

OFFICE OF THE ATTORNEY GENERAL

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Honorable William C. Young
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Community Notification Act
- Sex Offenders - Notice -
Pardons and Paroles

The Community Notification Act is not expressly retroactive but requires a previously convicted sex offender to register if he intends to change his legal residence.

The age provisions found in the definitions of the Community Notification Act apply to incest only.

The legality of the residence is determined at the time it is established.

Nothing in the Community Notification Act requires a person to give up a child for adoption.

Legal residency is established by the intent to permanently reside and other circumstances.

A convicted sex offender may not establish a legal residence within 1,000 feet of a day care center.

The courts will defer to the reasonable interpretation of a statute by the governmental agencies and law enforcement officials who are charged with the responsibility of administering the provisions thereof. The Board should adopt policies which comply with the intent of Act No. 96-793.

Dear Mr. Young:

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

QUESTION 1

Is the Community Notification Act retroactive? If not, is any part of it retroactive? (Page 6, beginning at line 4.)

FACTS AND ANALYSIS

The entire portion of the Act to which reference is made by this question is as follows:

"(4) Any person convicted of any sex crime against any person, who resides within the geographical boundaries of the state, shall always be subject to the law requiring that other residents living in proximity to the offender be notified.

"(A) At the time offenders who were released prior to the implementation of this notification law

register their residence as required under other provisions of the law, the notification procedures required of chiefs of police and sheriffs shall apply in the same manner as if the offender were being released from incarceration, with the exception that notification of residents living in proximity to the offender must be notified within 48 hours of the registration of the offender.

"(B) Any released sex crime offender for whom the notification requirements of this act apply, shall give 30 days written notice of his or her intent to change his or her legal residence to the sheriff of the county in which he or she resides, and to the sheriff of the county to which he or she plans to move if such are different. The notice of intent to move shall be on a form provided by the sheriff and shall include all the necessary and relevant information required by this act. The sheriff shall transfer the information to the appropriate persons responsible for communicating this information to the proper law enforcement officials and to residents who will be living in proximity to the offender."

Although the Act is therefore not expressly retroactive, it operates now and in the future on persons whose status is affected by prior events, but it does nothing to impact on or affect such status. The convicted sex offender who presently resides in Alabama but who was convicted of an enumerated offense prior to the enactment of this law must notify the chief of police or sheriff of his intention to change his legal residence only when he moves. Until that time, he is not required by any provision of the Act to register with law enforcement officials. Thus, the Act is not an additional penalty but applies only to previously convicted offenders who change residences, and who are now required by law to register as sex offenders upon change of residence.

CONCLUSION

The Community Notification Act is not retroactive but requires a previously convicted sex offender to register if he intends to change his legal residence.

QUESTION 2

Do the age provisions under the definition of sex offender apply to all the offenses listed or only to incest?

FACTS AND ANALYSIS

The Community Notification Act, designated as Act No. 96-793, defines the term "criminal sex offender" for the purposes of the Act:

"Establishing the Community Notification Act; requiring the notification to law enforcement officers and certain residents of the state of the intended residence of a convicted sex offender; providing for the procedure and method of notification, and providing penalties for violations. . . .

"Section 1. Title of act.

"This act shall be known and cited as the Community Notification Act.

"Section 2. Notification of Law Enforcement Officials When Convicted Sex Crime Offender Establishes Residence in Alabama Subsequent to Incarceration

"(a) For purposes of this act, 'criminal sex offender' shall mean a person convicted of any of the following criminal sexual offenses: Rape in the first or second degree; sodomy in the first or second degree; sexual torture; sexual abuse; or incest when the offender

is 20 years old or older and the victim
is 18 years old or younger. . . ."

It is the opinion of the Attorney General that the age limitation applies only to the offense of incest. In reaching this conclusion, we were guided by the generally accepted rules of statutory construction, interpretation, and operation. It is axiomatic that the plain language of a statute controls, except in those rare cases in which a literal application of the statute will produce results demonstrably at odds with the intentions of the drafters. In re Haas, 48 F.3d 1153 (11th Cir. 1995). The fundamental rule of construction is to ascertain and give effect to the intent of the legislature in enacting the statute. Hines v. Riverside Chevrolet-Olds, Inc., 655 So.2d 909, reh. den. (Ala. 1994). The intent of the legislature may be discerned from the language of the Act, the reason and necessity for the Act, and the goal sought to be obtained. The "last antecedent" doctrine recognized by Alabama courts applies relative and qualifying words, phrases, and clauses of a statute to the words or phrase immediately preceding, and not to others more remote. White v. Knight, 424 So.2d 566 (Ala. 1982). Therefore, it is the opinion of the Attorney General that the age-limiting phrase following the word "incest" applies only to the offense of incest and not to the other offenses listed.

We note that the Registration of Felons Act, Code of Alabama 1975, § 13A-11-180, et al., requires any person who has been convicted more than twice of a felony to register with the county sheriff within 24 hours after his arrival in the county. Further, Alabama's Registration of Sex Offenders Act, Code of Alabama 1975, § 13A-11-200, requires persons convicted of certain offenses to register with the sheriff and with the Department of Public Safety.

CONCLUSION

The age limitations apply to the offense of incest only.

QUESTION 3

When the requirement for 30 days' notice prior to a move (page 6, line 14) conflicts with other prohibitions concerning residence (such as if a child were born into his or her household) which takes precedence?

FACTS AND ANALYSIS

The logical interpretation of the laws here is to limit the meaning of the word "establish" to its usual and ordinary meaning. Such an interpretation of the legality of the residence is determined at the time the offender moves into the residence. If the residence is legal and there is compliance with the Act at the time the offender moves in, the residence remains legal.

CONCLUSION

The legality of the residence is determined at the time it is established.

QUESTION 4

If a female sexual criminal becomes pregnant and gives birth, must she be required to give up the child for adoption?

FACTS AND ANALYSIS

There is no provision in this law requiring any person to give up a child for adoption.

CONCLUSION

Nothing in the Community Notification Act requires a person to give up a child for adoption.

QUESTION 5

Would a halfway house or hospital or treatment facility be considered a legal residence?

FACTS AND ANALYSIS

The Act does not define the term "legal residence." However, in prior opinions the Attorney General has determined that the question of legal residency is a factual question based upon the surrounding circumstances of each individual case. The ultimate question in determining residency is where the person evidences an intention to reside and where he actually resides. Attorney General's opinion to Steve Clouse, dated January 9, 1996, A.G. No. 96-00088.

In Osborn v. O'Barr, 401 So.2d 773 (Ala. 1981), the Supreme Court discussed domicile and residency and opined that in order to acquire a domicile of choice there must be both an abandonment of the former domicile with no present intention of return and the establishment of another place of residence with the intention to remain permanently or at least for an unlimited time. Temporary absences from one's residence without the intent to abandon the former residence do not forfeit the domicile. Attorney General's opinion to Ted Boyett, dated June 18, 1993, A.G. No. 93-00258.

While these principles do not absolutely preclude the designation of a halfway house or a treatment facility as a legal residence, the intrinsic nature of each of these facilities designates it as only a temporary destination. It is therefore safe to conclude that, as a general rule, neither a halfway house nor a treatment facility would be a legal residence.

CONCLUSION

Legal residency is established by the intent to permanently reside.

QUESTION 6

What if an offender has resided in a residence and a day care center moves in next door? What if he owns the residence?

FACTS AND ANALYSIS

The Community Notification Act provides:

"(b) No released sex crime offender shall be allowed to establish a legal residence within 1,000 feet of any public school, private school, day care center, or any other child care facility. . . .

"(e) Violation of any residency restriction by a released sex crime offender shall constitute a Class A misdemeanor."

An ordinance or statute must be sufficiently clear to give reasonable notice of prohibited conduct and to apprise the judge and jury of proper standards for determining guilt. Statutes imposing criminal sanctions must be framed so that those who are to administer it and those to whom it is administered may know what standard of conduct is intended to be required. Bolin v. State, 96 So.2d 582, 266 Ala. 256, opinion conformed to 96 So.2d 592, 39 Ala.App. 161 (Ala. 1951). The intent of the legislature must appear on the face of a criminal statute, which must be strictly construed, as a person is not required to speculate as to the meaning of a statute. The statute must set up sufficient guidance to those who would be law abiding and must advise the defendant of the nature and cause of the accusation he is called upon to answer and must guide the court in the law's enforcement. Kahalley v. State, 254 Ala. 482, 48 So.2d 794 (Ala. 1950). We must, then, strictly construe the provisions of the statute here which proscribe conduct and impose criminal sanctions upon violations of defined standards.

Nothing in the Act would require a convicted sex offender to change his legal residence if a day care center moved in next door. The Act simply prohibits him from "establishing a legal residence" at such place. It

is the opinion of the Attorney General that, in a hypothetical fact situation such as the one posed here, the courts would not uphold a conviction obtained on these facts.

CONCLUSION

A convicted sex offender may not establish a legal residence within 1,000 feet of a day care center.

QUESTIONS 7 AND 8

May we continue to release parolees prior to thirty days' notice?

Will sheriff's office, police department change any notification information -- such as employment information, etc.?

FACTS AND ANALYSIS

These questions reflect the concern evidenced by law enforcement officials throughout the state as they endeavor to implement the provisions of this Act. It is important to recognize that the courts are required to defer to an agency's reasonable interpretation of a statute with which it is charged with administering. An agency's interpretation of a statute will be deemed reasonable and controlling unless it is arbitrary, capricious, or manifestly contrary to the clear meaning of the statute. Dawson v. Scott, 50 F.3d 884 (11th Cir. 1995). When possible a court enforces the plain language of a statute, except where doing so would produce an absurd result. Jones Truck Lines, Inc., v. Price Rubber Corp., 182 B.R. 901 (M.D. Ala. 1995). Thus, the administrative actions of law enforcement officials and agencies will be upheld by the courts as long as the actions are reasonable. Policies may be implemented by local law enforcement officials and agencies in order to comply with and implement the provisions of the Act. Attorney General's opinion to J. Carlton Smith, dated January 17, 1996, A.G. No. 96-00100.

The Board of Pardons and Paroles may continue to designate the date an inmate is to be released in the

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manner in which that decision is presently being made as nothing in the Community Notification Act applies directly to the Board of Pardons and Paroles. The Board should, to comply with the intent of Act No. 96-793, adopt internal policies consistent with allowing the Department of Corrections a 30-day period during which to notify law enforcement officials of a convicted sex offender's legal residence. We note the possibility of parole as a situation which could place a released inmate in immediate violation of the 30 days' notice requirement and suggest that the Board of Pardons and Paroles implement a policy or regulation which would prohibit the release of any person covered by this Act from being released prior to his compliance with the 30 days' notice requirement. Similarly, sheriffs and chiefs of police may adopt policies consistent with this Act by which to best administer it.

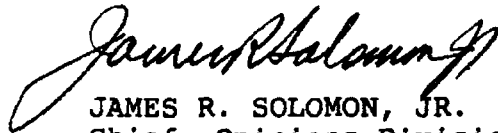
CONCLUSION

The courts will defer to the reasonable interpretation of a statute by the governmental agencies and law enforcement officials who are charged with administering the provisions thereof. The Board should adopt policies which comply with the intent of Act No. 96-793.

I hope this sufficiently answers your questions. 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

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