OPINION NO. 2005-037

Syllabus:

1. Pursuant to R.C. 2152.74(B)(3), a juvenile court must order the collection of a DNA specimen from a juvenile placed on some form of probation supervision pursuant to R.C. 2152.19(A)(4) on or after May 18, 2005.
2. If a juvenile released from one of the Department of Youth Services' institutions before May 18, 2005, and currently on supervised release pursuant to R.C. 5139.51(B) has not previously submitted to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(1), R.C. 2152.74(B)(2) authorizes the collection of a DNA specimen from the juvenile.
3. R.C. 2152.74(B)(3) authorizes the collection of a DNA specimen from a juvenile who was not committed to, or placed in, the custody of the Department of Youth Services or an entity described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3) and who has not previously submitted to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(1) or R.C. 2152.74(B)(2) when the juvenile is currently required to comply with the terms of a dispositional order issued by a juvenile court under R.C. Chapter 2152 before May 18, 2005.
4. A juvenile court may exercise its power to punish for contempt, conduct proceedings under R.C. Chapter 2152 to adjudicate the juvenile a delinquent child, or conduct probation revocation proceedings to compel a juvenile who is on some form of probation supervision imposed by a juvenile court pursuant to R.C. 2152.19(A)(4) to comply with a court order that requires the juvenile to submit to a DNA specimen collection procedure under R.C. 2152.74(B)(3).

5. A juvenile court may conduct proceedings to revoke the supervised release of a juvenile or make any other disposition of the juvenile authorized by law that the court considers proper to compel a juvenile who is required to submit a DNA specimen under R.C. 2152.74(B)(2) and who is on supervised release pursuant to R.C. 5139.51(B) to submit to a DNA specimen collection procedure.

To: William F. Schenck, Greene County Prosecuting Attorney, Xenia, Ohio
By: Jim Petro, Attorney General, September 29, 2005

You have requested an opinion concerning the propriety of collecting DNA specimens from juveniles in certain situations and the use of force to collect those specimens. Your questions are as follows:

1. Does R.C. 2152.74(B) authorize the collection of a DNA specimen from a juvenile[1] place[d] on some form of probation supervision imposed by a juvenile court pursuant to R.C. 2152.19(A)(4) on or after May 18, 2005?[2]
2. Does R.C. 2152.74(B) authorize the collection of a DNA specimen from a juvenile who is currently on supervised release pursuant to R.C. 5139.51(B) when the Department of Youth Services (DYS) released the juvenile from one of its institutions before May 18, 2005?
3. Does R.C. 2152.74(B) authorize the collection of a DNA specimen from a juvenile who was not committed to, or placed in, the custody of DYS or an entity described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3) when the juvenile court issued its dispositional order before May 18, 2005?
4. Does R.C. 2152.74 or another statute authorize the use of force to collect a DNA specimen from a juvenile who is on some form of probation supervision imposed by a juvenile court pursuant to R.C. 2152.19(A)(4) or supervised release pursuant to R.C. 5139.51(B) when the juvenile [refuses to] submit to a DNA specimen collection procedure? (Footnotes added.)

For the reasons set forth below, we have reached the following conclusions with regard to your three questions pertaining to the propriety of collecting DNA specimens from juveniles on some form of probation supervision or supervised release.

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[1] As used in this opinion, the term "juvenile" means a child who was adjudicated a delinquent child for committing an act listed in R.C. 2152.74(D).

[2] Effective May 18, 2005, R.C. 2152.74(B) was amended to expand the situations in which a DNA specimen must be collected from a juvenile. *See* Sub. H.B. 525, 125th Gen. A. (2004) (eff. May 18, 2005).

First, pursuant to R.C. 2152.74(B)(3), a juvenile court must order the collection of a DNA specimen from a juvenile placed on some form of probation supervision pursuant to R.C. 2152.19(A)(4) on or after May 18, 2005.

Second, if a juvenile released from one of DYS's institutions before May 18, 2005, and currently on supervised release pursuant to R.C. 5139.51(B) has not previously submitted to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(1), R.C. 2152.74(B)(2) authorizes the collection of a DNA specimen from the juvenile.

Third, R.C. 2152.74(B)(3) authorizes the collection of a DNA specimen from a juvenile who was not committed to, or placed in, the custody of DYS or an entity described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3) and who has not previously submitted to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(1) or R.C. 2152.74(B)(2) when the juvenile is currently required to comply with the terms of a dispositional order issued by a juvenile court under R.C. Chapter 2152 before May 18, 2005.

In answer to your question regarding the use of force to collect a DNA specimen from a juvenile, we conclude that a juvenile court may exercise its power to punish for contempt, conduct proceedings under R.C. Chapter 2152 to adjudicate the juvenile a delinquent child, or conduct probation revocation proceedings to compel a juvenile who is on some form of probation supervision imposed by a juvenile court pursuant to R.C. 2152.19(A)(4) to comply with a court order that requires the juvenile to submit to a DNA specimen collection procedure under R.C. 2152.74(B)(3). Also, a juvenile court may conduct proceedings to revoke the supervised release of a juvenile or make any other disposition of the juvenile authorized by law that the court considers proper to compel a juvenile who is required to submit a DNA specimen under R.C. 2152.74(B)(2) and who is on supervised release pursuant to R.C. 5139.51(B) to submit to a DNA specimen collection procedure.

Collection of DNA Specimens from Juveniles

Pursuant to R.C. 2152.74, the General Assembly has authorized the collection of a DNA specimen[3] from a juvenile in three situations. First, if a juvenile is committed to the custody of DYS, placed in a detention facility or district detention facility pursuant to R.C. 2152.19(A)(3), or placed in a school, camp, institution, or other facility for delinquent children described in R.C. 2152.19(A)(2), the juvenile is required to submit to a DNA specimen collection procedure administered by the Director of Youth Services if committed to DYS or by the chief administrative officer of the detention facility, district detention facility, school, camp, institution, or other facility for delinquent children to which the juvenile was committed or in which the juvenile was placed. R.C. 2152.74(B)(1).

Second, if a juvenile is committed to or placed in DYS or a detention facil-

[3] A "DNA specimen," for purposes of R.C. 2152.74, "includes human blood cells or physiological tissues or body fluids." R.C. 109.573(A)(5); *see also* R.C. 2152.74(A) (as used in R.C. 2152.74, "DNA specimen" has the same meaning as in R.C. 109.573).

ity, district detention facility, school, camp, institution, or other facility for delinquent children described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3), and does not submit to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(1), then prior to the juvenile's release from custody, the juvenile is required to submit to a DNA specimen collection procedure administered by the Director of Youth Services if committed to DYS or by the chief administrative officer of the detention facility, district detention facility, school, camp, institution, or other facility for delinquent children to which the juvenile was committed or in which the juvenile was placed. R.C. 2152.74(B)(2).

Third, if a juvenile is not committed to or placed in DYS or a detention facility, district detention facility, school, camp, institution, or other facility for delinquent children described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3), and does not provide a DNA specimen pursuant to R.C. 2152.74(B)(1) or R.C. 2152.74(B)(2), the juvenile is required to submit to a DNA specimen collection procedure administered by the chief administrative officer of the county probation department. R.C. 2152.74(B)(3).[4] Accordingly, if a juvenile satisfies the criteria set forth in one of the divisions of R.C. 2152.74(B), a DNA specimen may be collected from the juvenile.

A DNA Specimen May Be Collected from a Juvenile Placed on Some Form of Probation Supervision on or after May 18, 2005

Let us now turn to your first question, which asks whether R.C. 2152.74(B)

[4] R.C. 2152.74 was recently amended in Am. Sub. H.B. 66, 126th Gen. A. (2005) (eff. June 30, 2005, with certain sections effective on other dates). Am. Sub. H.B. 66 fails to include the language of division (B)(3) inserted into R.C. 2152.74 by Sub. H.B. 525. This failure does not, however, repeal by implication R.C. 2152.74(B)(3).

It is a codified rule of statutory construction that, unless amendments to a statute "are substantively irreconcilable," the amendments "are to be harmonized ... so that effect may be given to each." R.C. 1.52(B). Moreover, the fact that a later amendment "fails to include language inserted by an earlier amendment[] does not of itself make the amendments irreconcilable. Amendments are irreconcilable only when changes made by each cannot reasonably be put into simultaneous operation." *Id.*

A review of Am. Sub. H.B. 66 and Sub. H.B. 525 indicates that it is possible to put the changes made by these amendments into simultaneous operation. Accordingly, Am. Sub. H.B. 66 does not repeal by implication R.C. 2152.74(B)(3). *See generally State v. Wilson,* 77 Ohio St. 3d 334, 337, 673 N.E.2d 1347 (1997) ("had the legislature intended to repeal the earlier Act's amendment making assaults on law enforcement officers a felony, the later Act, as enrolled, should have contained that amendment and the language of that amendment should have been stricken through"); *State v. Frost,* 57 Ohio St. 2d 121, 124, 387 N.E.2d 235 (1979) ("[i]t has been a long-standing rule that courts will not hold prior legislation to be impliedly repealed by the enactment of subsequent legislation unless the subsequent legislation clearly requires that holding").

authorizes the collection of a DNA specimen from a juvenile placed on some form of probation supervision imposed by a juvenile court pursuant to R.C. 2152.19(A)(4)[5] on or after May 18, 2005. The plain language of R.C. 2152.74(B)(3) requires the collection of a DNA specimen from a juvenile in such a situation.

R.C. 2152.74(B)(3), which authorizes the collection of a DNA specimen from a juvenile who is not committed to or placed in DYS or an entity described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3), provides:

> If a child is adjudicated a delinquent child for committing an act listed in [R.C. 2152.74(D)], is not committed to or placed in the department of youth services, a detention facility or district detention facility, or a school, camp, institution, or other facility for delinquent children described in [R.C. 2152.19(A)(2) or (3)], and does not provide a DNA specimen pursuant to [R.C. 2152.74(B)(1) or (2)], *the juvenile court shall order the child to report to the county probation department immediately after disposition to submit to a DNA specimen collection procedure administered by the chief administrative officer of the county probation department*. The DNA specimen shall be collected from the child in accordance with [R.C. 2152.74(C)]. (Emphasis added.)

R.C. 2152.74(B)(3) thus directs a juvenile court to order the collection of a DNA specimen from a juvenile who has not been committed to or placed in DYS or an entity described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3) and who has not provided a DNA specimen pursuant to R.C. 2152.74(B)(1) or R.C. 2152.74(B)(2). Nothing in the Revised Code indicates or suggests that there are exceptions to R.C. 2152.74(B)(3)'s directive or that a juvenile court may disregard this legislative directive when the court places the juvenile on some form of probation supervision pursuant to R.C. 2152.19(A)(4).[6] Thus, insofar as R.C. 2152.74(B)(3) became effective on May 18, 2005, *see* note two, *supra,* and is to be applied prospectively,

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[5] R.C. 2152.19(A)(4) authorizes a juvenile court to place a juvenile on community control under any sanctions, services, and conditions that the court prescribes. Such community control may include either of the following conditions:

(a) A period of basic probation supervision in which the child is required to maintain contact with a person appointed to supervise the child in accordance with sanctions imposed by the court;

(b) A period of intensive probation supervision in which the child is required to maintain frequent contact with a person appointed by the court to supervise the child while the child is seeking or maintaining employment and participating in training, education, and treatment programs as the order of disposition[.]

R.C. 2152.19(A)(4). A juvenile court thus may, as a condition of community control, place a juvenile on some form of probation supervision pursuant to R.C. 2152.19(A)(4)(a) or R.C. 2152.19(A)(4)(b).

[6] Unlike R.C. 2152.74(B), R.C. 2901.07(B), which provides for the collection of a DNA specimen from a person who has been convicted of, or pleaded guilty to, a

see R.C. 1.48, a juvenile court must order the collection of a DNA specimen from a juvenile placed on some form of probation supervision pursuant to R.C. 2152.19(A)(4) on or after May 18, 2005. *See generally Dep't of Liquor Control v. Sons of Italy Lodge 0917,* 65 Ohio St. 3d 532, 534, 605 N.E.2d 368 (1992) (the use of the word "shall" in a statute setting forth the duties of a public officer renders the performance of the duties mandatory, unless there appears a clear and unequivocal legislative intent to the contrary); *Scheu v. State,* 83 Ohio St. 146, 157-58, 93 N.E. 969 (1910) (exceptions to the application or operation of the terms of a statute shall be recognized only when such exceptions are set forth clearly and unambiguously either in the statute itself or in another statute); *Morris Coal Co. v. Donley,* 73 Ohio St. 298, 76 N.E. 945 (1906) (syllabus, paragraph one) ("[a]n exception to the provisions of a statute not suggested by any of its terms should not be introduced by construction from considerations of mere convenience").

A DNA Specimen May Be Collected from a Juvenile Placed on Supervised Release Before May 18, 2005

Your second question asks whether R.C. 2152.74(B) authorizes the collection of a DNA specimen from a juvenile who is currently on supervised release pur-

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felony offense or a misdemeanor offense listed in R.C. 2901.07(D), expressly requires the collection of a DNA specimen from a person "on probation, released on parole, under transitional control, on community control, on post-release control, or under any other type of supervised release under the supervision of a probation department or the adult parole authority." R.C. 2901.07(B)(3)(a). The absence of similar language in R.C. 2152.74(B) may thus indicate that a juvenile court is not required to order the collection of a DNA specimen from a juvenile placed on some form of probation supervision pursuant to R.C. 2152.19(A)(4). *See generally Metro. Sec. Co. v. Warren State Bank,* 117 Ohio St. 69, 76, 158 N.E. 81 (1927) ("[h]aving used certain language in the one instance and wholly different language in the other, it will rather be presumed that different results were intended").

Because the language of R.C. 2152.74(B)(3) clearly applies to *every* juvenile who has not been committed to, or placed in, the Department of Youth Services (DYS) or an entity described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3) and who has not provided a DNA specimen pursuant to R.C. 2152.74(B)(1) or R.C. 2152.74(B)(2), it was unnecessary for the General Assembly to incorporate into R.C. 2152.74(B) language similar to that set forth in R.C. 2901.07(B)(3)(a). Accordingly, the absence in R.C. 2152.74(B) of language similar to that used in R.C. 2901.07(B)(3)(a) does not mean that the General Assembly does not intend for juvenile courts to order the collection of a DNA specimen from a juvenile placed on some form of probation supervision pursuant to R.C. 2152.19(A)(4) on or after May 18, 2005. *See generally Sears v. Weimer,* 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five) ("[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted").

suant to R.C. 5139.51(B)[7] when DYS released the juvenile from one of its institutions[8] before May 18, 2005.[9] Because a juvenile who is currently under supervised release pursuant to R.C. 5139.51(B) is in the legal custody of DYS, R.C. 2152.74(B)(2) requires the collection of a DNA specimen from the juvenile prior to the juvenile's discharge from supervised release.

R.C. 2152.74(B)(2) requires the collection of a DNA specimen from a juvenile prior to his release from the custody of DYS:

> *If a child is adjudicated a delinquent child for committing an act listed in [R.C. 2152.74(D)], is committed to or placed in the department of youth services,* a detention facility or district detention facility, or a school, camp, institution, or other facility for delinquent children, and does not submit to a DNA specimen collection procedure pursuant to [R.C. 2152.74(B)(1)], *prior to the child's release from the custody of the department of youth services,* from the custody of the detention facility or

[7] Pursuant to R.C. 5139.51(B), after conducting a period review of the case of a juvenile who is in the custody of DYS and who is eligible for supervised release after completing the minimum period of time in an institution prescribed by the committing court, DYS may decide to place the juvenile on supervised release. *See generally* R.C. 5139.05(B)(1) (except as otherwise provided in R.C. 5139.54, DYS, in accordance with R.C. 5139.51 and at any time after the end of the minimum period specified under R.C. 2152.16(A)(1), may release from an institution any juvenile committed to DYS. The order committing a juvenile to DYS shall state the minimum period). As used in R.C. 5139.51(B), "[s]upervised release" means the event of the release of a juvenile under R.C. Chapter 5139 "from an institution and the period after that release during which the child is supervised and assisted by an employee of [DYS] under specific terms and conditions for reintegration of the [juvenile] into the community." R.C. 5139.01(A)(22).

[8] An institution of DYS is a state facility that is created by the General Assembly and that is under the management and control of DYS or a private entity with which DYS has contracted for the institutional care and custody of felony delinquents. *See* R.C. 5139.01(A)(4) (defining "institution" for purposes of R.C. Chapter 5139 (youth services)).

[9] We note that, insofar as a juvenile who was released from an institution of DYS prior to May 18, 2005, and who is currently on supervised release pursuant to R.C. 5139.51(B), was probably confined in one of DYS's institutions on or after August 30, 1995, *see* R.C. 5139.51, the juvenile should have submitted to the collection of a DNA specimen pursuant to either R.C. 2152.74(B)(1) or R.C. 2152.74(B)(2) prior to his release from the institution. *See* 1995-1996 Ohio Laws, Part I, 131, 135 (Am. Sub. H.B. 5, eff. Aug. 30, 1995) (enacting R.C. 2151.315 (now R.C. 2152.74, *see* 1999-2000 Ohio Laws, Part IV, 9447, 9604 (Am. Sub. S.B. 179, eff. Jan. 1, 2002))). Similarly, a juvenile placed on supervised release pursuant to R.C. 5139.51(B) on or after May 18, 2005 should have also submitted to the collection of a DNA specimen pursuant to either R.C. 2152.74(B)(1) or R.C. 2152.74(B)(2) prior to his release from the institution. *See id.*

> district detention facility, or from the custody of the school, camp, institution, or facility, *the child shall submit to,* and the director of youth services or the chief administrator of the detention facility, district detention facility, school, camp, institution, or facility to which the child is committed or in which the child was placed shall administer, *a DNA specimen collection procedure* at the institution operated by or under the control of the department of youth services or at the detention facility, district detention facility, school, camp, institution, or facility to which the child is committed or in which the child was placed. The DNA specimen shall be collected in accordance with [R.C. 2152.74(C)]. (Emphasis added.)

Thus, the plain language of R.C. 2152.74(B)(2) requires that a juvenile who is in the custody of DYS on May 18, 2005, and who has not submitted to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(1), submit to a DNA specimen collection procedure prior to his release from the custody of DYS. *See generally Dep't of Liquor Control v. Sons of Italy Lodge 0917,* 65 Ohio St. 3d 532, 534, 605 N.E.2d 368 (the word ''shall'' is construed as mandatory unless there appears a clear and unequivocal legislative intent that it be interpreted as permissive).

Pursuant to R.C. 5139.05(B)(2), DYS retains ''legal custody''[10] of a juvenile committed to DYS by a juvenile court as follows:

> When a child has been committed to the department under [R.C. 2152.16], *the department shall retain legal custody of the child* until one of the following:
>
> (a) The department discharges the child to the exclusive management, control, and custody of the child's parent or the guardian of the child's person or, if the child is eighteen years of age or older, discharges the child.
>
> (b) The committing court, upon its own motion, upon petition of

[10] For purposes of R.C. 5139.05, ''legal custody'' is defined as follows:

> ''Legal custody,'' insofar as it pertains to the status that is created when a child is permanently committed to the department of youth services, means a legal status in which 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 the child; the responsibility to provide the child with food, clothing, shelter, education, and medical care; and the right to determine where and with whom the child shall live, subject to the minimum periods of, or periods of, institutional care prescribed in [R.C. 2152.13-.18]; 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.

R.C. 5139.01(A)(3).

> the parent, guardian of the person, or next friend of a child, or upon petition of the department, terminates the department's legal custody of the child.
>
> (c) The committing court grants the child a judicial release to court supervision under [R.C. 2152.22].
>
> (d) The department's legal custody of the child is terminated automatically by the child attaining twenty-one years of age.
>
> (e) If the child is subject to a serious youthful offender dispositional sentence, the adult portion of that dispositional sentence is imposed under [R.C. 2152.14]. (Emphasis added.)

Nothing in R.C. 5139.05 indicates that a juvenile released from one of DYS's institutions and placed on supervised release pursuant to R.C. 5139.51(B) is thereby released from the legal custody of DYS. In fact, a review of R.C. 5139.51, which governs the release and discharge of juveniles from DYS's institutions, indicates that such a juvenile remains in the legal custody of DYS.

R.C. 5139.51(A) authorizes DYS to conduct periodic reviews of the case of each juvenile in an institution of DYS who is eligible for supervised release under R.C. 5139.51(B) or discharge under R.C. 5139.51(C). After conducting such a review for a juvenile, DYS may determine the date on which the juvenile may be placed on supervised release or discharged, or deny the supervised release or discharge of the juvenile. *Id.*

For purposes of R.C. 5139.51, R.C. 5139.01(A) defines "[d]ischarge," "[r]elease," and "[s]upervised release" as follows:

> (8) "Discharge" means that the department of youth services' legal custody of a child is terminated.
>
> (9) "Release" means the termination of a child's stay in an institution and the subsequent period during which the child returns to the community under the terms and conditions of supervised release.
>
> ...
>
> (22) "Supervised release" means the event of the release of a child under this chapter from an institution and the period after that release during which the child is supervised and assisted by an employee of the department of youth services under specific terms and conditions for reintegration of the child into the community.

In light of these definitions, it is apparent that placing a juvenile on "supervised release" pursuant to R.C. 5139.51(B) is not the same as granting the juvenile a "discharge" pursuant to R.C. 5139.51(C). The primary difference between the two is that, under the latter, the juvenile is no longer in the legal custody of DYS, whereas under the former, only the juvenile's stay in an institution of DYS is terminated. Because the General Assembly has expressly ended DYS's legal

custody of a juvenile "discharged" under R.C. 5139.51(C), but did not similarly end such custody of a juvenile placed on "supervised release" pursuant to R.C. 5139.51(B), it reasonably follows that the General Assembly did not intend for DYS's legal custody of a juvenile to end when the juvenile is placed on supervised release pursuant to R.C. 5139.51(B). *See* R.C. 5139.51(E) (DYS may not grant a juvenile on supervised released pursuant to R.C. 5139.51(B) "a discharge prior to the discharge date if it finds good cause for retaining the child in the custody of the department until the discharge date"); *see also* R.C. 5139.06(D) ("[u]pon the *discharge* from its custody and control, [DYS] may petition the court for an order terminating its custody and control" (emphasis added)); *cf.* R.C. 2152.22(F) (DYS shall retain legal custody of a juvenile released from one of its institutions pursuant to a judicial release to DYS supervision under R.C. 2152.22(C)). *See generally Metro. Sec. Co. v. Warren State Bank,* 117 Ohio St. 69, 76, 158 N.E. 81 (1927) ("[h]aving used certain language in the one instance and wholly different language in the other, it will rather be presumed that different results were intended"); *State ex rel. Enos v. Stone,* 92 Ohio St. 63, 66, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result).

Accordingly, DYS retains legal custody of a juvenile released from one of its institutions before May 18, 2005, and currently on supervised release pursuant to R.C. 5139.51(B). Therefore, if such a juvenile has not previously submitted to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(1), R.C. 2152.74(B)(2) authorizes the collection of a DNA specimen from the juvenile.[11]

A DNA Specimen May Be Collected from a Juvenile Currently Required to Comply with a Dispositional Order Issued Before May 18, 2005

Your third question asks whether R.C. 2152.74(B) authorizes the collection of a DNA specimen from a juvenile who was not committed to, or placed in, the custody of DYS or an entity described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3)[12] when the juvenile court issued its dispositional order before May

[11] Pursuant to R.C. 2152.22(F), DYS retains legal custody of a juvenile released from one of its institutions pursuant to a judicial release to DYS supervision under R.C. 2152.22(C). Thus, if a juvenile released from one of DYS's institutions before May 18, 2005, and currently on judicial release to DYS supervision under R.C. 2152.22(C) has not previously submitted to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(1), R.C. 2152.74(B)(2) authorizes the collection of a DNA specimen from the juvenile.

[12] R.C. 2152.19(A)(2) and (3) read as follows:

> (A) If a child is adjudicated a delinquent child, the court may make any of the following orders of disposition, in addition to any other disposition authorized or required by this chapter:
>
> ...;

18, 2005.[13] In such a situation, if the juvenile is currently required to comply with the terms of the dispositional order, R.C. 2152.74(B)(3) authorizes the collection of a DNA specimen from the juvenile when the juvenile has not previously submitted to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(1) or R.C. 2152.74(B)(2).

As explained previously, R.C. 2152.74(B)(3) requires a juvenile court to order the collection of a DNA specimen from a juvenile who has not been committed to, or placed in, the custody of DYS or an entity described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3) and who has not provided a DNA specimen pursuant to R.C. 2152.74(B)(1) or R.C. 2152.74(B)(2). It is a codified legal principle that "[a] statute is presumed to be prospective in its operation unless expressly made retrospective." R.C. 1.48. Accordingly, R.C. 2152.74(B)(3) may not be applied so as to require a DNA specimen from a juvenile adjudicated a delinquent child prior to May 18, 2005, "unless there has been a prior determination that the General Assembly specified that the statute so apply." *State v. Cook,* 83 Ohio St. 3d 404, 410, 700 N.E.2d 570 (1998), *cert denied,* 525 U.S. 1182 (1999).

A review of R.C. 2152.74 indicates that the General Assembly has so specified such an intention. First, by its express terms R.C. 2152.74(B)(2) applies to a juvenile who was adjudicated a delinquent child and committed to, or placed in, the custody of DYS or an entity described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3) prior to R.C. 2152.74(B)(2)'s effective date, which was August 30, 1995, *see* 1995-1996 Ohio Laws, Part I, 131, 135 (Am. Sub. H.B. 5, eff. Aug. 30, 1995) (enacting R.C. 2151.315(B)(2) (now R.C. 2152.74(B)(2), *see* 1999-2000 Ohio Laws, Part IV, 9447, 9604 (Am. Sub. S.B. 179, eff. Jan. 1, 2002))).[14] *Cf. State v. Cook,* 83 Ohio St. 3d at 410, 700 N.E.2d 570 (finding a "clearly expressed legislative intent" that

> (2) Commit the child to the temporary custody of any school, camp, institution, or other facility operated for the care of delinquent children by the county, by a district organized under [R.C. 2152.41 or R.C. 2151.65], or by a private agency or organization, within or without the state, that is authorized and qualified to provide the care, treatment, or placement required, including, but not limited to, a school, camp, or facility operated under [R.C. 2151.65];
>
> (3) Place the child in a detention facility or district detention facility operated under [R.C. 2152.41] for up to ninety days[.]

[13] In lieu of commitment to, or placement in, the custody of DYS or an entity described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3), the dispositional order of a juvenile court may, *inter alia,* place the juvenile under community control, commit the juvenile to the custody of the court, require the juvenile to not be absent from school, and make any further disposition that the court finds proper. R.C. 2152.19(A).

[14] If R.C. 2152.74(B)(2) is not read as applying retroactively, this provision would not be needed because R.C. 2152.74(B)(1) applies to a juvenile who was adjudicated a delinquent child and committed to, or placed in, the custody of DYS or an entity

sexual-predator statutes apply retrospectively because the statutes imposed requirements on offenders based on offenses committed before the statutes' effective date).

Second, the language of R.C. 2152.74(B)(3) may be applied to a juvenile who was adjudicated a delinquent child before May 18, 2005, and who is currently required to comply with the terms of a dispositional order issued by a juvenile court pursuant to R.C. Chapter 2152. Like a juvenile who is committed to, or placed in, the custody of DYS or an entity listed in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3), a juvenile who is currently required to comply with the terms of a dispositional order that does not require commitment to, or placement in, the custody of DYS or an entity described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3) is serving the punishment imposed by the juvenile court pursuant to a dispositional order.

As stated in R.C. 2152.22(A):

> Subject to [R.C. 2152.22(B) and R.C. 2152.22(C)], [R.C. 2151.353, R.C. 2151.412-.421, and R.C. 2152.82-.85], and any other provision of law that specifies a different duration for a disposition order, all other dispositional orders made by the court under [R.C. Chapter 2152] shall be temporary and shall continue for a period that is designated by the court in its order, until terminated or modified by the court or until the child attains twenty-one years of age.

Thus, a juvenile who was adjudicated a delinquent child before May 18, 2005, and required to comply with the terms of a dispositional order issued by a juvenile court pursuant to R.C. Chapter 2152, remains subject to the punishment set forth in the order until he is no longer required under R.C. 2152.22(A) to comply with the terms of the order. *See generally In re Cross,* 96 Ohio St. 3d 328, 2002-Ohio-4183, 774 N.E.2d 258, at ¶11 (2002) (''if a juvenile court issued a dispositional order available under former R.C. 2151.353(A), a juvenile court could retain jurisdiction over that person as to that disposition''). This is the case even though the dispositional order does not require, as punishment, that the juvenile be committed to, or placed in, the custody of DYS or an entity described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3).

Finally, when the General Assembly enacted R.C. 2152.74(B)(3) in Sub. H.B. 525, 125th Gen. A. (2004) (eff. May 18, 2005), it also amended R.C.

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described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3) after August 30, 1995. *See generally* R.C. 1.47 (''[i]n enacting a statute, it is presumed that: ... A result feasible of execution is intended''); *State v. Wilson,* 77 Ohio St. 3d at 336, 673 N.E.2d 1347 (it is to be presumed that the General Assembly inserts language into a statute to accomplish some definite purpose); *State ex rel. Cleveland Elec. Illum. Co. v. City of Euclid,* 169 Ohio St. 476, 479, 159 N.E.2d 756 (1959) (''it is a basic presumption in statutory construction 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''), *appeal dismissed,* 362 U.S. 457 (1960).

2901.07(B)(3)(a).[15] As amended, R.C. 2901.07(B)(3)(a) requires the collection of a DNA specimen from an adult on community control or under any other type of supervised release under the supervision of a probation department or the adult parole authority:

> If a person is convicted of or pleads guilty to a felony offense or a misdemeanor offense listed in [R.C. 2901.07(D)] and the person is ... on community control ... or under any other type of supervised release under the supervision of a probation department or the adult parole authority, the person shall submit to a DNA specimen collection procedure administered by the chief administrative officer of the probation department or the adult parole authority.

R.C. 2901.07(B)(3)(a), as amended, thus applies to an adult currently on community control or under any other type of supervised release under the supervision of a probation department even though the adult was placed on community control or supervised release before May 18, 2005.

The General Assembly, therefore, has expressed a legislative intent that R.C. 2152.74(B) may be applied retrospectively whenever a juvenile is required to comply with the terms of a dispositional order issued under R.C. Chapter 2152.[16] *Cf. State v. Cook,* 83 Ohio St. 3d at 410, 700 N.E.2d 570 (R.C. Chapter 2950, which

[15] R.C. 2901.07 requires adults to provide a DNA specimen in situations analogous to those in which juveniles are required to provide a DNA specimen under R.C. 2152.74.

[16] The language of R.C. 2152.74(B)(3) requiring a juvenile "to report to the county probation department *immediately after disposition* to submit to a DNA specimen collection procedure" may suggest a legislative intent to only apply R.C. 2152.74(B)(3) prospectively. (Emphasis added.) While the use of the term "immediately" in this provision indicates that a juvenile must report to the county probation department "without delay" or "at once" after disposition of his case to submit to a DNA specimen collection procedure, *see Webster's New World Dictionary* 702 (2nd college ed. 1986), the use of this term does not foreclose applying R.C. 2152.74(B)(3) retrospectively.

The use of the term "immediately" in R.C. 2152.74(B)(3) is intended to establish the time in which a juvenile is required to submit to a DNA specimen collection procedure. "As a general rule, a statute providing a time for the performance of an official duty will be construed as directory so far as time for performance is concerned, especially where the statute fixes the time simply for convenience or orderly procedure." *State ex rel. Jones v. Farrar,* 146 Ohio St. 467, 66 N.E.2d 531 (1946) (syllabus, paragraph three). Because R.C. 2152.74(B)(3) expressly applies to a juvenile adjudicated a delinquent child and currently required to comply with the terms of a dispositional order issued by a juvenile court pursuant to R.C. Chapter 2152, such a juvenile is required to submit to a DNA specimen collection procedure even though the juvenile has failed to report immediately after disposition of his case to submit to such a procedure. Accordingly, the requirement that a juvenile

applies certain provisions regarding classification, registration, and community notification to sex offenders who were convicted and sentenced prior to the effective date of R.C. Chapter 2950, expresses a clear legislative intent that this chapter be applied retrospectively). *See generally State v. Walls,* 96 Ohio St. 3d 437, 2002-Ohio-5059, 775 N.E.2d 829, at ¶14 (2002) (''statutory amendments made the age of the offender *upon apprehension* the touchstone of determining juvenile-court jurisdiction without regard to whether the alleged offense occurred prior to the amendments' effective date. From these circumstances, we find an express legislative intent that the juvenile statutes apply retroactively''); *State ex rel. Plavcan v. S.E.R.S.,* 71 Ohio St. 3d 240, 243, 643 N.E.2d 122 (1994) (''[s]tatutes that reference past events to establish current status have been held not to be retroactive''). Hence, R.C. 2152.74(B)(3) authorizes the collection of a DNA specimen from a juvenile who was not committed to, or placed in, the custody of DYS or an entity described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3) and who has not previously submitted to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(1) or R.C. 2152.74(B)(2) when the juvenile is currently required to comply with the terms of a dispositional order issued by a juvenile court under R.C. Chapter 2152 before May 18, 2005.[17]

Whether the collection of a DNA specimen in the foregoing situation violates a juvenile's constitutional rights is one that must ultimately be made by the judiciary. *See generally State v. Walls,* 96 Ohio St. 3d 437, 2002-Ohio-5059, 775

report immediately to submit to a DNA specimen collection procedure does not indicate that R.C. 2152.74(B)(3) may not be applied to a juvenile adjudicated a delinquent child before May 18, 2005, and currently required to comply with the terms of a dispositional order issued by a juvenile court pursuant to R.C. Chapter 2152.

[17] A juvenile who is released from one of DYS's institutions pursuant to a judicial release to court supervision under R.C. 2152.22(B) before May 18, 2005, and who is currently required to comply with the terms of a dispositional order issued by a juvenile court pursuant to R.C. Chapter 2152, is also required to submit to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(3) unless he has previously submitted to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(1) or R.C. 2152.74(B)(2). However, if a juvenile who was not committed to, or placed in, the custody of DYS or an entity described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3) is not currently required to comply with the terms of a dispositional order issued by a juvenile court under R.C. Chapter 2152 before May 18, 2005, the juvenile is not required to submit to a DNA specimen collection procedure under R.C. 2152.74(B)(3). *See, e.g., In re Cross,* 96 Ohio St. 3d 328, 2002-Ohio-4183, 774 N.E.2d 258, at ¶28 (2002) (''the completion of probation signals the end of the court's jurisdiction over a delinquent juvenile''). *See generally State v. Bellman,* 86 Ohio St. 3d 208, 212, 714 N.E.2d 381 (1999) (''where a defendant was both sentenced for a sexually oriented offense and released prior to July 1, 1997, and was not previously required to register under R.C. Chapter 2950, that defendant cannot be required to register under R.C. 2950.04''); *State v. Riley,* 142 Ohio App. 3d 580, 586, 756 N.E.2d 676 (Hamilton County 2001) (same).

N.E.2d 829, at ¶26 (''numerous constitutional safeguards normally reserved for criminal prosecutions are equally applicable to juvenile delinquency proceedings''); *In re Cross,* 96 Ohio St. 3d 328, 2002-Ohio-4183, 774 N.E.2d 258, at ¶21 (basic due process requirements apply in juvenile court proceedings); *In re Gillespie,* 150 Ohio App. 3d 502, 2002-Ohio-7025, 782 N.E.2d 140, at ¶20 (Franklin County 2002) (''certain basic constitutional protections afforded adults ... are applicable to juvenile proceedings''), *appeal not allowed,* 98 Ohio St. 3d 1513, 2003-Ohio-1572, 786 N.E.2d 63 (2003). *See generally also State v. Cook,* 83 Ohio St. 3d at 415, 700 N.E.2d 570 (Article I, section ten of the United States Constitution, which states that no *ex post facto* law shall be passed, ''applies only to criminal statutes''). It is presumed, however, that R.C. 2152.74(B)(3) is constitutional and entitled to the benefit of every presumption in favor of its constitutionality. R.C. 1.47(A); *State v. Cook,* 83 Ohio St. 3d at 409, 700 N.E.2d 570.

In addition, no Ohio court, state or federal, has yet made a definitive ruling that the collection of a DNA specimen under R.C. 2152.74(B)(3) from a juvenile who is currently subject to a dispositional order issued prior to May 18, 2005, is unconstitutional. Also, based on *In re Nicholson,* 132 Ohio App. 3d 303, 724 N.E.2d 1217 (Cuyahoga County 1999), *appeal not allowed,* 86 Ohio St. 3d 1403, 711 N.E.2d 231 (1999), it appears that R.C. 2152.74(B)(3) does not violate Article II, section 28 of the Ohio Constitution, which provides that, ''[t]he general assembly shall have no power to pass retroactive laws.''

In re Nicholson examined R.C. 2151.315 (now R.C. 2152.74, *see* Am. Sub. S.B. 179) and declared that, ''the requirement of providing a DNA sample pursuant to R.C. 2151.315 is remedial.'' *Id.* at 308, 724 N.E.2d 1217. It is well settled that a purely remedial statute does not violate Article II, section 28 of the Ohio Constitution.[18] *State v. Walls,* 96 Ohio St. 3d 437, 2002-Ohio-5059, 775 N.E.2d 829, at ¶15; *State v. Cook,* 83 Ohio St. 3d 404 at 411, 700 N.E.2d 570. Accordingly, in light of a judicial interpretation that R.C. 2151.315 (now R.C. 2152.74) is remedial in nature, it reasonably appears that R.C. 2152.74 does not violate the ban on retroactive laws set forth in Article II, section 28 of the Ohio Constitution when it is applied to a juvenile who is currently subject to a dispositional order issued prior to May 18, 2005. *See generally State v. Cook,* 83 Ohio St. 3d at 410-14, 700 N.E.2d 570 (application of R.C. Chapter 2950 to the conduct of sex offenders that occurred before R.C. Chapter 2950 was enacted does not violate the retroactivity clause of Article II, section 28 of the Ohio Constitution).

Moreover, federal and state courts in Ohio have, in various other instances, found no violation of an adult's or juvenile's constitutional rights when the adult or juvenile has been required to submit to a DNA specimen collection procedure. *See, e.g., Williams v. Dep't of Rehabilitation and Correction,* 3 F. App'x 415, 2001 U.S.

[18] Remedial statutes ''are those affecting only the remedy provided, and include laws that merely substitute a new or more appropriate remedy for the enforcement of an existing right.'' *State v. Cook,* 83 Ohio St. 3d 404, 411, 700 N.E.2d 570 (1998), *cert denied,* 525 U.S. 1182 (1999); *accord State v. Walls,* 96 Ohio St. 3d 437, 2002-Ohio-5059, 775 N.E.2d 829, at ¶15 (2002).

App. LEXIS 2256 (6th Cir. 2001) (a defendant's due process rights are not violated when he is required to provide a DNA sample under R.C. 2901.07); *State v. Cremeans,* 160 Ohio App. 3d 1, 2005-Ohio-928, 825 N.E.2d 1124, at ¶39 (Montgomery County 2005) (''R.C. 2901.07, which requires DNA testing of offenders sentenced to incarceration, does not violate [a defendant's] Fourth Amendment right to be free from unreasonable searches''); *State v. Steele,* 155 Ohio App. 3d 659, 2003-Ohio-7103, 802 N.E.2d 1127 (Hamilton County 2003) (R.C. 2901.07, which permits the state to collect DNA specimens from offenders convicted of certain offenses without any individualized suspicion, does not violate the Fourth Amendment, because the statute's primary purpose goes beyond the needs of ordinary law enforcement, and because the state's interest in maintaining a DNA database outweighs the minimal intrusion into an offender's privacy interest), *appeal not allowed,* 102 Ohio St. 3d 1458, 2004-Ohio-2569, 809 N.E.2d 32 (2004); *State v. Wright,* 2002-Ohio-3138, 2002 Ohio App. LEXIS 3248, at ¶19 (Scioto County June 19, 2002) (the first amendment of the United States Constitution ''does not address or prohibit submission of a DNA sample'' under R.C. 2901.07), *appeal not allowed,* 96 Ohio St. 3d 1525, 2002-Ohio-5099, 775 N.E.2d 864 (2002); *In re Nicholson,* 132 Ohio App. 3d at 309, 724 N.E.2d 1217 (''the minimally intrusive nature of obtaining and analyzing [under R.C. 2151.315 (now R.C. 2152.74)] the DNA of a juvenile in custody who admitted to committing gross sexual imposition is a reasonable search and seizure under the Fourth Amendment when considering the nature of the intrusion and legitimate governmental interest of keeping a DNA data bank''); *State v. Biddings,* 49 Ohio App. 3d 83, 550 N.E.2d 975 (1988) (where the defendant in a criminal case claims that the taking of a blood sample from his person for DNA testing would violate his personal religious beliefs, he may, nevertheless, be ordered to provide a blood sample when the state has a compelling and paramount interest to have the results of the DNA test). Although we cannot state with absolute certainty that a court would find no violation of a juvenile's constitutional rights when the juvenile is required to submit to a DNA specimen collection procedure under R.C. 2152.74, it appears from the aforementioned that the collection under R.C. 2152.74(B)(3) of a DNA specimen from a juvenile currently required to comply with the terms of a dispositional order issued by a juvenile court under R.C. Chapter 2152 before May 18, 2005, does not violate the constitutional rights of the juvenile.

A Court May Exercise Various Powers to Compel a Juvenile to Submit to a DNA Collection Procedure

Your final question is whether R.C. 2152.74 or another statute authorizes the use of force to collect a DNA specimen from a juvenile who is on some form of probation supervision imposed by a juvenile court pursuant to R.C. 2152.19(A)(4) or supervised release pursuant to R.C. 5139.51(B) when the juvenile refuses to submit to a DNA specimen collection procedure. While no statute authorizes the use of physical force to collect a DNA specimen from a juvenile, a court may, under appropriate circumstances, exercise its power to punish for contempt, conduct proceedings under R.C. Chapter 2152 to adjudicate the juvenile a delinquent child for failure to obey a court order made under R.C. 2152.74(B)(3), or conduct proceedings to revoke the supervised release of a juvenile or make any other dispo-

sition of the juvenile authorized by law that the court considers proper, in order to compel the juvenile to submit to a DNA specimen collection procedure.

We will first address the situation concerning a juvenile who is on some form of probation supervision imposed by a juvenile court pursuant to R.C. 2152.19(A)(4), and then the situation of a juvenile who is on supervised release pursuant to R.C. 5139.51(B). As determined above, R.C. 2152.74(B)(3) authorizes a juvenile court to order a juvenile who is on some form of probation supervision imposed by a juvenile court pursuant to R.C. 2152.19(A)(4) to report to the county probation department immediately after disposition to submit to a DNA specimen collection procedure administered by the chief administrative officer of the county probation department.

No language in R.C. 2152.74(B)(3) or elsewhere in the Revised Code authorizes or sanctions the use of physical force by court personnel, law enforcement officers, medical professionals, or any other person to collect a DNA specimen from a juvenile who is required to submit to a DNA specimen collection procedure under R.C. 2152.74(B). Instead, if a juvenile court issues an order under R.C. 2152.74(B)(3) requiring a juvenile who is on some form of probation supervision imposed pursuant to R.C. 2152.19(A)(4) to submit to a DNA specimen collection procedure, the juvenile is required to comply with that order or risk being found in contempt of court and subjected to such penalties as the court may choose to impose. *See* R.C. 2151.21 (''[t]he juvenile court has the same jurisdiction in contempt as courts of common pleas''); R.C. 2705.02 (''a person guilty of ... [d]isobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or officer'' may be punished as for a contempt). *See generally Bd. of Educ. of the Hamilton City School Dist. v. Hamilton Classroom Teachers Ass'n,* 5 Ohio App. 3d 51, 53, 449 N.E.2d 26 (Butler County 1982) (''[a]n order issued by a court with jurisdiction must be obeyed until it is reversed by orderly and proper proceedings''); 2003 Op. Att'y Gen. No. 2003-025 at 2-207 n.16 (same).

In addition, if a juvenile fails to comply with an order issued by a juvenile court under R.C. 2152.74(B)(3), a complaint alleging the juvenile is a delinquent child may be filed against the juvenile, *see, e.g.,* R.C. 2152.021(A)(1); Ohio R. Juv. P. 10(A), and proceedings under that complaint may be conducted by a juvenile court, *see, e.g.,* Ohio R. Juv. P. 29. R.C. 2152.021(A)(1) states, in part:

> Subject to [R.C. 2152.021(A)(2)], any person having knowledge of a child who appears to be a juvenile traffic offender or *to be a delinquent child* may file a sworn complaint with respect to that child in the juvenile court of the county in which the child has a residence or legal settlement or in which the traffic offense or delinquent act allegedly occurred. The sworn complaint may be upon information and belief, and, in addition to the allegation that the child is a delinquent child or a juvenile traffic offender, the complaint shall allege the particular facts upon which the allegation that the child is a delinquent child or a juvenile traffic offender is based. (Emphasis added.)

Accord Ohio R. Juv. P. 10.

For purposes of R.C. 2152.021(A)(1) and Ohio R. Juv. P. 10, a "delinquent child" is "[a]ny child who violates any lawful order of the court made under [R.C. Chapter 2152] or [R.C. Chapter 2151] other than an order issued under [R.C. 2151.87]." R.C. 2152.02(F)(2); *accord* Ohio R. Juv. P. 2(I). A juvenile who fails to comply with an order issued by a juvenile court under R.C. 2152.74(B)(3) thus may have a complaint alleging him to be a delinquent child filed against him. If a juvenile against whom such a complaint is filed is adjudicated to be a delinquent child, the juvenile court may make any order of disposition authorized under R.C. Chapter 2152. *See, e.g.,* R.C. 2152.16(A) (when a juvenile is adjudicated a delinquent child, the juvenile court may commit the juvenile to the legal custody of DYS for secure confinement); R.C. 2152.19(A) (when a juvenile is adjudicated a delinquent child, the juvenile court may, *inter alia,* commit or place the juvenile in the custody of DYS or another entity described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3), place the child on community control, commit the child to the custody of the court, or make any further disposition that the court finds proper); Ohio R. Juv. P. 29(F) (if the allegations of a complaint are admitted or proved in an adjudicatory hearing, the juvenile court may enter an adjudication and proceed forthwith to disposition).

Also, because R.C. 2152.74(B)(3) explicitly requires a juvenile court to order a juvenile who is on some form of probation supervision imposed by a juvenile court pursuant to R.C. 2152.19(A)(4) to report to the county probation department to submit to a DNA specimen collection procedure, it reasonably follows that the court may condition the juvenile's probation on a requirement that the juvenile submit to a DNA specimen collection procedure. *See generally* R.C. 2152.19(A)(8) (if a child is adjudicated a delinquent child, the juvenile court may make any further disposition that the court finds proper). If such a condition of probation is imposed upon a juvenile, the court may revoke the juvenile's probation if he does not submit to a DNA specimen collection procedure.[19] *See* Ohio R. Juv. P. 35(B) ("[t]he court shall not revoke probation except after a hearing at which the child shall be present and appraised of the grounds on which revocation is proposed.... Probation shall not be revoked except upon a finding that the child has violated a condition of probation of which the child, had, pursuant to [Ohio R. Juv. P. 34(C)], been notified").

Accordingly, a juvenile court may exercise its power to punish for contempt, conduct proceedings under R.C. Chapter 2152 to adjudicate the juvenile a delinquent child, or conduct probation revocation proceedings to compel a juvenile who is on some form of probation supervision imposed by a juvenile court pursuant to R.C. 2152.19(A)(4) to comply with a court order that requires the juvenile to submit to a DNA specimen collection procedure under R.C. 2152.74(B)(3).[20]

With respect to the situation involving a juvenile on supervised release pur-

[19] A juvenile court may not exercise its power to punish for contempt of court when the conduct of the juvenile constitutes a violation of a condition of probation. *In re Nowak,* 133 Ohio App. 3d 396, 728 N.E.2d 411 (Geauga County 1999).

[20] As explained earlier, a juvenile currently on judicial release to court supervision under R.C. 2152.22(B) is required to comply with the terms of a dispositional order issued by a juvenile court pursuant to R.C. Chapter 2152 and is also required

suant to R.C. 5139.51(B), there is no court order that may be enforced by the juvenile court pursuant to its power to punish for contempt or through a proceeding to adjudicate the juvenile a delinquent child or revoke the juvenile's probation. As a result, these methods may not be used to compel such a juvenile to submit to a DNA specimen collection procedure. Nevertheless, there is one legal proceeding that may be used to compel the juvenile to submit to a DNA specimen collection procedure.

As concluded earlier, a juvenile on supervised release pursuant to R.C. 5139.51(B) is in the custody of DYS, and, as such, is required under R.C. 2152.74(B)(2) to submit to a DNA specimen collection procedure if the juvenile has not previously submitted to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(1). In other words, unless a juvenile has previously submitted to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(1), the juvenile is required under R.C. 2152.74(B)(2) to perform the act of submitting to a DNA specimen collection procedure when he is on supervised release pursuant to R.C. 5139.51(B).

Pursuant to R.C. 5139.51(D), when a juvenile is released from one of DYS's institutions, DYS must prepare a written supervised release plan for that juvenile that includes a term or condition requiring the juvenile to "observe the law." *See generally* R.C. 5139.51(B)(1) (when DYS decides to place a juvenile "on supervised release, consistent with [R.C. 5139.51(D)], the department shall prepare a written supervised release plan that specifies the terms and conditions upon which the [juvenile] is to be released from an institution on supervised release"). If a juvenile court at a hearing determines that a juvenile on supervised release pursuant to R.C. 5139.51(B) failed to observe the law, the court may revoke the supervised release of the juvenile or make any other disposition of the juvenile authorized by law that the court considers proper. R.C. 5139.52.

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to submit to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(3) unless he has previously submitted to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(1) or R.C. 2152.74(B)(2). *See* note seventeen, *supra*. This means that a juvenile court may exercise its power to punish for contempt, conduct proceedings under R.C. Chapter 2152 to adjudicate the juvenile a delinquent child, or conduct probation revocation proceedings to compel a juvenile who is currently on judicial release to court supervision under R.C. 2152.22(B) to comply with an order that requires the juvenile to submit to a DNA specimen collection procedure under R.C. 2152.74(B)(3). *See* R.C. 2151.021(A)(1); R.C. 2705.02; Ohio R. Juv. P. 10; Ohio R. Juv. P. 35(B); *see also* R.C. 2152.22(D) (if a court believes that the behavior of a juvenile on judicial release to court supervision under R.C. 2152.22(B) is not in accordance with the conditions of his judicial release, the court shall schedule a time for a hearing to determine whether the juvenile violated any of the post-release conditions. If the court determines that the juvenile violated any of the post-release conditions, the court may order the juvenile returned to DYS for institutionalization or make any disposition authorized by law that the court considers proper).

Because a juvenile on supervised release pursuant to R.C. 5139.51(B) is required by R.C. 2152.74(B)(2) to submit to a DNA specimen collection procedure unless he has previously submitted to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(1), a juvenile court may, pursuant to R.C. 5139.52, revoke the supervised release of the juvenile or make any other disposition of the juvenile authorized by law that the court considers proper when the juvenile does not submit to a DNA specimen collection procedure. Accordingly, a juvenile court may conduct proceedings to revoke the supervised release of a juvenile or make any other disposition of the juvenile authorized by law that the court considers proper to compel a juvenile who is required to submit a DNA specimen under R.C. 2152.74(B)(2) and who is on supervised release pursuant to R.C. 5139.51(B) to submit to a DNA specimen collection procedure.[21]

Conclusions

In sum, it is my opinion, and you are hereby advised as follows:

1. Pursuant to R.C. 2152.74(B)(3), a juvenile court must order the collection of a DNA specimen from a juvenile placed on some form of probation supervision pursuant to R.C. 2152.19(A)(4) on or after May 18, 2005.
2. If a juvenile released from one of the Department of Youth Services' institutions before May 18, 2005, and currently on supervised release pursuant to R.C. 5139.51(B) has not previously submitted to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(1), R.C. 2152.74(B)(2) authorizes the collection of a DNA specimen from the juvenile.

[21] As stated in note eleven, *supra,* a juvenile on judicial release to DYS supervision under R.C. 2152.22(C) is in the legal custody of DYS, and, as such, is also required to submit to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(2) unless he has previously submitted to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(1). Accordingly, a juvenile court may conduct proceedings to revoke the supervised release of a juvenile or make any other disposition of the juvenile authorized by law that the court considers proper to compel a juvenile who is on judicial release to DYS supervision under R.C. 2152.22(C) and who is required to submit a DNA specimen under R.C. 2152.74(B)(2) to submit to a DNA specimen collection procedure. *See* R.C. 2152.22(D) (if a court believes that the behavior of a juvenile on judicial release to DYS supervision under R.C. 2152.22(C) is not in accordance with the conditions of his judicial release, the court shall schedule a time for a hearing to determine whether the juvenile violated any of the post-release conditions, and, if the juvenile was released to DYS supervision under R.C. 2152.22(C), R.C. 5139.52(A)-(E) apply regarding the juvenile. If the court determines that the juvenile violated any of the post-release conditions, the court may order the juvenile returned to DYS for institutionalization or make any disposition authorized by law that the court considers proper).

3. R.C. 2152.74(B)(3) authorizes the collection of a DNA specimen from a juvenile who was not committed to, or placed in, the custody of the Department of Youth Services or an entity described in R.C. 2152.19(A)(2) or R.C. 2152.19(A)(3) and who has not previously submitted to a DNA specimen collection procedure pursuant to R.C. 2152.74(B)(1) or R.C. 2152.74(B)(2) when the juvenile is currently required to comply with the terms of a dispositional order issued by a juvenile court under R.C. Chapter 2152 before May 18, 2005.
4. A juvenile court may exercise its power to punish for contempt, conduct proceedings under R.C. Chapter 2152 to adjudicate the juvenile a delinquent child, or conduct probation revocation proceedings to compel a juvenile who is on some form of probation supervision imposed by a juvenile court pursuant to R.C. 2152.19(A)(4) to comply with a court order that requires the juvenile to submit to a DNA specimen collection procedure under R.C. 2152.74(B)(3).
5. A juvenile court may conduct proceedings to revoke the supervised release of a juvenile or make any other disposition of the juvenile authorized by law that the court considers proper to compel a juvenile who is required to submit a DNA specimen under R.C. 2152.74(B)(2) and who is on supervised release pursuant to R.C. 5139.51(B) to submit to a DNA specimen collection procedure.