## OPINION NO. 79-106

**Syllabus:**

1. 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.

2. Where an arrest pursuant to a warrant is made in any county other than the county from which the warrant issued or an adjoining county, and the accused is incarcerated in the jail of the county where the arrest is made, the sheriff of the county of arrest is responsible for making certain that an officer conveys the accused before a court in that county for the bail hearing required by Ohio R. Crim. P. 4(E)(1).

3. If an accused arrested pursuant to a warrant in a county other than the county from which the warrant issued or an adjoining county is not released on bail, the political subdivision which has charged the accused with the offense must pick up the accused and deliver him to the court that issued the warrant, without unnecessary delay.

**To: Ronald J. Mayle, Sandusky County Pros. Atty., Fremont, Ohio**
**By: William J. Brown, Attorney General, December 26, 1979**

I have before me your request for my opinion in which you ask the following question:

> In cases where an accused is arrested and held overnight in the county jail pending the opening of court, who has the responsibility to deliver the accused to the court from the jail when the court opens for business?

In 1962 Op. Att'y Gen. No. 3420, p. 925, my predecessor stated that the responsibility for transportation of prisoners must be determined with reference to the court under whose jurisdiction the prisoner is held. That opinion interpreted R.C. 2301.15, R.C. 2949.08, and R.C. 1901.32 to place such responsibility upon the bailiffs of the common pleas and municipal courts, or otherwise upon the court's order. As the opinion did not, however, discuss specifically transportation to an accused's initial appearance before the court, and as the opinion was decided prior to the promulgation of the Ohio Rules of Criminal Procedure, I conclude that it is inapplicable to your inquiry.

The rules of criminal procedure were adopted by the Ohio Supreme Court pursuant to Ohio Const. art. IV, §5(B), which states in pertinent part:

> The 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 . . . . All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

This constitutional provision has been interpreted to mean that, in matters of procedure, rules promulgated thereunder will control over any conflicting statutes. Boyer v. Boyer, 46 Ohio St. 2d 83 (1976). Thus, with respect to any conflict between the rules of criminal procedure and statutes enacted prior to adoption of the rules, the rules must prevail.

In analyzing prisoner delivery responsibilities, the rules and statutes distinguish between arrests made pursuant to court-issued warrants, on the one hand, and arrests made without warrants, on the other hand.

Ohio R. Crim. P. 4(E)(1) sets out the procedure to be followed upon arrest pursuant to a warrant as follows:

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

R. Crim. P. 4(E)(1) clearly places upon the arresting officer the responsibility for conveying an accused to the initial appearance before a court when an arrest has been made pursuant to a warrant in the county from which the warrant issued, or in an adjoining county. The use of the word "shall" in the rule contemplates the imposition of a mandatory duty upon the arresting officer. See Dorrian v. Scioto Conservancy District, 27 Ohio St. 2d 102 (1971).

When an arrest pursuant to a warrant is made in any county other than the county from which the warrant issued or an adjoining county, rule 4(E)(1) requires that the accused first be brought before a court in the county of arrest and given an opportunity to consult with an attorney and to post bail. If not released by that court, the rule requires that the arrested person be taken before the court which issued the warrant. In this case, unlike the situation in which an arrest is made in the county from which the warrant issued or an adjoining county, R. Crim. P. 4(E)(1) does not specify the person responsible for conveying the accused to a court in the county of arrest for a bail hearing or for returning the arrested person to the court issuing the warrant if not released. The rule merely states that such person "shall be brought" before the court without unnecessary delay. It must be determined, therefore, whether any statutory provision supplements the rule in this respect.

It might be posited that R.C. 2935.02 provides the answer as to who is responsible for conveying an arrested person before a court in the county of arrest for the bail hearing required by rule 4(E)(1). That section provides, in pertinent 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.
>
> 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.

Whether this section directs that the officer holding a warrant convey the accused to a court having jurisdiction of the offense in the county of arrest turns upon the meaning of the words, "the magistrate or court of the county having cognizance of the case," in the first paragraph of R.C. 2935.02. A review of the history of this section reveals that "cognizance" refers to a magistrate or court of the county from which the warrant issued.

The predecessor of R.C. 2935.02 may be first found in Rev. Stat. 7130 and 7139 (in force at least as early as 1890), the latter providing as follows:

> If the accused flee from justice, the officer holding the warrant may pursue and arrest him in any county of this state, and convey him before the magistrate or court issuing the warrant, or other magistrate or court of the county having cognizance of the case. (Emphasis added.)

An examination of the Revised Statute sections dealing with the issuance and form of warrants demonstrates that the emphasized language above referred to another magistrate or court in the county from which the warrant issued.

Rev. Stat. 7137 mandated as follows:

> The warrant shall be directed to the sheriff or to any constable of the county, or, when it is issued by an officer of a municipal corporation, then to the marshal or other police officer of such corporation, and. . . shall command the officer forthwith to take the accused and bring him before the magistrate or court issuing the warrant, or some other magistrate of the county having cognizance of the case, to be dealt with according to law. (Emphasis added.)

Rev. Stat. 7138 directed that a warrant be substantially in the following form:

> The State of Ohio, _____ County, ss.:
>
> To any Constable of said _____ County, greeting:
>
> Whereas there has been filed with me an affidavit, of which the following is a copy: [Here copy the affidavit.]

> These are therefore to command you to take the said E.F., if he be found in your county, or, if he has fled, that you pursue after him into any other county in the state, and take and safely keep the said E.F., so that you have his body forthwith before me, or some other magistrate of said county, to answer the said complaint, and be further dealt with according to law.
>
> A.B., Justice of the Peace
>
> (Emphasis added.)

Thus, a warrant directed that an accused be brought before the magistrate who issued the warrant, or some other magistrate of the same county. As such, Rev. Stat. 7139 evidently constituted an authorization for a police officer to go outside of his or her territorial jurisdiction, across county lines, to make an arrest pursuant to a warrant, and to return the accused to the court or magistrate issuing the warrant, or some other court or magistrate of such county. Furthermore, in view of the fact that there was no statute at that time requiring that an accused be given an opportunity to post bail in the county of arrest before being returned to the warrant-issuing county, Rev. Stat. 7139 could not have been intended to refer to a magistrate or court in the county of arrest.

Rev. Stat. 7130, analogous to the remaining portion of R.C. 2935.02, provided that, if the warrant directed removal of an accused to the county in which the offense was committed, the officer holding the warrant must deliver him to a magistrate of such county.

The provisions of Rev. Stat. 7130 and Rev. Stat 7139 were eventually combined in G.C. 13432-10 (Am. S.B. No. 8, 1929), which provided in part:

> If accused flee from justice, or be not found in the county where the warrant 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, except as hereinafter provided.
>
> 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, to be dealt with according to law.

The second paragraph of G.C. 13432-10 may be better understood in light of G.C. 13432-13, which provided that if a person charged with an offense flees the county, a court or magistrate in the county in which such person is found "may issue a warrant for his arrest and removal to the county in which the offense was alleged to have been committed, to be delivered to a court or magistrate of such county, . . . ." Thus, the officer pursuing and arresting an accused would not convey such person to the court which issued the warrant, if the warrant issued from the county where the accused was found and directed removal to a court or magistrate in the county where the offense was alleged to have been committed.

The first paragraph of G.C. 13432-10 omitted the language "magistrate or court issuing the warrant," but retained the language regarding a "magistrate or court having cognizance of the case." Once again, however, the warrant form requirements, as set out in the General Code, demonstrate that the meaning of this language did not change. G.C. 13432-19 provided that a warrant shall command the officer to whom issued to bring the accused "before the magistrate or court issuing such warrant, or other magistrate of the county having cognizance of the case, . . . ." The warrant language was nearly identical to that found in Rev. Stat. 7138, commanding that the accused be pursued if not found in the county, arrested, and conveyed "before me (the magistrate issuing the warrant) or some other magistrate of said county, . . . ."

The major change in the General Code statutes from the provisions of the Revised Statutes was the enactment of G.C. 13432-11, giving a person accused of a misdemeanor the right to demand that he be taken before a court in the county

where arrested and offer recognizance for his appearance before the court or magistrate who issued the warrant (analogous to R.C. 2935.13). If the accused was not let to bail, the arresting officer was to convey the accused before the warrant-issuing court. G.C. 13432-12. Thus, G.C. 13432-10 provided that an accused be conveyed before a court or magistrate in the county having cognizance of the case, i.e., a court or magistrate in the county from which the warrant issued, "except as hereinafter provided." The exceptions applied when the warrant, issuing from the county where the accused was found, directed removal to the county in which the offense was alleged to have been committed, and when a misdemeanor was charged, in which case the accused was first conveyed before a court in the county of arrest for the setting of bail.

R.C. 2935.02 is, with minor changes, the same as G.C. 13432-10. Moreover, the requirement as to the form of a warrant, found in R.C. 2935.18, is substantially the same as Rev. Stat. 7133 and G.C. 13432-19, commanding that if the accused is not found in the county, "you pursue after him in any other county in this state and take and safely keep the said E.F. so that you have his body forthwith before me or some other magistrate of said county to answer the said complaint. . . ." Inasmuch as the warrant form requirements and the statutory language with respect to arrest pursuant to a warrant in another county has not undergone any meaningful change, I must conclude that the language in R.C. 2935.02 has the same meaning as it had when embodied in Rev. Stat 7139 and 7130, and G.C. 13432-10. Accordingly, the first paragraph of R.C. 2935.02 permits an officer only to pursue and arrest an accused in another county, and convey that person before a magistrate or court in the county from which the warrant issued. The statute does not, therefore, have any applicability to the question of who has the responsibility for delivering the accused to a court in the county of arrest for the bail hearing required by Ohio R. Crim. P. 4(E)(1) when an arrest is made in any county beyond a county adjoining the one from which the warrant issued.

Thus, neither R.C. 2935.02 nor Ohio R. Crim. P. 4(E)(1) specifies the person responsible for transporting an accused arrested pursuant to a warrant in a county other than the county from which the warrant issued, or an adjoining county, to the bail hearing in the county of arrest. Presumably then, any person could deliver the arrested person to this hearing. It may, on occasion, be convenient for the arresting officer to do so. However, no mandatory duty to that effect is imposed upon the arresting officer by rule or statute. The question, therefore, is who has the responsibility for transporting to court a person arrested and held in the county jail overnight pending the opening of court when the arresting officer does not return to deliver the accused to court.

A sheriff has charge of the county jail and persons confined therein, R.C. 341.01, and is by statute responsible for the neglect or misconduct of his or her deputies. R.C. 311.05. Furthermore, as custodian of the county jail, the sheriff may be subject to the sanctions imposed by R.C. 2935.16, which provides that if it comes to the attention of a judge that a person is being held in jail without commitment from a court, the judge must require the person in charge of such jail to disclose under whose process the prisoner is being held. If the prisoner is held solely under a warrant of arrest from any court, the judge must "order the custodian to produce the prisoner forthwith before the court or magistrate issuing the warrant and if such be impossible for any reason, to produce him before the inquiring judge or magistrate." Any person in charge of a jail who violates R.C. 2935.16 may be fined and/or imprisoned.

Moreover, although there is no definitive case on point, failure of the custodian of a jail to ensure that a prisoner is conveyed "without unnecessary delay" before a court or magistrate may be the basis for a suit for false imprisonment or a suit under 42 U.S.C. §1983 for deprivation of constitutional rights. See Leger v. Warren, 62 Ohio St. 500 (1900); In re Thompson, 4 Ohio Op. 3d 359 (C.P. Montgomery County 1974) (regarding warrantless arrests). See also Anderson v. Nosser, 456 F. 2d 835 (5th Cir. 1972) (§1983 action will lie against police chief and officers for failure to comply with statute providing that arresting officer shall take accused before proper officer without unnecessary delay).

Accordingly, because the sheriff has charge of all persons confined in the county jail, I am of the opinion that, when an arrest pursuant to a warrant is made beyond a county adjoining the one from which the warrant issued, and the accused is confined in the county jail overnight, the sheriff is responsible for delegating an officer to transport the accused, without unnecessary delay, to a court having jurisdiction of the offense in the county of arrest for the bail hearing required by rule 4(E)(1), if the arresting officer does not so transport the accused.

If the accused is not released on bail by the court in the county of arrest, rule 4(E)(1) requires that he or she be brought before the court issuing the warrant. Here again, the rule does not specify the person responsible for transporting the accused. In the event that an officer holding the warrant has pursued the accused into another county and made the arrest, R.C. 2935.02, discussed earlier herein, authorizes such officer to convey the accused before the magistrate or court issuing the warrant. R.C. 2935.02 also provides that if the warrant directs removal to a court in the county where the offense was alleged to have been committed, the officer "holding the warrant shall deliver the accused to a court or magistrate of such county." This provision has, however, been superseded by Ohio R. Crim. P. 4(C), which provides, in part, that a "warrant shall command that the defendant be arrested and brought before the court issuing it without unnecessary delay." Hence, there is currently no situation in which a warrant may direct that an accused be brought before a court other than the court issuing the warrant. R.C. 2935.02 thus operates only to authorize an officer holding a warrant, and pursuing the accused into another county to effectuate an arrest, to deliver the accused to the court which issued the warrant. No mandatory duty is imposed on the arresting officer. It must be determined, therefore, who has responsibility to deliver the accused if the arresting officer does not do so.

Where an arrest is made in a county beyond the one adjoining the county from which the warrant issued, rule 4(E)(1) operates to require officials having custody of the accused in the county of arrest to guarantee that the accused is not removed until afforded the bail hearing mandated by the rule. Thus, those officials in the county of arrest who have custody of the accused have an interest in ensuring, and a duty to ensure, that the accused is conveyed before a court in the county of arrest. If, however, the accused is not released on bail, officials in the county of arrest have no further interest in the proceedings or the accused. The rule merely requires that the accused be brought before the court which issued the warrant. At this point then, I am of the opinion that officials of the charging subdivision are responsible for conveying the accused before the warrant-issuing court.

In 1976 Op. Att'y Gen. No. 76-012, I addressed the question as to who has responsibility for the care and sustenance of prisoners. I concluded that the responsibility for the care of prisoners rests upon the nature of the offense involved, not the character of the officer making the arrest, and therefore, a municipality is responsible for prisoners charged with violation of municipal ordinances, and a county for prisoners charged with violations of state statutes. The basic concept is that "an individual is the prisoner of the political subdivision which has charged him with an offense. . .and that it is the 'charging' subdivision which has responsibility for the prisoner." Op. No. 76-012, supra, at p. 2-36 (emphasis added).

In accordance with the foregoing principles, it follows that if the "charging" subdivision is responsible for a prisoner being held by other authorities, the charging subdivision is also responsible for picking up an accused being held by another county on behalf of the charging subdivision and delivering the accused to the warrant-issuing court. I conclude, therefore, that municipal police officers are responsible for picking up and transporting an accused charged with violation of a municipal ordinance, and the county sheriff of the county from which the warrant issued is responsible for picking up and transporting an accused charged with violation of a state statute, where an accused is not released after the bail hearing required by Ohio R. Crim. P. 4(E)(1).

In the case of a warrantless arrest, the proper procedure to be followed is

established by Ohio R. Crim. P. 4(E)(2), which provides:

> Where a person is arrested without a warrant the arresting officer shall . . . bring the arrested person without unnecessary delay before a court having jurisdiction of the offense, and shall file or cause to be filed a complaint describing the offense for which the person was arrested . . . . (Emphasis added.)

No exceptions are made with regard to warrantless arrests. The arresting officer must bring the accused before a court having jurisdiction of the offense without unnecessary delay. See Dayton Newspapers, Inc. v. City of Dayton, 45 Ohio St. 2d 107, 111 (1976) (concurring opinion); In re Thompson, 4 Ohio Op. 3d 359, 362 (C.P. Montgomery County 1974).

You have also inquired whether the result reached herein is applicable to all courts and all types of arresting officers.

Ohio R. Crim. P. 4(E) provides that an arresting officer shall bring the accused before the court issuing the warrant or having jurisdiction over an offense. Ohio R. Crim. P. 1(A) states that the rules are to be followed in "all courts of this state," with the exceptions enumerated in division (C) of the rule. Therefore, the provisions of Ohio R. Crim. P. 4(E) are applicable to any court, whether common pleas, municipal, or otherwise. Moreover, it is my opinion that, as Ohio R. Crim. P. 4 deals with the arrest powers of "law enforcement officers," the meaning of "arresting officer" in rule 4(E) is co-extensive with that of "law enforcement officer." Ohio R. Crim. P. 2 defines "law enforcement officer" as follows:

> [A] sheriff, deputy sheriff, constable, municipal police officer, marshal, deputy marshal, or state highway patrolman, and also means any officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, the authority to arrest violators is conferred . . . .

Accordingly, the foregoing discussion applies to any person who comes within the definition of law enforcement officer in Ohio R. Crim. P. 2.

It is my opinion, therefore, and you are so advised, that:

1. 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.

2. Where an arrest pursuant to a warrant is made in any county other than the county from which the warrant issued or an adjoining county, and the accused in incarcerated in the jail of the county where the arrest is made, the sheriff of the county of arrest is responsible for making certain that an officer conveys the accused before a court in that county for the bail hearing required by Ohio R. Crim. P. 4(E)(1).

3. If an accused arrested pursuant to a warrant in a county other than the county from which the warrant issued or an adjoining county is not released on bail, the political subdivision which has charged the accused with the offense must pick up the accused and deliver him to the court that issued the warrant, without unnecessary delay.