November 12, 2002

The Honorable Victor V. Vigluicci
Portage County Prosecuting Attorney
466 South Chestnut Street
Ravenna, Ohio 44266

SYLLABUS: 2002-027

1. Pursuant to R.C. 2941.401, when a prisoner in a state correctional institution provides appropriate officials written notice of his place of imprisonment and a request for final disposition of a pending misdemeanor charge that is set forth in a complaint filed with a municipal court, the prisoner may be removed from the institution and taken to the municipal court for final disposition of the matter.

2. When, pursuant to R.C. 2941.401, a prisoner in a state correctional institution provides appropriate officials written notice of his place of imprisonment and a request for final disposition of a pending misdemeanor charge that is set forth in a complaint, a municipal court in which the matter is pending may issue a warrant that requires a bailiff of the court, a municipal police officer, or a county sheriff to transport the prisoner to the court for final disposition of the matter.

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OPINION NO. 2002-027

The Honorable Victor V. Vigluicci
Portage County Prosecuting Attorney
466 South Chestnut Street
Ravenna, Ohio 44266

Dear Prosecutor Vigluicci:

You have requested an opinion concerning the authority of a municipal court to order that a prisoner in a state correctional institution be brought before the court for final disposition of a pending misdemeanor charge that is set forth in a complaint. You have informed us that there are prisoners in state correctional institutions that have misdemeanor charges[1] pending in the Portage County Municipal Court. These prisoners routinely request final disposition of the pending misdemeanor charges under R.C. 2941.401, which authorizes prisoners in state correctional institutions to request final disposition of pending criminal charges.

When a prisoner has caused such a request to be delivered to the appropriate prosecuting authority and the Portage County Municipal Court, the prisoner must be brought to trial within 180 days unless a continuance is granted by the court. R.C. 2941.401. If the prisoner is not brought to trial within the time provided, subject to any continuance allowed by the court, the court no longer has jurisdiction over the matter, the charging instrument is void, and the court must enter an order dismissing the action with prejudice. *Id.*

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[1] A "[m]isdemeanor" is "an offense defined by law as a misdemeanor." Ohio R. Crim. P. 2(B). R.C. 2901.02 provides that, "any offense specifically classified as a misdemeanor is a misdemeanor," and "[a]ny offense not specifically classified is a misdemeanor if imprisonment for not more than one year may be imposed as a penalty." In addition, R.C. 715.67 states that, "[a]ny municipal corporation may make the violation of any of its ordinances a misdemeanor, and provide for the punishment thereof by fine or imprisonment, or both." Accordingly, the term "misdemeanor" includes any offense classified as a misdemeanor in the Revised Code, any offense not specifically classified in the Revised Code that has a penalty of imprisonment of not more than one year, and any violation of a municipal ordinance that a municipal corporation has made a misdemeanor.

In order to bring prisoners who have requested final disposition of a pending misdemeanor charge under R.C. 2941.401 to trial within the specified time, the Portage County Municipal Court orders the county sheriff to transport these prisoners to the court for final disposition of the matter. Defense attorneys for these prisoners assert, however, that the municipal court lacks the authority to order the county sheriff to transport these prisoners to the court. You therefore wish to know whether, when a prisoner in a state correctional institution requests final disposition under R.C. 2941.401 of a pending misdemeanor charge that is set forth in a complaint, a municipal court may order a bailiff of the court, a municipal police officer, or a county sheriff to transport the prisoner to the court for final disposition of the matter.

Resolution of your question requires that we address two issues. First, we must determine whether a prisoner in a state correctional institution may be removed from the institution and taken to a municipal court for final disposition of a pending misdemeanor charge set forth in a complaint. If such removal is permissible, we must then determine whether a municipal court is authorized to order a bailiff of the court, a municipal police officer, or a county sheriff to transport the prisoner to the municipal court for final disposition of the matter.

With respect to the first issue, 1987 Op. Att'y Gen. No. 87-068 advised that a prisoner in a state correctional institution may not be removed from the institution to stand trial on a pending misdemeanor charge. In this regard, the opinion explained at 2-417 through 2-419:

> While I am not aware of any statutory provisions which expressly authorize the removal of inmates for trial on misdemeanor charges, I am aware of several provisions which demonstrate that the General Assembly did not intend for inmates in penitentiaries and state reformatory institutions to be removed from such institutions to be tried for the commission of misdemeanors.
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> ….
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> … [T]he express language of R.C. 2941.39 and .40 strictly limits the removal of inmates to instances where the inmate is to stand trial for the commission of a felony.[2] In accordance with the maxim *expressio unius est exclusio alterius*, the naming of a specific class implies the exclusion of those not named. R.C. 2941.39 and .40 specifically apply only where the inmate has been

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[2] R.C. 2941.39 provides that "[w]hen a convict in a state correctional institution is indicted for a felony committed while confined in the correctional institution, the convict shall remain in the custody of the department of rehabilitation and correction, subject to [R.C. 2941.40-.46]." R.C. 2941.40 provides:

> A convict in a state correctional institution, who escaped, forfeited his recognizance before receiving sentence for a felony, or against whom an indictment or information for felony is pending, may be removed to the county in which the conviction was had or the indictment or information was pending for sentence or trial, upon the warrant of the court of common pleas of the county.

> formally charged with the commission of a felony. Thus, by expressly providing for the removal of inmates who have committed felonies, the General Assembly has demonstrated that it did not intend to allow for the removal of inmates who have committed misdemeanors. (Footnote added and citations omitted.)

1987 Op. Att'y Gen. No. 87-068 thus reasoned that, insofar as R.C. 2941.39 and R.C. 2941.40 provide for the removal of prisoners from state correctional institutions for final disposition of pending felony charges, the General Assembly did not intend to allow the removal of these prisoners for final disposition of pending misdemeanor charges.[3]

1987 Op. Att'y Gen. No. 87-068 is silent, however, regarding the application of R.C. 2941.401, which guarantees a prisoner in a state correctional institution the right to a speedy trial on pending charges.[4] *See generally State v. Craft,* Case No. 97CA00130, 1998 Ohio App. LEXIS 3548, at *13 (Licking County June 29, 1998) (except as provided in R.C. 2941.401, the State of Ohio has no authority to remove a prisoner from a state correctional institution for trial on a misdemeanor offense). This statute provides, in pertinent part:

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[3] R.C. 2941.39 and R.C. 2941.40 have been amended since the issuance of 1987 Op. Att'y Gen. No. 87-068. These amendments, however, have not extended the application of these statutes to a prisoner in a state correctional institution who has been charged formally with a misdemeanor. *See, e.g.,* 1997-1998 Ohio Laws, Part IV, 7448, 7527 (Am. Sub. S.B. 111, eff. Mar. 17, 1998) (amending R.C. 2941.39 so as to require the Department of Rehabilitation and Correction to maintain custody of a convict indicted for a felony committed while confined in a state correctional institution); 1993-1994 Ohio Laws, Part IV, 6342, 6399 (Am. Sub. H.B. 571, eff. Oct. 6, 1994) (substituting the phrase "state correctional institution" for the phrase "penitentiary or a state reformatory" in R.C. 2941.39 and R.C. 2941.40). These statutes as amended thus continue to apply only when a prisoner in a state correctional institution has been charged formally with a felony.

[4] Pursuant to the Sixth Amendment to the United States Constitution and Ohio Const. art. I, § 10, a prisoner in a state correctional institution charged with a criminal offense is guaranteed a right to a speedy trial. *State v. Cloud*, 122 Ohio App. 3d 626, 629, 702 N.E.2d 500, 503 (Greene County 1997). In Ohio this right is implemented by R.C. 2941.401. *Id.*; *State v. Green*, Case No. 97 CA 2308, 1998 Ohio App. LEXIS 2772, at *8 (Ross County June 10, 1998) ("Ohio law is clear that whenever a criminal defendant is serving a term of imprisonment, R.C. 2941.401 must be applied to determine the defendant's speedy trial rights"). *See also* R.C. 2945.71-.73 (setting forth provisions concerning the time in which a hearing or trial must be held for criminal defendants generally); *State v. King*, 70 Ohio St. 3d 158, 160, 637 N.E.2d 903, 905 (1994) ("this court has found the statutory speedy trial provisions set forth in R.C. 2945.71 to be coextensive with constitutional speedy trial provisions," citing to *State v. O'Brien*, 34 Ohio St. 3d 7, 516 N.E.2d 218 (1987)).

> When a person has entered upon a term of imprisonment in a correctional institution of this state, and when during the continuance of the term of imprisonment *there is pending in this state any untried indictment, information, or complaint against the prisoner, he shall be brought to trial within one hundred eighty days after he causes to be delivered to the prosecuting attorney and the appropriate court in which the matter is pending, written notice of the place of his imprisonment and a request for a final disposition to be made of the matter*, except that for good cause shown in open court, with the prisoner or his counsel present, the court may grant any necessary or reasonable continuance….
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> ….
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> If the action is not brought to trial within the time provided, subject to continuance allowed pursuant to this section, no court any longer has jurisdiction thereof, the indictment, information, or complaint is void, and the court shall enter an order dismissing the action with prejudice.
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> This section does not apply to any person adjudged to be mentally ill or who is under sentence of life imprisonment or death, or to any prisoner under sentence of death. (Emphasis added.)

Thus, pursuant to R.C. 2941.401, after a prisoner in a state correctional institution has provided to appropriate officials written notice of his place of imprisonment and a request for final disposition of a pending charge in an indictment, information, or complaint, the prisoner must be brought to trial within 180 days unless a continuance is granted by the court in which the matter is pending or the prisoner waives his speedy trial rights.[5]

R.C. 2941.401 applies in any situation in which "there is pending in this state any untried … complaint against [a] prisoner" serving a term of imprisonment in a state correctional institution. A "complaint is a written statement of the essential facts constituting the offense charged." Ohio R. Crim. P. 3. *See generally State v. Wood*, 48 Ohio App. 2d 339, 343, 357 N.E.2d 1106, 1109 (Cuyahoga County 1976) ("a complaint constitutes the basic charging instrument in all criminal proceedings in this state"). Pursuant to Ohio R. Crim. P. 7(A), a misdemeanor may be prosecuted by complaint in a municipal court. *See* R.C. 2935.05; Ohio R. Crim. P. 12(A). R.C. 2941.401, therefore, grants a prisoner in a state correctional institution the right to demand final disposition of a pending misdemeanor charge that is set forth in a complaint filed with a municipal court. *State v. Schwartz*, Case No. 97-CA-11, 1998 Ohio App. LEXIS 1923 (Coshocton County Apr. 10, 1998). *See generally* R.C. 2901.04(B) ("sections of the Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy, and sure administration of justice").

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[5] A prisoner in a state correctional institution may waive his constitutional and statutory rights to a speedy trial, provided the waiver is knowingly and voluntarily made. *State v. King*, 70 Ohio St. 3d at 160, 637 N.E.2d at 905.

It follows, therefore, that when a prisoner in a state correctional institution properly demands final disposition of a pending misdemeanor charge, R.C. 2941.401 imposes a duty on the court and the prosecutor to bring the prisoner to trial within 180 days unless a continuance is granted by the court or the prisoner waives his speedy trial rights. *State v. Cloud*, 122 Ohio App. 3d 626, 629, 702 N.E.2d 500, 503 (Greene County 1997). The duty imposed on courts and prosecutors by this statute is to be strictly enforced. *State v. Smith,* 140 Ohio App. 3d 81, 86, 746 N.E.2d 678, 682 (Hancock County 2000); *State v. Cloud*, 122 Ohio App. 3d at 629-30, 702 N.E.2d at 503; *see State v. Pachay,* 64 Ohio St. 2d 218, 416 N.E.2d 589 (1980); *see also State v. Kidd*, 60 Ohio App. 2d 374, 376, 397 N.E.2d 768, 770 (Hamilton County 1978) (a defendant's right to be brought to trial within the specified time periods of R.C. 2945.71 "is to be strictly enforced and that a duty rests on the court and the prosecutor to see that it is complied with").

The duty to bring a prisoner in a state correctional institution to trial within the time specified in R.C. 2941.401 clearly implies the power to remove the prisoner from the institution and transport the prisoner to the court at the time of trial. *See generally State v. Drenner,* No. 85 CA 7, 1985 Ohio App. LEXIS 6901, at *5 (Pickaway County July 24, 1985) (the legislative history of the speedy trial statutes "demonstrates that the ability to transport convicts for trial was intended to be commensurate with the right of the convict to be tried"). If the court and prosecuting authorities are not able to have a prisoner in a state correctional institution transported to the court for prosecution of a pending misdemeanor charge, the court and the prosecutor would not be able, in most cases, to bring the prisoner to trial within 180 days. As a result, the court would no longer have jurisdiction over the matter, the charging instrument would be void, and the court would have to enter an order dismissing the action with prejudice. R.C. 2941.401.

The General Assembly assuredly did not intend to impose a duty on courts and prosecutors that could not be performed. It is a basic principle of statutory interpretation that "the General Assembly is not presumed to do a vain or useless thing, and that when language is inserted in a statute it is inserted to accomplish some definite purpose." *State ex rel. The Cleveland Elec. Illuminating Co. v. City of Euclid*, 169 Ohio St. 476, 479, 159 N.E.2d 756, 759 (1959), *appeal dismissed,* 362 U.S. 457 (1960); *see also* R.C. 1.47 ("[i]n enacting a statute, it is presumed that: … (D) [a] result feasible of execution is intended"). Thus, the General Assembly must have intended for a prisoner in a state correctional institution to be removed from the institution and taken to a court for final disposition of a pending misdemeanor charge that is set forth in a complaint when the prisoner exercises his right to a speedy trial under R.C. 2941.401. *See generally* R.C. 2963.30, Article III(e) (a request for final disposition of pending charges in another state made by a prisoner in a state correctional institution is deemed a waiver of extradition and constitutes consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the expeditious and orderly disposition of such charges).

Moreover, the statutory framework authorizing the removal of a prisoner in a state correctional institution for final disposition of a pending felony charge was already in place at the time R.C. 2941.401 was enacted. *See* 1969-1970 Ohio Laws, Part I, 1065 (Am. S.B. 355, eff.

Nov. 18, 1969) (enacting R.C. 2941.401); 1929 Ohio Laws, 123, 171-72 (Am. S.B. 8, approved Apr. 17, 1929) (enacting G.C. 13438-4 through 13438-11 (the provisions of which are now set forth in R.C. 2941.39, R.C. 2941.40, and R.C. 2941.41-.46)). It is well settled that the General Assembly is presumed to act with knowledge of existing statutes. *Charles v. Fawley*, 71 Ohio St. 50, 53, 72 N.E. 294, 295 (1904); *Eggleston v. Harrison*, 61 Ohio St. 397, 404, 55 N.E. 993, 996 (1900). Thus, it must be assumed further that, when the General Assembly enacted R.C. 2941.401, the General Assembly was aware of the existing statutes authorizing the removal of a prisoner in a state correctional institution for final disposition of a pending felony charge.

Nevertheless, the General Assembly did not limit the application of R.C. 2941.401 to situations in which a prisoner in a state correctional institution has a pending felony charge against him. As discussed previously, R.C. 2941.401 applies in any situation in which "there is pending in this state any untried … complaint against [a] prisoner" serving a term of imprisonment in a state correctional institution. By not limiting R.C. 2941.401 to pending felony charges, the General Assembly has further demonstrated that it intended for a prisoner in a state correctional institution to be removed from the institution and taken to a court for final disposition of a pending misdemeanor charge that is set forth in a complaint when the prisoner exercises his right under R.C. 2941.401 to a speedy trial. If the General Assembly had intended to limit R.C. 2941.401's application to situations involving pending felony charges, the General Assembly could have used the term "felony" in R.C. 2941.401, having used that term in other instances. *See generally Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239, 242 (1926) (had the legislature intended a term to have a particular meaning, "it would not have been difficult to find language which would express that purpose," having used that language in other connections).

Accordingly, pursuant to R.C. 2941.401, when a prisoner in a state correctional institution provides appropriate officials written notice of his place of imprisonment and a request for final disposition of a pending misdemeanor charge that is set forth in a complaint filed with a municipal court, the prisoner may be removed from the institution and taken to the municipal court for final disposition of the matter. *See generally State v. Craft,* 1998 Ohio App. LEXIS 3548, at *13 ("[i]n the absence of appellant's making a demand for a speedy disposition of the instant charges pursuant to R.C. 2941.401, the State had no authority to remove appellant from the correctional institution for trial on misdemeanor offenses"); *State v. Drenner,* 1985 Ohio App. LEXIS 6901, at *5-6 (rejecting the assertion that the omission of any reference in R.C. 2941.401 to transportation for misdemeanor charges in municipal court leaves the court without the power to obtain a prisoner's presence at trial).

Let us now consider the second issue, whether a municipal court is authorized to order a bailiff of the court, a municipal police officer, or a county sheriff to transport a prisoner in a state correctional institution to the municipal court for final disposition of a pending misdemeanor charge. As a general matter, no statute explicitly requires a municipal court bailiff, a municipal police officer, or a county sheriff to transport a prisoner in a state correctional institution to a municipal court for final disposition of a pending misdemeanor charge. *Cf.* R.C. 2941.41 (upon the warrant of a court of common pleas, a county sheriff is required to transport a prisoner in a

state correctional institution to the county in which an indictment or information for a felony is pending against the prisoner).

Nevertheless, R.C. 1901.23, which addresses the issuance of writs and process in a municipal court, provides, in relevant part, that, "[a]ll *warrants*, executions, subpoenas, writs, and processes in all criminal and quasi-criminal cases *may be issued* to the bailiff of the court, a police officer of the appropriate municipal corporation, or *to the sheriff of the appropriate county*." (Emphasis added.) *See also* Ohio R. Crim. P. 4(D)(1) ("[w]arrants shall be executed and summons served by any officer authorized by law"); 1986 Op. Att'y Gen. No. 86-003 (syllabus, paragraph one) ("[p]ursuant to R. Crim. P. 4(D)(1), R. Crim. P. 4.1(F), and R. Crim. P. 9(A), an arrest warrant may be executed by any officer authorized by law").

Past opinions of the Attorneys General have examined this provision of R.C. 1901.23 and advised that a municipal court may issue an arrest warrant to a municipal police officer, 1984 Op. Att'y Gen. No. 84-004 (syllabus, paragraph two), or a municipal court bailiff, 1986 Op. Att'y Gen. No. 86-003 (syllabus, paragraph one). In addition, 1979 Op. Att'y Gen. No. 79-008 at 2-21 advised that a municipal court may issue arrest warrants to the sheriff of the county in which the court has jurisdiction. *Accord* 1984 Op. Att'y Gen. No. 84-004 (syllabus, paragraph two). The opinion explained as follows:

> [R.C. 1901.23] specifically limits the issuance of process to a sheriff in civil actions to the sheriffs of counties other than the county or counties in which the issuing municipal court is located. Such a limitation is not placed upon a municipal court when it issues criminal warrants. Accordingly, I must conclude that the language of R.C. 1901.23 authorizes a municipal court to issue criminal warrants to the sheriff of the county in which such court has jurisdiction.

Id. at 2-21.[6] Accordingly, pursuant to R.C. 1901.23, a municipal court is authorized to issue an arrest warrant in a criminal case to either a bailiff of the court, a municipal police officer, or a sheriff of a county in which the court exercises its jurisdiction.[7]

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[6] 1979 Op. Att'y Gen. No. 79-008 was overruled, in part, on other grounds by 1986 Op. Att'y Gen. No. 86-003 (syllabus, paragraph three).

[7] Because no statute explicitly requires a municipal court bailiff, a municipal police officer, or a county sheriff to transport a prisoner in a state correctional institution to a municipal court for final disposition of a pending misdemeanor charge, the municipal court may designate pursuant to R.C. 1901.23 the officer that is required to transport the prisoner to the court. *See generally* 1979 Op. Att'y Gen. No. 79-008 (syllabus, paragraph one) ("[a] municipal court may select either the bailiff of such court or the sheriff, in its discretion, to serve criminal warrants in any area of the county in which such court has jurisdiction"). In exercising its discretion in this regard, a municipal court should consider the local practices for transporting prisoners, whether

A "warrant" is "[a] writ directing or authorizing someone to do an act, esp. one directing a law enforcer to make an arrest, a search, or a seizure." *Black's Law Dictionary* 1579 (7th ed. 1999). *See generally* 1961 Op. Att'y Gen. No. 2214, p. 261, at 266 (in criminal cases before a municipal court, the issuance of a bench warrant "would undoubtedly be part of the service of process in the prosecution"). A warrant issued by a municipal court to a bailiff of the court, a municipal police officer, or a county sheriff may be executed "at any place within this state." Ohio R. Crim. P. 4(D)(2); *see* R.C. 2935.02; 1986 Op. Att'y Gen. No. 86-003 (syllabus, paragraph three). In fact, R.C. 2935.02 states, in part:

> If 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.
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> 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 county.

Accordingly, if a municipal court issues a warrant for the arrest of a prisoner in a state correctional institution to bailiff of the court, a municipal police officer, or a county sheriff, Ohio R. Crim. P. 4 and R.C. 2935.02 authorize the bailiff, police officer, or sheriff to go to the institution to arrest and transport the prisoner to the court. Therefore, when, pursuant to R.C. 2941.401, a prisoner in a state correctional institution provides appropriate officials written notice of his place of imprisonment and a request for final disposition of a pending misdemeanor charge that is set forth in a complaint, a municipal court in which the matter is pending may issue a warrant that requires a bailiff of the court, a municipal police officer, or a county sheriff to transport the prisoner to the court for final disposition of the matter.

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

1. Pursuant to R.C. 2941.401, when a prisoner in a state correctional institution provides appropriate officials written notice of his place of imprisonment and a request for final disposition of a pending misdemeanor charge that is set forth in a complaint filed with a municipal court, the prisoner may be removed from the institution and taken to the municipal court for final disposition of the matter.

2. When, pursuant to R.C. 2941.401, a prisoner in a state correctional institution provides appropriate officials written notice of his place of imprisonment and a request for final disposition of a pending misdemeanor charge that is set forth in a complaint, a municipal court in

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the pending misdemeanor charge constitutes a violation of a state statute or municipal ordinance, and any other information it deems appropriate or relevant.

which the matter is pending may issue a warrant that requires a bailiff of the court, a municipal police officer, or a county sheriff to transport the prisoner to the court for final disposition of the matter.

Respectfully,

BETTY D. MONTGOMERY
Attorney General