

**IN THE SUPREME COURT OF IOWA**

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**NO. 16-1290**

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**BRIAN JAMES MAXWELL,**

**Petitioner - Appellant,**

**vs.**

**IOWA DEPARTMENT OF PUBLIC SAFETY,**

**Respondent - Appellee.**

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**APPEAL FROM THE IOWA DISTRICT COURT  
FOR POLK COUNTY  
HONORABLE LAWRENCE P. MCLELLAN, JUDGE**

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**APPELLEE IOWA DEPARTMENT OF PUBLIC SAFETY'S  
FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT**

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## **CERTIFICATE OF FILING**

I, John R. Lundquist, hereby certify that on December 30, 2016, I or a person acting on my behalf filed Appellee Iowa Department of Public Safety's Final Brief and Request for Oral Argument with the Clerk of the Iowa Supreme Court by EDMS.

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**STATEMENT OF ISSUES PRESENTED FOR REVIEW**

**I. WHETHER MAXWELL’S PENDING APPEAL OF HIS LASCIVIOUS CONDUCT CONVICTION STAYED OR OTHERWISE DEFERRED HIS OBLIGATION TO REGISTER AS A SEX OFFENDER UNDER IOWA CODE CHAPTER 692A?**

**Authorities**

*Houck v. Iowa Bd. of Pharmacy Exam’rs*, 752 N.W.2d 14 (Iowa 2008)

*Greenwood Manor v. Iowa Dep’t of Pub. Health*, 641 N.W.2d 823 (Iowa 2002)

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2009 Iowa Acts Ch. 119

Iowa Code § 692A.103(1)(f)

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Iowa Code § 692A.103(3) & (5)

## **ROUTING STATEMENT**

Because this case involves the application of existing legal principles to the uncontested facts herein, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3)(a).

## **STATEMENT OF THE CASE**

Nature of the Case: Petitioner-Appellant Brian James Maxwell [Maxwell] appeals from a ruling on Iowa Code chapter 17A judicial review entered by the Iowa District Court for Polk County. The Honorable Lawrence P. McLellan affirmed a final administrative determination by the Iowa Department of Public Safety that Maxwell must register as a sex offender under Iowa Code chapter 692A despite the fact that his lascivious conduct with a minor conviction was on appeal.

Course of Proceedings and Disposition: On October 12, 2015, Maxwell registered with the Iowa Department of Public Safety [Department or DPS] as a sex offender based upon his Madison County conviction for violating Iowa Code section 709.14 – lascivious conduct with a minor. (Stipulation of Facts [SOF] at ¶ 9; Exhibit 8 (Sex Offender Registration); App. 23, 38-39). Maxwell subsequently submitted an application for determination to the Department seeking verification of his duty to register

while his criminal case was on appeal. (SOF at ¶ 16; Exhibit 10 (Application for Determination); App. 23, 46-47). On December 30, 2015, Commissioner of Public Safety Roxann M. Ryan issued a written determination finding that Maxwell was required to immediately register as a sex offender due to his lascivious conduct conviction because his conviction had yet to be overturned or otherwise set aside on appeal. (Supplement to SOF at ¶ 1; Exhibit 11 (Decision of Determination); App. 65, 66).

In the interim, Maxwell had filed for judicial review. (*See generally* Petition; App. 1-6). On April 7, 2016, the District Court affirmed the Department's determination that Maxwell was required by Iowa law to register as a sex offender during the pendency of his criminal appeal. (Order re: Petition for Judicial Review [4/7/2016 Order]; App. 76-86). Maxwell subsequently filed a motion seeking enlargement or amendment and reconsideration of the District Court's ruling. (Motion to Enlarge; App. 87-91).

The District Court entered an amended order on June 29, 2016 reaffirming its earlier conclusion that Maxwell was required to immediately register as a sex offender. (Order re: Motion to Enlarge or Amend Findings

[6/26/2016 Order]; App. 96-103). The Court specifically found that Iowa Code section 692A.103(1)(c) mandated Maxwell's immediate registration because his posting of an appeal bond "released" him from his 120-day term of incarceration. (6/26/2016 Order at pp. 6-7; *see* 4/7/2016 Order at pp. 6-10; App. 101-02, 81-85).

The Court denied Maxwell's second motion to enlarge or amend findings on July 26, 2016. (Second Motion to Enlarge; Order re: Second Motion to Enlarge or Amend; App. 104-07, 108-09). Maxwell now appeals the District Court's judicial review ruling as amended. (Notice of Appeal; App. 110-11).

Statement of Facts: On May 11, 2015, Madison County Judge Gary G. Kimes found Maxwell guilty of engaging in lascivious conduct with a minor in violation of Iowa Code section 709.14. (*See* SOF at ¶ 3; Exhibit 1 (Verdict); App. 22, 25-26). Lascivious conduct with a minor is an enumerated offense for which registration as a sex offender is required under Iowa Code chapter 692A. *See* Iowa Code § 692A.102(1)(b)(10) (2016). The Court sentenced Maxwell on August 18, 2015 to a one-year term of incarceration, all but 120 days suspended, followed by a two-year term of probation. (SOF at ¶ 4; Exhibit 2 (Judgment and Sentence);

App. 22, 27-30). A ten-year special sentence was also imposed pursuant to Iowa Code section 903B.2. (*Id.*; App. 22, 27-30). Maxwell subsequently appealed his criminal conviction and posted an appeal bond.<sup>1</sup> (SOF at ¶ 5; Exhibit 3 (Notice of Appeal); Exhibit 4 (Appeal Bond); App. 22, 33).

Counsel for Maxwell subsequently sought clarification from the Fifth Judicial Department of Correctional Services as to whether Maxwell was required to report for probation and to register as a sex offender during the pendency of his criminal appeal. (SOF at ¶ 6; Exhibit 5 (E-mail Correspondence); App. 22, 34). In response, Probation / Parole Officer Stacy Antisdell stated that “everything is on hold since appeal bond was posted.” (SOF Exhibit 5; App. 34).

Through a letter dated September 24, 2015, the Iowa Department of Public Safety – Iowa Sex Offender Registry notified Maxwell of its belief that Maxwell’s criminal appeal did not stay his obligation to register as a sex offender and that he should report to the Madison County Sheriff’s

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<sup>1</sup> The Iowa Court of Appeals affirmed Maxwell’s lascivious conduct conviction on November 9, 2016. *See State v. Maxwell*, No. 15-1392, 2016 WL 6652361 (Iowa Ct. App. Nov. 9, 2016). Maxwell applied for further review of the Court of Appeals’ ruling on November 29, 2016. *See Docket, State v. Maxwell*, No. 15-1392. Exoneration of Maxwell’s appeal bond and implementation of his criminal sentence plausibly moots this matter.

Office to complete registration. (SOF at ¶ 8; Exhibit 7 (DPS Correspondence); App. 23, 37). Maxwell registered as a sex offender on October 12, 2015. (SOF at ¶ 9; Exhibit 8 (Sex Offender Registration); Exhibit 9 (Notification of Registration Requirement); App. 23, 38-39). Maxwell listed his principal residence as Winterset, Iowa. (SOF Exhibit 8 at p. 1; App. 38).

Additional facts will be mentioned in the course of the IRGC's argument as necessary.

## ARGUMENT

### **I. MAXWELL'S PENDING APPEAL OF HIS LASCIVIOUS CONDUCT CONVICTION DID NOT STAY OR OTHERWISE DEFER HIS OBLIGATION TO REGISTER AS A SEX OFFENDER UNDER IOWA CODE CHAPTER 692A.**

Standard of Review: The Court's standard of review is to correct errors of law committed by the district court. *E.g., Houck v. Iowa Bd. of Pharmacy Exam'rs*, 752 N.W.2d 14, 16 (Iowa 2008); *Greenwood Manor v. Iowa Dep't of Pub. Health*, 641 N.W.2d 823, 830 (Iowa 2002). When scrutinizing the propriety of a district court's judicial review ruling, the Court applies the standards of Iowa Code section 17A.19(10) to the



challenged agency action to determine whether its conclusions are the same as those of the district court. *Litterer v. Judge*, 644 N.W.2d 357, 360-61 (Iowa 2002); *see Greenwood Manor*, 641 N.W.2d at 830. Because this case does not arise from the Department’s conduct of a contested case hearing, the Court should apply the scope and standard of review applicable to the review of “other agency action.” *See Greenwood Manor*, 641 N.W.2d at 834.

Maxwell asserts prejudice on the grounds that the Department acted contrary to Iowa Code section 692A.103 and/or improperly applied this code section to the uncontested facts of this case when it determined that Maxwell was required to register as a sex offender while his criminal conviction was on appeal. Reviewing courts are to give appropriate deference to those matters vested by a provision of law in the discretion of the agency. Iowa Code § 17A.19(10)(c), (l) & (m), 17A.19(11); *see, e.g., Renda v. Iowa Civil Rights Comm’n*, 784 N.W.2d 8, 10-14 (Iowa 2010).

Although the Department is vested with a degree of authority to interpret Iowa Code chapter 692A to determine which criminal convictions require registration as a sex offender (*see* Iowa Code §§ 692A.116, 692A.118(3) & (4)), the Department’s interpretation of Iowa Code section

692A.103 – and specifically the word “release” – can be affirmed even upon *de novo* review under the less deferential correction of errors of law standard.<sup>2</sup> See Iowa Code § 17A.19(10)(c); see, e.g., *City of Coralville v. Iowa Utilities Bd.*, 750 N.W.2d 523, 527 (Iowa 2008) (applying Iowa Code section 17A.19(10)(c)). As the agency statutorily designated to determine a sex offender’s registration status, the Department’s application of law to fact is entitled to heightened deference in this matter and may only be reversed if irrational, illogical, or wholly unjustifiable. Iowa Code § 17A.19(10)(m); see Iowa Code § 692A.116 (determination of requirement to register); e.g., *State v. Bullock*, 638 N.W.2d 728, 735 (Iowa 2002) (“the determination of the length of any required registration is an administrative decision initially committed to the Department of Public Safety”).

Ultimately, “[t]he burden of demonstrating the required prejudice and the invalidity of agency action is on the party asserting invalidity.” Iowa Code § 17A.19(8)(a). It is, therefore, Maxwell’s burden to demonstrate that the Department’s determination was entered in violation of applicable law

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<sup>2</sup> If interpretative authority has been clearly vested with the Department, its legal interpretations are entitled to heightened deference and may only be reversed when the interpretation is irrational, illogical, or wholly unjustifiable. Iowa Code § 17A.19(10)(l); e.g., *Houck*, 752 N.W.2d at 16-17.

and prejudiced his rights. *See Hill v. Fleetguard, Inc.*, 705 N.W.2d 665, 671 (Iowa 2005).

Preservation of Error: The question of whether the Department correctly concluded that Maxwell was required to register as a sex offender while his lascivious conduct conviction was on appeal was raised before and decided by the District Court, and is therefore preserved for appellate review. (*See* Petition; 4/7/2016 Order; 6/29/2016 Order; App. 1-6, 96-103).

Argument: The Department correctly determined that Maxwell is required to register under Iowa Code chapter 692A during the pendency of his criminal appeal. The Iowa Sex Offender Registry exists to promote community safety through the dissemination of public information. A person's obligation to register as a sex offender in Iowa is triggered by that person's conviction for an enumerated sex offense coupled with residency, employment, or school attendance within the state.

It is undisputed that Petitioner Maxwell stands convicted of engaging in lascivious conduct with a minor, an enumerated sex offense. Maxwell resides in Madison County. Maxwell is not incarcerated. Rather, Maxwell was released from serving his term of incarceration by the posting of an appeal bond. Accordingly, Maxwell's duty to register as a sex offender

immediately accrued despite the fact that his criminal case was appealed. *See* Iowa Code § 692A.103(1)(c); *In Interest of S.M.M.*, 558 N.W.2d 405 (Iowa 1997). To find otherwise will defeat the public safety purposes for implementing a sex offender registry.

### ***Overview of Sex Offender Registry***

The Department is mandated by law to maintain a central registry of information collected from persons required by Iowa law to register as sex offenders. Iowa Code § 692A.118. Sex offender registration is not a sentencing issue within the purview of a criminal court, but rather is an administrative function delegated to the Department's jurisdiction. *See, e.g., Kruse v. Iowa Dist. Court for Howard County*, 712 N.W.2d 695, 699 (Iowa 2006) (“[I]t is the operative command of the statutes . . . that impose the registration requirement on the convicted party rather than the judgment of the court.”). Thus, all persons convicted of any of the statutorily delineated criminal offenses involving sexual misconduct shall register as sex offenders in the state of Iowa. Iowa Code §§ 692A.102, 692A.103, 692A.106.

Specifically, “[a] person who has been convicted of any sex offense classified as a tier I, tier II, or tier III offense . . . shall register as a sex

offender as provided in this chapter if the offender *resides*, is employed, or attends school in this state.” Iowa Code § 692A.103(1) (emphasis added). Iowa law defines a qualifying “sex offense” within the context of Iowa Code chapter 692A to include “an indictable offense for which a conviction has been entered that is enumerated in section 692A.102 . . . .” Iowa Code § 692A.101(27). “A sex offender shall appear in person to register with the sheriff of each county where the offender has a residence, maintains employment, or is in attendance as a student, within five business days of being required to register under section 692A.103 . . . .” Iowa Code § 692A.104(1).

For registry purposes, a person stands “convicted” of a sex offense if he “is found guilty of, pleads guilty to, or is sentenced or adjudicated delinquent for an act which is an indictable offense in this state or in another jurisdiction . . . . ‘Convicted’ does not mean a plea, sentence, adjudication, deferred sentence, or deferred judgment which has been reversed or otherwise set aside.” Iowa Code § 692A.101(7). In most cases, a person convicted of a qualifying sex offense is required to register for a period of ten years that commences alternatively:

- a. From the date of placement on probation.
- b. From the date of release on parole or work release.
- c. From the date of release from incarceration.
- ....
- f. From the date of conviction for a sex offense requiring registration if probation, incarceration, or placement ordered pursuant to section 232.52 in a juvenile facility is not included in the sentencing, order, or decree of the court . . . .

Iowa Code §§ 692A.103(1), 692A.106(1). A person is not required to register as a sex offender while incarcerated. Iowa Code § 692A.103(2).

A person may petition the Iowa Department of Public Safety for a determination as to whether that person is obligated under Iowa law to register as a sex offender. Iowa Code § 692A.116; *see also* 661 Iowa Admin. Code § 83.3(5). Within 90 days of the filing of such a request and receipt of all required supporting documents, the Department is to determine whether that person was in fact convicted of a registrable sex offense. Iowa Code § 692A.116; 661 Iowa Admin. Code § 83.3(6). The Iowa Legislature has delegated no authority or discretion to the Department to waive or otherwise ignore the statutory registration requirements. Thus, as the Legislature has mandated, all persons convicted of a qualifying sex offense

shall register as a sex offender for the time period specified by law. Iowa Code §§ 692A.103 & 104.

***Registration Intended to Protect, Not Punish***

The goal of any statutory interpretation is to give effect to the legislative intent of a statute. *E.g., Ackelson v. Manley Toy Direct, L.L.C.*, 832 N.W.2d 678, 687 (Iowa 2013); *Andover Volunteer Fire Dep't v. Grinnell Mut. Reinsurance Co.*, 787 N.W.2d 75, 81 (Iowa 2010); *State v. Schultz*, 604 N.W.2d 60, 62 (Iowa 1999). An interpretation should be sought that “will advance, rather than defeat, the statute’s purpose.” *Schultz*, 604 N.W.2d at 62.

This Court has held that the purpose of Iowa Code chapter 692A is clear: “to require registration of sex offenders and thereby protect society from those who because of probation, parole, *or other release* are given access to members of the public.” *In Interest of S.M.M.*, 558 N.W.2d at 408 (emphasis added); *see also State v. Iowa Dist. Court ex rel. Story County*, 843 N.W.2d 76, 81 (Iowa 2014) (“the purpose of the registry is protection of the health and safety of individuals, and particularly children, from individuals who, by virtue of probation, parole, *or other release*, have been given access to members of the public”); *State v. Pickens*, 558 N.W.2d 396,

400 (Iowa 1997) (“the statute was motivated by concern for public safety, not to increase the punishment”). Thus, Iowa Code chapter 692A’s registration requirements were not enacted to punish perpetrators, but to promote public safety through the dissemination of information. *See, e.g., Pickens*, 558 N.W.2d at 400; *In Interest of S.M.M.*, 558 N.W.2d at 408.

Therefore, any alleged ambiguities in Iowa’s sex offender law or its application to a particular offender should be resolved in favor of furthering public safety by requiring continued registration. Iowa Code § 4.4(5) (“Public interest is favored over any private interest”); *see Teamsters Local Union No. 421 v. City of Dubuque*, 706 N.W.2d 709, 717 (Iowa 2005).

Maxwell cites to *State v. Reiter*, 601 N.W.2d 372 (Iowa 1999), for the proposition that Iowa Code chapter 692A must be strictly construed in its entirety because certain violations by registered sex offenders are subject to criminal liability. The Court in *Reiter*, however, only found that the specific penalty clauses of the sex offender statute are to be strictly construed. *See Reiter*, 601 N.W.2d at 373-74. The *Reiter* Court did not find that registration requirements in general were to be strictly construed or that the absence of criminal liability served to excuse a sex offender from fulfilling otherwise mandated registration activities. *Id.* Regardless, even a criminal



statute should not be so restrictively interpreted as to undercut its obvious public purpose. *E.g.*, *State v. Hearn*, 797 N.W.2d 577, 587 (Iowa 2011); *State v. Nelson*, 178 N.W.2d 434, 437 (Iowa 1970) (“[T]hough penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the Legislature.”).

### ***Convicted of a Registrable Offense***

Registration with the State’s sex offender registry may be based solely upon the fact of a person’s criminal conviction of a requisite sex offense. *See Connecticut Dep’t of Public Safety v. Doe*, 538 U.S. 1, 123 S. Ct. 1160 (2003). It is uncontested that Maxwell was found guilty by a judge of engaging in lascivious conduct with a minor in violation of Iowa Code section 709.14. (*See* SOF at ¶ 3; App. 22); *see also State v. Maxwell*, No. 15-1392, 2016 WL 6652361 (Iowa Ct. App. Nov. 9, 2016). Iowa law designates lascivious conduct with a minor in violation of section 709.14 as a tier II offense for sex offender registry purposes. Iowa Code § 692A.102(1)(b)(10).

A judicial finding of guilt constitutes a conviction under Iowa Code chapter 692A. *See* Iowa Code § 692A.101(7) (defining “convicted”). The Legislature recognized that some criminal convictions may be successfully

appealed when it clarified that a conviction for sex offender registration purposes does not include a finding of guilt that has been “reversed or otherwise set aside.” *Id.* Thus, until such time as his conviction for lascivious conduct is reversed or set aside, Maxwell stands convicted of a registrable sex offense and he is obligated to register as provided in Iowa Code chapter 692A. *See* Iowa Code §§ 692A.101(7), 692A.102(1)(b)(10), 692A.103(1). The Iowa Code does not create any exceptions for persons whose criminal cases are pending on appeal.

### ***Immediate Obligation to Register***

Iowa Code section 692A.103 identifies who is required to register as a sex offender in the state of Iowa and the date upon which credit toward fulfilling that obligation commences. Specifically, any person convicted of a registrable sex offense who resides in Iowa must register. Iowa Code § 692A.103. Maxwell’s duty to register as a sex offender accrued immediately upon his lascivious conduct conviction as he was already an Iowa resident. As recognized by the District Court, only incarceration would excuse an adult offender like Maxwell from immediately registering. (6/29/2016 Order at p. 7; App. 102); *see* Iowa Code §§ 692A.103(2); 692A.104(1).

Maxwell argues that because none of the events listed in Iowa Code section 692A.103(1)(a) - (f) have yet occurred, he is not obligated to report and register as a sex offender.<sup>3</sup> Even if subsections (a) - (f) of section 692A.103(1) are to be considered triggers upon which the duty to register commences, the District Court correctly held that Maxwell was released – at least temporarily – from his obligation to report to and serve a term of incarceration by his posting of an appeal bond. (4/7/2016 Order at pp. 6-9; 6/29/2016 Order at p. 7; App. 81-84, 102). Consequently, Iowa Code section 692A.103(1)(c) did in fact trigger his duty to immediately register as a sex offender. *Id.*

This Court has already clarified what the word “release” denotes within the context of Iowa Code chapter 692A. *See In Interest of S.M.M.*, 558 N.W.2d at 408. The Court specifically held that in applying Iowa Code chapter 692A’s registration mandate, “release” is “simply the antithesis of

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<sup>3</sup> Reading Iowa Code chapter 692A in its full context, the events delineated in Iowa Code section 692A.103(1) could be read as simply the dates from which to start counting the ten-year or longer term an offender is required to register. *See State v. Edouard*, 854 N.W.2d 421, 435 (Iowa 2014) (“Statutes must be read in their entirety”); *Andover Volunteer Fire Dep’t*, 787 N.W.2d at 82 (“The context of a statute is an important consideration in the search for legislative intent”). Conviction and residency are the events that actually give rise to Maxwell’s registration duty.

incarceration.” *In Interest of S.M.M.*, 558 N.W.2d at 408. Thus, the entry of any court order or other judicial action that allows a convicted sex offender to “avoid physical confinement” operates to “release” that offender from incarceration for purposes of applying Iowa Code section 692A.103(1)(c). *See In Interest of S.M.M.*, 558 N.W.2d at 408. In view of this established understanding of the use of the word release in Iowa Code section 692A.103(1), this Court should reject, as it did in *In Interest of S.M.M.*, Maxwell’s argument that he cannot be released from incarceration – a form of custody – before he actually commences serving a jail term. *In Interest of S.M.M.*, 558 N.W.2d at 407-08.

Although *In Interest of S.M.M.* came down in 1997, the Legislature has not deemed it necessary to define or clarify the use of the word release within the context of Iowa Code chapter 692A’s registration mandate. *See Ackelson, L.L.C.*, 832 N.W.2d at 688 (“[W]e presume the legislature is aware of our cases that interpret its statutes.”). Even though Iowa Code chapter 692A as a whole was substantially amended in 2009, the relevant text of the statutory language interpreted by the Court in *In Interest of S.M.M.* was not materially altered. *Compare* Iowa Code § 692A.2(1) (1997) *with* Iowa Code § 692A.113(1) (2016); *see generally* 2009 Iowa Acts

ch. 119 (rewriting Iowa Code chapter 692A). Thus, the Legislature has acquiesced in the Court’s earlier interpretation of when the duty to register as a sex offender accrues under Iowa Code chapter 692A, and this Court should accordingly decline Maxwell’s invitation to revisit its holding in *In Interest of S.M.M. See Ackelson, L.L.C.*, 832 N.W.2d at 688 (“When many years pass following such a case without a legislative response, we assume the legislature has acquiesced in our interpretation.”).

Alternatively, if the posting of an appeal bond stayed Maxwell’s sentence in its entirety as he alleges, Maxwell would be subject to the criteria enumerated under Iowa Code section 692A.103(1)(f).<sup>4</sup> The effect of

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<sup>4</sup> This alternative provides that the mandated period of registration shall be measured:

- f. From the date of conviction for a sex offense requiring registration if probation, incarceration, or placement ordered pursuant to section 232.52 in a juvenile facility is not included in the sentencing, order, or decree of the court . . . .

Iowa Code § 692A.103(1)(f).

Although the District Court ruled that Iowa Code section 692A.103(1)(f) was inapplicable to Maxwell’s situation, this Court may affirm for any reason urged below. *E.g., King v. State*, 818 N.W.2d 1, 11 (Iowa 2012) (“[W]e will uphold a district court ruling on a ground other than the one upon which the district court relied provided the ground was urged in that court.”). Contrary to the District Court’s ruling, this code subsection does not appear on its face to be limited solely to juvenile

such a stay would arguably render the sentencing order a temporary nullity and unenforceable at this time. Thus, Maxwell would not be subject to a sentencing order imposing probation or incarceration and he would need to register immediately upon conviction. *See* Iowa Code § 692A.103(1)(f).

Further support for an interpretation that Maxwell is subject to immediate registration can be gleaned from the statutory instruction that when a sex offender “is convicted but not incarcerated” – as was Maxwell – the court “shall verify that the person has completed initial or subsequent registration forms, and accept the forms on behalf of the sheriff of the county of registration.” Iowa Code § 692A.109(2)(a). The Legislature thus intended that persons like Maxwell who are convicted, but avoid immediate incarceration, register nonetheless. Maxwell’s interpretation that a convicted sex offender’s posting of an appeal bond indefinitely defers registration would render this instruction to the district court meaningless in many instances.

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offenders. (*See* 6/29/2016 Order at p.7; App. 102). Rather, the application of this code subsection is premised upon any “conviction for a sex offense requiring registration . . . .” *See* Iowa Code § 692A.103(1)(f). The statutory definition of “conviction” encompasses much more than juvenile adjudications. *See* Iowa Code § 692A.101(7) (defining “convicted”).

Maxwell's constrained reading of chapter 692A's registration triggers could lead to inconsistent applications and absurd results. Under Maxwell's interpretation, a person appealing a conviction for a sex offense would nonetheless have to register as a sex offender if they were sentenced to time served without further incarceration or received a deferred judgment without formal probation. Yet a person like Maxwell would escape immediate registration despite being convicted of a potentially more egregious offense that resulted in an order of incarceration. Equally troubling under Maxwell's interpretation is the possibility that a person of financial means could avoid sex offender registration during his criminal appeal, but an indigent offender would face immediate registration due solely to his inability to post an appeal bond. The Department's common-sense interpretation fairly and equally applies to all convicted sex offenders who are released pending appeals of their convictions. *See, e.g., Teamsters Local Union No. 421*, 706 N.W.2d at 717 (Reinforcing that courts should strive for common-sense statutory interpretations that avoid absurd results); *State v. Petithory*, 702 N.W.2d 854, 859 (Iowa 2005).

Lastly, the Legislature has clearly exempted all sex offenders from registering while they are incarcerated. *See Iowa Code § 692A.103(2)*.

Juvenile offenders may also have their registration duty deferred, modified, or even waived by a juvenile court judge. *See* Iowa Code § 692A.103(3) & (5). As the District Court recognized, no similar statutory exceptions or remedies exist for a sex offender who has been released on appeal bond. (6/29/2016 Order at p. 7; App. 102). The Legislature’s failure to articulate such exemptions for persons pursuing appeals of their convictions evidences an intention that all adult sex offenders who have access to the public, whether it be through probation, parole, or any other type of release, must register under Iowa Code chapter 692A. *See, e.g., State v. Beach*, 630 N.W.2d 598, 600 (Iowa 2001) (“Intent may be expressed by the omission, as well as the inclusion, of statutory terms. Put another way, the express mention of one thing implies the exclusion of other things not specifically mentioned.”).

Iowa Code chapter 692A’s general registration requirements are not penal statutes that must be narrowly construed in a defendant’s favor. *See Pickens*, 558 N.W.2d at 400. Rather, as a public safety statute, Iowa Code chapter 692A should not be interpreted “too narrowly so as to undermine or jeopardize its purpose.” *Teamsters Local Union No. 421*, 706 N.W.2d at 717 (“we interpret statutes consistent with their purpose”). Allowing



persons convicted of committing sex crimes to escape sex offender registration while they live and work within Iowa's communities merely because they were able to defer pending incarceration through the posting of an appeal bond would defeat the public safety initiative justifying the creation of a sex offender registry. *See, e.g., State v. Hagedorn*, 679 N.W.2d 666, 669 (Iowa 2004); *State v. Peck*, 539 N.W.2d 170, 173 (Iowa 1995) (“criminal statutes are to be construed in the defendant’s favor, but they must be construed reasonably and in such a way as to not defeat their plain purpose.”). Public safety is particularly vulnerable if an offender out on appeal bond lacks meaningful supervision by corrections personnel.

The Department accordingly committed no errors in finding that Maxwell’s obligation to register as a sex offender commenced immediately upon conviction.

### **CONCLUSION**

The Iowa Department of Public Safety correctly ruled that Brian James Maxwell must register as a sex offender during the pendency of his criminal appeal. Such an interpretation and application is consistent with the statutory language used and bolsters the Legislature’s goal of protecting the public by disseminating information about persons living or working in

the community who have demonstrated through their actions a propensity to engage in crimes against children.

The District Court's ruling upholding the Department's determination that Maxwell's obligation to register as a sex offender commenced immediately upon his lascivious conduct conviction should accordingly be affirmed.

### **REQUEST FOR ORAL ARGUMENT**

Appellee Iowa Department of Public Safety requests that it be heard at the time of final submission of this matter.

### **CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 4,664 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Corel WordPerfect version 12.0 in 14-point, Times New Roman font.

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