is silent as to the posting of bail, requires that the arrested person be held without bail, the arrested person chooses not to post bail, or the arrested person chooses not to waive the procedures contained in division (E)(1) of this rule, the arrested person shall, except as provided in division (F) of this rule, be brought without unnecessary delay before a court of record therein, having jurisdiction over such an offense, and the arrested person shall not be removed from that county until the arrested person has been given a reasonable opportunity to consult with an attorney, or individual of the arrested person's choice, and to post bail to be determined by the judge or magistrate of that court not inconsistent with the directions of the issuing court as contained in the warrant or after consultation with the issuing court. If the warrant is silent as to the posting of bail or holding the arrested person without bail, the court may permit the arrested person to post bail, hold the arrested person without bail, or consult with the warrant issuing court on the issue of bail.

(d) If the arrested person is not released, the arrested person shall then be removed from the county and brought before the court issuing the warrant, without unnecessary delay. If the arrested person is released, the release shall be on condition that the arrested person appear in the issuing court at a time and date certain. (Footnotes added.)

*See also* R.C. 2935.13 (proceedings upon arrest of a person pursuant to a warrant).

Because a law enforcement officer is required to execute an arrest warrant when he is aware of the warrant and the Ohio Supreme Court has enacted specific procedures for protecting the rights of a person named in a warrant, it follows that, when a law enforcement officer arrests a person charged with violating a law of this state on the basis of a warrant issued to the county sheriff under Ohio R. Crim. P. 4, the law enforcement officer's arrest of the person is not an arrest without a warrant. If such an arrest was considered made without a warrant, a law enforcement officer could easily eschew the obligations imposed upon him by Ohio R. Crim. P. 4 when he arrests a person named in an arrest warrant. Also, instances could arise in which the rights of a person named in an arrest warrant are violated. For example, the person may not be brought without unnecessary delay before the court issuing the warrant as required by Ohio R. Crim. P. 4. Thus, in light of the language of Ohio R. Crim. P. 4, it is our opinion that, when a law enforcement officer arrests a person charged with violating a law of this state on the basis of an arrest warrant issued to the county sheriff under Ohio R. Crim. P. 4, the law enforcement officer executes the warrant, and as such, the officer's arrest of the person is made upon the warrant. *See generally* R.C. 2935.08 (“[a]ll further detention and further proceedings shall be

pursuant to such affidavit or complaint and warrant”); R.C. 2935.24 (a copy of an arrest warrant “is effectual in the hands of any law enforcement officer and he shall proceed in the same manner under it as though he held the original warrant issued by the court”).

**Scope of Authority When a Law Enforcement Officer Arrests a Person on the Basis of a Warrant Not Issued to the Officer or His Department**

Your fourth question asks: If a law enforcement officer’s arrest on the basis of a warrant issued to the county sheriff under Ohio R. Crim. P. 4 of a person charged with violating a law of this state is considered made without a warrant, does the authority of the law enforcement officer to make the arrest vary depending upon whether the offense charged in the warrant is a felony or misdemeanor? Because such an arrest is made upon the arrest warrant issued to the county sheriff, it is unnecessary for us to address this question.

**Authority of a Law Enforcement Officer to Detain, Rather than Arrest, a Person Named in an Arrest Warrant Not Issued to the Officer or his Department**

Your fifth question asks: If a law enforcement officer is not required to execute a warrant issued to the county sheriff under Ohio R. Crim. P. 4 for the arrest of a person charged with violating a law of this state when the law enforcement officer is aware of the warrant, may the law enforcement officer detain the person until the county sheriff is able to execute the warrant or a new arrest warrant is issued to the law enforcement officer? A law enforcement officer in the foregoing situation may not detain the person until the county sheriff is able to execute the warrant or a new arrest warrant is issued to the law enforcement officer since, as previously explained, the officer is required to arrest the person named in a warrant issued to the county sheriff or issue the person a summons pursuant to Ohio R. Crim. P. 4(A)(2). Accordingly, we do not need to address your fifth question because of what we have concluded earlier.

**Duty of a Law Enforcement Officer to Deliver to the Issuing Court a Person Named in a Warrant Not Issued to the Officer or His Department**

Your final question asks: If a law enforcement officer elects to detain, rather than arrest, a person on the basis of a warrant issued to the county sheriff under Ohio R. Crim. P. 4 for the arrest of the person for violating a law of this state, is the law enforcement officer required to transport the person to the county jail or is the county sheriff required to arrange for the person’s transportation to the county jail when the arrest occurs in the county from which the warrant issued? When a person charged with violating a law of this state is arrested by a law enforcement officer in the county from which a warrant for the person’s arrest was issued to the county sheriff under Ohio R. Crim. P. 4, Ohio R. Crim. P. 4(E)(1) requires the release of the person in accordance with Ohio R. Crim. P. 4(F) or Ohio R. Crim. P. 46 or the delivery of the person to the court issuing the warrant.

As explained above, a law enforcement officer may not detain, rather than arrest, a person named in a warrant issued to the county sheriff under Ohio R. Crim. P. 4 for the arrest of

the person for violating a law of this state.<sup>11</sup> We will therefore address the duty of a law enforcement officer to transport a person named in an arrest warrant to the county jail when the officer arrests the person in the county from which the warrant issued.

Criminal Rule 4(E)(1), which sets forth the specific procedures to be followed when a law enforcement officer executes a warrant under Ohio R. Crim. P. 4 for the arrest of a person charged with violating a law of this state in the county from which the warrant issued, provides, in part:

(a) Where a person is arrested upon a warrant that states it was issued before a scheduled initial appearance, or the warrant is silent as to when it was issued, the judicial officer before whom the person is brought shall apply [Ohio R. Crim. P. 46].<sup>12</sup>

(b) Where a person is arrested upon a warrant that states it was issued after an initial appearance or the failure to appear at an initial appearance and the arrest occurs either in the county from which the warrant issued or in an adjoining county, the arresting officer shall, except as provided in [Ohio R. Crim. P. 4(F)],<sup>13</sup> where the warrant provides for the posting of bail, permit the arrested person to post a sum of cash or secured bail bond as contained in the warrant with the requirement that the arrested person appear before the warrant issuing court at a time and date certain, or bring the arrested person without unnecessary delay before the court that issued the warrant. (Footnotes added.)

Nothing in Ohio R. Crim. P. 4(E)(1) requires a law enforcement officer to transport a person the officer arrests upon a warrant issued to the county sheriff to the county jail. Instead, the plain language of Ohio R. Crim. P. 4(E)(1) states that, when a law enforcement officer executes a warrant under Ohio R. Crim. P. 4 by arresting the person named in the warrant in the county from which the warrant issued, the law enforcement officer is required to release the person in accordance with Ohio R. Crim. P. 4(F) or Ohio R. Crim. P. 46 or deliver the person to

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<sup>11</sup> Pursuant to Ohio R. Crim. P. 4(A)(2), a law enforcement officer may issue a summons, rather than arrest, a person named in a warrant issued to the county sheriff under Ohio R. Crim. P. 4 for the arrest of the person for violating a law of this state. *See* note six, *supra*.

<sup>12</sup> Except as provided in Ohio Const. art. I, § 9, a person charged with violating a law of this state may be released on bail. *See* note nine, *supra*.

<sup>13</sup> Criminal Rule 4(F) authorizes a law enforcement officer to release an arrested person charged with a misdemeanor offense by issuing a summons when issuance of a summons appears reasonably calculated to assure the person's appearance before the court that issued the warrant for the person's arrest. *See* note ten, *supra*.

the issuing court.<sup>14</sup> *See also* R.C. 2935.13. *See generally* 1993 Op. Att’y Gen. No. 93-003 at 2-23 (“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”); 1979 Op. Att’y Gen. No. 79-106 (syllabus, paragraph one) (“Ohio R. Crim. P. 4(E) requires the arresting officer to deliver an accused to the initial appearance before the court in the case of all warrantless arrests and in the case of arrests made pursuant to a warrant in the county from which the warrant issued or an adjoining county”). Therefore, when a person charged with violating a law of this state is arrested by a law enforcement officer in the county from which a warrant for the person’s arrest was issued to the county sheriff under Ohio R. Crim. P. 4, the plain language of Ohio R. Crim. P. 4(E)(1) requires the release of the person in accordance with Ohio R. Crim. P. 4(F) or Ohio R. Crim. P. 46 or the delivery of the person to the court issuing the warrant. *See generally* *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five) (“[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted”).

### Conclusions

For the reasons set forth above, it is my opinion, and you are hereby advised that:

1. The clerk of the court of common pleas may issue to the county sheriff a warrant under Ohio R. Crim. P. 4 for the arrest of a person charged with violating a law of this state, provided the clerk is not required by law to issue the warrant to another law enforcement officer.
2. A law enforcement officer is required to issue a summons pursuant to Ohio R. Crim. P. 4(A)(2) or arrest a person charged with violating a law of

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<sup>14</sup> A law enforcement officer who executes an arrest warrant issued under Ohio R. Crim. P. 4 by arresting the person in the county from which the warrant issued and returns the warrant to the issuing court has discharged his duty to deliver the person to the issuing court. *See generally* 1991 Op. Att’y Gen. No. 91-047 at 2-248 (“a [state highway patrol] trooper discharges his duty to ‘take before a court’ an individual arrested by him for a misdemeanor, when he takes the individual before a clerk or deputy clerk of court”). In such a situation, the person arrested upon the warrant may be confined in the county jail or any other jail used by the court issuing the warrant. *See generally* 2004 Op. Att’y Gen. No. 2004-024 (syllabus, paragraph one) (“[a] person arrested by a township law enforcement officer, deputy sheriff, or state highway patrol trooper for violating a law of this state may be confined in either a county or city jail prior to arraignment, initial appearance, or trial”); 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”).

this state when the law enforcement officer is aware of a warrant issued to the county sheriff under Ohio R. Crim. P. 4 for the arrest of the person.

3. When a law enforcement officer arrests a person charged with violating a law of this state on the basis of an arrest warrant issued to the county sheriff under Ohio R. Crim. P. 4, the law enforcement officer executes the warrant, and as such, the officer's arrest of the person is made upon the warrant.
4. When a person charged with violating a law of this state is arrested by a law enforcement officer in the county from which a warrant for the person's arrest was issued to the county sheriff under Ohio R. Crim. P. 4, Ohio R. Crim. P. 4(E)(1) requires the release of the person in accordance with Ohio R. Crim. P. 4(F) or Ohio R. Crim. P. 46 or the delivery of the person to the court issuing the warrant.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Petro", written in a cursive style.

JIM PETRO  
Attorney General