

OFFICE OF THE ATTORNEY GENERAL

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BILL PRYOR
ATTORNEY GENERAL
STATE OF ALABAMA
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ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (334) 242-7300

Honorable Tim Morgan
District Attorney
100 North Side Square
Huntsville, AL 35801-4820

Sex Offenders – Community
Notification Act - Sheriffs

Section 13A-11-200 was not
repealed by the Community
Notification Act.

Attempted sexual abuse is within
those offenses requiring registration
with the sheriff under section
13A-11-200.

An arrest for noncompliance with
section 13A-11-200 is made upon
probable cause. Due process
requirements in enforcement of the
statute are determined by a court of
competent jurisdiction.

Dear Mr. Morgan:

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

QUESTION 1

Whether section 13A-11-200 of the Code
of Alabama has been repealed by the recent

sexual offender notification statute ("Megan's Law").

FACTS, LAW, AND ANALYSIS

Section 13A-11-200 of the Code of Alabama states:

If any person, except a delinquent child, as defined in Section 12-15-1, 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 offenses 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, and without limiting the generality of the above statement shall include specifically: rape, as proscribed by Sections 13A-6-61 and 13A-6-62; sodomy, as proscribed by Sections 13A-6-63 and 13A-6-64; sexual misconduct, as proscribed by Section 13A-6-65; indecent exposure, as proscribed by Section 13A-6-68; promoting prostitution in the first or second degree, as proscribed by Sections 13A-12-111 and 13A-12-112; obscenity, as proscribed by Section 13A-12-131; incest, as proscribed by Section 13A-13-3; or the attempt to commit any of the above offenses.

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.

ALA. CODE § 13A-11-200 (1994).

The Community Notification Act concerning criminal sex offenders was enacted in 1996 and is codified at sections 15-20-20 through 15-20-24 of the Code of Alabama. ALA. CODE §§ 15-20-20 to 15-20-24 (Supp. 1997). Notification to persons living in proximity to certain sex crime offenders after the release of the offenders from incarceration is required by section 15-20-22. ALA. CODE § 15-20-22 (Supp. 1997). Section 15-20-22(c) provides:

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.

ALA. CODE § 15-20-22(c) (Supp. 1997) (emphasis supplied).

This Office considered a similar question in an opinion to Honorable Samuel L. Russell, dated August 11, 1997, A.G. No. 97-00255. It was stated in that opinion:

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 applies. 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 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).

Id.

CONCLUSION

Section 13A-11-200 was not repealed by the Community Notification Act.

QUESTION 2

If section 13A-11-200 has not been repealed, for law enforcement purposes, does the offense of attempted sexual abuse fall within the class of offenses requiring registration?

FACTS, LAW, AND ANALYSIS

The following offenses are set out in section 13A-11-200 for which an individual convicted thereof must register with the sheriff:

The offenses 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, and without limiting the generality of the above statement shall include specifically: rape, as proscribed by Sections 13A-6-61 and 13A-6-62; sodomy, as proscribed by Sections 13A-6-63 and 13A-6-64; sexual misconduct, as proscribed by Section 13A-6-65; indecent exposure, as proscribed by Section 13A-6-68; promoting prostitution in the first or second degree, as proscribed by Sections 13A-12-111 and 13A-12-112; obscenity, as proscribed by Section 13A-12-131; incest, as proscribed by Section 13A-13-3; or the attempt to commit any of the above offenses.

ALA. CODE § 13A-11-200 (1994) (emphasis added).

Although sexual abuse is not listed in the specific crimes for which registration is required, it is named in the statement of generality. It is further stated that a conviction of "any attempt to commit any of these acts" requires registration.

CONCLUSION

Attempted sexual abuse is within those offenses requiring registration with the sheriff under section 13A-11-200.

QUESTION 3

With respect to enforcement procedure, whether due process requires prior notification of noncompliance before an arrest may be made for registration violation.

FACTS, LAW, AND ANALYSIS

An arrest is made upon probable cause to make the arrest after the issuance of a warrant, without a warrant in instances permitted by statute, or after indictment when the defendant is present. See ALA. CODE § 15-10-1 to § 15-10-74 (1995).

The enforcement of the statute involves due process requirements for the registration of sex offenders or individuals convicted of certain crimes. See Lambert v. California, 355 U.S. 225 (1957). Whether due process requirements are met in the enforcement or prosecution under the statute is determined by a court of competent jurisdiction.


CONCLUSION

An arrest for noncompliance with section 13A-11-200 is made upon probable cause. Due process requirements in enforcement of the statute are determined by a court of competent jurisdiction.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact James R. Solomon, Jr., of my staff.

Sincerely,

BILL PRYOR
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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