

IN THE SUPREME COURT OF OHIO

ROMAN CHOJNACKI, :  
 : Case Nos. 2008-0991 and 2008-0992  
Appellant, :  
 : On Appeal from the Warren  
v. : County Court of Appeals  
 : Twelfth Appellate District  
NANCY ROGERS, Ohio Atty. General, : Court of Appeals  
in her Official Capacity, : Case No. CA200803040  
 :  
Appellee. :

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MERIT BRIEF OF APPELLANT ROMAN CHOJNACKI

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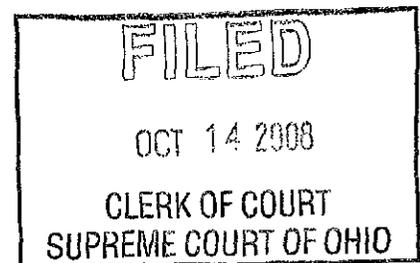
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## STATEMENT OF THE FACTS

Roman Chojnacki (pronounced Shō - nă - kē) pleaded guilty to three counts of unlawful sexual activity with a minor in the Cuyahoga County Court of Common Pleas. The acts were alleged to have occurred between September 11, 2004 and August 31, 2005. Mr. Chojnacki was sentenced to four years in prison on each count, to be served consecutively. After a classification hearing pursuant to former R.C. Chapter 2950, the trial court found that he was not likely to reoffend and classified him as a sexually oriented offender. (*State v. Chojnacki* (May 5, 2006, Journal Entry), Cuyahoga C.P. No. CR-05-473492-A). Mr. Chojnacki is currently incarcerated in Warren Correctional Institution in Warren County, Ohio.

On or about December 28, 2007, Mr. Chojnacki received a letter from the Office of the Ohio Attorney General notifying him that he had been reclassified under Senate Bill 10 (Ohio's Adam Walsh Act), as a Tier II offender. On February 26, 2008, Mr. Chojnacki filed a Petition to Contest the Application of the Adam Walsh Act.<sup>1</sup> Because Mr. Chojnacki was incarcerated and indigent, he filed a Motion to Appoint Counsel concurrently with his Petition. On March 10, 2008, the trial court denied his motion for appointment of counsel. (*Chojnacki v. Dann* (March 10, 2008, Entry Denying Motion for Appointment of Counsel), Warren C.P. No. 08CV708220).

Mr. Chojnacki appealed. On April 3, 2008, the Twelfth District Court of Appeal sua sponte dismissed his appeal because it found:

The entry denying petitioner's motion for appointment of counsel does not affect a substantial right in the action which in effect determines the action and prevents a judgment. R.C. 2505.02(B)(1). It is not an order made in a special proceeding

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<sup>1</sup>At the direction of the Warren County clerk of courts, all R.C. 2950.031 and R.C. 2950.032 petitions must be captioned as civil cases in order to be accepted for filing. The legal consequences of filing a civil petition rather than a criminal one are substantial. By filing the petition in compliance with local order, Appellant did not and does not concede that the issues raised herein or that such petitions in general, are "civil." Accordingly, Appellant objects to that requirement to preserve the record.

(R.C. 2505.02(A)(2)), or a provisional remedy (R.C. 2505.02(A)(3)). This appeal is accordingly hereby DISMISSED . . . .

(*Chojnacki v. Dann* (April 3, 2008, Entry of Dismissal), 12th Dist. Case No. CA200803040).

On April 8, 2008, Mr. Chojnacki filed an Application for Reconsideration, or, in the alternative, Motion to Certify a Conflict in light of the Second District Court of Appeals decision in *King v. State of Ohio* (Mar. 19, 2008), 2nd Dist. No. 2008-CA-2. In *King*, the Second District Court of Appeals found that an entry denying a motion for appointment of counsel was an immediately appealable order under R.C. 2505.02(B)(2) and (B)(4), and that the right to counsel in Senate Bill 10 hearings is a “substantial right” under the appealable-order statute. The Twelfth District denied the Application for Reconsideration but granted the Motion to Certify the Conflict. (*Chojnacki v. Dann* (May 5, 2008, Entry Denying Application for Reconsideration and Granting Motion to Certify Conflict), 12th Dist. Case No. CA200803040).

On August 6, 2008, this Court determined that a conflict existed and directed the parties to brief the following question: Whether a decision denying a request for appointment of counsel on a reclassification hearing held pursuant to Ohio’s version of the Adam Walsh Act, Senate Bill 10, is a final appealable order.” Additionally, on that same day, this Court accepted Mr. Chojnacki’s jurisdictional appeal which offered the following proposition of law: An entry denying the appointment of counsel in Senate Bill 10 reclassification hearings is a final appealable order because a trial court affects a substantial right when it denies a petitioner the right to counsel. This Court sua sponte consolidated briefing in both cases.

## INTRODUCTION

This case presents the issue whether an entry denying appointment of counsel in a reclassification hearing under Senate Bill 10, Ohio's Adam Walsh Act ("SB 10"), is a final appealable order. This is a narrow question, and one that does not implicate the full range of issues being litigated around the State regarding SB 10.

Specifically, this case does not directly present the issue whether a petitioner challenging his reclassification under SB 10 is entitled to counsel. The court of appeals below did not reach the issue whether Mr. Chojnacki was entitled to counsel at the hearing on his petition. Rather, it dismissed the appeal solely on the ground that the trial court's order denying appointment of counsel was not a final appealable order. Therefore, Mr. Chojnacki asserts only the limited issue of whether a court of appeals may review the denial of appointed counsel at a hearing challenging reclassification under SB 10.

The holding in this case will affect only a limited class of petitioners. It will be limited to persons who are reclassified under SB 10. That is, it will apply only to those persons to whom SB 10 has been applied retroactively. Persons who are sentenced *after* the effective date of SB 10 will be represented by counsel at their sentencing hearings when their reporting and other obligations are imposed as part of their sentences.

Recognizing the right to appeal the denial of appointed counsel will protect both the petitioner's substantial interest in representation as well as interests in judicial economy. The function and importance of counsel in proceedings challenging reclassification under SB 10 cannot be overstated. In order to contest the reclassification, a right statutorily guaranteed by SB 10, a person must traverse a treacherous terrain, filled with land mines that, if not handled correctly, will result in the ultimate forfeiture of constitutional rights.

## APPELLANT'S PROPOSITION OF LAW

**An entry denying the appointment of counsel in Senate Bill 10 reclassification hearings is a final appealable order. R.C. 2505.02(B)(2) and (B)(4).**

The trial court's entry denying Mr. Chojnacki's motion to appoint counsel is a final appealable order under R.C. 2505.02(B)(2) and 2505.02(B)(4).<sup>2</sup> The entry was issued in a special proceeding and affects a substantial right, as required by R.C. 2505.02(B)(2). Additionally, the court's order determined an action involving a provisional remedy and prevented judgment in Mr. Chojnacki's favor. Mr. Chojnacki would not be afforded meaningful review by an appeal following the final judgment, as required by R.C. 2505.02(B)(4). Accordingly, this Court should reverse and remand the matter with instructions to adjudicate Mr. Chojnacki's claims regarding appointment of counsel.

**I. An entry denying the appointment of counsel in Senate Bill 10 reclassification hearings is a final appealable order under R.C. 2505.02(B)(2) because it is made in a special proceeding and affects a substantial right.**

A. An entry denying appointment of counsel in a Senate Bill 10 reclassification hearing is made in a special proceeding.

A SB 10 reclassification<sup>3</sup> hearing is a "special proceeding." The State does not contest that this is a special proceeding within the meaning of R.C. 2505.02(A)(2). See Appellee's 6/18/08 Mem. in Resp. on Jurisdiction, p. 3. The initial inquiry when determining whether an order constitutes a final appeal order under R.C. 2505.02(B)(2) is whether the order was made in a

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<sup>2</sup>Mr. Chojnacki submits that the entry denying appointed counsel is a final appealable order under R.C. 2505.02(B)(2) and (B)(4). The Twelfth District dismissed his appeal citing (B)(1), as well as (A)(2) (special proceeding) and (A)(3) (provisional remedy). *Chojnacki v. Dann* (April 3, 2008), Entry of Dismissal, 12th Dist. Case No. CA200803040. Mr. Chojnacki is not arguing that the trial court's entry is a final appealable order under R.C. 2505.02(B)(1).

<sup>3</sup>Mr. Chojnacki uses the phrase "reclassification hearing" as a shorthand reference to the hearing in which a person who has already been reclassified by the Attorney General may challenge the reclassification under R.C. 2950.031.

special proceeding. *Polikoff v. Adams* (1993), 67 Ohio St. 3d 100, 108 at fn.8, 616 N.E.2d 213. A proceeding is considered “special” if it occurs within “an action or proceeding that is specifically created by statute and prior to 1853 was not denoted as an action at law.” *Polikoff*, 67 Ohio St.3d at 107, 616 N.E.2d 213.

The trial court’s order denying Mr. Chojnacki appointed counsel arose out of a statutorily created proceeding: a reclassification hearing under R.C. 2950.031. This provision became effective on July 1, 2007, and therefore satisfies the “special proceeding” requirement of R.C. 2505.02(A)(2). A holding in Mr. Chojnacki’s case that an order denying a motion to appoint counsel in a SB 10 reclassification proceeding is a final appealable order under R.C. 2505.02(B)(2) would not apply in the regular course of a criminal or civil trial because neither satisfy the special proceeding requirement.

- B. An entry denying appointment of counsel in a Senate Bill 10 reclassification hearing affects a substantial right.

The right to counsel is a substantial right, so the trial court’s denial of Mr. Chojnacki’s motion to appoint counsel affected a substantial right. To conclude that the trial court’s entry is a final appealable order, this Court must determine whether it affected a substantial right. R.C. 2505.02(B)(2). A substantial right is one “that the United States Constitution, Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.” R.C. 2505.02(A)(1).<sup>4</sup>

The right to counsel is undeniably a substantial right. For example, this Court has held that, in the civil context, a motion to disqualify counsel affects a substantial right. *Bernbaum v.*

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<sup>4</sup> Some examples of court entries that affect “substantial rights” are: 1) orders that affect the presentation of probate claims, *In re: Estate of Wyckoff: Gill v. Gordon* (1957) 166 Ohio St. 354, 359, 142 N.E. 2d 660, and 2) motions to intervene, *Fairview General Hosp. v. Fletcher* (1990), 69 Ohio App.3d 827, 591 N.E.2d 1312.

*Silverstein* (1980), 62 Ohio St.2d 445, 406 N.E.2d 532; *Russell v. Mercy Hosp.* (1984), 15 Ohio St.3d 37, 472 N.E.2d 695. In *Bernbaum* and *Russell*, this Court unequivocally held that an order regarding disqualification of counsel in a civil case affects a substantial right within the meaning of R.C. 2505.02(B)(2). *Bernbaum*, 62 Ohio St.2d at 446, n.2, 406 N.E.2d 532 (“an order overruling a motion to disqualify counsel affects a ‘substantial right.’ Such a determination is clearly supportable.”); *Russell*, 15 Ohio St.3d at 39, n.4, 474 N.E.2d 695 (“This court, in *Bernbaum*[,] . . . while holding that the overruling of a motion to disqualify counsel was not a final appealable order, nonetheless acknowledged that such a motion affects a substantial right. . . . Accordingly, upon the authority of *Bernbaum*, this court finds that an order to disqualify counsel affects a substantial right.”) (citations omitted; footnote omitted).

The analysis in *Russell* is particularly informative because *Russell* addresses a civil analogue to the issue in Mr. Chojnacki’s case. The Court concluded that there is a critical difference between an appeal from the *denial* of a motion to disqualify counsel (the situation addressed in *Bernbaum*) and the *granting* of a disqualification motion (the situation addressed in *Russell*). An order granting disqualification deprives the party of representation by its chosen counsel, whereas the party will continue to be represented when the trial court denies the motion to disqualify. “The harm caused by postponing review of an order granting disqualification of counsel would in most instances be irreparable. In contrast to a motion denying disqualification, a motion so granting is necessarily more conclusive. Its effects are immediate and measurable. It has irreparable and unreviewable consequences for the individual who hired the disqualified counsel as well as for disqualified counsel.” *Russell*, 15 Ohio St.3d at 41, 472 N.E.2d 695. The same holds true in the SB 10 context, regardless of whether SB 10 proceedings are considered criminal or civil.

Courts have recognized that the right to counsel is a substantial right in a variety of contexts, aside from a criminal defendant's Sixth Amendment and due process right to counsel at trial and in an appeal of right. See, e.g., *Morrissey v. Brewer* (1972), 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (right to counsel in release revocation proceedings); *Mempa v. Rhay* (1967), 389 U.S. 128, 88 S.Ct. 254, 19 L.Ed.2d 336 (right to counsel at sentencing "whether it be labeled a revocation of probation or a deferred sentence"); *Gideon v. Wainwright* (1963), 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (right to counsel in criminal prosecutions); *State ex rel. Cody v. Toner* (1983), 8 Ohio St.3d 22, 456 N.E.2d 813 (right to counsel in paternity actions where the state represents the complaining mother and child as recipients of public assistance); and *State ex rel. Heller v. Miller* (1980), 61 Ohio St.2d 6, 399 N.E.2d 66 (right to counsel in proceedings involving the involuntary, permanent termination of parental rights). For these reasons, the court's denial of appointment of counsel in a SB 10 reclassification hearing affects a substantial right.

- C. That an entry denying appointment of counsel in Senate Bill 10 proceedings is a final appealable order is buttressed by the vital role that counsel plays in those proceedings.

The vital role that counsel plays in reclassification hearings cannot be overstated. Legal counsel is necessary to assist the client in traversing the complex procedural issues that arise whenever litigants confront a new, statutorily created court proceeding. Competent counsel is aware of the courts' rules of procedure and the need to contemporaneously object based on specific authority. Any misstep made when contesting a petitioner's reclassification could forever waive further constitutional arguments. See, *State v. Longpre*, 4th Dist. No. 08CA3017, 2008-Ohio-3832, and *State v. Honey*, 9th Dist. No. 08CA0018-M, 2008-Ohio-4943, at ¶21 ("This Court declines to address his argument that R.C. 2950.034 deprives him of the right to

substantive due process in violation of the Fifth and Fourteenth Amendments to the United States Constitution because Defendant forfeited this objection by failing to raise it before the trial court.”). Accordingly, there can be no dispute that the right to counsel is a ‘substantial right’ for the limited purposes of 2505.02.

The importance of counsel is initially evidenced by trial courts’ disagreement about the procedural requirements for contesting the reclassification. Courts have arbitrarily imposed various procedural hurdles to challenging an SB 10 reclassification. For example, some trial courts have directed clerks of court not to accept petitions unless they are captioned in a certain manner. See fn. 1. Other courts, like Washington County, have directed that, if the case originated from that county, the petition must be filed in the criminal case; if not, it must be filed as a new civil case. Franklin, Lake and Montgomery County Common Pleas courts have imposed similar requirements.

Additionally, courts have imposed inconsistent requirements for the manner in which a petitioner must caption a petition. Some trial courts require the State of Ohio be the responding party, others the Ohio Attorney General. Similarly, requirements are inconsistent as to which side of the “v” the petitioner’s name must appear. For example, some require the petition to be captioned “State v. Petitioner” (e.g., Trumbull County) while others require “Petitioner v. State” (e.g., Stark County) or “In re: Petitioner” (e.g., Summit County). Mr. Chojnacki’s case illustrates another concern. His case was filed as “Chojnacki v. Dann,” but Dann moved to dismiss because “Marc Dann” was not the proper party. However, before that issue could be resolved, the appeal was dismissed. In the meantime, Marc Dann was replaced by current Ohio Attorney General Nancy Rogers.

A petitioner only has 60 days in which to file his petition. R.C. 2950.031(E). Therefore, if he attempts to file his petition contesting his reclassification and the documents are rejected because he did not caption it correctly, he may lose the ability to timely challenge his reclassification. Additionally, several documents in addition to the petition must be filed in order to effectively contest a reclassification. Of particular importance here is a motion to appoint counsel, which some courts have granted. See e.g., *Brooks v. State* (July 24, 2008), Lorain C.P. No. 07CV154328 and *State v. Ehmer* (April 14, 2008), Logan C.P. No. CV 08 01 0053 (determining that because the reclassification hearing is a stage of the proceeding under R.C. 120.16, petitioner is entitled to counsel); but see *State v. W.M.* (January 9, 2008), Trumbull C.P. No. 2008cv149 (denying petitioner's request for appointed counsel). In sum, a lay person cannot reasonably be expected to navigate through this procedural morass; the need for counsel is acute.

Furthermore, if the petitioner does not file a petition, he will be foreclosed from the benefit of avoiding reclassification. Several trial courts have stayed the application of SB 10 until it is resolved by this Court, but a person is not entitled to the benefit of the stay unless and until he files. See e.g., *Nelson v. Ohio* (May 14, 2008), Stark C.P. No. 2008MI000015; *Petitioners v. Respondents* (Feb. 1, 2008), Union C.P. No. 08-MS09913; *In re: Petitions filed contesting application of Adam Walsh Act* (Jan. 28, 2008), Summit C.P. Judgment Entry Stay Order (cases stayed pending resolution by the Ohio Supreme Court).

Finally, the challenges to SB 10 are complex, and it is unfair to expect a petitioner without any legal education to be able to make constitutional arguments about the ex post facto application of the law, or why the law violates his previous plea agreement, or any of the panoply of challenges that are currently being litigated throughout Ohio. Some of these challenges have achieved success. See e.g., *State v. Toles* (Sept. 9, 2008), Franklin C.P. No.

00CR-02-875 (holding all S.B. 10 registration conditions other than additional frequency and duration requirements unconstitutional); *Sigler v. State* (Aug. 11, 2008), Richland C.P. No. 07CV1863 (holding the SB 10 violates the constitutional prohibitions against retroactive and ex post facto laws); *Brooks v. State* (July 24, 2008), Lorain C.P. No. 07CV154328; *Evans v. State* (May 9, 2008), Cuyahoga C.P. No. CV-08 646797 (holding the SB 10 violates the constitutional prohibitions against retroactive and ex post facto laws).

A lay person cannot be expected to be able to raise these challenges. However, if the petitioner does not raise these arguments by motion and during his hearing, he risks waiving and/or forfeiting his constitutional rights. *State v. Longpre*, 4th Dist. No. 08CA3017, 2008-Ohio-3832, at ¶3, *State v. Honey*, 9th Dist. No. 08CA0018-M, 2008-Ohio-4943, at ¶21. The Seventh District recently opined:

As an aside, we must note that [petitioner] may have waived the above claims. He did not file a motion with the trial court claiming that Senate Bill 10 was unconstitutional. At sentencing, however, counsel stated that he was going to file an appeal and a stay motion so that [petitioner's] name would not get into the system "in the event that it does – it is found to be unconstitutional." (Tr. 12). "Failure to raise at the trial court level the issue of the constitutionality of a statute or its application, which issue is apparent at the time of trial, constitutes a waiver of such issue and a deviation from this state's orderly procedure, and therefore need not be heard for the first time on appeal." *State v. Awan* (1986), 22 Ohio St.3d 120, syllabus. Nevertheless, it is recognized that the waiver doctrine is discretionary. *In re M.D.* (1988), 38 Ohio St.3d 149, 151.

*State v. Byers*, 7th Dist. No. 07CO39, 2008-Ohio-5051, at ¶104-05. Furthermore, the Fourth District has held, "On appeal, [petitioner] challenges the constitutionality of the trial court's retroactive application of Senate Bill 10. Because [petitioner] failed to raise his various constitutional arguments in the trial court, we find that he has forfeited his right to raise them for the first time on appeal." *State v. Longpre*, 4th Dist. No. 08CA3017, 2008-Ohio-3832, at ¶3.

Without counsel to assist a petitioner with the various complications of exercising his right to contest his reclassification, a petitioner faces devastating consequences.

**II. An entry denying the appointment of counsel in Senate Bill 10 reclassification hearing is a final appealable order under the provisional remedy section of R.C. 2505.02(B)(4).**

The trial court's order denying Mr. Chojnacki appointed counsel is also a final appealable order because: it is an order that denies a provisional remedy, it is an order that, in effect, determines the action, and an appeal following the final judgment would not afford a meaningful remedy. An order is final if it:

grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

R.C. 2505.02(B)(4). A provisional remedy is "a proceeding ancillary to an action[.]" R.C. 2505.02(A)(3). This Court has established a three-part test for determining whether R.C. 2505.02(B)(4) is satisfied:

(1) the order must either grant or deny relief sought in a certain type of proceeding -- a proceeding that the General Assembly calls a "provisional remedy,"

(2) the order must both determine the action with respect to the provisional remedy and prevent a judgment in favor of the appealing party with respect to the provisional remedy, and

(3) the reviewing court must decide that the party appealing from the order would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action. See, also, R.C. 2505.02(A)(3) (defining "provisional remedy").

*State v. Muncie* (2001), 91 Ohio St.3d 440, 446, 746 N.E.2d 1092. This Court went on to explain that, as to the first prong, “[a]n ‘order’ is thus properly understood as the mandate from the trial court that grants or denies the particular relief at issue in that proceeding – not as the provisional remedy itself.” *Id.* at 448. Furthermore, “an ancillary proceeding is one that is attendant upon or aids another proceeding.” *Id.* at 449. See, also, *Forest City Invest. Co. v. Haas* (1924) 110 Ohio St. 188, 192, 143 N.E. 549 (the denial of the appointment of a receiver is a proceeding ancillary to the main action); *Lincoln Tavern, Inc. v. Snader* (1956), 165 Ohio St. 61, 68, 133 N.E.2d 606 (noting that “an attachment is a provisional remedy; an ancillary proceeding which must be appended to a principal action and whose very validity must necessarily depend upon the validity of the commencement of the principal action”).

Here, the trial court’s order denied Mr. Chojnacki’s Motion to Appoint Counsel that he filed concurrently with his Petition to Contest the Application of the Adam Walsh Act. Thus, it is an order from the trial court that denied Mr. Chojnacki’s sought relief – appointed counsel – which would aid in another proceeding, i.e., that being the hearing to contest the application of SB 10. The first prong is satisfied.

The order in Mr. Chojnacki’s case also satisfies the second prong, because the order denied the provisional remedy sought: the appointment of counsel. For an order to be final, it “must both determine the action with respect to the provisional remedy and prevent a judgment in favor of the appealing party with respect to the provisional remedy.” *Muncie*, 91 Ohio St.3d at 446, 746 N.E.2d 1092. The order determined the action with respect to the motion to appoint counsel and prevented Mr. Chojnacki from receiving court-appointed counsel.

Finally, the third prong is satisfied because without counsel to protect his interests, Mr. Chojnacki would not be afforded a meaningful or effective remedy by an appeal following final

judgment. The Fourth District's decision in *State v. Longpre*, 4th Dist. No. 08CA3017, 2008-Ohio-3832, is indicative of the importance of competent counsel in SB 10 proceedings. The court determined that, because Mr. Longpre had not objected to the classification under SB 10, Mr. Longpre had forfeited any argument pertaining to the constitutionality of SB 10. *Id.* at ¶11; see, also, *State v. Honey*, 9th Dist. No. 08CA0018-M, 2008-Ohio-4943, at ¶21. The constitutional implications of SB 10 are complex, and while they are not before this Court in Mr. Chojnacki's case, the consequences of failing to properly raise these issues are fatal to petitioners without counsel.

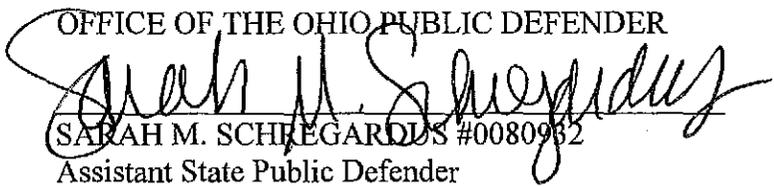
Furthermore, judicial economy favors the immediate review of the denial of counsel as recognized by this Court in *Russell*. This Court noted, "The harm caused by postponing review of an order granting disqualification of counsel would in most instances be **irreparable** . . . Its effects are immediate and measurable. It has **irreparable and unreviewable consequences** for the individual who hired the disqualified counsel as well as for disqualified counsel." *Russell*, 15 Ohio St.3d at 41, 472 N.E.2d 695 (emphasis added). This Court recognized the devastating consequences of proceeding through the justice system without counsel of choice and then trying to review the proceedings on appeal. *Id.* The consequences of not having counsel to assist in the SB 10 reclassification procedures are irreparable; full and fair appellate review would be impossible.

### CONCLUSION

Whether this Court determines that the trial court's order denying Mr. Chojnacki court-appointed counsel affects a substantial right and occurred in a special proceeding, or denies a provisional remedy and that Mr. Chojnacki would not be afforded meaningful appellate review, the conclusion is the same: it is a final appealable order.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

  
SARAH M. SCHREGARDUS #0080932

Assistant State Public Defender

(Counsel of Record)

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Columbus, Ohio 43215

(614) 466-5394

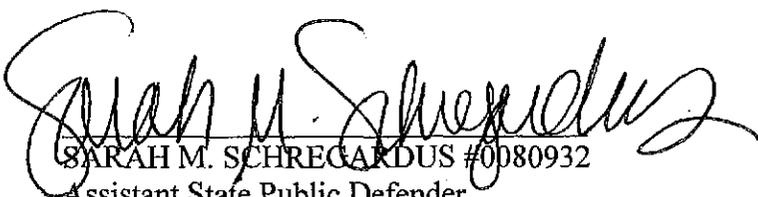
(614) 752-5167 (Fax)

E-mail: sarah.schregardus@opd.state.oh.us

COUNSEL FOR ROMAN CHOJNACKI

### CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **Merit Brief of Appellant Roman Chojnacki** was forwarded by regular U.S. Mail, postage prepaid to Mary Martin, Warren County Assistant Prosecutor, Warren County Courthouse, 500 Justice Drive, Lebanon, Ohio, 45036 this 14th day of October, 2008.

  
SARAH M. SCHREGARDUS #0080932

Assistant State Public Defender

COUNSEL FOR ROMAN CHOJNACKI

#287859

IN THE SUPREME COURT OF OHIO

ROMAN CHOJNACKI,	:	
	:	Case Nos. 2008-0991 and 2008-0992
Appellant,	:	
	:	On Appeal from the Warren
v.	:	County Court of Appeals
	:	Twelfth Appellate District
NANCY ROGERS, Ohio Atty. General,	:	Court of Appeals
in her Official Capacity,	:	Case No. CA200803040
	:	
Appellee.	:	

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APPENDIX TO MERIT BRIEF OF APPELLANT ROMAN CHOJNACKI

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IN THE SUPREME COURT OF OHIO

08-0991

ROMAN CHOJNACKI,  
Petitioner-Appellant,

vs.

MARC DANN, Ohio Attorney General,  
In his Official Capacity

Respondent-Appellee.

Case No. \_\_\_\_\_

On Appeal from the Warren  
County Court of Appeals  
Twelfth Appellate District

Case No. CA2008-03-040

NOTICE OF CERTIFIED CONFLICT

OFFICE OF THE OHIO PUBLIC DEFENDER

RACHEL HUTZEL # 0055757  
Warren County Prosecutor

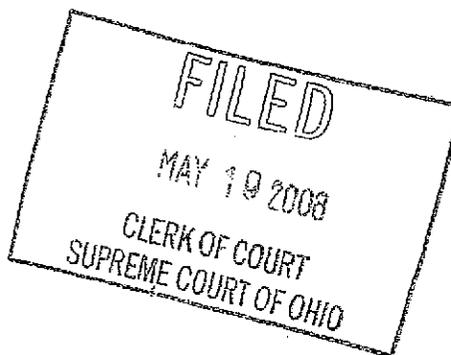
SARAH M. SCHREGARDUS #0080932  
Assistant State Public Defender  
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Warren County Prosecutor's Office  
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COUNSEL FOR STATE OF OHIO

COUNSEL FOR ROMAN CHOJNACKI



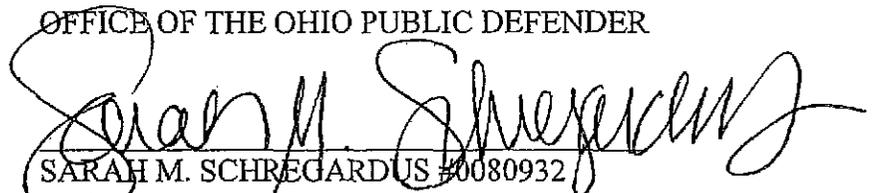
**NOTICE OF CERTIFIED CONFLICT**

Appellant Roman Chojnacki gives notice, pursuant to S.Ct.R. IV, Section 1, that the Twelfth District Court of Appeals certified its decision in *Chojnacki v. Dann* (April 3, 2008), Warren App. No. CA2008-03-040 in conflict with the Second District Court of Appeals decision in *King v. State of Ohio* (Mar. 19, 2008), Miami App. No 2008-CA-2 on May 5, 2008 pursuant to Article IV, Section 3(B)(4) of the Ohio Constitution.

The certified question is: whether a decision denying a request for appointment of counsel in a reclassification hearing held pursuant to Ohio's version of the Adam Walsh Act, Senate Bill 10, is a final appealable order.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



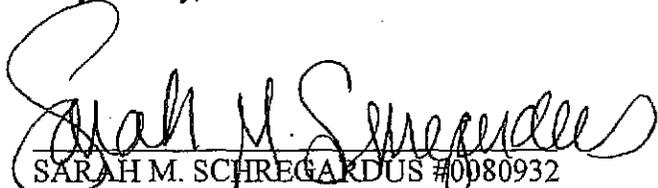
SARAH M. SCHREGARDUS #0080932  
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COUNSEL FOR ROMAN CHOJNACKI

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing NOTICE OF CERTIFIED CONFLICT has been served upon Rachel Hutzler, Warren County Prosecutor, Warren County Courthouse, 500 Justice Drive, Lebanon, Ohio, 45036 this 19<sup>th</sup> day of May, 2008.

  
SARAH M. SCHREGARDUS #0080932  
Assistant State Public Defender

COUNSEL FOR ROMAN CHOJNACKI

COURT OF APPEALS  
IN THE COURT OF COMMON PLEAS OF WARREN COUNTY, OHIO

MAY 5 2008

ROMAN CHOJNACKI,

Petitioner/Appellant,

vs.

MARC DANN, Ohio Atty. General,  
in his Official Capacity,

Respondent/Appellee,

CASE NO. CA2008-03-040

*James L. Spaeth, Clerk*  
LEBANON OHIO

ENTRY DENYING APPLICATION  
FOR RECONSIDERATION AND  
GRANTING MOTION TO CERTIFY  
CONFLICT

The above cause is before the court pursuant to an application for reconsideration or, in the alternative, motion to certify conflict filed by counsel for appellant, Roman Chojnacki, on April 8, 2008. No response has been filed on behalf of appellee, Marc Dann, Ohio Attorney General.

On February 26, 2008, appellant filed a "petition to contest reclassification" which challenges the application of Ohio's version of the Adam Walsh Act reclassifying him as a Tier II offender. On the same date, petitioner filed a motion for appointment of the office of the Ohio Public Defender as counsel. The motion was denied, and appellant filed this appeal. In an entry of dismissal filed on April 3, 2008, this court dismissed the appeal for the reason that it is not taken from a final appealable order. Thereafter, appellant timely filed the above application for reconsideration, or in the alternative, motion to certify conflict.

The test generally used when ruling on an application for reconsideration is whether the application calls the court's attention to an obvious error in its decision, or raises an issue which was improperly or not fully considered, or was not considered at all by the court. *State v. Black* (1991), 78 Ohio App.3d 130. In his application for reconsideration, appellant disagrees with this court's decision finding the entry appealed from



Warren CA2008-03-040

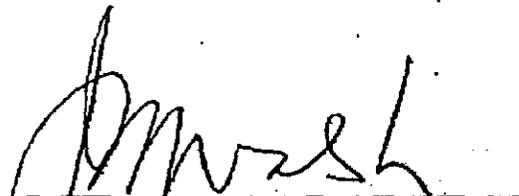
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not to be a final appealable, but raises no issues which were not fully considered by the court. The application for reconsideration is accordingly DENIED.

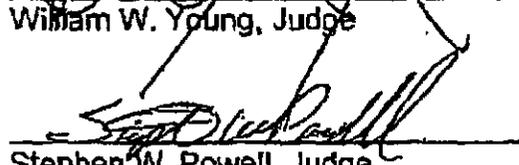
Under the Ohio Constitution, a court of appeals is required to certify the record of a case to the Supreme Court of Ohio if it finds that its decision is in conflict with the judgment of another court of appeals on the same question. O.Constitution Art. IV, Section 3(B)(4). Appellant contends that this court's decision is in conflict with a decision by the Second District Court of Appeals, *King v. State of Ohio* (Mar. 19, 2008), Miami App. No. 2008-CA-2.

Upon review, the court finds that its decision is in conflict with the *King* decision. Accordingly, the motion to certify is GRANTED. The issue for certification is whether a decision denying a request for appointment of counsel in a reclassification hearing held pursuant to Ohio's version of the Adam Walsh Act, Senate Bill 10, is a final appealable order.

IT IS SO ORDERED.

  
James E. Walsh, Presiding Judge

  
William W. Young, Judge

  
Stephen W. Powell, Judge

COURT OF APPEALS  
IN THE COURT OF WARREN COUNTY  
FILED OF WARREN COUNTY, OHIO

APR 3 2008

*James P. Spaeth, Clerk*  
LEBANON OHIO

CASE NO. CA2008-03-040

ROMAN CHOJNACKI,  
Petitioner/Appellant,

ENTRY OF DISMISSAL

vs.

MARC DANN, Ohio Attorney General,  
in his Official Capacity,

Respondent/Appellee.

The above cause is before the court pursuant to a notice of appeal filed by petitioner/appellant, Roman Chojnacki, on March 13, 2008. The appeal is taken from an entry filed in the Warren County Court of Common Pleas on March 10, 2008 denying a motion for appointment of counsel.

Appellant is an inmate incarcerated at Lebanon Correctional Institution. He was found guilty of three counts of unlawful sexual conduct with a minor in 2006 and sentenced to 12 years in prison.

On February 26, 2008, petitioner filed a "petition to contest reclassification" which challenges the application of Ohio's version of the Adam Walsh Act re-classifying him as a Tier II offender. On the same date, petitioner filed a motion for appointment of the Office of the Ohio Public Defender as counsel. The motion was denied on March 10, 2008 and this appeal follows.

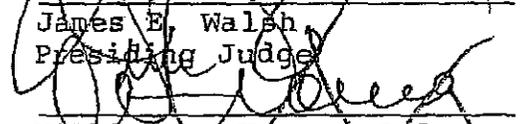
Upon consideration, the court finds that this appeal is not taken from a final appealable order. The entry denying petitioner's motion for appointment of counsel does not affect a substantial right in the action which in effect determines the action and prevents a judgment. R.C. 2505.02(B)(1). It is not an order made in a special

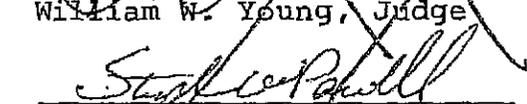
proceeding (R.C. 2505.02(A)(2)), or a provisional remedy (R.C. 2505.02(A)(3)).

This appeal is accordingly hereby DISMISSED, costs to petitioner.

IT IS SO ORDERED.

  
James E. Walsh  
Presiding Judge

  
William W. Young, Judge

  
Stephen W. Powell, Judge

IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MIAMI COUNTY

STEFANI M. KING

*Plaintiff-Appellant*

v.

STATE OF OHIO

*Defendant-Appellee*

Appellate Case No. 2008-CA-2.

T. Ct. Case No. 07-CV-1030

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**DECISION AND ENTRY**

March 19<sup>th</sup>, 2008

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This matter comes before us upon Stefani M. King's appeal from the trial court's December 26, 2007 order overruling her motion for appointment of counsel to assist her in challenging her reclassification as a "Tier II" sex offender.

The record reflects that King pleaded guilty to unlawful sexual conduct with a minor in 1997. She served five years of community control and completed ten years of registration as a sexually oriented offender. In December 2007, she received a letter from the Ohio Attorney General's office advising her of additional requirements being imposed on her under R.C. 2950.031, which was enacted in Senate Bill 10, effective January 1, 2008. Under SB 10, King automatically is reclassified as a "Tier II" offender based on the offense she committed. She also is required to register as a sex offender every six months for 25 years.

As permitted under R.C. 2950.031(E), King filed a petition in the trial court for

A-8

a hearing to challenge her reclassification as a Tier II offender and the accompanying registration requirements. She also filed an affidavit of indigence and a motion for the appointment of counsel to assist with her petition. The trial court summarily overruled the motion on December 26, 2007. This timely appeal followed.

After King filed her notice of appeal, the parties submitted written briefs addressing, *inter alia*, our jurisdiction over an interlocutory appeal from the trial court's denial of counsel. We also heard oral argument on the jurisdictional issue. Having considered the parties' respective arguments, we conclude that the trial court's order is immediately appealable under R.C. 2505.02(B)(2) and (B)(4).

Under R.C. 2505.02(B)(2), an order is final and appealable if it affects a substantial right and is made in a special proceeding. King contends the trial court's order declining to appoint counsel meets this standard. She asserts that the right to counsel is a "substantial right" recognized by the Constitution and by statute. She also claims her petition for a reclassification hearing qualifies as a "special proceeding" because she filed it under R.C. 2950.031(E), which specifically created such a procedure for a sex offender to challenge reclassification under SB 10.

In response, the State does not dispute that King's petition for a reclassification hearing is a "special proceeding" because it is "an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity." R.C. 2505.02(A)(2). The State argues, however, that the trial court's denial of counsel does not affect a substantial right because King has no right to counsel.

Upon review, we find the State's argument to be unpersuasive. Contrary to

the State's argument, we need not decide the merits—i.e., whether King actually has a right to counsel—in order to decide whether she can take an immediate appeal under R.C. 2505.02(B)(2). The State reasons that King has no right to appeal the denial of counsel because she has no right to counsel. If that logic held, this court would be compelled to resolve the merits of an appeal under R.C. 2505.02(B)(2) in order to decide the threshold issue of whether the appeal is properly before us.

Instead, we believe the proper inquiry is whether the right to counsel itself has been recognized as a "substantial right." The Ohio Supreme Court seemingly took this approach in *Gehm v. Timberline Post & Frame*, 112 Ohio St.3d 514, 2007-Ohio-607. There it characterized intervention as a "substantial right" under the appealable-order statute without first deciding whether the party seeking to intervene actually had a right to do so. *Id.* at 519.<sup>1</sup> The State does not dispute that the right to counsel is recognized by the Constitution and Crim.R. 44. Therefore, the trial court's ruling involves a substantial right.

Having determined that the proceeding in the trial court qualifies as a special proceeding, and that King has asserted a substantial right, the only remaining question is whether the trial court's ruling affects the substantial right. An order

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<sup>1</sup>The *Gehm* court reasoned:

"The only other possible basis for the denial of the motion to intervene to qualify as a final, appealable order under R.C. 2505.02 is that it affects a 'substantial right' as defined by R.C. 2505.02(A)(1) and that it 'in effect determines the action and prevents a judgment.' R.C. 2505.02(B)(1).

"R.C. 2505.02(A)(1) defines a 'substantial right' as 'a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.' As a motion to intervene is a right recognized by Civ.R. 24, intervention constitutes a substantial right under R.C. 2505.02(A)(1)."

affecting a substantial right is one which, if not immediately appealable, would foreclose appropriate relief in the future. *Southside Comm. Dev. Corp. v. Levin*, 116 Ohio St.3d 1209, 1210-1211, 2007-Ohio-6665.

In *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, the Ohio Supreme Court recognized that granting a motion to disqualify counsel in a civil case is an appealable order under R.C. 2505.02 because it cannot be reviewed effectively after final judgment. *Id.* at 178, citing *Russell v. Mercy Hosp.* (1984), 15 Ohio St.3d 37; see also *State ex rel. Asberry v. Payne*, 82 Ohio St.3d 44, 49, 1998-Ohio-596 (holding that a pro se appeal would not necessarily be a "complete, beneficial, and speedy" remedy for a pro se litigant to challenge the trial court's refusal to appoint counsel in a civil child-custody proceeding); *State ex rel. Cody v. Toner* (1983), 8 Ohio St.3d 22, 23 ("In the instant case, if relator must wait for an appeal to establish his alleged right to have court-appointed counsel, he will be denied the opportunity to be legally represented throughout the course of the adjudication and disposition of his case. Accordingly, although relator may ultimately appeal an adverse decision rendered in the paternity action, that remedy cannot be said to be 'adequate under the circumstances.'").<sup>2</sup> The foregoing cases support the proposition that the denial of counsel in a civil proceeding is subject to immediate review because an appeal

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<sup>2</sup>*Asberry* is distinguishable from the present case insofar as a statute specifically provided for the appointment of counsel there. We do not cite *Asberry*, however, for the proposition that King is entitled to counsel. Instead, we find *Asberry* instructive on a different issue, namely whether the denial of counsel in a civil case may be reviewed effectively after the entry of final judgment.

after final judgment is inadequate.<sup>3</sup> We find that to be true in this case, which involves a civil action filed by King to contest her reclassification by the Ohio Attorney General. In an appeal after final judgment, King would be required to prove that the presence of counsel would have resulted in a more favorable outcome and that she was prejudiced by the absence of counsel—a showing which often is difficult to make.<sup>4</sup> Accordingly, the trial court's order refusing to appoint counsel for King is immediately appealable under R.C. 2505.02(B)(2).

We reach the same conclusion concerning King's right to take an immediate appeal under R.C. 2505.02(B)(4), which involves provisional remedies. It provides that an order granting or denying a provisional remedy is immediately appealable if both of the following conditions are met:

"(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

"(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action \* \* \*"

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<sup>3</sup>Although *Keenan* involved the disqualification of counsel of choice rather than the refusal to appoint counsel for a pro se litigant, the two situations nevertheless implicate some of the same concerns regarding the effectiveness of an appeal after final judgment. Moreover, we note that *Asberry* and *Cody*, like the present case, involved a trial court's complete refusal to appoint counsel for an indigent party in a civil action.

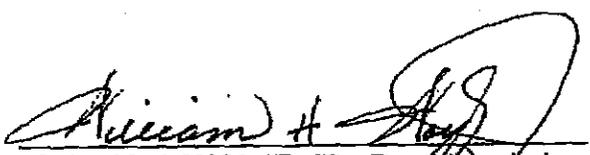
<sup>4</sup>Conversely, prejudice is presumed when a trial court erroneously disqualifies or denies counsel in a criminal case. See, e.g., *Russell*, 15 Ohio St.3d at 43; *Keenan*, 69 Ohio St.3d at 179. For that reason, an order disqualifying counsel in a criminal case is not immediately appealable. *Id.*

In opposition to King's reliance on R.C. 2505.02(B)(4), the State contends no provisional remedy is at issue. We disagree. A "provisional remedy" is "a proceeding ancillary to an action \* \* \*." R.C. 2505.02(A)(3). King's motion for the appointment of counsel is ancillary to her petition for a reclassification hearing. Her request for counsel is attendant upon or aids her petition to challenge her reclassification as a Tier II offender. Cf. *State v. Williams*, Lucas App. Nos. L-03-1070, L-03-1071, 2003-Ohio-2533, ¶27 (recognizing that an order disqualifying counsel is ancillary to the main action and qualifies as a provisional remedy). Moreover, the trial court's denial of counsel determines the action with respect to the provisional remedy and prevents a judgment in the King's favor on the question of counsel.

The only remaining issue is whether King would be afforded a meaningful or effective remedy by an appeal following final judgment. We once again conclude, based on the reasoning set forth above, that an appeal following final judgment in this civil action would be inadequate. Therefore, the trial court's order refusing to appoint counsel is immediately appealable under R.C. 2505.02(B)(4).

In accordance with our January 14, 2008 scheduling order, the parties previously filed briefs addressing King's asserted right to counsel and the trial court's contrary ruling. Before we resolve the appeal, however, we will grant King fourteen days from the date of this decision and entry to file any supplemental brief that she deems necessary. If King submits such a brief, the State shall have fourteen days from the date of King's filing to submit its own supplemental brief. King then shall file any reply brief deemed necessary within seven days. No extensions of this briefing schedule will be granted.

IT IS SO ORDERED.

  
WILLIAM H. WOLFF, JR., Presiding Judge

  
JAMES A. BROGAN, Judge

  
MIKE FAIN, Judge

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Judge Jeffrey M. Welbaum  
Miami County Common Pleas Court  
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Troy, OH 45373

IN THE SUPREME COURT OF OHIO

ROMAN CHOJNACKI,

Petitioner-Appellant,

vs.

MARC DANN, Ohio Attorney General,  
In his Official Capacity

Respondent-Appellee.

Case No. 00-0992

On Appeal from the Warren  
County Court of Appeals  
Twelfth Appellate District

Case No. CA2008-03-040

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**NOTICE OF APPEAL OF APPELLANT ROMAN CHOJNACKI**

---

OFFICE OF THE OHIO PUBLIC DEFENDER

RACHEL HUTZEL # 0055757  
Warren County Prosecutor

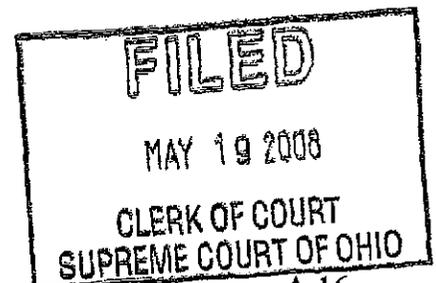
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COUNSEL FOR STATE OF OHIO

COUNSEL FOR ROMAN CHOJNACKI



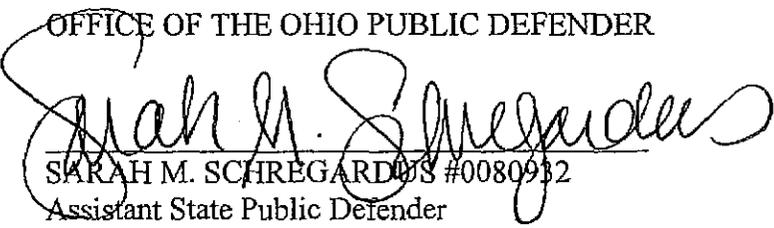
**NOTICE OF APPEAL OF APPELLANT ROMAN CHOJNACKI**

Appellant Roman Chojnacki hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Warren County Court of Appeals, Twelfth Appellate District, entered in Court of Appeals Case No. CA2008-03-040 on April 3, 2008.

This case raises a substantial constitutional question, involves a felony, and is of public or great general interest. The question was also certified by the Twelfth District and concurrently with this Notice of Appeal, Mr. Chojnacki is filing a Notice of Certified Conflict.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



SARAH M. SCHREGARDUS #0080932

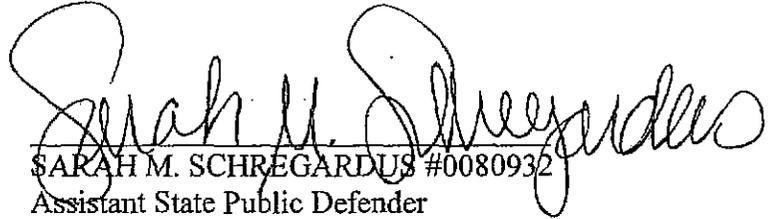
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E-mail: [sarah.schregardus@opd.state.oh.us](mailto:sarah.schregardus@opd.state.oh.us)

COUNSEL FOR ROMAN CHOJNACKI

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing NOTICE OF APPEAL has been served upon Rachel Hutzler, Warren County Prosecutor, Warren County Courthouse, 500 Justice Drive, Lebanon, Ohio, 45036 this 19<sup>th</sup> day of May, 2008.

  
SARAH M. SCHREGARDUS #0080932  
Assistant State Public Defender

COUNSEL FOR ROMAN CHOJNACKI

COMMON PLEAS COURT  
WARREN COUNTY OHIO  
FILED

08 MAR 10 AM 10:20

JAMES L. FLANNERY  
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS  
WARREN COUNTY, OHIO  
GENERAL DIVISION**

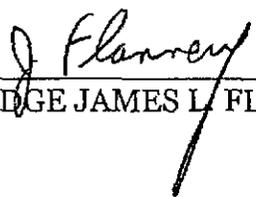
ROMAN CHOJNACKI	:	
	:	
Petitioner,	:	CASE NO. 08CV70822
	:	
VS.	:	<u>ENTRY DENYING</u>
	:	<u>MOTION FOR</u>
MARC DANN, Ohio Attorney	:	<u>APPOINTMENT</u>
General, in his official capacity	:	<u>OF COUNSEL</u>
	:	
Respondent,	:	

The petitioner here has challenged the application of Ohio's version of the Adam Walsh Act, Senate Bill 10 to re-classifying him as a tier two offender. The State Public Defender's Office on his behalf has requested that that office be appointed counsel at State expense to represent this defendant. The Court declines that request finding that this is not a proceeding at which the petitioner's liberty is at stake. As noted in his motion, he is an inmate serving a prison sentence currently. Nothing in Senate Bill 10 provides for the Court to appoint counsel at taxpayer expense for representation of petitioners seeking to challenge the re-classification. The Ohio Supreme Court has already ruled that

classification in and of itself is not punitive. See State v. Cook, 83 Ohio St.3d 404.

This Court fails to see how extending the frequency and duration for registering as a sex offender has any punitive effect whatsoever. The petitioner here must continue to register for ten (10) years from his prior designation as a sexually oriented offender. Before that can ever expire the Court is satisfied that the constitutionality of Senate Bill 10 will have been finally decided by the Ohio Supreme Court. Currently the Federal District Court for the Northern District of Ohio has stayed the expiration of the time for filing a petition to contest reclassification and community notification for Tier III registrants. See Doe v. Dann, Northern Dist. of Ohio, unrep.

The Legislature here has created a purely civil remedy to contest reclassification. Counsel is not required to be appointed for purely civil proceedings where there is no immediate risk of a loss of liberty present. See Gideon v. Wainright, 372 U.S. 335 for 6<sup>th</sup> Amend. Right to counsel. Therefore the motion filed February 25, 2008 is not well taken and the same is denied.

  
\_\_\_\_\_  
JUDGE JAMES L. FLANNERY

c: Sarah M. Schregardus, Esq.  
Warren County Prosecutor  
Attorney General Marc Dann

COURT OF APPEALS  
WARREN COUNTY  
FILED OF WARREN COUNTY, OHIO

APR 3 2008

*James L. Spaeth, Clerk*  
LEBANON OHIO

CASE NO. CA2008-03-040

ROMAN CHOJNACKI,

Petitioner/Appellant,

ENTRY OF DISMISSAL

vs.

MARC DANN, Ohio Attorney General, :  
in his Official Capacity, :

Respondent/Appellee. :

The above cause is before the court pursuant to a notice of appeal filed by petitioner/appellant, Roman Chojnacki, on March 13, 2008. The appeal is taken from an entry filed in the Warren County Court of Common Pleas on March 10, 2008 denying a motion for appointment of counsel.

Appellant is an inmate incarcerated at Lebanon Correctional Institution. He was found guilty of three counts of unlawful sexual conduct with a minor in 2006 and sentenced to 12 years in prison.

On February 26, 2008, petitioner filed a "petition to contest reclassification" which challenges the application of Ohio's version of the Adam Walsh Act re-classifying him as a Tier II offender. On the same date, petitioner filed a motion for appointment of the Office of the Ohio Public Defender as counsel. The motion was denied on March 10, 2008 and this appeal follows.

Upon consideration, the court finds that this appeal is not taken from a final appealable order. The entry denying petitioner's motion for appointment of counsel does not affect a substantial right in the action which in effect determines the action and prevents a judgment. R.C. 2505.02(B)(1). It is not an order made in a special proceeding (R.C. 2505.02(A)(2)), or a provisional remedy (R.C. 2505.02(A)(3)).

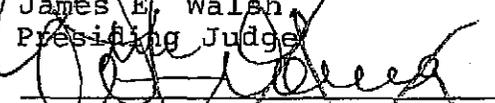
This appeal is accordingly hereby DISMISSED, costs to petitioner.

IT IS SO ORDERED.



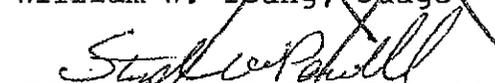
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James E. Walsh,  
Presiding Judge



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William W. Young, Judge



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Stephen W. Powell, Judge

COURT OF APPEALS  
IN THE COURT OF APPEALS OF WARREN COUNTY, OHIO  
WARREN COUNTY  
FILED

MAY 5 2008

ROMAN CHOJNACKI,

Petitioner/Appellant,

vs.

MARC DANN, Ohio Atty. General,  
in his Official Capacity,

Respondent/Appellee,

James L. Spaeth, Clerk  
LEBANON OHIO

CASE NO. CA2008-03-040  
ENTRY DENYING APPLICATION  
FOR RECONSIDERATION AND  
GRANTING MOTION TO CERTIFY  
CONFLICT

The above cause is before the court pursuant to an application for reconsideration or, in the alternative, motion to certify conflict filed by counsel for appellant, Roman Chojnacki, on April 8, 2008. No response has been filed on behalf of appellee, Marc Dann, Ohio Attorney General.

On February 26, 2008, appellant filed a "petition to contest reclassification" which challenges the application of Ohio's version of the Adam Walsh Act reclassifying him as a Tier II offender. On the same date, petitioner filed a motion for appointment of the office of the Ohio Public Defender as counsel. The motion was denied, and appellant filed this appeal. In an entry of dismissal filed on April 3, 2008, this court dismissed the appeal for the reason that it is not taken from a final appealable order. Thereafter, appellant timely filed the above application for reconsideration, or in the alternative, motion to certify conflict.

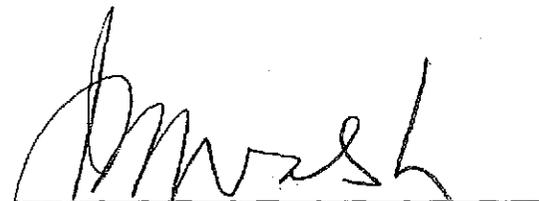
The test generally used when ruling on an application for reconsideration is whether the application calls the court's attention to an obvious error in its decision, or raises an issue which was improperly or not fully considered, or was not considered at all by the court. *State v. Black* (1991), 78 Ohio App.3d 130. In his application for reconsideration, appellant disagrees with this court's decision finding the entry appealable from

not to be a final appealable, but raises no issues which were not fully considered by the court. The application for reconsideration is accordingly DENIED.

Under the Ohio Constitution, a court of appeals is required to certify the record of a case to the Supreme Court of Ohio if it finds that its decision is in conflict with the judgment of another court of appeals on the same question. O.Constitution Art. IV, Section 3(B)(4). Appellant contends that this court's decision is in conflict with a decision by the Second District Court of Appeals, *King v. State of Ohio* (Mar. 19, 2008), Miami App. No. 2008-CA-2.

Upon review, the court finds that its decision is in conflict with the *King* decision. Accordingly, the motion to certify is GRANTED. The issue for certification is whether a decision denying a request for appointment of counsel in a reclassification hearing held pursuant to Ohio's version of the Adam Walsh Act, Senate Bill 10, is a final appealable order.

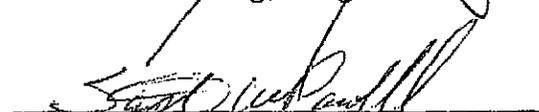
IT IS SO ORDERED.



James E. Walsh, Presiding Judge



William W. Young, Judge



Stephen W. Powell, Judge



-39238599

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO  
Plaintiff

ROMAN CHOJNACKI  
Defendant

Case No: CR-05-473492-A

Judge: DAVID T MATIA

INDICT: 2907.04 UNLAWFUL SEXUAL CONDUCT WITH  
MINOR  
2907.04 UNLAWFUL SEXUAL CONDUCT WITH  
MINOR  
2907.04 UNLAWFUL SEXUAL CONDUCT WITH  
MINOR  
ADDITIONAL COUNTS...

**JOURNAL ENTRY**

THE DEFENDANT HAS BEEN CONVICTED OF OR HAS PLEAD GUILTY TO COMMITTING TO THE FOLLOWING SEXUALLY ORIENTED OFFENSE (S) AS DEFINED BY R.C. 2950.01, SPECIFICALLY, UNLAWFUL SEXUAL CONDUCT WITH MINOR- F3.

PURSUANT TO R.C. CHAPTER 2950, THIS COURT FINDS THAT THE DEFENDANT, SHALL BE CLASSIFIED AND/OR ADJUDICATED AS FOLLOWS:

**ADJUDICATION AND CLASSIFICATION OF SEXUALLY ORIENTED OFFENSES**

PURSUANT TO PRIOR NOTICE TO THE PARTIES, THIS CAUSE CAME BEFORE THE COURT TO DETERMINE WHETHER THE DEFENDANT, WHO HAS BEEN CONVICTED OF, OR PLEAD GUILTY TO A SEXUALLY ORIENTED OFFENSE THAT IS NOT A REGISTRATION EXEMPT OFFENSE, IS A SEXUAL PREDATOR. THE DEFENDANT WAS PRESENT WITH COUNSEL OR WAS INFORMED OF THE RIGHT TO HAVE COUNSEL PRESENT. THE PARTIES WERE AFFORDED THE OPPORTUNITY TO TESTIFY, PRESENT EVIDENCE, CALL AND EXAMINE WITNESSES, AND CALL AND EXAMINE EXPERT WITNESSES.

THE COURT HAS CONSIDERED ALL EVIDENCE AND ARGUMENTS PRESENTED BY THE PARTIES, AND ALL OTHER RELEVANT FACTORS, INCLUDING BUT NOT LIMITED TO THE FACTORS LISTED IN R. C. 2950.09(B).

UPON CONSIDERATION OF THE FOREGOING, THIS COURT FINDS THAT THE DEFENDANT IS NOT LIKELY TO ENGAGE IN ONE OR MORE SEXUALLY ORIENTED OFFENSES IN THE FUTURE. IT IS HEREBY ORDERED AND ADJUDGED THAT THE DEFENDANT IS NOT A SEXUAL PREDATOR FOR THE FOLLOWING REASONS: NO REASON GIVEN.

THIS DETERMINATION IS A FINAL APPEALABLE ORDER.

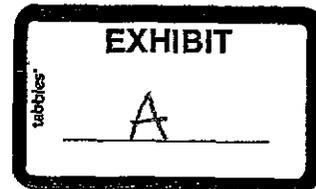
THE COURT FURTHER FINDS THE DEFENDANT IS NOT A HABITUAL SEXUAL OFFENDER.

THIS COURT CERTIFIES THAT THE DEFENDANT WAS PROVIDED THE NOTICE OF REGISTRATION DUTIES OF HIS CLASSIFICATION AS A SEXUALLY ORIENTED OFFENDER, AND THAT AN EXPLANATION OF THE REGISTRATION, NOTIFICATION AND VERIFICATION REQUIREMENTS WAS PROVIDED TO THE DEFENDANT.

IT IS SO ORDERED.

HB180  
05/05/2006

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By: CJ SJO  
GERALD E. FUERST, CLERK



FROM :

FAX NO. :2164433613

Feb. 25 2008 09:11AM P3



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CPMO1 05/05/2006 12:50:17

A handwritten signature in black ink, appearing to read "David J. Keeler". The signature is written in a cursive style with a horizontal line underneath.

Judge Signature

05/09/2006

HB180  
05/05/2006

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A-26  
Page 2 of 2

## AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

### AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

### AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

## AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

### AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States; or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim or the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

LEXSTAT O.R.C. 2505.02

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED  
WITH THE SECRETARY OF STATE THROUGH OCTOBER 13, 2008 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH JULY 1, 2008 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 20, 2008 \*\*\*

TITLE 25. COURTS -- APPELLATE  
CHAPTER 2505. PROCEDURE ON APPEAL

Go to the Ohio Code Archive Directory

*ORC Ann. 2505.02 (2008)*

§ 2505.02. Final order

(A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to *section 2307.85* or *2307.86 of the Revised Code*, a prima-facie showing pursuant to *section 2307.92 of the Revised Code*, or a finding made pursuant to division (A)(3) of *section 2307.93 of the Revised Code*.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234 [2305.23.4], 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63,

3923.64, 4705.15, and 5111.018 [5111.01.8], and the enactment of sections 2305.113 [2305.11.3], 2323.41, 2323.43, and 2323.55 of the Revised Code or or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131 [2305.13.1], 2315.18, 2315.19, and 2315.21 of the Revised Code.

(7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of section 163.09 of the Revised Code.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

## LEXSTAT ORC ANN. 2950.031

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\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 20, 2008 \*\*\*

TITLE 29. CRIMES -- PROCEDURE  
 CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

Go to the Ohio Code Archive Directory

ORC Ann. 2950.031 (2008)

§ 2950.031. Attorney general to determine application of new SORN Law to each offender or delinquent child; registered letter to be sent; right to court hearing to contest application

(A) (1) At any time on or after July 1, 2007, and not later than December 1, 2007, the attorney general shall determine for each offender or delinquent child who prior to December 1, 2007, has registered a residence, school, institution of higher education, or place of employment address pursuant to *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code* the offender's or delinquent child's new classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed, and, regarding a delinquent child, whether the child is a public registry-qualified juvenile offender registrant.

(2) At any time on or after July 1, 2007, and not later than December 1, 2007, the attorney general shall send to each offender or delinquent child who prior to December 1, 2007, has registered a residence, school, institution of higher education, or place of employment address pursuant to *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code* a registered letter that contains the information described in this division. The registered letter shall be sent return receipt requested to the last reported address of the person and, if the person is a delinquent child, the last reported address of the parents of the delinquent child. The letter sent to an offender or to a delinquent child and the delinquent child's parents pursuant to this division shall notify the offender or the delinquent child and the delinquent child's parents of all of the following:

(a) The changes in Chapter 2950. of the Revised Code that will be implemented on January 1, 2008;

(b) Subject to division (A)(2)(c) of this section, the offender's or delinquent child's new classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed and the duration of those duties, whether the delinquent child is classified a public registry-qualified juvenile offender registrant, and the information specified in division (B) of *section 2950.03 of the Revised Code* to the extent it is relevant to the offender or delinquent child;

(c) The fact that the offender or delinquent child has a right to a hearing as described in division (E) of this section, the procedures for requesting the hearing, and the period of time within which the request for the hearing must be made.

(d) If the offender's or delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to January 1, 2008, a summary of the provisions of *section 2950.033 [2950.03.3] of the Revised Code* and the application of those provisions to the offender or delinquent child, provided that this division applies to a delinquent child only if the child is in a category specified in division (C) of *section 2950.033 [2950.03.3] of the Revised Code*.

(3) The attorney general shall make the determinations described in division (A)(1) of this section for each offender or delinquent child who has registered an address as described in that division, even if the offender's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date or the delinquent child is in a category specified in division (C) of *section 2950.033 [2950.03.3] of the Revised Code* and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date. The attorney general shall send the registered letter described in division (A)(2) of this section to each offender or delinquent child who has registered an address as described in that division even if the offender's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of *section 2950.033 [2950.03.3] of the Revised Code*, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date. *Section 2950.033 [2950.03.3] of the Revised Code* applies to any offender who has registered an address as described in division (A)(1) or (2) of this section and whose duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of *section 2950.033 [2950.03.3] of the Revised Code*, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date.

(B) If a sheriff informs the attorney general pursuant to *section 2950.043 [2950.04.3] of the Revised Code* that an offender or delinquent child registered with the sheriff pursuant to *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code* on or after December 1, 2007, that the offender or delinquent child previously had not registered under either section with that sheriff or any other sheriff, and that the offender or delinquent child was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense upon which the registration was based prior to December 1, 2007, within fourteen days after being so informed of the registration and receiving the information and material specified in division (D) of that section, the attorney general shall determine for the offender or delinquent child all of the matters specified in division (A)(1) of this section. Upon making the determinations, the attorney general immediately shall send to the offender or to the delinquent child and the delinquent child's parents a registered letter pursuant to division (A)(2) of this section that contains the information specified in that division.

(C) The attorney general shall maintain the return receipts for all offenders, delinquent children, and parents of delinquent children who are sent a registered letter under division (A) or (B) of this section. For each offender, delinquent child, and parents of a delinquent child, the attorney general shall send a copy of the return receipt for the offender, delinquent child, or parents to the sheriff with whom the offender or delinquent child most recently registered a residence address and, if applicable, a school, institution of higher education, or place of employment address and to the prosecutor who handled the case in which the offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense that resulted in the offender's or child's registration duty under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code*. If a return receipt indicates that the offender, delinquent child, or parents of a delinquent child to whom the registered letter was sent does not reside or have temporary domicile at the listed address, the attorney general immediately shall provide notice of that fact to the sheriff with whom the offender or delinquent child registered that residence address.

(D) The attorney general shall mail to each sheriff a list of all offenders and delinquent children who have registered a residence address or a school, institution of higher education, or place of employment address with that sheriff and to whom a registered letter is sent under division (A) or (B) of this section. The list shall specify the offender's or delinquent child's new classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under

the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed, and, regarding a delinquent child, whether the child is a public registry-qualified juvenile offender registrant.

(E) An offender or delinquent child who is in a category described in division (A)(2) or (B) of this section may request as a matter of right a court hearing to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. The offender or delinquent child may contest the manner in which the letter sent to the offender or delinquent child pursuant to division (A) or (B) of this section specifies that the new registration requirements apply to the offender or delinquent child or may contest whether those new registration requirements apply at all to the offender or delinquent child. To request the hearing, the offender or delinquent child not later than the date that is sixty days after the offender or delinquent child received the registered letter sent by the attorney general pursuant to division (A)(2) of this section shall file a petition with the court specified in this division. If the offender or delinquent child resides in or is temporarily domiciled in this state and requests a hearing, the offender or delinquent child shall file the petition with, and the hearing shall be held in, the court of common pleas or, for a delinquent child, the juvenile court of the county in which the offender or delinquent child resides or temporarily is domiciled. If the offender does not reside in and is not temporarily domiciled in this state, the offender or delinquent child shall file the petition with, and the hearing shall be held in, the court of common pleas of the county in which the offender registered a school, institution of higher education, or place of employment address, but if the offender has registered addresses of that nature in more than one county, the offender may file such a petition in the court of only one of those counties.

If the offender or delinquent child requests a hearing by timely filing a petition with the appropriate court, the offender or delinquent child shall serve a copy of the petition on the prosecutor of the county in which the petition is filed. The prosecutor shall represent the interests of the state in the hearing. In any hearing under this division, the Rules of Civil Procedure or, if the hearing is in a juvenile court, the Rules of Juvenile Procedure apply, except to the extent that those Rules would by their nature be clearly inapplicable. The court shall schedule a hearing, and shall provide notice to the offender or delinquent child and prosecutor of the date, time, and place of the hearing.

If an offender or delinquent child requests a hearing in accordance with this division, until the court issues its decision at or subsequent to the hearing, the offender or delinquent child shall comply prior to January 1, 2008, with Chapter 2950. of the Revised Code as it exists prior to that date and shall comply on and after January 1, 2008, with Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on that date. If an offender or delinquent child requests a hearing in accordance with this division, at the hearing, all parties are entitled to be heard, and the court shall consider all relevant information and testimony presented relative to the application to the offender or delinquent child of the new registration requirements under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. If, at the conclusion of the hearing, the court finds that the offender or delinquent child has proven by clear and convincing evidence that the new registration requirements do not apply to the offender or delinquent child in the manner specified in the letter sent to the offender or delinquent child pursuant to division (A) or (B) of this section, the court shall issue an order that specifies the manner in which the court has determined that the new registration requirements do apply to the offender or delinquent child. If at the conclusion of the hearing the court finds that the offender or delinquent child has proven by clear and convincing evidence that the new registration requirements do not apply to the offender or delinquent child, the court shall issue an order that specifies that the new registration requirements do not apply to the offender or delinquent child. The court promptly shall serve a copy of an order issued under this division upon the sheriff with whom the offender or delinquent child most recently registered under *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code* and upon the bureau of criminal identification and investigation. The offender or delinquent child and the prosecutor have the right to appeal the decision of the court issued under this division.

If an offender or delinquent child fails to request a hearing in accordance with this division within the applicable sixty-day period specified in this division, the failure constitutes a waiver by the offender or delinquent child of the offender's or delinquent child's right to a hearing under this division, and the offender or delinquent child is bound by the determinations of the attorney general contained in the registered letter sent to the offender or child.

If a juvenile court issues an order under division (A)(2) or (3) of *section 2152.86 of the Revised Code* that classifies a delinquent child a public-registry qualified juvenile offender registrant and if the child's delinquent act was committed prior to January 1, 2008, a challenge to the classification contained in the order shall be made pursuant to division (D) of *section 2152.86 of the Revised Code*.

LEXSTAT ORC ANN. 2950.032

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\*\*\* ANNOTATIONS CURRENT THROUGH JULY 1, 2008 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 20, 2008 \*\*\*

TITLE 29. CRIMES -- PROCEDURE  
CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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*ORC Ann. 2950.032 (2008)*

§ 2950.032. Attorney general to determine tier classification for each offender or delinquent child; notice of provisions implemented on January 1, 2008

(A) (1) At any time on or after July 1, 2007, and not later than December 1, 2007, the attorney general shall do all of the following:

(a) For each offender who on December 1, 2007, will be serving a prison term in a state correctional institution for a sexually oriented offense or child-victim oriented offense, determine the offender's classification relative to that offense as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes in that chapter that will be implemented on January 1, 2008, and the offender's duties under Chapter 2950. of the Revised Code as so changed and provide to the department of rehabilitation and correction a document that describes that classification and those duties;

(b) For each delinquent child who has been classified a juvenile offender registrant relative to a sexually oriented offense or child-victim oriented offense and who on December 1, 2007, will be confined in an institution of the department of youth services for the sexually oriented offense or child-victim oriented offense, determine the delinquent child's classification relative to that offense as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes in that chapter that will be implemented on January 1, 2008, the delinquent child's duties under Chapter 2950. of the Revised Code as so changed, and whether the delinquent child is a public registry-qualified juvenile offender registrant and provide to the department a document that describes that classification, those duties, and whether the delinquent child is a public registry-qualified juvenile offender registrant.

(c) For each offender and delinquent child described in division (A)(1)(a) or (b) of this section, determine whether the attorney general is required to send a registered letter to that offender or that delinquent child and delinquent child's parents pursuant to *section 2950.031 [2950.03.1] of the Revised Code* relative to the sexually oriented offense or child-victim oriented offense for which the offender or delinquent child is serving the prison term or is confined and, if the attorney general is required to send such a letter to that offender or that delinquent child and delinquent child's parents relative to that offense, include in the document provided to the department of rehabilitation and correction or the department of youth services under division (A)(1)(a) or (b) of this section a conspicuous notice that the attorney general will be sending the offender or delinquent child and delinquent child's parent the registered letter and that the department is not required to provide to the offender or delinquent child the written notice described in division (A)(2) of this section.

(2) At any time on or after July 1, 2007, and not later than December 1, 2007, except as otherwise described in this division, the department of rehabilitation and correction shall provide to each offender described in division (A)(1)(a) of this section and the department of youth services shall provide to each delinquent child described in division (A)(1)(b) of this section and to the delinquent child's parents a written notice that contains the information described in this division. The department of rehabilitation and correction and the department of youth services are not required to provide the written notice to an offender or a delinquent child and the delinquent child's parents if the attorney general included in the document provided to the particular department under division (A)(1)(a) or (b) of this section notice that the attorney general will be sending that offender or that delinquent child and the delinquent child's parents a registered letter and that the department is not required to provide to that offender or that delinquent child and parents the written notice. The written notice provided to an offender or a delinquent child and the delinquent child's parents pursuant to this division shall notify the offender or delinquent child of all of the following:

(a) The changes in Chapter 2950. of the Revised Code that will be implemented on January 1, 2008;

(b) Subject to division (A)(2)(c) of this section, the offender's or delinquent child's classification as a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender under Chapter 2950. of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008, the offender's or delinquent child's duties under Chapter 2950. of the Revised Code as so changed and the duration of those duties, whether the delinquent child is classified a public registry-qualified juvenile offender registrant, and the information specified in division (B) of *section 2950.03 of the Revised Code* to the extent it is relevant to the offender or delinquent child;

(c) The fact that the offender or delinquent child has a right to a hearing as described in division (E) of this section, the procedures for requesting the hearing, and the period of time within which the request for the hearing must be made;

(d) If the offender's or delinquent child's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to January 1, 2008, a summary of the provisions of *section 2950.033 [2950.03.3] of the Revised Code* and the application of those provisions to the offender or delinquent child, provided that this division applies regarding a delinquent child only if the child is in a category specified in division (A) of *section 2950.033 [2950.03.3] of the Revised Code*.

(3) The attorney general shall make the determinations described in divisions (A)(1)(a) and (b) of this section for each offender or delinquent child who is described in either of those divisions even if the offender's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of *section 2950.033 [2950.03.3] of the Revised Code*, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date. The department of rehabilitation and correction shall provide to each offender described in division (A)(1)(a) of this section and the department of youth services shall provide to each delinquent child described in division (A)(1)(b) of this section the notice described in division (A)(2) of this section, even if the offender's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date, or the delinquent child is in a category specified in division (C) of *section 2950.033 [2950.03.3] of the Revised Code*, and the child's duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date. *Section 2950.033 [2950.03.3] of the Revised Code* applies regarding any offender described in division (A)(1)(a) or (b) of this section whose duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date and any delinquent child who is in a category specified in division (A) of *section 2950.033 [2950.03.3] of the Revised Code* and whose duty to comply with those sections is scheduled to terminate prior to January 1, 2008, under the version of *section 2950.07 of the Revised Code* that is in effect prior to that date.

(B) If on or after December 2, 2007, an offender commences a prison term in a state correctional institution or a delinquent child commences confinement in an institution of the department of youth services for a sexually oriented offense or a child-victim oriented offense and if the offender or delinquent child was convicted of, pleaded guilty to, or was classified a juvenile offender registrant relative to the sexually oriented offense or child-victim oriented offense on

or before that date, as soon as practicable, the department of rehabilitation and correction or the department of youth services, as applicable, shall contact the attorney general, inform the attorney general of the commencement of the prison term or institutionalization, and forward to the attorney general information and material that identifies the offender or delinquent child and that describes the sexually oriented offense resulting in the prison term or institutionalization, the facts and circumstances of it, and the offender's or delinquent child's criminal or delinquency history. Within fourteen days after being so informed of the commencement of the prison term or institutionalization and receiving the information and material specified in this division, the attorney general shall determine for the offender or delinquent child all of the matters specified in division (A)(1)(a), (b), or (c) of this section and immediately provide to the appropriate department a document that describes the offender's or delinquent child's classification and duties as so determined.

Upon receipt from the attorney general of a document described in this division that pertains to an offender or delinquent child, the department of rehabilitation and correction shall provide to the offender or the department of youth services shall provide to the delinquent child, as applicable, a written notice that contains the information specified in division (A)(2) of this section.

(C) If, on or after July 1, 2007, and prior to January 1, 2008, an offender is convicted of or pleads guilty to a sexually oriented offense or a child-victim oriented offense and the court does not sentence the offender to a prison term for that offense or if, on or after July 1, 2007, and prior to January 1, 2008, a delinquent child is classified a juvenile offender registrant relative to a sexually oriented offense or a child-victim oriented offense and the juvenile court does not commit the child to the custody of the department of youth services for that offense, the court at the time of sentencing or the juvenile court at the time specified in division (B) of section 2152.82, division (C) of section 2152.83, division (C) of section 2152.84, division (E) of section 2152.85, or division (A) of *section 2152.86 of the Revised Code*, whichever is applicable, shall do all of the following:

(1) Provide the offender or the delinquent child and the delinquent child's parents with the notices required under *section 2950.03 of the Revised Code*, as it exists prior to January 1, 2008, regarding the offender's or delinquent child's duties under this chapter as it exists prior to that date;

(2) Provide the offender or the delinquent child and the delinquent child's parents with a written notice that contains the information specified in divisions (A)(2)(a) and (b) of this section;

(3) Provide the offender or the delinquent child and the delinquent child's parents a written notice that clearly indicates that the offender or delinquent child is required to comply with the duties described in the notice provided under division (C)(1) of this section until January 1, 2008, and will be required to comply with the duties described in the notice provided under division (C)(2) of this section on and after that date.

(D) (1) Except as otherwise provided in this division, the officer or employee of the department of rehabilitation and correction or the department of youth services who provides an offender or a delinquent child and the delinquent child's parents with the notices described in division (A)(2) or (B) of this section shall require the offender or delinquent child to read and sign a form stating that the changes in Chapter 2950, of the Revised Code that will be implemented on January 1, 2008, the offender's or delinquent child's classification as a tier I sex offender, a tier II sex offender, or a tier III sex offender, the offender's or delinquent child's duties under Chapter 2950, of the Revised Code as so changed and the duration of those duties, the delinquent child's classification as a public registry-qualified juvenile offender registrant if applicable, the information specified in division (B) of *section 2950.03 of the Revised Code* to the extent it is relevant to the offender or delinquent child, and the right to a hearing, procedures for requesting the hearing, and period of time within which the request for the hearing must be made have been explained to the offender or delinquent child.

Except as otherwise provided in this division, the judge who provides an offender or delinquent child with the notices described in division (C) of this section shall require the offender or delinquent child to read and sign a form stating that all of the information described in divisions (C)(1) to (3) of this section has been explained to the offender or delinquent child.

If the offender or delinquent child is unable to read, the official, employee, or judge shall certify on the form that the official, employee, or judge specifically informed the offender or delinquent child of all of that information and that the offender or delinquent child indicated an understanding of it.

(2) After an offender or delinquent child has signed the form described in division (D)(1) of this section or the official, employee, or judge has certified on the form that the form has been explained to the offender or delinquent child and that the offender or delinquent child indicated an understanding of the specified information, the official, employee,

or judge shall give one copy of the form to the offender or delinquent child, within three days shall send one copy of the form to the bureau of criminal identification and investigation in accordance with the procedures adopted pursuant to *section 2950.13 of the Revised Code*, and shall send one copy of the form to the sheriff of the county in which the offender or delinquent child expects to reside and one copy to the prosecutor who handled the case in which the offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense that resulted in the offender's or child's registration duty under *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code*.

(E) An offender or delinquent child who is provided a notice under division (A)(2) or (B) of this section may request as a matter of right a court hearing to contest the application to the offender or delinquent child of the new registration requirements under Chapter 2950, of the Revised Code as it will exist under the changes that will be implemented on January 1, 2008. The offender or delinquent child may contest the matters that are identified in division (E) of *section 2950.031 [2950.03.1] of the Revised Code*. To request the hearing, an offender or delinquent child who is provided a notice under division (A)(2) of this section shall file a petition with the appropriate court not later than the date that is sixty days after the offender or delinquent child is provided the notice under that division, and an offender or delinquent child who is provided a notice under division (B) of this section shall file a petition with the appropriate court not later than the date that is sixty days after the offender or delinquent child is provided the notice under that division. The request for the hearing shall be made in the manner and with the court specified in division (E) of *section 2950.031 [2950.03.1] of the Revised Code*, and, except as otherwise provided in this division, the provisions of that division regarding the service of process and notice regarding the hearing, the conduct of the hearing, the determinations to be made at the hearing, and appeals of those determinations also apply to a hearing requested under this division. If a hearing is requested as described in this division, the offender or delinquent child shall appear at the hearing by video conferencing equipment if available and compatible, except that, upon the court's own motion or the motion of the offender or delinquent child or the prosecutor representing the interests of the state and a determination by the court that the interests of justice require that the offender or delinquent child be present, the court may permit the offender or delinquent child to be physically present at the hearing. An appearance by video conferencing equipment pursuant to this division has the same force and effect as if the offender or delinquent child were physically present at the hearing. The provisions of division (B) of *section 2950.031 [2950.03.1] of the Revised Code* regarding the effect of a failure to timely request a hearing also apply to a failure to timely request a hearing under this division.

If a juvenile court issues an order under division (A)(2) or (3) of *section 2152.86 of the Revised Code* that classifies a delinquent child a public-registry qualified juvenile offender registrant and if the child's delinquent act was committed prior to January 1, 2008, a challenge to the classification contained in the order shall be made pursuant to division (D) of *section 2152.86 of the Revised Code*.

LEXSTAT ORC ANN. 2950.034

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TITLE 29. CRIMES -- PROCEDURE  
 CHAPTER 2950. SEX OFFENDER REGISTRATION AND NOTIFICATION

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*ORC Ann. 2950.034 (2008)*

§ 2950.034. Residing within 1,000 feet of school, preschool, or child day-care center premises prohibited

(A) No person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense or a child-victim oriented offense shall establish a residence or occupy residential premises within one thousand feet of any school premises or preschool or child day-care center premises.

(B) If a person to whom division (A) of this section applies violates division (A) of this section by establishing a residence or occupying residential premises within one thousand feet of any school premises or preschool or child day-care center premises, an owner or lessee of real property that is located within one thousand feet of those school premises or preschool or child day-care center premises, or the prosecuting attorney, village solicitor, city or township director of law, similar chief legal officer of a municipal corporation or township, or official designated as a prosecutor in a municipal corporation that has jurisdiction over the place at which the person establishes the residence or occupies the residential premises in question, has a cause of action for injunctive relief against the person. The plaintiff shall not be required to prove irreparable harm in order to obtain the relief.

(C) As used in this section:

(1) "Child day-care center" has the same meaning as in *section 5104.01 of the Revised Code*.

(2) "Preschool" means any public or private institution or center that provides early childhood instructional or educational services to children who are at least three years of age but less than six years of age and who are not enrolled in or are not eligible to be enrolled in kindergarten, whether or not those services are provided in a child day-care setting. "Preschool" does not include any place that is the permanent residence of the person who is providing the early childhood instructional or educational services to the children described in this division.

(3) "Preschool or child day-care center premises" means all of the following:

(a) Any building in which any preschool or child day-care center activities are conducted if the building has signage that indicates that the building houses a preschool or child day-care center, is clearly visible and discernable without obstruction, and meets any local zoning ordinances which may apply;

(b) The parcel of real property on which a preschool or child day-care center is situated if the parcel of real property has signage that indicates that a preschool or child day-care center is situated on the parcel, is clearly visible and discernable without obstruction, and meets any local zoning ordinances which may apply;

(c) Any grounds, play areas, and other facilities of a preschool or child day-care center that are regularly used by the children served by the preschool or child day-care center if the grounds, play areas, or other facilities have sign-

age that indicates that they are regularly used by children served by the preschool or child day-care center, is clearly visible and discernable without obstruction, and meets any local zoning ordinances which may apply.