

**OPINION NO. 88-062****Syllabus:**

1. Where the Department of Youth Services wishes to grant a home furlough to a child who has been committed to the legal custody of the Department of Youth Services for institutionalization or institutionalization in a secure facility under R.C. 2151.355(A)(4) or (5), the Department may not, for the purpose of such furlough, allow the child to leave the institution in which he has been placed, prior to the expiration of the minimum period prescribed by the statutory provision under which he was committed, unless the court which committed the child approves of such early release in accordance with R.C. 2151.38(B); once such a child has been institutionalized or institutionalized in a secure facility for the minimum period prescribed by the statutory provision under which he was committed, the Department may, in accordance with R.C. 2151.38(C) and R.C. 5139.06, allow the child to leave the institution in which he was placed and return home, without prior approval of the court which committed the child.
  2. Where the Department of Youth Services wishes to grant a home furlough to a child who has been committed to the legal custody of the Department of Youth Services for institutionalization in a secure facility under R.C. 2151.355(A)(6), the Department may not, for the purpose of such furlough, allow the child to leave the institution in which he has been placed, prior to the child's attainment of the age of twenty-one years, unless the court which committed the child approves of such early release in accordance with R.C. 2151.38(B).
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**To: Geno Natalucchi-Persichetti, Director, Department of Youth Services,  
Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, September 12, 1988**

I have before me your opinion request in which you ask whether the Department of Youth Services must obtain prior approval by a court which commits a child under R.C. 2151.355 to the Department of Youth Services for a minimum period of six months, one year, or until the child reaches the age of twenty-one years before the Department may release the child for a home visit for a period of up to seven days. Your letter of request contains the following background information:

The Ohio Department of Youth Services is statutorily mandated in Chapters 2151 and 5139 of the Revised Code of Ohio to accept adjudicated felony level juvenile offenders who are committed to us by Ohio's juvenile courts. A commitment to our Department carries a "minimum period of institutionalization" for either six months, one year, or until the attainment of the age of 21 depending on the severity of the committing offense....

During the course of institutionalization, it is often determined that a short term furlough for the therapeutic purpose of family reunification for the offender or for other preparation by the youth for his/her return to the community (meeting with community agencies, social services, schools, etc.) would be beneficial to the rehabilitation process, assuming the youth is not considered a risk to public safety. We therefore frequently release a youth for a home visit for periods of up to seven (7) days. We presently request approval from the committing juvenile court before such a home furlough is granted.

In order to answer your question, it is first necessary to examine the authority of a juvenile court with regard to the disposition of a child who has been found by the court to be a delinquent child as set forth in R.C. 2151.355, which states in pertinent part:

(A) If a child is found by the court to be a delinquent child, the court may make any of the following orders of disposition:

....

(4) If the child was adjudicated delinquent by reason of having committed an act that would be an aggravated felony of the third degree or a felony of the third or fourth degree if committed by an adult, commit the child to the legal custody of the department of youth services for institutionalization for an indefinite term consisting of a minimum period of six months and a maximum period not to exceed the child's attainment of the age of twenty-one years;

(5) If the child was adjudicated delinquent by reason of having committed an act that would be an aggravated felony of the first or second degree or a felony of the first or second degree if committed by an adult, commit the child to the legal custody of the department of youth services for institutionalization in a secure facility for an indefinite term consisting of a minimum period of one year and a maximum period not to exceed the child's attainment of the age of twenty-one years;

(6) If the child was adjudicated delinquent by reason of having committed an act that would be the offense of murder or aggravated murder if committed by an adult, commit the child to the legal custody of the department of youth services for institutionalization in a secure facility until the child's attainment of the age of twenty-one years....

*See generally* R.C. 5139.05(A) (stating, in part, "[t]he juvenile court may commit any child to the department of youth services permanently as authorized in [R.C. 2151.355], provided that any child so committed shall be at least twelve years of age at the time of his commitment"); *State v. Grady*, 3 Ohio App. 3d 174, 175, 444 N.E.2d 51, 52 (Cuyahoga County 1981) ("[w]hen a child is found to be delinquent...the court must determine his disposition by adhering to the options enumerated in R.C. 2151.355").

R.C. 2151.355(A)(4), (5), and (6) each authorize a juvenile court to commit a child who has been adjudicated delinquent for any reason specified in those subdivisions to the "legal custody" of the Department of Youth Services. R.C. 2151.011(B)(10) defines the phrase "legal custody," as used in R.C. Chapter 2151, as meaning in part:

a legal status created by court order which vests in the custodian the right to have *physical care and control of the child and to determine where and with whom he shall live*, and the right and duty to protect, train, and discipline him and to provide him with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities. (Emphasis added.)

Pursuant to R.C. 5139.04(B), the Department of Youth Services has a duty to receive custody of any child who has been committed to the Department under R.C. 2151.355. See generally R.C. 5139.05(A) (stating, in part, "[a]ny order to commit a child to an institution under the control and management of the department shall have the effect of ordering that the child be committed to the department and assigned to an institution for an indefinite term consisting of the prescribed minimum period of time and a maximum period not to exceed the child's attainment of the age of twenty-one years if the child was committed pursuant to [R.C. 2151.355(A)(4) or (5)]..., or until the child's attainment of the age of twenty-one years if the child was committed pursuant to [R.C. 2151.355(A)(6)]...").

A related statute, R.C. 5139.05(B), setting forth certain powers and duties of the Department of Youth Services, states in pertinent part:

When a child has been committed permanently to the department, the department shall retain *legal custody* of the child until such time as it divests itself of such custody by discharging the child to the exclusive management, control, and custody of his parent or the guardian of his person, or until the committing court, upon its own motion, upon petition of the parent, guardian of the person, or next friend of a child, or upon petition of the department, terminates such custody, or until such custody is terminated automatically by the child attaining the age of twenty-one years. (Emphasis added.)

The meaning of the term "legal custody," as used in R.C. Chapter 5139, to the extent it pertains to the status created when a child is permanently committed<sup>1</sup> to the Department of Youth Services, is set forth in R.C. 5139.01(A)(3), as follows:

a legal status wherein the department has the following rights and responsibilities: the right to have physical possession of the child; the right and duty to train, protect, and control him; the responsibility to provide him with food, clothing, shelter, education, and medical care; and *the right to determine where and with whom he shall live, subject to the minimum periods of institutional care prescribed in [R.C. 2151.355]*; provided, that these rights and responsibilities are exercised subject to the powers, rights, duties, and responsibilities of the guardian of the person of the child, and subject to any residual parental rights and responsibilities. (Emphasis added.)

Thus, where a juvenile court commits a child, pursuant to R.C. 2151.355(A)(4), (5), or (6), to the legal custody of the Department of Youth Services, the Department has a duty to retain legal custody of such child as required by R.C. 5139.05(B). Such custody, by virtue of R.C. 5139.01(A)(3), authorizes the Department to determine where and with whom the child shall live, subject, however, to the minimum periods of institutional care prescribed by R.C. 2151.355.

<sup>1</sup> R.C. 5139.01(A)(2) defines "permanent commitment," for purposes of R.C. Chapter 5139, as meaning: "a commitment which vests legal custody of a child in the department of youth services."

Specifically concerning children who have been committed to the Department of Youth Services pursuant to R.C. 2151.355(A)(4), (5), or (6), R.C. 5139.06 states:

(A) When a child has been committed to the department of youth services it shall:

(2) Maintain the child in *institutional care or institutional care in a secure facility* for the required period of institutionalization in a manner consistent with [R.C. 2151.355(A)(4), (5), or (6)], whichever is applicable, and [R.C. 2151.38(B)]. (Emphasis added.)

In order to determine whether the furlough procedure outlined in your opinion request may be used by the Department, it is first necessary to determine whether the furlough procedure comports with the Department's duties under R.C. 5139.06(A)(2). Pursuant to R.C. 2151.355(A)(4) or (5), set forth above, the Department of Youth Services must maintain legal custody of the child in institutional care or institutional care in a secure facility for a minimum period of six months or one year, respectively. Similarly, with respect to a child who has been committed to the Department pursuant to R.C. 2151.355(A)(6), the Department is required to maintain legal custody of the child for institutionalization in a secure facility until the child reaches age twenty-one. R.C. 2151.38(B) specifies that where a child has been committed to the Department under R.C. 2151.355(A)(4), (5), or (6), the Department "shall not release the child" from institutional care or institutional care in a secure facility, whichever is applicable, "and as a result shall not discharge the child, order his release on parole, or assign him to a family home, group care facility, or other place for treatment or rehabilitation," prior to the expiration of the prescribed minimum period of institutionalization for one committed pursuant to R.C. 2151.355(A)(4) or (5), or prior to the child's attainment of the age of twenty-one for one committed pursuant to R.C. 2151.355(A)(6), unless the court that committed the child approves an early release in accordance with R.C. 2151.38(B)(2).<sup>2</sup>

R.C. 2151.355 (A) (4), (5), and (6) each specify a minimum period for which the child is to be committed. The fact that the General Assembly has specifically included the phrases "for institutionalization" or "for institutionalization in a secure facility" in the commitment statutes clearly expresses the intention that the child is to be maintained within an institution for at least the statutorily prescribed minimum period.

Although the word "institution" is not defined by statute for purposes of R.C. Chapter 2151, it is defined as used in R.C. Chapter 5139, governing the Department of Youth Services. Thus, in construing the powers and duties of the Department of Youth Services with regard to commitments made to the Department under R.C. Chapter 2151, it is logical to assume that the definition of "institution" set forth in R.C. 5139.01(A)(4), applies equally when used in the provisions of R.C. Chapter 2151 concerning commitments to the Department of Youth Services. See generally *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (syllabus, paragraph two) ("[s]tatutes relating to the same matter or subject, although passed at different times and making no reference to each other, are *in pari materia* and should be read together to ascertain and effectuate if possible the legislative intent"). R.C. 5139.01(A)(4) defines the word "institution," for purposes of R.C. Chapter 5139, as meaning:

*a state facility created by the general assembly that is under the management and control of the division of correctional services of the*

<sup>2</sup> R.C. 2151.38(B)(2)(b) authorizes a child who has been committed to the Department pursuant to R.C. 2151.355(A)(4), (5), or (6), or the child's parent, to seek the child's release, prior to the expiration of the minimum period prescribed by the statutory provision pursuant to which he was committed, from the court that committed the child. Since your question concerns situations where the Department itself seeks the child's release, I will not address the provisions of R.C. 2151.38(B)(2)(b).

*department of youth services and that maintains sufficient control over juveniles committed to its custody in order to prevent them from committing further acts of delinquency and accomplish their rehabilitation. (Emphasis added.)*

Based upon the definition of the term "institution" as meaning, in part, a "state facility created by the general assembly," it is clear that where a juvenile court commits a child to the legal custody of the Department of Youth Services, for "institutionalization" or "for institutionalization in a secure facility" for a specified minimum period of time, the intent of the committing statutes is that the child be maintained physically within a state facility created by the General Assembly, at least for the prescribed minimum period, subject to, among other things, the statutory method for obtaining the early release of the child, *see, e.g.*, R.C. 2151.38(B)(2); R.C. 5139.06(B). *See generally* R.C. 5139.01(A)(1) (defining the word "commitment" as meaning, "the transfer of the *physical custody* of a child or youth from the court to the department of youth services" (emphasis added)).

I turn now to R.C. 2151.38(B), concerning the authority of the juvenile court with respect to children whom it has committed to the Department of Youth Services, which states in part:

(B)(1) If a child is committed to the department of youth services pursuant to [R.C. 2151.355(A)(4) or (5)], the department shall not release the child from institutional care or institutional care in a secure facility, whichever is applicable, and as a result shall not discharge the child, order his release on parole, or assign him to a family home, group care facility, or other place for treatment or rehabilitation, prior to the expiration of the prescribed minimum periods of institutionalization unless the department, the child, or the child's parent requests an early release from institutional care or institutional care in a secure facility, whichever is applicable, from the court that committed the child and the court approves the early release in a journal entry, or unless the court on its own motion grants an early release. A request for early release by the department, the child, or the child's parent shall be made only in accordance with [R.C. 2151.38(B)(2)].

If a child is committed to the department of youth services pursuant to [R.C. 2151.355(A)(6)], the department shall not release the child from institutional care in a secure facility, and as a result shall not discharge the child, order his release on parole, or assign him to a family home, group care facility, or other place for treatment or rehabilitation, prior to the child's attainment of the age of twenty-one years unless the department, the child, or the child's parent requests an early release from institutional care in a secure facility from the court that committed the child and the court approves the early release in a journal entry, or unless the court on its own motion grants an early release. A request for early release by the department, the child, or the child's parent shall be made only in accordance with [R.C. 2151.38(B)(2)].

(2)(a) If the department of youth services desires to release a child committed to it pursuant to [R.C. 2151.355(A)(4) or (5)] from institutional care or institutional care in a secure facility, whichever is applicable, prior to the expiration of the prescribed minimum periods of institutionalization or if it desires to release a child committed to it pursuant to [R.C. 2151.355(A)(6)] from institutional care in a secure facility prior to the child's attainment of the age of twenty-one years, it shall request the court that committed the child for an early release....

Upon receipt of a request for a child's early release filed by the department at any time, or upon its own motion at any time, the court that committed the child to the department shall either approve the early release from institutional care or institutional care in a secure facility, whichever is applicable, by journal entry or schedule a time within thirty days for a hearing on whether the child is to be released.

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(c) If a court schedules a hearing to determine whether a child committed to the department should be granted an early release, either upon receipt of a request filed by the department under division (B)(2)(a) of this section or filed by the child or the child's parent in accordance with the time periods prescribed in division (B)(2)(b) of this section, or upon its own motion, it shall order the department to deliver the child to the court on the date set for the hearing and present to the court at that time a treatment plan for the child's post-institutional care. The court shall determine at the hearing whether the child should be released from institutionalization or institutionalization in a secure facility, whichever is applicable. If the court approves the early release, the department shall prepare a written treatment and rehabilitation plan for the child pursuant to division (D) of this section, which shall include the terms and conditions of his release. It shall send the committing court and the juvenile court of the county in which the child is placed a copy of the plan and the terms and conditions that it fixed. The court of the county in which the child is placed may adopt the terms and conditions set by the department as an order of the court and may add any additional consistent terms and conditions it considers appropriate....If the court of the county in which the child is placed orders the child to be returned to a department of youth services institution, the time during which the child was institutionalized or institutionalized in a secure facility, whichever is applicable, prior to his early release shall be considered as time served in fulfilling the prescribed minimum period of institutionalization or institutionalization in a secure facility that is applicable to the child under his original order of commitment. If the court orders the child returned to a department of youth services institution, the child shall remain in institutional care for a minimum period of three months.

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 (E) The department of youth services shall file a written progress report with the committing court regarding each child released pursuant to division (B) or (C) of this section, at least once every thirty days unless specifically directed otherwise by the court....*The department shall retain legal custody of a child so released until it discharges the child or until the custody is terminated as otherwise provided by law.* (Emphasis added.)

R.C. 2151.38(B), thus, prohibits the "release" of a child who has been committed to the Department of Youth Services pursuant to R.C. 2151.355(A)(4), (5), or (6), except as allowed in R.C. 2151.38(B), prior to the expiration of the minimum period specified in R.C. 2151.355(A)(4) or (5) for a child committed under one of those provisions or prior to the child's attainment of age twenty-one for a child committed under R.C. 2151.355(A)(6).

The specific powers and duties of the Department of Youth Services with respect to a child who has been committed to the Department under R.C. 2151.355(A)(4), (5), or (6) are set forth in R.C. 5139.06, which states in part:

(B) When a child has been committed to the department of youth services pursuant to [R.C. 2151.355 (A)(6)], or when a child has been committed to the department pursuant to [R.C. 2151.355(A)(4) or (5)] and the child has not been institutionalized or institutionalized in a secure facility, whichever is applicable, for the prescribed minimum periods of time under those divisions, the department, the child, or the child's parent may request the court that committed the child to order an early release<sup>3</sup> from institutionalization or institutionalization

<sup>3</sup> As used in R.C. Chapter 5139, "release" means:

the termination of a child's stay in one of the institutions under the management and control of the department of youth services. A child released pursuant to [R.C. 2151.38(B) or R.C. 5139.06(C)] shall be on parole until discharged pursuant to [R.C.

in a secure facility, whichever is applicable, in accordance with [R.C. 2151.38(B)], and the child may be released...in accordance with that division. Such a child shall not be released...except in accordance with that division. When a child is released pursuant to that division, the department shall comply with [R.C. 2151.38(D) and (E)] relative to the child, and shall send the committing court and the juvenile court of the county in which the child is placed<sup>4</sup> a copy of the plan and the terms and conditions that it fixed. The court of the county in which the child is placed may adopt the terms and conditions as an order of the court, and may add any additional consistent terms and conditions it considers appropriate....

(C) When a child has been committed to the department of youth services it may:

(1) If the child was committed pursuant to [R.C. 2151.355(A)(4) or (5)] and has been institutionalized or institutionalized in a secure facility, whichever is applicable, for the prescribed minimum periods of time under those divisions, order his release on parole under such supervision and conditions as it believes conducive to law-abiding conduct or order replacement or renewed parole as often as conditions indicate it to be desirable; provided that the department shall notify the committing court, in writing, of the terms of supervision and the conditions of the release at least fifteen days prior to the scheduled date of release;

....  
(3) Revoke or modify any order of the department except an order of discharge as often as conditions indicate it to be desirable;

(4) If the child was committed pursuant to [R.C. 2151.355(A)(4) or (5)] and has been institutionalized or institutionalized in a secure facility, whichever is applicable, for the prescribed minimum periods of time under those divisions, discharge the child from its custody and control when it is satisfied that such discharge is consistent with the welfare of the individual and protection of the public. The department shall notify the committing court, in writing, that it is going to discharge the child at least fifteen days before the scheduled date of discharge, and upon the discharge, shall immediately certify such discharge in writing, and transmit the certificate to the committing court.

(5) If the child was committed pursuant to [R.C. 2151.355(A)(4) or (5)] and has been institutionalized or institutionalized in a secure facility, whichever is applicable, for the prescribed minimum periods of time under those divisions, assign the child to a family home, a group care facility, or other place maintained under public or private auspices, within or without this state, for necessary treatment and

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5139.06(C)(4)], or until such custody is terminated as otherwise provided by law.

R.C. 5139.01(A)(9). R.C. 5139.01(A)(8) defines the word "discharge," for purposes of R.C. Chapter 5139, as meaning, "that the department of youth services' legal custody of a child is terminated."

<sup>4</sup> R.C. 5139.01(A) (6) defines the term "placement," as used in R.C. Chapter 5139, as meaning:

the conditional release of a child under such terms and conditions as are specified by the department of youth services. The department shall retain legal custody of a child released pursuant to [R.C. 2151.38(B) or R.C. 5139.06(C)] until such time as it discharges the child, or until such custody is terminated as otherwise provided by law.

See note 3, *supra*. The phrase "home placement," as used in R.C. Chapter 5139, means "the placement of a child in the home of his parent or parents, or in the home of the guardian of his person." R.C. 5139.01(A)(7).

rehabilitation, the costs of which may be paid by the department, provided that the department shall notify the committing court, in writing, of the place and terms of the assignment at least fifteen days prior to the scheduled date of the assignment.

(D) The department of youth services shall notify the committing court of any order transferring the physical location of any child committed to it in accordance with [R.C. 5139.35].<sup>5</sup> Upon the discharge from its custody and control, the department may petition the court for an order terminating its custody and control.

(E) If a child is released on parole under division (C)(1) of this section, or is assigned to a family home, group care facility, or other place for treatment or rehabilitation under division (C)(5) of this section, the department shall comply with [R.C. 2151.38(D) and (E)] relative to the child, and shall send the committing court and the juvenile court of the county in which the child is placed a copy of the plan and the terms and conditions of the release or assignment that it fixed. The court of the county in which the child is placed may adopt the terms and conditions as an order of the court, and may add any additional consistent terms and conditions it considers appropriate. Any violations of the terms and conditions established by the court of the county in which the child is placed in its journal entry shall be handled pursuant to [R.C. 2151.38(C)]. (Footnotes added.)

Pursuant to R.C. 5139.06(B), in the event that a child has been committed to the Department under R.C. 2151.355(A)(4) or (5) and has not been institutionalized or institutionalized in a secure facility, whichever is applicable, for the minimum period prescribed by the statutory provision under which the child was committed or if a child has been committed to the Department pursuant to R.C. 2151.355(A)(6), the child shall not be released except in accordance with R.C. 2151.38(B).

Consequently, where the Department of Youth Services wishes to release a child committed to the Department pursuant to R.C. 2151.355(A)(4) or (5) for institutionalization or institutionalization in a secure facility prior to the expiration of the minimum period under the committing statutory provision, R.C. 2151.38(B)(2)(a) requires the Department to request that the court which committed the child grant an early release, and the Department may not release such child absent the court's approval of the release in a journal entry, R.C. 2151.38(B)(1). Similarly, where the Department wishes to release a child who has been committed to the Department pursuant to R.C. 2151.355(A)(6) for institutionalization in a secure facility prior to the child's attainment of the age of twenty-one years, R.C. 2151.38(B)(2)(a) requires the Department to request that the court which committed the child grant an early release, and the Department may not release such child absent the court's approval of the release in a journal entry, R.C. 2151.38(B)(1).

R.C. 5139.06, however, prescribes a different procedure where the Department of Youth Services wishes to release a child who has been committed to

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<sup>5</sup> R.C. 5139.35 requires the Department of Youth Services to obtain the prior consent of the committing court where the Department wishes to place a child "in an institution with a less restrictive setting than that in which the child was originally placed, other than an institution under the management and control of the department," where the child was committed to the Department pursuant to R.C. 2151.355(A)(4) or (5) and has not been institutionalized or institutionalized in a secure facility for the statutorily prescribed minimum period or where the child was committed to the Department under R.C. 2151.355(A)(6). See generally R.C. 5139.01(A)(4) (defining "institution," as used in R.C. Chapter 5139, as meaning, "a state facility created by the general assembly that is under the management and control of the division of correctional services of the department of youth services and that maintains sufficient control over juveniles committed to its custody in order to prevent them from committing further acts of delinquency and accomplish their rehabilitation"). Since your question concerns removal of the child from an institution to the home of a parent, the provisions of R.C. 5139.35 do not apply.



it under R.C. 2151.355(A)(4) or (5) and has served the minimum period prescribed by the statutory provision under which he was committed. R.C. 5139.06(C)(1) expressly authorizes the Department to order such child's "release on parole under such supervision and conditions as it believes conducive to law-abiding conduct or order replacement or renewed parole as often as conditions indicate it to be desirable." R.C. 5139.06(C)(1), however, also imposes a duty upon the Department in such a situation to "notify the committing court, in writing, of the terms of supervision and the conditions of the release at least fifteen days prior to the scheduled date of release."<sup>6</sup> Further, R.C. 5139.06(C)(4) authorizes the Department to "discharge [such a child] from its custody and control when it is satisfied that such discharge is consistent with the welfare of the individual and the protection of the public." Like R.C. 5139.06(C)(1), R.C. 5139.06(C)(4) imposes upon the Department a duty to "notify the committing court, in writing, that it is going to discharge the child at least fifteen days before the scheduled date of discharge, and upon the discharge, shall immediately certify such discharge in writing, and transmit the certificate to the committing court."<sup>7</sup>

R.C. 5139.06(C)(5) presents another alternative which the Department may pursue. Where a child was committed to the Department pursuant to R.C. 2151.355(A)(4) or (5) and the child has been institutionalized or institutionalized in a secure facility, whichever is applicable, for the minimum period prescribed by the statutory provision under which the child was committed, the Department may, "assign the child to a family home, a group care facility, or other place maintained under public or private auspices, within or without this state, for necessary treatment and rehabilitation,...provided that the department shall notify the committing court, in writing, of the place and terms of the assignment at least fifteen days prior to the scheduled date of the assignment." Thus, as with R.C. 5139.06(C)(1) and (4), discussed above, the Department need not obtain approval of the committing court where the Department wishes to assign a child in accordance with R.C. 5139.06(C)(5), once the child has been institutionalized in the manner, and for the minimum period, prescribed by the statutory provision under which he was committed to the Department.

The home furlough plan, as outlined in your opinion request, contemplates that a child who has been committed to the Department pursuant to R.C. 2151.355(A)(4), (5), or (6) will, for periods of up to seven days, leave the institution in which the Department has placed him, so long as the Department does not consider the child to be a risk to public safety. You specifically ask, "whether prior approval from the committing court is necessary for such visits or whether such home visits can be considered as merely an extension of the institutionalization process for purposes of rehabilitation." Examination of the statutory scheme and the precise language governing a juvenile court's authority with respect to the disposition of a child who has been adjudicated delinquent under R.C. 2151.355(A)(4), (5), or (6), leads

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<sup>6</sup> Almost identical provisions are set forth in R.C. 2151.38(C) which states in part:

If a child is committed to the department of youth services pursuant to [R.C. 2151.355(A)(4) or (5)] and the child has been institutionalized or institutionalized in a secure facility, whichever is applicable, for the prescribed minimum periods of time under those divisions, the department, *without approval of the court that committed the child*, may release the child from institutional care or discharge the child. (Emphasis added.)

<sup>7</sup> No provision analogous to R.C. 5139.06(C)(1) or (4) is prescribed by that statute for the release or discharge of a child committed to the legal custody of the Department under R.C. 2151.355(A)(6) for institutionalization in a secure facility until the child's attainment of the age of twenty-one. R.C. 5139.10 states, however: "Unless the child has already received a final discharge, the control by the department of youth services of a child committed as a delinquent shall cease when the child reaches the age of twenty-one years."

me to conclude that commitment to the legal custody of the Department of Youth Services for institutionalization or for institutionalization in a secure facility requires that until the expiration of the minimum period prescribed by the statutory provision under which the child was committed, R.C. 2151.355(A)(4), (5), or (6), the Department may not release the child and, therefore, may not grant such a child a "home furlough," absent approval by the committing court.

Support for this conclusion is found in the statutory scheme governing the duties of the Department of Youth Services with respect to children who have been committed to the Department under R.C. 2151.355(A)(4), (5), or (6). As discussed above, R.C. 5139.01(A)(3) defines the term "legal custody," for purposes of R.C. Chapter 5139, as follows: "insofar as it pertains to the status which is created when a child is permanently committed to the department of youth services, means a legal status wherein the department has the following rights and responsibilities:...the right to determine where and with whom he shall live, *subject to the minimum periods of institutional care prescribed in [R.C. 2151.355]...*" Under R.C. 2151.355(A)(4), (5), or (6), legal custody of the child is placed in the Department of Youth Services. *See* R.C. 5139.05(A). Pursuant to R.C. 5139.01(A)(3), the Department's right, as legal custodian of the child, to determine where and with whom the child shall live is expressly made subject to the applicable minimum period of "institutional care" prescribed by the statutory provision pursuant to which the child was committed.

Further, as set forth above, the General Assembly has prescribed a detailed and comprehensive scheme to be utilized to obtain judicial approval in those situations where the Department of Youth Services wishes to release from institutionalization any child prior to the expiration of the minimum period for which he was committed to the Department under R.C. 2151.355(A)(4) or (5) or prior to the attainment of age twenty-one for a child committed to the Department under R.C. 2151.355(A)(6). In addition, the General Assembly has enumerated the circumstances in which a child may otherwise be taken out of the institution in which he has been placed. *See, e.g.*, R.C. 5139.05(C) (authorizing the Department of Youth Services to "remove" a child in its custody to a juvenile diagnostic center for "mental, physical, and other examination, inquiry, or treatment for such period of time as is necessary"); R.C. 5139.06(C)(2) ("[n]otwithstanding the provisions of this chapter or [R.C. Chapter 2151] that prescribe required periods of institutionalization," the Department may "transfer" a child committed to the Department of Youth Services "to any other state institution, whenever it appears that the child by reason of his mental illness, mental retardation, or other developmental disability ought to be in another state institution"); R.C. 5139.20 (governing emergency releases to meet overcrowding problems, stating, in part: "(D) If a child is granted an emergency release pursuant to this section, the child thereafter shall be considered to have been institutionalized or institutionalized in a secure facility, whichever is applicable, for the prescribed minimum period of time under [R.C. 2151.355(A)(4) or (5)]. The department shall retain legal custody of a child so released until it discharges the child or until its custody is terminated as otherwise provided by law"); R.C. 5139.24 (authorizing the transfer of a child over the age of sixteen to a state reformatory if the child is incorrigible or "appears incapable of benefiting by the treatment or training afforded by the department"); R.C. 5139.30 (authorizing the Department to transfer a child committed to it to "a school, forestry camp, or other facility" established under R.C. 2151.65); R.C. 5139.32(A) (authorizing the Department to release or discharge a child who is unable to benefit from the programs conducted by the Department, "and either return him to the committing court, provided that such court so consents or directs, or otherwise secure for him an environment more beneficial to his future development"); R.C. 5139.35 (prior court consent necessary for Department to place child committed to it under R.C. 2151.355(A)(4) or (5) who has not been institutionalized for prescribed minimum period or child committed under R.C. 2151.355(A)(6) in institution with less restrictive setting than that in which the child was originally placed, other than an institution under the management and control of the Department); R.C. 5139.39 (authorizing, in part, Department of Youth Services to transfer any child committed to it to an approved foster care facility). None of the above statutory provisions, however, include a "home furlough" as described in your opinion request. It appears, therefore, that where a child is committed to the legal custody of the Department of Youth Services for institutionalization or institutionalization in a secure facility for a specified minimum period of time under R.C. 2151.355(A)(4) or (5) or under R.C.

2151.355(A)(6) until reaching the age of twenty-one, the Department is without authority to allow the child to return to his home on furlough prior to the expiration of the minimum period prescribed by the statutory provision pursuant to which he was committed for one committed under R.C. 2151.355(A)(4) or (5) or prior to age twenty-one for one committed under R.C. 2151.355(A)(6), absent approval of such release by the court which committed the child as provided in R.C. 2151.38(B) or R.C. 5139.06(B). With respect to a child who has been committed to the Department under R.C. 2151.355(A)(4) or (5), and who has served the minimum period prescribed by the statutory provision under which he was committed, the Department may allow the child to return home on furlough without court approval in accordance with R.C. 2151.38(C) and R.C. 5139.06.

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

1. Where the Department of Youth Services wishes to grant a home furlough to a child who has been committed to the legal custody of the Department of Youth Services for institutionalization or institutionalization in a secure facility under R.C. 2151.355(A)(4) or (5), the Department may not, for the purpose of such furlough, allow the child to leave the institution in which he has been placed, prior to the expiration of the minimum period prescribed by the statutory provision under which he was committed, unless the court which committed the child approves of such early release in accordance with R.C. 2151.38(B); once such a child has been institutionalized or institutionalized in a secure facility for the minimum period prescribed by the statutory provision under which he was committed, the Department may, in accordance with R.C. 2151.38(C) and R.C. 5139.06, allow the child to leave the institution in which he was placed and return home, without prior approval of the court which committed the child.
2. Where the Department of Youth Services wishes to grant a home furlough to a child who has been committed to the legal custody of the Department of Youth Services for institutionalization in a secure facility under R.C. 2151.355(A)(6), the Department may not, for the purpose of such furlough, allow the child to leave the institution in which he has been placed, prior to the child's attainment of the age of twenty-one years, unless the court which committed the child approves of such early release in accordance with R.C. 2151.38(B).