

IN THE SUPREME COURT OF OHIO

STATE OF OHIO
Plaintiff- Appellee,

-vs-

LAMBERT DEHLER
Defendant- Appellant

)
) OHIO SUPREME COURT NO 2009-1974
)
) On Appeal from the
) Trumbull County Court of Appeals,
) Eleventh Appellate District
)
) Court of Appeals Case No. 2008-T-0061
)
)
)

MERIT BRIEF OF APPELLEE, STATE OF OHIO

DENNIS WATKINS #0009949
Trumbull County Prosecuting Attorney

THE OFFICE OF THE
PUBLIC DEFENDER

DEENA DeVICO #0080796
Assistant Prosecuting Attorney
(COUNSEL OF RECORD)

JASON A. MACKE #0069870
Assistant State Public Defender
(COUNSEL OF RECORD)

LU WAYNE ANNOS #0055651
Assistant Prosecuting Attorney

KATHERINE A. SZUDY #0076729
Assistant State Public Defender

160 High St. N.W., 4th Floor
Warren, Ohio 44481
Telephone No. (330) 675-2426
Fax No. (330) 675-2431
psdevico@co.trumbull.oh.us

250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 (fax)
jay.macke@opd.ohio.gov

COUNSEL FOR APPELLEE,
THE STATE OF OHIO

COUNSEL FOR APPELLANT,
LAMBERT DEHLER

RECEIVED
NOV 24 2010
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
NOV 24 2010
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....iii

APPENDIX.....v.

STATEMENT OF THE CASE AND FACTS.....1

ARGUMENT.....5

APPELLANT’S FIRST PROPOSITION OF LAW.....5
 The Adam Walsh Act violates the state and federal constitutions when it is retroactively applied to a prisoner who was sentenced more than 17 years ago and he was never previously labeled under Megan’s Law.

APPELLEE’S ISSUE PRESENTED FOR REVIEW AND ARGUMENT....5
 The Adam Walsh Act, as applied to Appellant since he was never classified as a sex offender under Megan’s Law, does not violate his constitutional rights when applied retroactively to him.

APPELLANT’S SECOND PROPOSITION OF LAW.....29
 Petitioners in Senate Bill 10 classification proceedings are entitle to court-appointed counsel. Sixth and Fourteenth Amendments of the United States Constitution; Section 16, Article I of the Ohio Constitution.

APPELLEE’S ISSUE PRESENTED FOR REVIEW AND ARGUMENT...29
 Sex offender classification challenges and hearings conducted pursuant to the Adam Walsh Act are civil in nature and do not deprive sex offenders of a substantial liberty interest, and as such these sex offenders are not entitled to appointed counsel.

CONCLUSION.....35

PROOF OF SERVICE.....36

TABLE OF AUTHORITIES

Cases & Statutes

Allen v. Illinois (1985), 478 U.S. 364.....20

Doe v. Dann (2008), No. 1:08-CV-00220 (N.D. Ohio).....33

Doe v. Miller (C.A. 8 2005), 405 F.3d 700.....22

Gagnon v. Scapelli (1973), 411 U.S. 778.....30

Graham v. City of Findlay Police Dept., 3rd App. No. 5-01-32, 2002-Ohio-1215.....31

Hawker v. People of New York (1898), 170 U.S. 189.....20, 28

Hudson v. United States (1997), 522 U.S. 93.....16, 24

Hyle v. Porter, 117 Ohio St.3d 165, 2008-Ohio-542.....26

J.W. Hampton, Jr. & Co. v. U.S. (1928), 276 U.S. 394.....12

Kansas v. Hendricks (1997), 521 U.S. 346.....20, 23, 24

Kennedy v. Mendoza-Martinez (1963), 372 U.S. 144.....20, 29

Lassiter v. Dep’t of Soc. Serv’s (1981), 452 U.S. 18.....32

Lynce v. Mathis (1997), 519 U.S. 433.....14

Mathews v. Eldridge (1970), 424 U.S. 319.....33

Miller v. Florida (1987), 482 U.S. 423.....14

Mistretta v. U.S. (1989), 488 U.S. 361.....11

McKune v. Lile (2002), 536 U.S. 24.....25

North Carolina v. Pearce (1969), 395 U.S. 711.....29

R.C. 2950.01(B)(2), repealed.....6

R.C. 2950.01(G)(1)(a).....34

R.C. 2950.02(B), repealed.....	6
R.C. 2950.01(E)(1), repealed.....	6
R.C. 2950.07(B)(1), repealed.....	6
R.C. 2950.07(B)(2), repealed.....	6
R.C. 2950.07(B)(3), repealed.....	7
R.C. 2950.09(C)(1)(b), repealed.....	7, 8, 9
R.C. 2950.09(C)(2)(a), repealed.....	7, 8, 9
R.C. 2950.09(C)(2)(b), repealed.....	7, 9
<i>State ex rel. Dickman v. Defenbacher</i> (1955), 16 Ohio St.142.....	14
<i>State ex rel. Jenkins v. Stern</i> (1987), 33 Ohio St.3d 108.....	31
<i>State ex rel. Johnson v. Taulbee</i> (1981), 66 Ohio St.2d 417.....	11
<i>State ex rel. Matz v. Brown</i> (1988), 37 Ohio St.3d 279.....	28, 32
<i>Smith v. Doe</i> (2003), 538 U.S. 84.....	14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28
<i>State v. Bodyke</i> , 126 Ohio St.3d 266, 2010-Ohio-2424.....	5, 6, 10, 12, 33
<i>State v. Chojnacki</i> , 126 Ohio St.3d 321, 2010-Ohio-3212.....	5
<i>State v. Cook</i> (1998), 83 Ohio St.3d 404...14, 15, 16, 18, 19, 20, 21, 22, 24, 25, 27, 29, 32	
<i>State v. Dehler</i> , 11th App. No. 2008-T-61, 2009-Ohio-5059.....	31
<i>State v. Ferguson</i> , 120 Ohio St.3d 7, 2008-Ohio-4824.....	27
<i>State v. Hayden</i> , 96 Ohio St.3d 211, 2002-Ohio-4169.....	7, 9, 21
<i>State v. King</i> , 2nd App. No. 08-CA-02, 2008-Ohio-2594.....	31
<i>State v. Sterling</i> , 113 Ohio St.3d 255, 2007-Ohio-1790.....	11
<i>State v. Wilson</i> , 113 Ohio St.3d 282, 2007-Ohio-2202.....	20
<i>United States v. Ward</i> (1980), 448 U.S. 242.....	15

Van Fossen v. Babcock & Wilcox Co. (1988), 36 Ohio St.3d 100.....27

Constitutions

Section 28, Article II, Ohio Constitution.....26

Other Authorities

Ohio Department of Rehabilitation and Correction, Offender Search Detail, Lambert F. Dehler.....7

State v. Dehler, Journal Entry, filed October 29, 1992.....33, 34

APPENDIX

R.C. 2950.02, repealed.....A-1

Ohio Department of Rehabilitation and Correction, Offender Search Detail, Lambert F. Dehler..... A-2

State v. Dehler, Journal Entry, filed October 29, 1992.....A-3

STATEMENT OF THE CASE AND FACTS

Appellant Lambert Dehler (“Appellant”) was found guilty by a jury of two (2) counts of Rape and two (2) counts of Gross Sexual Imposition in 1992. *State v. Dehler*, 11th Dist. No. 2008-T-0061, 2009-Ohio-5059, at ¶4. The court sentenced Appellant to serve seven (7) to twenty-five (25) years on each count of Rape, to run concurrent to each other, and to serve two (2) consecutive terms of eighteen (18) months on each of the Gross Sexual Imposition counts to run concurrently to the Rape sentences. *Id.* Appellant remains imprisoned on these charges. *Id.* Because Appellant was incarcerated, he never received a sex offender classification hearing under Megan’s Law.

Appellant was notified in prison of his new classification as a Tier III sex offender under the Adam Walsh Act (“AWA”) by the Ohio Attorney General on January 7, 2008. *Id.* at ¶5. This notice informed Appellant of his classification and registration duties upon release from prison under the new AWA provisions contained in R.C. Chapter 2950. *Id.* Part of this notification of his sex offender classification informed Appellant of his ability to contest the application of the Tier III classification and its requirements. *Id.*

Appellant timely filed a petition to contest his classification as a Tier III sex offender and several days later filed another request for a hearing, as well as other motions. *Id.* at ¶6. In these filings, Appellant raised several arguments, including the issue that the State was barred from classifying him as a sex offender because he had never been classified under the prior version of Ohio sex offender registration law, namely Megan’s Law. *Id.* Appellant argued that the State was barred from classifying him as a sex offender due to collateral estoppel, res judicata, and laches. *Id.* He also argued that the Department of Rehabilitation and Correction (“DRC”) lost jurisdiction to serve him with his notice of classification as a Tier III sex offender after

December 1, 2007. Id. Appellant claimed that because his notice was served on January 7, 2008, and there is no statutory provision for late service of his classification letter, he is not subject to or bound by the AWA. Id. Appellant also claimed violations of double jeopardy, ex post facto, and separation of powers in his various motions. Id.

The State, in lieu of filing an answer brief in opposition to Appellant's motions, filed a motion for summary judgment, in which we argued that Appellant was properly classified as a Tier III sex offender based on the offense of which he was convicted and that the AWA is constitutional. Id at ¶7. The Trumbull County Court of Common Pleas found the AWA to be constitutional and that Appellant was properly classified as a Tier III sex offender under the new scheme. Id at ¶9. The court denied all of Appellant's motions, including his request for an oral hearing. Id at ¶9. Finding that there were indeed no genuine issues of material fact that remained for it to consider, the trial court granted the State's motion for summary judgment. Id.

Appellant timely appealed the trial court's decision to the Eleventh District Court of Appeals raising five assignments of error:

1. "The trial court erred by not granting Petitioner's Motion for Summary Judgment because the Department of Rehabilitation and Correction lost jurisdiction to distribute to adult prison inmates the Notice of New Classification and Registration Duties after December 1, 2007.
2. The trial court erred by not granting a hearing pursuant to R.C. 2950.032(E).
3. The trial court erred when it failed to provide the mandatory hearing under R.C. 2950.11(F)(2).
4. The trial court erred when it denied the appointment of counsel because the Petitioner filed timely requests for counsel under the Adam Walsh Act.

5. The Adam Walsh Act (AWA) amendments to R.C. 2950.01 et seq., do not apply to the Defendant because he was sentenced in 1992 and the state previously declined to avail itself of the prior law (“Megan’s Law”) and the current application of the AWA violates the doctrine of laches, res judicata, Clause 1, Section 10, Article I, of the United States Constitution as ex post facto legislation, and violates Section 28, Article II, of the Ohio Constitution as retroactive legislation, and further violates R.C. 1.48 and 1.58, et seq.”

Id. at ¶11-15. The Eleventh Appellate District denied all of Appellant’s assignments of error, finding the AWA to be constitutional and that Appellant was properly classified as a Tier III offender based upon his 1992 conviction for Rape, and upholding the trial court’s decision. Id. at ¶2.

On October 6, 2009, Appellant filed a Motion to Certify a Conflict with the court of appeals, and the State filed its Answer in Opposition to Appellant’s Motion to Certify a Conflict on October 16, 2009. The Eleventh Appellate District filed its Judgment Entry denying Appellant’s Motion to Certify a Conflict on December 2, 2009. At the same time, Appellant filed a timely notice of appeal and memorandum in support of jurisdiction with this Court on October 29, 2009. His memorandum submitted five propositions of law:

1. A trial court loses jurisdiction to hear a petition filed under the Adam Walsh Act when the prison serves the notice after the deadline date of December 1, 2007;
2. A trial court must hold a hearing under R.C. 2950.032(E) when a timely petition is filed;

3. A trial court must hold a hearing under R.C. 2950.11(F)(2) when a timely and properly filed petitions is made under that section, notwithstanding wording in R.C. 2950.11(H)(1);
4. A trial court must appoint counsel under the Adam Walsh Act when a timely petition for a hearing is filed;
5. The Adam Walsh Act violates the state and federal constitutions when it is retroactively applied to a prisoner who was sentenced more than 17 years ago and he was never previously labeled under Megan's Law.

(Memorandum in Support of Jurisdiction of Appellant, October 29, 2009).

On April 14, 2010, this Court accepted Appellant's appeal on the fourth and fifth propositions of law and stayed the briefing schedule pending the outcome in *State v. Bodyke*, 2008-2502 and *Chojnacki v. Cordray*, 2008-0991 and 2008-0992. *04/14/2010 Case Announcements*, 2010-Ohio-1557. This Court ordered that the instant case no longer be held and that briefing proceed on Propositions of Law IV and V on July 22, 2010 because this Court issued opinions in *State v. Bodyke*, Slip Opinion No. 2010-Ohio-2424 and *Chojnacki v. Cordray*, Slip Opinion No. 2010-Ohio-3212. *07/22/2010 Case Announcements*, 2010-Ohio-3396. In this same order, the Court appointed Timothy Young of the Ohio Public Defender's Office to represent Appellant in this matter. Id. Appellant filed his merit brief on October 7, 2010, and the brief of amicus curiae Cuyahoga County Public Defender was filed in support of Appellant on October 12, 2010. Now before this Court are the issues of whether counsel must be appointed to those challenging their sex offender classifications under the AWA and whether the retroactive application of the AWA violates Ohio's separation of powers doctrine and retroactivity clause, and the ex post facto and double jeopardy clauses of the United States Constitution.

ARGUMENT

APPELLANT'S FIRST PROPOSITION OF LAW: The Adam Walsh Act violates the state and federal constitutions when it is retroactively applied to a prisoner who was sentenced more than 17 years ago and he was never previously labeled under Megan's Law.

APPELLEE'S ISSUE PRESENTED FOR REVIEW AND ARGUMENT: The Adam Walsh Act, as applied to Appellant since he was never classified as a sex offender under Megan's Law, does not violate his constitutional rights when applied retroactively to him.

I. Introduction

Appellant first claims that the AWA violates his constitutional rights as retroactively applied to him because he was not classified under Megan's Law. The State acknowledges that *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424 held that the AWA is unconstitutional as applied to a sex offender who was RECLASSIFIED from their previous Megan's Law sex offender classification to a tiered sex offender classification under the AWA. However, *Bodyke* does not apply in Appellant's case, since he was not classified as a sex offender under Megan's Law. Although this Court severed R.C. 2950.031 and 2950.032, the State argues that it did not strike them as facially unconstitutional, but only as applied to *Bodyke* and other similarly situated sex offenders (that is, sex offenders whose classifications had been adjudicated by a court and were the subject of a final judicial order). *Bodyke*, 2010-Ohio-2424, syll. ¶2, 3; *State v. Chojnacki*, 126 Ohio St.3d 321, 2010-Ohio-3212, at ¶5. This Court should hold that the AWA does not violate Ohio's constitutional ban on retroactive laws and that it can be applied to offenders like Appellant, who are currently imprisoned for a sex offense but were never classified under Megan's Law.

II. Argument

Since Appellant relies so heavily on Megan's Law as the basis of some of his arguments, the State will give a brief history of Megan's Law and how it affects Appellant. In 1994, young

Megan Kanka was kidnapped from her home in New Jersey and was raped and murdered by a convicted sex offender. *Bodyke*, 2010-Ohio-2424, ¶4. The New Jersey legislature passed “Megan’s Law” following this notorious crime, which required community notification when a sex offender moved into a neighborhood. *Id.* Congress passed a federal crime bill called the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act which was substantially similar to Megan’s Law in New Jersey. *Id.* at ¶5.

Ohio has had a sex offender registration statute in effect since 1963. *Id.* at ¶3. Megan’s Law “created Ohio’s first comprehensive registration and classification system for sex offenders.” *Id.* at ¶7. This former law was substantially similar to the New Jersey Megan’s Law, and this is how it became known. When Ohio repealed the former registration law and enacted H.B. 180, it set forth that its intent was to protect the public’s safety and general welfare. Former R.C. §2950.02(B). Megan’s Law set forth three sex offender classifications into which an offender could be placed. Habitual Sex Offender is a person who is convicted of a sexually oriented offense, was previously convicted of or pleaded guilty to one or more sexually oriented offenses, and must register for a period of twenty years. Former R.C. §2950.01(B)(2); Former R.C. §2950.07(B)(2). Sexual Predator is a person who has been convicted of or pleaded guilty to a sexually oriented offense, is likely to engage in the future in one or more sexually oriented offenses, and must register for life. Former R.C. §2950.01(E)(1); Former R.C. §2950.07(B)(1). A Sexually Oriented Offender is an offender who has been convicted of a sexually oriented offense but who does not fit the description of either a sexual predator or an habitual sex offender, and who must register for a period of ten years. *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169, at ¶9; Former R.C. §2950.07(B)(3).

Under Megan's Law, a person who was convicted of a sexually oriented offense prior to January 1, 1997 and was serving a prison term on or after January 1, 1997 was required to be evaluated by the Department of Rehabilitation and Corrections ("DRC") and the DRC was then required to recommend that the prisoner either be adjudicated as a sexual predator or not be adjudicated as a sexual predator. Former R.C. §2950.09(C)(1)(b). The sentencing court, upon receiving a sexual predator recommendation from the DRC, was required to hold a hearing to determine whether the prisoner was going to be classified as a sexual predator; the court had the discretion to either hold the hearing and make the determination prior to the offender's release from imprisonment or at any time within one year following the offender's release from imprisonment. Former R.C. §2950.09(C)(2)(a). On the other hand, if the DRC did not recommend that a prisoner be classified as a sexual predator, it was required to notify the court of that recommendation and the court was required to then determine whether the offender was previously convicted of another sexually oriented offense and accordingly classify the offender as either an habitual sex offender if so, or as a sexually oriented offender if not. Former R.C. §2950.09(C)(2)(b). However, in both cases, the DRC's recommendation and the court's hearing were not required to be held immediately; instead, the recommendation could be made right before an offender was released from imprisonment, and the court could hold the sexual predator hearing before the offender's release from imprisonment or within one year afterwards.

According to the DRC's offender information sheet on Appellant, he has been serving a definite prison term of twenty-six years, with an indefinite prison term of fourteen years to life in prison since May 10, 1993. DRC Offender Search Detail for Lambert Dehler, Inmate #A273819. Appellant's first parole hearing is not scheduled until March 2070. *Id.* As such, the DRC never made a sexual predator recommendation to the sentencing court regarding Appellant while

Megan's Law was in effect, because he was still over sixty years away from his first parole board hearing. The DRC was required to do this in the case of every offender who was incarcerated for a sexually oriented offense; however, there was no time requirement for this recommendation to be made, and the DRC theoretically still had sixty years in which to make this recommendation if Megan's Law had not been repealed. According to former R.C. Chapter 2950 et seq., Defendant did not automatically become a sexually oriented offender on some magical date. Instead, he was not classified as a sex offender under Megan's Law yet because the DRC had not yet made its mandatory recommendation of sexual predator or not a sexual predator to Appellant's sentencing court.

In Appellant's brief, he claims that he is already classified as a sexually oriented offender with a ten-year registration period, commencing on November 30, 2007 pursuant to *Hayden, supra*, and Former R.C. §2950.09(C)(2)(a), both of which Appellant claims made a sexual predator hearing optional and a sexually oriented offender classification the default if this predator determination was not made. However, Appellant's reliance on *Hayden* and Former R.C. §2950.09 are misplaced in this circumstance. In his brief, Appellant makes it sound like his sentencing court could have just arbitrarily decided to hold a sexual predator or habitual sex offender hearing while Megan's Law was in effect, yet did not, so therefore he automatically became a sexually oriented offender, arbitrarily choosing the date for that classification as November 30, 2007. However, upon a close reading of Former R.C. §2950.09(C)(1)(b), since Appellant was convicted of a sexually oriented offense (Rape) prior to January 1, 1997, and was still incarcerated for that sexually oriented offense on that date, the DRC was the only entity that could recommend to the sentencing court that Appellant should be a sexual predator or not be a sexual predator; only *after* the DRC made that recommendation must the sentencing court then

hold its hearing, up to one year after Appellant's release from prison. Former R.C. §2950.09(C)(1)(b); Former R.C. §2950.09(C)(2)(a)(b). As the State set forth above, nothing in this statute set forth that, if the DRC did not make this recommendation and/or the sentencing court did not hold a sexual predator hearing by a certain date, the Appellant would then automatically become a sexually oriented offender on November 30, 2007.

The State then asks this Court to examine *Hayden* in the context of Former R.C. §2950.09(C). This Court set forth that a trial court is not required to hold a sexual predator hearing to determine if a sex offender is a sexually oriented offender; instead, the sentencing court could just automatically classify a sex offender as a sexually oriented offender. *Hayden*, 2002-Ohio-4169, at ¶2 of the syllabus. Although not all of the facts are laid out in this Court's decision in *Hayden*, it is clear that when reading this decision in conjunction with R.C. §2950.09(C), if Hayden was convicted of Rape in 1984, then he was still imprisoned on that offense in 1999 when the sentencing court classified him as a sexually oriented offender, and the DRC was required to notify the sentencing court that it was not recommending that Hayden be classified as a sexual predator pursuant to Former R.C. §2950.09(C)(1)(b) for the court to just forego that sexual predator hearing and find that Appellant had not previously been convicted of a sexually oriented offense before that Rape charge and classified him as a sexually oriented offender pursuant to Former R.C. §2950.09(C)(2)(b). *Id.* As the State set forth above, nothing in Former R.C. Chapter 2950 gave a sentencing court the power to arbitrarily hold a sexual predator hearing on an offender that had been sent to prison on a sexually oriented offense before January 1, 1997, and since the DRC never made a sexual predator or non-sexual predator recommendation to Appellant's sentencing court, the sentencing court never even had the opportunity to address Appellant's sex offender classification and thus could not have

automatically classified him as a sexually oriented offender. *Hayden* cannot be read in a vacuum; it just sets forth that offenders for whom the DRC recommended that they not be sexual predators do not have the right to a hearing, but instead can automatically be classified as sexually oriented offenders as a matter of law. *Hayden* does not apply to Appellant since the DRC never made a recommendation as to his sexual predator status, and as such Appellant's sentencing court never had the opportunity to address his sex offender classification under Megan's Law. As the State will set forth below, because Appellant was never classified as a sex offender under Megan's Law, his classification as a Tier III sex offender under the AWA is constitutional and its retroactive application does not violate Ex Post Facto, double jeopardy, or the prohibition against retroactive laws.

A. The retroactive application of Senate Bill 10 to Appellant does not violate the separation of powers doctrine or the remedy formulated by this Court in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424.

Appellant first argues to this Court that under Megan's Law he would have been entitled to a sexual predator hearing to determine his future risk of reoffending before he was classified as a sexually oriented offender, habitual sex offender, or sexual predator. Although this is true, Appellant never had a sexual predator hearing and was never classified under Megan's Law. Thus, there was no prior judicial order classifying him as a sex offender under Megan's Law. Appellant's Tier III sex offender classification under the AWA was an original classification, and a separation of powers problem does not arise. The State will extend its discussion of this issue below, in spite of the fact that Appellant never raised this issue in his appeal to the Eleventh District Court of Appeals.

Although the Ohio Constitution does not contain any specific language establishing the doctrine of separation of powers, it is inherent in the constitutional framework, and each of the three branches of government must be protected from encroachments by the other branches. *State v. Sterling*, 113 Ohio St.3d 255, 2007-Ohio-1790, at ¶22-23. “The administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers. *Id.*, citing *State ex rel. Johnson v. Taulbee* (1981), 66 Ohio St.2d 417, ¶1 of the syllabus. The law, as applied in Ohio, requires a showing that a legislative enactment or executive action encroached upon a judicial *order* before declaring a law unconstitutional, or that an executive order has encroached upon a legislative action.

Appellant mistakenly attributes a separation of powers problem to his own case, as there was no final judicial order classifying him as a sexual predator, habitual sex offender, or sexually oriented offender under Megan’s Law that was then overturned by an action of the executive branch. Appellant claims that the AWA divests a court of its power to sentence a defendant; however, this is just not true. According to Title 47 of the Revised Code, the legislature may delegate certain ministerial functions to the executive branch to carry out. In passing Senate Bill 10, the General Assembly delegated a non-judicial task that is ministerial in nature to the Attorney General. Given the administrative nature of our modern governmental system, this kind of delegation is fairly common. The U.S. Supreme Court has only found the non-delegation doctrine to be violated in two cases, both decided in 1935. In *Mistretta v. U.S.* (1989), 488 U.S. 361, the Supreme Court held that “[s]o long as Congress ‘shall lay down by legislative act an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform, such legislative action is not a forbidden delegation of legislative

power.” *Id.* at 372, citing *J.W. Hampton, Jr. & Co. v. U.S.* (1928), 276 U.S. 394, 406. This is a very low standard. The Ohio Attorney General clearly did not violate this principle by merely classifying sex offenders who had never previously been classified under Megan’s Law according to the specifications set forth by the General Assembly in Senate Bill 10. The Attorney General did not make any factual determinations, but merely classified sex offenders like Appellant into tiers based on the offense of which they were convicted. *See* R.C. §2950.031(A)(1); §2950.01. Here, the General Assembly has merely changed its earlier classification scheme, applicable after *Bodyke* to those who were never classified under Megan’s Law, because it is not purporting to overrule or vacate a prior judicial order.

As the State argued above, Appellant was never automatically classified as a sexually oriented offender under Megan’s Law – there is no judicial order classifying him as such. Appellant relies heavily on *Bodyke* to support his proposition that his classification violates the separation of powers doctrine, but *Bodyke* simply does not apply to him because he was never previously classified under a final judicial order. “R.C. 2950.031 and 2950.032, which require the attorney general to **reclassify** sex offender **who have already been classified by court order under former law**, impermissibly instruct the executive branch to review past decisions of the judicial branch and thereby violate the separation-of-powers doctrine.” *Bodyke*, 2010-Ohio-2424, at ¶2 of the syllabus (emphasis added). This Court went on to hold that “R.C. 2950.031 and 2950.032, which require the attorney general to **reclassify** sex offenders **whose classifications have already been adjudicated by a court and made the subject of a final judicial order**, violate the separation-of-powers doctrine by requiring the opening of final judgments. *Id.*, at ¶3 of the syllabus (emphasis added). This Court then held that the remedy for these sex offenders would be to strike R.C. 2950.031 and 2950.032 and to reinstate the prior judicial classifications of sex

offenders. Clearly, since Appellant has no prior judicial sex offender classification to fall back upon, there is nothing to reinstate in his case and R.C. 2950.032 should not be stricken in his case and those of offenders like him.

Additionally, this Court rejected *stare decisis* when it declined to follow *Cook* and *Ferguson*, because those cases did not present a separation of powers challenge. In the case at hand, Appellant never raised a separation of powers argument either in the trial court or at the appellate court level, only choosing to raise this issue in his merit brief before this Court. The State argues that Appellant never chose to raise the separation of powers issue before because he knew that he was never the subject of a final judicial order classifying him as a sex offender under Megan's Law, thus the executive branch did not overrule a final judicial order in this case. The State argues that, because there is no real separation of powers issue in the case at hand, the State respectfully asks this Court to follow *stare decisis* and follow its decisions in *Cook* and *Ferguson*, which otherwise found the classification scheme of Megan's Law to be constitutional.

B. The retroactive application of Senate Bill 10 does not violate the Ex Post Facto Clause of the United States Constitution and the Retroactivity Clause of the Ohio Constitution.

Appellant next claims that the AWA is unconstitutional because it violates the Ex Post Facto Clause of the U.S. Constitution and the Retroactivity Clause of the Ohio Constitution. The State points out that a regularly enacted statute enjoys a presumption of constitutionality, and the party challenging the constitutionality of a law must establish beyond a reasonable doubt that the statute is incompatible with the Constitution before a court may declare the statute unconstitutional. *State ex rel. Dickman v. Defenbacher* (1955), 16 Ohio St.142. The State would like to remind this Court that it found that Megan's Law did not violate either Ex Post Facto or

retroactivity clauses of the U.S. and Ohio Constitutions in *State v. Cook* (1998), 83 Ohio St.3d 404. Based on the principles of *stare decisis*, the State respectfully asks this Court to uphold the AWA as applied to Appellant and other similarly situated sex offenders.

I. Senate Bill 10 does not violate Section 10, Article I of the United States Constitution.

“To fall within the *ex post facto* prohibition, a law must be retrospective – that is ‘it must apply to events occurring before its enactment’ – and it ‘must disadvantage the offender affected by it’ * * * by altering the definition of criminal conduct or increasing the punishment for the crime * * *.” *Lynce v. Mathis* (1997), 519 U.S. 433, 442 (Citations Omitted). In the present case, the reclassification and increased registration duties are neither “retroactive” nor do they serve as increased “punishment.” The Megan’s Law registration and notification requirements were upheld against retroactivity and Ex Post Facto challenges in *Cook*. The amendments in Senate Bill 10, like the law upheld in *Cook*, simply change the “frequency and duration” of the registration requirements. *Cook*, 83 Ohio St.3d at 411.

The Ex Post Facto clause of the United States Constitution prohibits laws that “change[] the *punishment*, and inflict[] a greater *punishment*, than the law annexed to the crime, when committed.” *Miller v. Florida* (1987), 482 U.S. 423, 429 (emphasis added). The United States Supreme Court has held that the ex post facto clause will not apply if the legislature had a non-punitive intent and the law is not so punitive in its application that it overrides the legislature’s non-punitive intent. *Smith v. Doe* (2003), 538 U.S. 84, 92. Moreover, the Ohio Supreme Court has recognized that, “[a]s a threshold matter, the *Ex Post Facto* Clause applies only to criminal statutes,” and that “[c]ourts have used the ‘intent-effects’ test to delineate between civil and criminal statutes for the purposes of an *ex post facto* analysis of sex offender registration and

notification statutes.” *State.v. Cook* (1998), 83 Ohio St.3d 404, 415. Thus, absent a punitive intent or a punitive application, a law will not be deemed to be “punishment,” and will not be subject to the Ex Post Facto clause.

This Court has chosen to utilize the “intent-effects test” to determine whether a law is civil or criminal for the purposes of an Ex Post Facto analysis of sex offender registration and notification statutes. *See Cook*, 83 Ohio St.3d at 415-17 (the intent of the General Assembly in enacting former Revised Code Chapter 2950 was remedial, not punitive). When applying this intent-effects test, a reviewing court must first consider whether the legislature, “in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other.” *United States v. Ward* (1980), 448 U.S. 242, 248-49. But, even if a legislature indicated its preference to be civil in nature, a court must then determine whether a statute was truly meant to be criminal if “the statutory scheme [is] punitive either in purpose or effect as to negate that intention.” *Id.*

a. SB 10 and the AWA Show No Punitive Intent

The General Assembly expressly stated its intent that the revisions to Chapter 2950 of the Revised Code would be non-punitive and would be meant to serve the non-criminal purposes of aiding law enforcement, providing helpful information to the public, and protecting the public. R.C. 2950.02(A) & (B). The legislature declared that when “the public is provided adequate notice and information about offenders and delinquent children who commit sexually oriented offenses,” they “can develop constructive plans to prepare themselves and their children.” R.C. §2950.02(A)(1). Further, the legislature set forth that “protection of members of the public from sex offenders * * * is a paramount government interest,” and the “release of information about sex offenders * * * to public agencies and the general public will further [that] interest.” R.C.

§2950.02(A)(2), (A)(6). The General Assembly went on to articulate that its “intent [is] to protect the safety and general welfare of the people of this state” through the passage of Senate Bill 10. R.C. §2950.02(B).

This Court, in *Cook*, upheld nearly identical statements of non-punitive intent in Megan’s Law as evidence that the legislature intended to create a civil, remedial scheme. *Cook*, 83 Ohio St.3d at 416-17. “[O]nly the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty.” *Smith v. Doe*, 538 U.S. at 92, citing *Hudson v. United States* (1997), 522 U.S. 93, 100. Appellant does not, and cannot, show by the “clearest” proof that the legislature had a punitive intent.

Appellant first argues that the provisions of the AWA and their placement in R.C. Chapter 2950 show a clear punitive intent. The State disagrees. This Court has previously held that the “exchange or release of information is not punitive,” as interpreting Former R.C. §2950.02 under Megan’s Law, which is substantially similar to the intent language in the current R.C. §2950.02. *Cook*, 83 Ohio St.3d at 417. The placement of the statutes in R.C. Title 29, the title containing the criminal code, is not dispositive of the question of legislative intent. The location and labels of the statute do not by themselves designate the nature of the statute. *Smith v. Doe*, 538 U.S. at 94. This fact alone does not mean that the legislature intended this to be a criminal statute. Megan’s Law was also codified in R.C. Chapter 2950, yet was upheld as a remedial, civil law. Further, Title 29 contains quite a few statutes that do not invoke criminal punishment. *See*, e.g., R.C. §2930.01 et seq. (victim’s rights); R.C. §2953.01 et seq. (post-conviction remedies); R.C. §2981.05 (civil forfeiture). Placement of the statute in R.C. Title 29, the criminal code, is not dispositive of a punitive legislative intent, and it alone “is not sufficient to support a conclusion that the legislative intent was punitive.” *Smith v. Doe*, 538 U.S. at 95.

Appellant also argues that the enhanced criminal punishments for failure to register make the intent behind this statute punitive. However, these penalties are not part of the underlying sex offense; rather, they attach to a new violation of the registration laws and require the State to institute new criminal proceedings before punishment can be imposed for a registration violation. *See* R.C. §2950.99. Megan’s Law also imposed criminal punishment on sex offenders for failing to register. *See* Former R.C. 2950.99. This kind of new criminal punishment for failing to register was also upheld by the United States Supreme Court in *Smith v. Doe*, 538 U.S. at 96, which noted that Alaska’s sex offender registration law “is enforced by criminal penalties.” The State would also like to point out to this Court that, if there were no criminal ramifications for failing to register as a sex offender, there would be no enforcement tool left to the State to ensure the public safety and welfare. If sex offenders merely failed to register with the sheriff of their county of residence and the State had no way to institute a new criminal case as punishment for this failure to register, the law would just become not worth the paper it was printed on and the public would remain unprotected from sex offenders.

Next, Appellant argues that, because a sex offender must be notified of his Tier classification and the possible ramifications of failing to register as required by R.C. Chapter 2950 at his sentencing, that this becomes part of his or her original criminal sentence for the sex offense and it is indicative of an intent for the classification to be a criminal punishment. Specifically, Appellant cites to R.C. §2929.23(A) & (B) and 2929.19(B)(4)(a) to support this contention. However, Megan’s Law also required this notification of registration obligations at the sex offender’s sentencing, so the sex offender was put on notice of what his or her responsibilities were and so he or she could conform his or her actions appropriately. *See* Former R.C. §2950.03(A)(2). This notification during sentencing was upheld by the U.S. Supreme Court

as well, “it is effective to make it part of the plea colloquy or the judgment of conviction * * * [this] does not render the statutory scheme itself punitive.” *Smith v. Doe*, 538 U.S. at 96. “When a State sets up a regulatory scheme, it is logical to provide those persons subject to it with clear and unambiguous notice of the requirements and the penalties for noncompliance. *Id.* Notification at sentencing furthers the goals of having sex offenders register as they are supposed to in order to properly protect the public, to put them on notice of what is expected of them, and to answer any questions they might have. This provision of notification at sentencing is put in place to protect the offender as much as it is to protect the public; it was not intended to be punitive, but to protect the rights of both the offender and the public.

Appellant next argues that community notification and registration of more information with the sheriff moves the AWA from non-punitive to punitive. Specifically, Appellant sets forth that “[w]hile the statute at issue in *Cook* restricted the access of an offender’s information to ‘those persons necessary in order to protect the public[,]’ Senate Bill 10 requires the offender’s information to be open to public inspection and to be included in the internet sex-offender and child-victim offender database. R.C. 2950.081.” (Appellee’s Merit Brief, 18). Appellant claims that this combined with the registration of more detailed information makes the AWA no longer narrowly-tailored as it was found to be under Megan’s Law in *Cook*. However, this Court held that registration and notification provisions “have the remedial purpose of collecting and disseminating information to relevant persons to protect the public from registrants who may reoffend.” *Cook*, 83 Ohio St.3d at 420. “Notification provisions allow dissemination of relevant information to the public for its protection.” *Id.* at 421. “[N]otification requirements may be a detriment to registrants, but the sting of public censure does not convert a remedial statute into a punitive one.” *Id.* at 423. Also, the U.S. Supreme Court held that “[t]he fact that Alaska posts

offender information on the internet does not alter this conclusion” that the statute is non-punitive in nature. *Smith v. Doe*, 538 U.S. at 86.

Clearly, times have changed since Megan’s Law went into effect, and the internet has become far more popular with the general public and, at the same time, far more abused by sex offenders, since Megan’s Law went into effect in 1997. The internet has become so popular and used so widely that it is the most convenient way for parents to access information about sex offenders in order to protect their children. It is very important for parents to be aware of sex offenders’ internet identifiers when monitoring their children’s internet activity. The internet is not just limited to sex offenders who live within a short distance of a child’s home or to previous victims of the offender; as such, an internet database containing the offender’s basic information, offense information, and internet information will better enable parents to protect their children, thus serving the remedial purpose of protecting the public.

Appellant continues by arguing that lack of a sex offender classification hearing to determine the offender’s likelihood of recidivism shows a punitive intent on the part of the legislature. Appellant attempts to draw a distinct line between the crime of which an offender was convicted and the offender’s ongoing threat to the community. However, the State argues that these two concepts go hand-in-hand. As in Appellant’s case, he was convicted of two counts of Rape, five counts of Felonious Sexual Penetration, and thirteen counts of Gross Sexual Imposition, all of which involved a female child victim. *See* Ohio Department of Rehabilitation and Correction Offender Search Detail for Lambert Dehler, prisoner A273819. Appellant’s prior convictions for Rape classify him as a Tier III sex offender; with so many offenses involving a minor female victim, it is highly likely that Appellant will repeat this kind of offense if and when he is released from prison. How heinous and violative a crime is by its nature is indicative of

how dangerous a sex offender is. The United States Supreme Court has also addressed the constitutionality of a similar categorical sex offender classification scheme, “[t]he State’s determination to legislate with respect to convicted sex offenders as a class, rather than require individual determination of their dangerousness, does not render the Act punitive. *Smith v. Doe*, 538 U.S. at 87, citing *Hawker v. New York* (1898), 170 U.S. 189, 197; *Kansas v. Hendricks* (1997), 521 U.S. 346, 357-368.

b. The Effect of SB 10 and the AWA is Not Punitive

Not only was it the General Assembly’s intent to create a civil remedial statutory scheme, the statute, as applied, is also civil, remedial, and non-punitive in effect. Not only must there be some punitive effect, but it must have a “punitive effect *so as to negate a declared remedial intention.*” *Allen v. Illinois* (1985), 478 U.S. 364, 369 (emphasis added). In determining whether there is a punitive intent, the Court should consider the seven guideposts outlined in *Kennedy v. Mendoza-Martinez* (1963), 372 U.S. 144, 168-69, all of which show that the AWA is civil in nature. Again, “only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty.” *Smith v. Doe*, 538 U.S. at 92. Using these guideposts, both the Ohio and the U.S. Supreme Courts have found similar laws to be constitutional. *See Cook*, 83 Ohio St.3d 404; *State v. Wilson*, 113 Ohio St.3d 282, 2007-Ohio-2202; *Smith v. Doe*, 538 U.S. 84. Appellant has failed to show credible evidence of a punitive effect, and has especially failed to show evidence sufficient to negate the General Assembly’s declared non-punitive intent.

1. Whether the Sanction Involves an Affirmative Disability or Restraint

Appellant claims that the AWA imposes a severe disability because it imposes affirmative obligations, creates a severe stigma, the time periods are “significant and intrusive” –

in Appellant's case, registering quarterly for life, and the aggressive community notification requirements and dissemination of personal information subjects offenders to humiliation and ostracism. (Appellant's Merit Brief, 22-23). The court is required, under this prong, to determine "how the effects of the [amendments] are felt by those subject to it. If the disability or restraint is minor and indirect, its effects are unlikely to be punitive." *Smith v. Doe*, 538 U.S. at 99-100.

In *Cook*, this Court held that Megan's Law, which also had quarterly reporting for life for sexual predators, did not constitute an affirmative disability or restraint, "[t]he act of registering does not restrain the offender in any way." *Cook*, 83 Ohio St.3d at 418. Instead, it serves as "a *de minimus* administrative requirement * * * comparable to renewing a driver's license." *Id.*, citing *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169, at ¶14. As to a social stigma that this creates, the State would like to object to the sex offender label as what attaches the social stigma. In fact, it is the commission of and conviction for a sexually oriented offense which attaches a social stigma and which subjects a sex offender to humiliation and ostracism, not the label itself. As to the community notification of personal information, this Court has already held that community notification does not constitute an affirmative disability or restraint, since "the burden of dissemination is not imposed on the defendant, but rather on law enforcement." *Cook*, 83 Ohio St.3d at 418. Also, the U.S. Supreme Court held that "[a]lthough the public availability of the information may have a lasting and painful impact on the convicted sex offender, these consequences flow not from the Act's registration and dissemination policies, but from the fact of conviction, already a matter of public record. The State makes the facts underlying the offenses and the resulting convictions accessible so members of the public can take precautions they deem necessary before dealing with the registrant." *Smith v. Doe*, 538 U.S. at 101.

2. Whether the Sanction Has Historically Been Regarded as Punishment

Appellant likens sex offender registration and community notification with public shaming punishments and calls it a form of parole or probation placed on the offender. The registration, notification and residency mechanisms of sex offender laws are *not* rooted historically as a traditional means of punishment. These restrictions are relatively new and unique. *Smith v. Doe*, 538 U.S. at 97; *Doe v. Miller* (C.A. 8 2005), 405 F.3d 700, 719-720. And as the United States Supreme Court held, this fact “suggests that the statute was not meant as a punitive measure, or, at least, that it did not involve a traditional means of punishing.” *Id.* Further, the increased registration obligations and residency restrictions do not mirror colonial punishments, as Appellant insinuates. While a sex offender is required to provide additional information to a sheriff - the name and address of an employer or an institution of higher education - this information is not automatically disseminated to co-workers, fellow students, or the general public in its vicinity. Rather these individuals must actively seek this information. A sex offender is not standing in public announcing these facts, as was the case in colonial times. “Humiliated offenders were required ‘to stand in public with signs, cataloguing their offenses.’” *Smith v. Doe*, 538 U.S. at 97 (citation omitted). Publicity and any dishonor that may come from dissemination of this information was not the ultimate goal of the General Assembly. And the information which a sex offender must supply does not equate to a public shaming. *Id.* at 98. Instead, it results in the accurate dissemination of relevant information to further assist the public and protect it. *Cook*, 83 Ohio St.3d at 422.

Additionally, the residency restrictions imposed by the AWA are not designed to banish sex offenders from the community. Rather, the restrictions place certain, minimal restrictions on the places where a sex offender may reside within a community without completely banishing or

restricting him from the community. See *Smith v. Doe*, 538 U.S. at 98. (“The aim [of banishment] was to make these offenders suffer permanent stigmas, which in effect cast the person out of the community.”)

The AWA does not act as a disability or restraint comparable to parole, probation, and supervised release. The restraint posed upon a sex offender is minimal; it is not a physical restraint, such as imprisonment. Nor does it even approximate the involuntary commitment of mentally ill sex offenders, which has been held to be non-punitive. *Kansas v. Hendricks*, 521 U.S. at 363-365. And the inability to reside within one thousand feet of a school is even less severe than “occupational debarment” against another non-punitive measure. *Smith v. Doe*, 538 U.S. at 100. Furthermore, the act of periodically updating residential and employment information does not equate within the onerous obligations of probation and other forms of conditional release. Therein, defendants must maintain employment, submit to random drug testing, and permit warrantless searches of their residences, in addition to reporting on a regular basis to a probation or parole officer. Under the AWA, a sex offender is merely required to provide an additional piece of information during his regular reporting cycle. Similarly, the United States Supreme Court, in *Smith v. Doe*, juxtaposed registration requirements against supervised release holding: “[p]robation and supervised release entails a series of mandatory conditions and allow the supervising officer to such the revocation of probation or release in case of infraction.” *Id.* at 101. But Alaska's Megan's Law, which the Court reviewed, went even further than Ohio's AWA, forcing sex offenders to inform authorities about changes in facial features, the failure to comport with this requirement resulted in criminal prosecution. *Id.* at 101-102. Accordingly, the disability or restraint placed on Appellant is minor and indirect, and cannot, therefore, be considered punitive.

3. Whether the Sanction Comes into Play Only on a Finding of Scienter

The language contained in the AWA, like Megan's Law, does not require a finding of scienter. As set forth by the U.S. Supreme Court, "whether the regulation comes into play only on a finding of scienter and whether the behavior which it applies is already a crime – are of little weight in this case. The regulatory scheme applies only to past conduct which was, and is, a crime. This is a necessary a necessary beginning point, for recidivism is the statutory concern. The obligations the statute imposes are the responsibility of registration, a duty not predicated upon some present or repeated violation." *Smith v. Doe*, 538 U.S. at 105.

4. Whether Its Operation Will Promote the Traditional Aims of Punishment- Retribution and Deterrence

Appellant next argues that the AWA restrains his physical liberty and subjects him to ostracism, which thereby have a retributive and deterrent effect. (Appellant's Merit Brief, 25). The primary objectives of criminal punishment are deterrence and retribution. *Kansas v. Hendricks*, 521 U.S. at 361-362. "Deterrent measures serve as a threat of negative repercussions to discourage people from engaging in certain behavior." *Cook*, 83 Ohio St.3d at 420 (citation omitted). On the other hand, "[r]etribution is vengeance for its own sake. It does not seek to affect future conduct or solve any problem except realizing justice." *Id.* While all laws, to some extent, may result in a deterrent effect, such is not the primary purpose of the statutory provisions of the AWA. "Any number of government programs might deter crime without imposing punishment." *Smith v. Doe*, 538 U.S. at 102. And "[t]o hold that the mere presence of a deterrent purpose renders *** sanctions 'criminal' *** would severely undermine the government's ability to engage in effective regulation ***." *Hudson*, 522 U.S. at 105.

5. Whether the Behavior to Which It Applies Is Already a Crime

Appellant claims that, because all sex offenders are individuals who at some point have been convicted of a crime, this clearly shows a punitive effect to the AWA. (Appellant's Merit Brief, 26). Although it is true that the "[r]egulatory scheme applies only to past conduct, which was, and is, a crime," this does not mean that some new punishment is imposed on the past conduct. *Smith v. Doe*, 538 U.S. at 105. Instead, the obligations imposed are "registration, a duty not predicated upon some present or repeated violation." *Id.* "[A]ny * * * punishment flows from a failure to register, a new violation of the statute, not from a past sex offense." *Cook*, 83 Ohio St.3d at 421.

6. Whether an Alternative Purpose to Which It May Rationally Be Connected Is Assignable for It

Appellant admits that the AWA does indeed advance a non-punitive purpose. (Appellant's Merit Brief, 27). The AWA does bear a *rational* connection to a non-punitive purpose, and the statute does not require "a close or perfect fit with the non-punitive aim it seeks to advance." *Smith v. Doe*, 538 U.S. at 103. As noted above, the General Assembly expressly stated its intent that the revisions to Chapter 2950 of the Revised Code would be non-punitive and would be meant to serve the non-criminal purposes of aiding law enforcement, providing helpful information to the public, and protecting the public. The United States Supreme Court has consistently found that there are "grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class. The risk of recidivism posed by sex offenders is 'frightening and high'." *Smith v. Doe*, 538 U.S. at 103, quoting *McKune v. Lile* (2002), 536 U.S. 24, 34. With this in mind, it is clear that the AWA is rationally related to the non-punitive purpose of providing helpful information to the public, protecting the public, and aiding law enforcement.

7. Whether It Appears Excessive in Relation to the Alternative Purpose Assigned

Finally, Appellant argues that, although the AWA advances a rational, non-punitive purpose, that the registration and community notification requirements are excessive in comparison to the stated goals of the law. (Appellant's Merit Brief, 27). Whether a statutory scheme is excessive "is not an exercise in determining whether the legislature has made the best choice possible to address the problem it seeks to remedy. The question is whether the regulatory means chosen are reasonable in light of the non-punitive objective." *Smith v Doe*, 538 U.S. at 105. The mere fact that the statute applies to all offenders convicted of certain crimes, without regard for individual dangerousness, does not render the statute excessive. In reaching the same conclusion, the U.S. Supreme Court found that:

"Alaska could conclude that a conviction for a sex offense provides evidence of substantial risk of recidivism. The legislature's findings are consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class. *** The Ex Post Facto Clause does not preclude a State from making reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences. We have upheld against ex post facto challenges laws imposing regulatory burdens on individuals convicted of crimes without any corresponding risk assessment.

Smith v. Doe, 538 U.S. at 103-104

Based on the foregoing, there is no violation of the Ex Post Facto clause because the statutory scheme under the AWA is not punitive in intent or effect.

C. Senate Bill 10 Does Not Violate Section 28, Article II of the Ohio Constitution

Appellant next claims that the AWA violates the ban on retroactive laws. "The General Assembly shall have no power to pass retroactive laws." Ohio Const., Art. II, §28. When a court examines a retroactivity claim, it determines "whether the General Assembly expressly made the statute retroactive." *Hyle v. Porter*, 117 Ohio St.3d 165, 2008-Ohio-542, ¶8. If it has made the

law retroactive, the court then decides “whether the statutory restriction is substantive or remedial in nature.” *Id.*

There is no question that the Ohio General Assembly intended the AWA to apply retroactively to offenders who were convicted of sex offenses prior to its enactment in 2007. This Court must then determine whether the AWA is remedial or substantive in nature. *Cook*, 83 Ohio St.3d at 411. A remedial law is not impermissibly retroactive, even if it is applied retroactively. *Id.*

“A statute is ‘substantive’ if it impairs or takes away vested rights, affects an accrued substantive right, imposes new or additional burdens, duties, obligation, or liabilities as to a past transaction, or creates a new right. Conversely, remedial laws are those affecting only the remedy provided, and include laws that merely substitute a new or more appropriate remedy for the enforcement of an existing right.” *Id.* (internal citations omitted), citing *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100, 107. This Court has previously held that the Retroactivity Clause “does not prohibit all increased burdens; it prohibits only increased punishment.” *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, ¶39. As the State has expounded upon above in its Ex Post Facto arguments, the AWA is a civil, remedial act, not a criminal one, and thus is not unconstitutionally retroactive.

Appellant claims that offenders who were classified under Megan’s Law are obligated to comply with new requirements, and directly attaches new burdens to a past transaction, and as such is criminal and violates the retroactivity clause. (Appellant’s Merit Brief, 30). However, as the State has already repeatedly argued above, Appellant was never classified under Megan’s Law, and as such there can be no increase in his registration requirements. Appellant also claims that tying his classification to his prior conviction rather than basing it on an individualized

assessment of future risk is impermissible. However, as the State has already set forth above, the U.S. Supreme Court upheld against Ex Post Facto challenges, which also includes an examination of retroactivity, “[d]oubtless, one who has violated the criminal law may thereafter reform and become in fact possessed of a good moral character. But the legislature has power in cases of this kind to make a rule of universal application’.” *Smith v. Doe*, 538 U.S. at 104, citing *Hawker v. People of New York* (1898), 170 U.S. 189, 197. The Supreme Court went on to say that “[t]he State’s determination to legislate with respect to convicted sex offenders as a class, rather than require individual determination of their dangerousness, does not make the statute a punishment.” *Id.* Here, clearly the State has not imposed an additional burden or punishment on Appellant based on a past transaction, just as this Court found in *Cook*, 83 Ohio St.3d at 411 (Holding that most of the new requirements imposed were placed on the sheriffs rather than offenders). This Court went on to hold that:

“This court has held that where no vested right has been created, ‘a later enactment will not burden or attach a new disability to a past transaction or consideration in the constitutional sense, unless the past transaction or consideration * * * created at least a reasonable expectation of finality.’ * * * We rejected the argument that the statute was retroactive because it attached a new disability to the felony he had committed before the law was enacted. We held that ‘[e]xcept with regard to constitutional protections against *ex post facto* laws * * * felons have no reasonable right to expect that their conduct will never thereafter be made the subject of legislation.’”

Id. at 412, citing *State ex rel. Matz v. Brown*, 37 Ohio St.3d 279, 281-82. In addition, this Court held that “the registration and address verification provisions of R.C. Chapter 2950 are *de minimis* procedural requirements that are necessary to achieve the goals of R.C. Chapter 2950. * * * [T]he registration and verification provisions are remedial in nature and do not violate the ban on retroactive laws.” *Id.* at 412-13. As such, the State submits that the AWA is not

impermissibly retroactive as applied to Appellant, as he was never classified under Megan's Law and it does not place a new burden upon him based upon a past transaction.

D. Senate Bill 10 Does Not Violate the Double Jeopardy Clause of Either the United States Constitution or Section 10, Article I of the Ohio Constitution

Appellant next argues that since the AWA is punitive in both its intent and effect, the registration and notification requirements act as a second punishment. (Appellant's Merit Brief, 32). The Double Jeopardy Clause prohibits three different scenarios: "a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple punishments for the same offense." *North Carolina v. Pearce* (1969), 395 U.S. 711, 717. The issue that Appellant raises is inflicting multiple punishments for the same offense. When determining whether a law imposes multiple criminal punishments for the same offense, a reviewing court must examine the seven factors set forth in *Mendoza-Martinez*, 372 U.S. at 165-69. These are the same exact factors that the State has already addressed in its Ex Post Facto analysis above, and as such, the State will stand on those arguments to show how Appellant's double jeopardy claim should fail.

APPELLANT'S SECOND PROPOSITION OF LAW: Petitioners in Senate Bill 10 classification proceedings are entitled to court-appointed counsel. Sixth and Fourteenth Amendments of the United States Constitution; Section 16, Article I of the Ohio Constitution.

APPELLEE'S ISSUE PRESENTED FOR REVIEW AND ARGUMENT: Sex offender classification challenges and hearings conducted pursuant to the Adam Walsh Act are civil in nature and do not deprive sex offenders of a substantial liberty interest, and as such these sex offenders are not entitled to appointed counsel.

I. Introduction

Appellant claims that he should be entitled to appointed counsel in regards to his sex offender classification hearing pursuant to R.C. §2950.032. The State opposes this contention;

sex offenders who are challenging their classifications under the AWA should not be entitled to counsel since the hearings are civil in nature.

II. Argument

A. Sex offender classification hearings conducted under the AWA are civil and these hearings are not a critical stage of a criminal proceeding.

Appellant contends that sex offender classification hearings are completely criminal in nature, and as such he should be entitled to the appointment of counsel under the Sixth Amendment to the U.S. Constitution. (Appellant's Merit Brief, 33). Appellant also contends that the challenge to his sex offender classification is a critical stage of these criminal proceedings. (Appellant's Merit Brief, 35). As Appellant points out, the characteristics to which a court should look to determine if a matter is criminal or civil in nature is the extent to which the proceeding is adversarial, the level of formality attendant to the proceeding, whether the proceeding is presided over by a judicial officer, whether the State is represented by a prosecutor, and the type of sanction imposed at the conclusion of the proceedings. *Gagnon v. Scapelli* (1973), 411 U.S. 778, 787-90.

The stated intent by the legislature is that sex offender classification hearings in which sex offenders can challenge their classifications are to be completely civil in nature, "[i]n any hearing under this division, the Rules of Civil Procedure * * * apply, except to the extent that those Rules would by their nature be clearly inapplicable." R.C. §2950.031(E). These hearings were not meant to be the least bit adversarial in nature, other than the fact that each side is presenting opposing arguments; they are hearings in which each side presents evidence as to whether an offender was placed into the proper tier, and the judge takes the matter under advisement. Although the State is represented by the prosecutor and a judge does preside, this is generally the case for many types of hearings both civil and criminal in nature. The last, and

most important factor, is whether there is a criminal sanction imposed at the end of the hearing. As the State laid out in its extensive constitutional arguments above, Appellant's sex offender classification is civil and non-punitive in nature, as set forth by this Court in *Cook*. As they are civil in nature, and "litigants have no generalized right to appointed counsel in civil actions." *Graham v. City of Findlay Police Dept.*, 3rd App. No. 5-01-32, 2002-Ohio-1215, citing *State ex rel. Jenkins v. Stern* (1987), 33 Ohio St.3d 108. Appellant should not be entitled to appointed counsel.

The Eleventh District Court of Appeals held that,

"Mr. Dehler would only be entitled to counsel if it was statutorily provided or if there was an infringement of his substantial liberty interest or vested right. As succinctly stated by Judge Fain in his concurring opinion in *State v. King*, '[i]ncarceration is not one of the possible outcomes that may result from the proceeding for which [he] seeks the appointment of counsel, and, therefore [he] is not entitled to the appointment of counsel at the State's expense."

State v. Dehler, 11th App. No. 2008-T-61, 2009-Ohio-5059, ¶74, quoting *State v. King*, 2nd App. No. 08-CA-02, 2008-Ohio-2594, ¶36. According to R.C. §120.16(A)(1), representation is provided to "indigent adults * * * who are charged with the commission of an offense or act that is a violation of a state statute and for which the penalty or any possible adjudication includes the potential loss of liberty." In cases such as these, there is no criminal action and Appellant is not charged with the commission of an offense, nor does he stand to suffer any potential loss of liberty.

This very Court, in *Cook*, said it best,

"except with regard to constitutional protections against ex post facto laws * * * felons have no reasonable right to expect that their conduct will never thereafter be made the subject of legislation * * * [because] where no vested right has been created, 'a later enactment will not burden or attach a new disability to a past transaction or consideration in the constitutional sense, unless the past transaction or consideration created at least a reasonable expectation of finality."

Cook, 83 Ohio St.3d at 412, quoting *Brown*, 37 Ohio St.3d at 281-82. Based on the foregoing, the State submits that Appellant is not entitled to appointment of counsel because his sex offender classification is civil, not criminal in nature.

B. Petitioners in Senate Bill 10 classification proceedings are not entitled to court-appointed counsel under the Fourteenth Amendment's Due Process Clause

Appellant argues that, in the alternative, even if the AWA is not criminal in nature but is indeed civil, that he is still entitled to appointment of counsel in order to achieve the fundamental fairness required by the Due Process Clause, because he faces a loss of personal freedom based upon the proceedings and because the rights involved are significant and the proceedings are complex. (Appellant's Merit Brief, 37-38, 41). The State again disagrees with all of Appellant's contentions, and submits to this Court that it has addressed all of Appellant's concerns and arguments at one point or another in this brief with regard to fairness of the process involved, no loss of personal freedom, and that there are no "rights" involved to even be put in jeopardy. However, the State will briefly address each of Appellant's concerns.

1. There is no problem with "fundamental fairness" as required by the Due Process Clause in Appellant's case.

Appellant argues that it is just inherently unfair that he not be appointed counsel. However, just because Appellant thinks that it is unfair and wishes to have had counsel appointed to him at the State's expense does not mean that he is so entitled. This due process analysis consists of "discover[ing] what 'fundamental fairness' consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake." *Lassiter v. Dep't of Soc. Serv's* (1981), 452 U.S. 18, 24. More specifically, the court should examine each case by weighing the private interests at stake, the government's

interest, and the risk that the procedures used will lead to erroneous decisions. *Mathews v. Eldridge* (1970), 424 U.S. 319, 335.

a. The Private Interest at Stake

Appellant contends that he has an absolute right to appointed counsel because he faces a loss of personal freedom. (Appellant's Merit Brief, 38). Appellant cites quite a few facts and figures in his brief, but never really states how this affects his own personal private interest or how he personally faces a loss of freedom. The State would first like to point out that Appellant's facts and figures are no longer accurate; he cites to the figures listed in the discovery provided by the Attorney General in *Doe v. Dann*, Case No. 1:08-CV-00220 (N.D. Ohio), which was provided in 2008 after the initial reclassification of all Megan's Law sex offenders to the tiered AWA classifications. However, when this Court handed down its decision in *Bodyke*, 2010-Ohio-2424, it automatically reverted all sex offenders who had been *reclassified* under the AWA back to their old Megan's Law classifications. As such, Appellant's facts and figures are no longer accurate, since they fail to take into account the changes implemented by *Bodyke*. Appellant also refers to a possible threat of future incarceration for failing to abide by the registration requirements. However, the State has no argument that, at such point as Appellant may be released from prison and fail to register, a new criminal proceeding would be instituted against him and he would then be more than entitled to the appointment of counsel.

Appellant goes on to argue that he should be entitled to counsel because his private interest in being placed in the wrong tier is significant. However, Appellant has never raised the issue, not at the trial or the appellate level, that he has been placed in the wrong tier. To be sure, the State submits that Appellant was convicted of two counts of Rape in violation of R.C. §2907.02. (See Journal Entry of October 29, 1992, State's Exhibit which is attached hereto and

incorporated herein by reference). According to R.C. §2950.01(G)(1)(a), an offender who is found guilty of a violation of R.C. §2907.02 is a Tier III sex offender. Appellant was not misclassified, and he did not fail to properly contest his classification. This Court is not here to decide this issue based on what could have happened, but what on has happened, and Appellant suffered no harm to his private interest.

b. There is no significant risk of erroneous decisions if counsel is not appointed

Appellant next claims that there is a significant risk of an erroneous decision if he does not have appointed counsel. However, Appellant navigated his way through the court system quite adeptly up until this point. He filed all of the appropriate motions, and even some that you would not expect, in the trial court. He filed an appellate brief and a response to the state's motion in the Eleventh District Court of Appeals, raising all of the same arguments that his court-appointed counsel has raised, and then some, save for one single issue. Appellant also refers in the hypothetical to individuals who might have entered into a plea agreement having right to contract issues to raise. In this case, though, Appellant was found guilty by a jury and never entered into a plea agreement. (See Journal Entry of October 29, 1992, State's Exhibit which is attached hereto and incorporated herein by reference).

c. The State's interest is not served by appointing counsel

Last, Appellant claims that the State's interest would also be served by the appointment of counsel in sex offender reclassification cases. However, this is categorically untrue. It would have cost the State an extreme amount of time and resources to have court-appointed counsel assigned to every single sex offender who had been classified and reclassified under the AWA. Appellant also insinuates that it takes court-appointed counsel to obtain an accurate classification of offenders to ensure that the law is respected and basic fairness prevails. (Appellant's Merit

Brief, 44). The State is insulted by this insinuation that only defense counsel would advance the interests of fairness and justice. (Parenthetically, undersigned counsel corrected the record in the Trumbull County Court of Common Pleas on several occasions; the State moved to amend three classifications that were erroneous, to the sex offender's benefit, by either lowering his classification or completely declassifying him.)

As such, looking at all of the factors listed in *Eldridge*, they do not weigh in favor of appointing counsel for sex offenders such as Appellant.

CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to determine that this Court's decision in *State v. Bodyke*, 2010-Ohio-2424 does not apply to Appellant and other sex offenders like him who were never classified under Megan's Law. Further, the State asks this Court to find that the AWA is civil, remedial, and non-punitive in nature, and to deny Appellant's claim that he is entitled to court-appointed counsel.

Respectfully submitted,

DENNIS WATKINS #0009949
Trumbull County Prosecuting Attorney


DEENA DeVICO #0080796
Assistant Prosecuting Attorney
(COUNSEL OF RECORD)

LU WAYNE ANNOS #0055651
Assistant Prosecuting Attorney
160 High St. N.W., 4th Floor
Warren, Ohio 44481
Telephone No. (330) 675-2426
Fax No. (330) 675-2431
psdevico@co.trumbull.oh.us

COUNSEL FOR APPELLEE,
THE STATE OF OHIO

PROOF OF SERVICE

I do hereby certify that a copy of the foregoing *Appellee's Merit Brief* was mailed to the attorneys for the Appellant, Jason A. Macke, Esq. and Katherine A. Szudy, Esq., at The Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215 and to Amicus Curiae Cuyahoga County Public Defender, Robert Tobik, Esq. and Cullen Sweeney, Esq., at 310 Lakeside Avenue, Suite 200, Cleveland, Ohio 44113 this 23rd day of November, 2010.


DEENA DeVICO (#0080796)
Assistant Prosecuting Attorney

communities can develop constructive plans to protect themselves and their children for the offender, or the frequent child's release from imprisonment, a prison term, or other confinement or detention. This allows members of the public and communities to meet with members of law enforcement agencies to prepare and obtain information about the rights and responsibilities of the public and the communities and to provide education and counseling to their children.

(2) Sex offenders and offenders who commit child-victim oriented offenses pose a risk of engaging in further sexually abusive behavior even after being released from imprisonment, a prison term, or other confinement or detention, and protection of members of the public from sex offenders and offenders who commit child-victim oriented offenses is a paramount governmental interest.

(3) The penal, juvenile, and mental health components of the justice system of this state are largely hidden from public view, and a lack of information from any community may result in the failure of the system to satisfy the paramount governmental interest of public safety as described in division (A)(2) of this section.

(4) Overly restrictive confidentiality and liability laws governing the release of information about sex offenders and offenders who commit child-victim oriented offenses have reduced the willingness to release information that could be appropriately released under the public disclosure laws and have increased risks of public safety.

(5) A person who is found to be a sex offender or who has committed a child-victim oriented offense has a reduced expectation of privacy because of the public interest in public safety and in the effective operation of government.

(6) The release of information about sex offenders and offenders who commit child-victim oriented offenses to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal, juvenile, and mental health systems as long as the information released is rationally related to the furtherance of those goals.

(B) The general assembly hereby declares that in providing in this chapter for registration regarding offenders and certain delinquent children who have committed sexually oriented offenses that are not registration-exempt sexually oriented offenses or who have committed child-victim oriented offenses and for community notification regarding sexual predators, child-victim predators, habitual sex offenders, and habitual child-victim offenders who are about to be or have been released from imprisonment, a prison term, or other confinement or detention and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, it is the general assembly's intent to protect the safety and general welfare of the people of this state. The general assembly further declares that it is the policy of this state to require the exchange in accordance with this chapter of relevant information about sex offenders and offenders who commit child-victim oriented offenses among public agencies and officials and to authorize the release of information in accordance with this chapter of necessary and relevant information about sex offenders and offenders who commit child-victim oriented offenses to members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive.

HISTORY: 146 v H 180 (Eff 7-1-97); 149 v S 3 (1-1-2002); 150 v S 5, § 1, eff. 7-31-03.

§ 2950.02 Legislative determinations and intent to provide information to protect public safety.

Effective until 1-1-08.

(A) The general assembly hereby determines and declares that it recognizes and finds all of the following:

(1) If the public is provided adequate notice and information about offenders and delinquent children who commit sexually oriented offenses that are not registration-exempt sexually oriented offenses or who commit child-victim oriented offenses, members of the public and

§ 2950.02 Legislative intent to provide information to

Effective until 1-1-08.

(A) The general assembly hereby declares that it recognizes and finds all of the following: (1) If the public is provided information about offenders and offenders who commit sexually oriented offenses or who commit child-victim oriented offenses, members of the public and communities can develop constructive plans to protect themselves and their children for the offender, or the frequent child's release from imprisonment, a prison term, or other confinement or detention.

(2) Sex offenders and offenders who commit child-victim oriented offenses pose a risk of engaging in further sexually abusive behavior even after being released from imprisonment, a prison term, or other confinement or detention, and protection of members of the public from sex offenders and offenders who commit child-victim oriented offenses is a paramount governmental interest.

(3) The penal, juvenile, and mental health components of the justice system of this state are largely hidden from public view, and a lack of information from any community may result in the failure of the system to satisfy the paramount governmental interest of public safety as described in division (A)(2) of this section.

(4) Overly restrictive confidentiality and liability laws governing the release of information about sex offenders and offenders who commit child-victim oriented offenses have reduced the willingness to release information that could be appropriately released under the public disclosure laws and have increased risks of public safety.

(5) A person who is found to be a sex offender or who has committed a child-victim oriented offense has a reduced expectation of privacy because of the public interest in public safety and in the effective operation of government.

(6) The release of information about sex offenders and offenders who commit child-victim oriented offenses to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal, juvenile, and mental health systems as long as the information released is rationally related to the furtherance of those goals.

(B) The general assembly hereby declares that in providing in this chapter for registration regarding offenders and certain delinquent children who have committed sexually oriented offenses that are not registration-exempt sexually oriented offenses or who have committed child-victim oriented offenses and for community notification regarding sexual predators, child-victim predators, habitual sex offenders, and habitual child-victim offenders who are about to be or have been released from imprisonment, a prison term, or other confinement or detention and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, it is the general assembly's intent to protect the safety and general welfare of the people of this state. The general assembly further declares that it is the policy of this state to require the exchange in accordance with this chapter of relevant information about sex offenders and offenders who commit child-victim oriented offenses among public agencies and officials and to authorize the release of information in accordance with this chapter of necessary and relevant information about sex offenders and offenders who commit child-victim oriented offenses to members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive.

HISTORY: 146 v H 180 (Eff 7-1-97); 149 v S 3 (1-1-2002); 150 v S 5, § 1, eff. 7-31-03.

(A) The general assembly hereby determines and declares that it recognizes and finds all of the following: (1) If the public is provided adequate notice and information about offenders and delinquent children who commit sexually oriented offenses that are not registration-exempt sexually oriented offenses or who commit child-victim oriented offenses, members of the public and

A-1

search

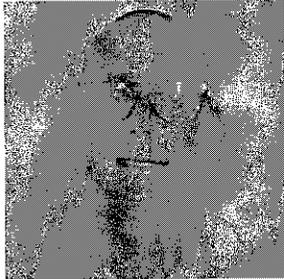
[No Menu inside the Offender Search.]

Ohio Department of Rehabilitation and Correction Offender Search Detail

<< Search Page

Your search only returned one record.

LAMBERT F DEHLER	
Number:	A273819
DOB:	06/05/1956
Gender:	Male
Race:	White
Admission Date:	05/10/1993
Institution:	Mansfield Correctional Institution
Status:	INCARCERATED



Victim Info	Ohio Revised Code	Pre-S.B. 2 Felony Sentencing Chart	S.B. 2 Felony Sentencing Chart
Offense Information			
GSI	Counts: 13	ORC: 2907.05 3	Victim Info
Committing County: CUYAHOGA	Admission Date: 05/10/1993	Degree of Felony: Third	
RAPE	Counts: 2	ORC: 2907.02 3	Victim Info
Committing County: CUYAHOGA	Admission Date: 05/10/1993	Degree of Felony: A1	
FEL SEXUAL PENETRATION	Counts: 5	ORC: 2907.12 3	Victim Info
Committing County: CUYAHOGA	Admission Date: 05/10/1993	Degree of Felony: A1	

Sentence Information	
Definite Sentence:	26 years
Indefinite Sentence Min:	14 years
Indefinite Sentence Max:	Life Sentence
Expiration of Max Sentence:	01/01/8888

Parole Hearing Information	
Next Parole Board Hearing/Review Month:	March 2070
Latest Parole Board Hearing/Review Type & Results:	FIRST HEARING

Notes

The above information may not contain a complete list of sentencing information for each offender.

Any person, agency or entity, public or private, who reuses, publishes or communicates the information available from this server shall be solely liable and responsible for any claim or cause of action based upon or alleging an improper or inaccurate disclosure arising from such reuse, re-publication or communication, including but not limited to actions for defamation and invasion of privacy.

Questions concerning the information contained in these documents should be sent via the U.S. Mail to the appropriate correctional institution, attn: Record Office. Addresses are available at at this link: [INSTITUTIONS](#).

A-2

11-24-92

Sue

3

STATE OF OHIO
CUYAHOGA COUNTY

IN THE COURT OF COMMON PLEAS

SEPTEMBER TERM, 19 92
TO-WIT: OCTOBER 23 19 92

STATE OF OHIO

PLAINTIFF

no. CR-281712

VS.

INDICTMENT RAPE, GROSS SEXUAL IMPOSITION

LAMBERT F. DEHLER

DEFENDANT

JOURNAL ENTRY

THIS DAY AGAIN COMES THE PROSECUTING ATTORNEY ON BEHALF OF THE STATE AND DEFENDANT, LAMBERT F. DEHLER, IN OPEN COURT, REPRESENTED BY COUNSEL, ATTORNEY CHARLES MORGAN.

NOW COMES THE JURY, CONDUCTED INTO COURT BY THE BAILIFF AND RETURNED THE FOLLOWING VERDICTS IN WRITING, TO-WIT: "WE, THE JURY BEING DULY IMPANELED AND SWORN, FIND THE DEFENDANT, LAMBERT F. DEHLER, GUILTY OF RAPE, ORC 2907.02- AS CHARGED IN COUNTS ONE AND TWO", AND "WE, THE JURY, FIND THE DEFENDANT, GUILTY OF GROSS SEXUAL IMPOSITION, ORC 2907.05 AS CHARGED IN COUNTS THREE AND FOUR OF THE INDICTMENT". (NON-PROBATIONABLE OFFENSES).

DEFENDANT WAS INFORMED OF THE VERDICTS OF THE JURY. JURY DISCHARGED. DEFENDANT IS REFERRED TO THE PROBATION DEPARTMENT FOR PRE-SENTENCE INVESTIGATION AND REPORT.

DEFENDANT ADVISED OF APPEAL RIGHTS.
SENTENCING SET FOR NOVEMBER 16, 1992 AT 2:30 P. M.

VOL 1159 PG 771

FILED
OCT 29 1992
GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY, OHIO

JUDGE *K. Sutula*

RAC 10/26/92 15:08

KATHLEEN A SUTULA

COPIES SENT TO:

- Sheriff _____
- Defendant _____
- Other _____

A-3