

**OPINION NO. 76-028****Syllabus:**

Both incarcerated individuals and those serving probation pursuant to Chapter 2951, Revised Code, are subject to extradition as provided by Chapter 2963, Revised Code. Should an individual on probation refuse to voluntarily surrender to the authorities of another state the full extradition process set forth in R.C. Chapter 2963 must be invoked.

---

**To: James A. Rhodes, Governor, Columbus, Ohio**  
**By: William J. Brown, Attorney General, April 28, 1976**

I have before me your recent request for my opinion, which raises the following question:

An accused enters a plea of guilty and the imposition of sentence is suspended and the defendant put on probation under authority of Chapter 2951 of the Revised Code. While said defendant is on probation and under the jurisdiction of the court suspending the sentence and putting him on probation, authorities from another state seek the custody of said person for a crime committed before his apprehension and plea of guilty and suspension of sentence in our state court.

What is the status of said person as regards his being turned over to the authorities of another state for the previously committed crime? Suppose said party refused to voluntarily surrender to the authorities from the other state. Is the status of said person the same as if he were incarcerated and serving the sentence?

As you note in your request, this question was addressed by one of my predecessors in 1931 Op. Att'y Gen. No. 3807, at p. 1434. At that time, the laws of the State of Ohio were such that an incarcerated individual was not subject to extradition. My predecessor concluded that a person on probation occupies the same position as that of a person who is physically incarcerated in a penal institution and is, thus, not subject to extradition.

By legislative enactment in 1953, the State of Ohio became a member of the Interstate Compact on Extradition, the provisions of which are set forth in Chapter 2963, Revised Code. Under R.C. 2963.02 the Governor is charged with the duty of providing for the arrest and delivery to the executive authority of any other state of the United States any person charged in that state with treason, felony or any other crime who has fled from justice and is found

within the State of Ohio. No distinction is made between persons at large, those imprisoned or those on probation or parole in the execution of this duty. To the contrary, R.C. 2963.05 and 2963.30 specifically provide for the extradition of persons already incarcerated.

Further, jurisdiction within the state is not lost by turning over to another state a prisoner or one against who criminal charges are pending. See Ponzi v. Fesseden, 258 U.S. 254 (1922); Mantos v. Smith, 406 F. 2d 1243 (5th Cir. 1969); Jenkins v. Madigan, 211 F. 2d 904 (7th Cir. 1954) cert. denied, 348 U.S. 842; Thompson v. Bannon, 298 F. 2d 611 (6th Cir. 1962). If a person under probation in a state court is extradited to face charges in another state and is convicted therein, after serving his sentence in that state he may be returned to the sending state to again resume his probationary sentence which has been tolled during his absence. Stepp v. Lutz, 348 F. 2d 466 (6th Cir. 1965). Tomkalski v. Maxwell, 175 Ohio St. 377 (1963).

It is, therefore, my opinion that the conclusion of my predecessor in 1931 Op. Att'y Gen. No. 3807 - that persons on probation are not subject to extradition - has been invalidated by subsequent legislative enactment. I approve and follow, however, the conclusion of Opinion No. 3807 that a person on probation occupies the same position as a person who is physically incarcerated.

In specific response to your question it is my opinion and you are so advised that both incarcerated individuals and those serving probation pursuant to Chapter 2951, Revised Code, are subject to extradition as provided by Chapter 2963, Revised Code. Should an individual on probation refuse to voluntarily surrender to the authorities of another state the full extradition process set forth in R.C. Chapter 2963 must be invoked.