

OFFICE OF THE ATTORNEY GENERAL



97-00255

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ATTORNEY GENERAL
STATE OF ALABAMA

AUG 11 1997

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

Honorable Samuel L. Russell
District Attorney
Tenth Judicial Circuit -
Bessemer Division
Courthouse Annex
Bessemer, Alabama 35020-4907

Community Notification Act -
Sex Offenders - Retroactive
Provisions

Community Notification Act
is not expressly retroactive.
Convicted sex offender who
was convicted of offense
prior to enactment of this
law must notify the chief of
police or sheriff of his
intention to change his
legal residence when he
moves.

A convicted sex offender
may not establish as his
legal residence a home in
which children under the
age of 18 reside, regard-
less of marital status.

ALA. CODE §§ 13A-11-183,
13A-11-200, and 15-20-22 (1975)
each apply to the registration
of convicted sex offenders.

Dear Mr. Russell:

This opinion of the Attorney General is issued in response to your request.

QUESTION 1

Does the Community Notification Act apply retroactively to convicted sex offenders that were released prior to the enactment of the law?

FACTS AND ANALYSIS

Your request indicates that a convicted sex offender, released in February 1995, registered with the Jefferson County Sheriff's Department within 30 days of his release as required by ALA. CODE § 13A-11-200 (1975) (all cites are to the CODE). He registered an address in Birmingham but later moved to another location in the county in December 1996. At that time, he did not inform the Sheriff's Department of his relocation. He has since married a woman who has custody of her two children (both of whom are under the age of 18). On July 1, 1997, the convicted sex offender registered again with the Sheriff's Department, and revealed that he is living with his wife and her two children.

The Community Notification Act, found at § 15-20-21, et seq., requires that criminal sex offenders must, upon release from prison, reside for a minimum of 30 days at the address stated in his or her declaration of intent to the prison warden. The Act also states, in pertinent part:

If a criminal sex offender transfers his or her residence to a different location after the minimum 30-day period, all other provisions for reporting the move shall apply. Ala. Code § 15-20-21(d).

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. Ala. Code § 15-20-22(b).

Any released sex crime offender for whom the notification requirements of this article 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. Ala. Code § 15-20-22(d).

The issue of whether the Community Notification Act is retroactive has been addressed in a previous Attorney General's opinion. This Office has concluded that the Act is not expressly retroactive. Attorney General's Opinion to William C. Young, A. G. No. 96-00320, dated September 20, 1996. "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 [Community Notification] 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." Id.

CONCLUSION

The Community Notification Act is not expressly retroactive. However, 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 when he moves. Until that time, he is not required by any provision of the Community Notification Act to register with law enforcement officials.

QUESTION 2

Under § 15-20-22(g), if the mother has legal custody of her children that are under 18 years of age and she marries a convicted sex offender, would this be legal as "elsewhere provided by law" since all parties have a legal right to live in the same household?

FACTS AND ANALYSIS

The CODE section pertinent to your question is as follows:

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.

Section 15-20-22(g).

This issue has been partially addressed in two previous Attorney General's opinions. In the first, this Office concluded that Alabama's Community Notification Act prohibits a released sex crime offender from establishing a legal residence where a person 18 years or younger resides. Attorney General's opinion to Randy Hinshaw, A. G. No. 96-00259, dated July 12, 1996. In part, that opinion stated:

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 Act provides that the legal residence cannot be 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 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.

Id.

In the second opinion which has addressed this issue, this Office again concluded that a criminal sex offender may not establish a legal residence with any child 18 years old or younger. "The Community Notification Act provides that the legal residence of a criminal sex offender cannot be at a place where a person 18 years of age or younger resides. It is the clear intent of the law that a criminal sex offender may not be released from prison into a home with his own children. There is no exception in the law for children who are related to the offender or over whom the offender has custody. There is no exception in the law for stepchildren." Attorney General's Opinion to Randy Hinshaw, A. G. No. 96-00285, dated August 5, 1996.

If the law contains no exceptions for the offender to live with his own children, those who are related to him, or those over which he has custody, it would certainly follow that no exemptions exist for a criminal sexual offender to cohabitate with the children of a woman who he has married.

CONCLUSION

A convicted sex offender may not establish as his legal residence a home in which children under the age of 18 reside, regardless of marital status.

QUESTION 3

If a convicted sex offender moves within the same county, under § 15-20-22, does § 13A-11-183 apply or would § 13A-11-200 apply?

FACTS AND ANALYSIS

Section 13A-11-183 states:

It shall be the duty of any person who has registered pursuant to this article and who changes his address or place of residence in the county, to inform the sheriff of such change within 24 hours after the same has been made, which shall be noted in the aforesaid book of registration and also on the registration card.

In addition, § 13A-11-200 states:

If any person . . . residing in Alabama, has heretofore been convicted, or shall be convicted in any state or municipal court in Alabama or so convicted in another state in any court having jurisdiction similar to the jurisdiction of state and municipal courts in Alabama for any of the offenses hereinafter enumerated, such person shall, upon his or her release from legal custody, register with the sheriff of the county of his or her legal residence within 30 days following such release or within 30 days after September 7, 1967, in case such person was released prior to such date. The offense above referred to are generally any act of sexual perversion involving a member of the same or the opposite sex, or any sexual abuse of any member of the same or the opposite sex or any attempt to commit any

of these acts. . . . Any person having been so convicted shall upon moving his legal residence from one county to another register with the sheriff of the county to which he has moved within 30 days after such removal. It shall be unlawful for a convicted sex offender as described in this article to fail or refuse to register as herein required.

Section 15-20-22(c) reads:

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.

No provision of the Community Notification Act, including § 15-20-22(c), expressly or impliedly repeals the provisions of § 13A-11-183 and § 13A-11-200. The appellate courts of this state have determined that in resolving conflict between statutory provisions, whenever possible, statutes must be construed in pari materia in light of their application to the same general subject matter. Opinion of the Justices No. 334, 599 So.2d 1166, 1168 (Ala. 1992); Bynum v. Campbell, 419 So.2d 1370, 1374 (Ala. 1982).

Applying these rules of statutory construction, it is the opinion of this Office that each of the three sections apply. Section 13A-11-200 requires criminal sex offenders to register with the sheriff of the county of his legal residence within 30 days after release from prison. It also requires that a criminal sex offender must register within 30 days with the sheriff of any county to which he

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or she subsequently moves. Under § 13A-11-183, a criminal sex offender is required to inform the sheriff within 24 hours of any change of residence within the county. Section 15-20-22(c) simply requires that convicted sex offenders who registered their addresses under § 13A-11-183 and § 13A-11-200 be subject to the same community notification policies as those who were released more recently (since the passage of the Community Notification Act).

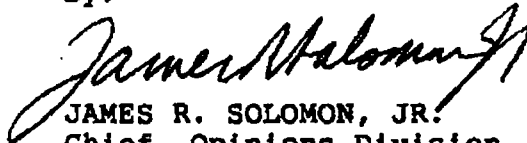
CONCLUSION

Sections 13A-11-183, 13A-11-200, and 15-20-22 each apply to the registration of convicted sex offenders.

If our Office can be of further assistance, please do not hesitate to contact James R. Solomon, Jr., of my staff.

Sincerely,

BILL PRYOR
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

BP/JRSjr/ag

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