

# OFFICE OF THE ATTORNEY GENERAL

96-00259



JEFF SESSIONS  
ATTORNEY GENERAL  
STATE OF ALABAMA

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ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (204) 242-7300

THIS OPINION HAS BEEN  
OVERRULED BY ACT NO.  
98-489.

Honorable Randy Hinshaw  
Member, House of Representatives  
218 Constitution Drive  
Meridianville, AL 35759

Community Notification Act  
- Crimes and Offenses -  
Sex Offenders - Notices

A criminal sex offender  
may not establish a legal  
residence with any child  
18 years old or younger.

Dear Representative Hinshaw:

This opinion is issued in response to your request  
for an opinion from the Attorney General.

## QUESTION

Does the Community Notification Act  
prohibit a criminal sex offender from  
residing with a minor child who is a  
relative?

## FACTS AND ANALYSIS

Alabama's Community Notification Act prohibits a  
released sex crime offender from establishing a legal  
residence where a person 18 years or younger resides. Act  
No. 96-793, Section 3.(d):

"No released sex crime offender  
shall be allowed to establish a legal  
residence where a person 18 years of

age or younger resides, except as elsewhere provided by law."

First, as a general rule, we act under the presumption that a legislative act is constitutional. It is a fundamental rule of statutory construction that the legislative intent as it is expressed in the statute is to be ascertained and effectuated. Darks Dairy, Inc. v. Alabama Dairy Commission, et al., 367 So.2d 1378 (Ala. 1979). The intent of the statute is to be given effect and, if the language is clear and unambiguous, then the statute is to be given its clear meaning. Beavers v. County of Walker, 645 So.2d 1365 (Ala. 1994); Attorney General's opinion to William E. Shinn, dated June 3, 1992, A.G. No. 92-00294. In applying the clear meaning of a statute, one must look at its entire statutory scheme rather than at isolated phrases or clauses. Ex parte Employee's Retirement Systems of Alabama, 644 So.2d 943 (Ala. 1994). The reason and necessity for the statute is also relevant. Pace v. Armstrong World Industries, Inc., 578 So.2d 281 (Ala. 1991).

In applying these rules of construction to the Community Notification Act, we acknowledge first that the purpose of the Act is to require any imprisoned criminal sex offender to declare in writing the address at which he or she will reside upon release from incarceration. The residence declared by the sex offender before he is released from prison becomes his legal residence for the purposes of this Act. The residence cannot be within 1,000 feet of any public school, private school, day care center, or any other child care facility. The residence cannot be within 1,000 feet of any of the sex offender's former victims.

The Act provides that the legal residence cannot be at a place where a person 18 years of age or younger resides. There is no exception from this prohibition for children who are relatives or over whom the sex offender has custody.

The phrase "except as elsewhere provided by law" might be interpreted by a court under some unforeseen, extraordinary, and even improbable circumstances to authorize a judicial determination and court order as an exception to the residency prohibition. However, this phrase is not a statutory exemption for relatives or for any other child over whom the sex offender has custody. When read in its entirety, the Community Notification Act mandates that the community be warned of the presence of

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criminal sex offenders and prohibits sex offenders from living with children under the age of 18. The legislature did not exclude the offender's own children or relatives from its protection. After researching the issue, we find no other law to the contrary.

CONCLUSION


A criminal sex offender may not establish a legal residence with any child 18 years old or younger.

I hope this sufficiently answers your question. If our office can be of further assistance, please contact Jane LeCroy Brannan of my staff.

Sincerely,

JEFF SESSIONS  
Attorney General

By:



JAMES R. SOLOMON, JR.  
Chief, Opinions Division

JS/JLB/jho  
H6.96/OP