

# OFFICE OF THE ATTORNEY GENERAL



98-00164

**BILL PRYOR**  
ATTORNEY GENERAL  
STATE OF ALABAMA

JUN 16 1998

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (334) 242-7300

Honorable Robert Owens  
District Attorney  
Shelby County Courthouse  
P.O. Box 706  
Columbiana, Alabama 35051

Community Notification Act – Sex  
Offenders – Retroactive Provisions -  
Act No. 98-489

Discussion of the modifications to  
the Community Notification Act as  
provided in Act No. 98-489.

Dear Mr. Owens:

This opinion of the Attorney General is issued in response to your request. Your questions concern the application of Act No. 98-489. This Act amends the Community Notification Act and does not become effective until August 1, 1998.

## QUESTION 1

Does a convicted sex offender, who was sentenced to only probation, fall under the definition of "released" pursuant to the Community Notification Act Revision contained in Alabama Act No. 98-489?

### FACTS AND ANALYSIS

Act No. 98-489 amends the Community Notification Act found in sections 15-20-21 through 15-20-24 of the Code of Alabama. Previously, under the 1996 Community Notification Act, this Office indicated that sex offenders who received probation were not subject to the Community Notification Act. Attorney General's Opinion to Honorable James B. Johnson, dated October 8, 1996, A.G. No. 97-00004. Section 15-20-21 of the Code of Alabama, as amended by Act No. 98-489, now provides more specific definitions and clarity. Under Act No. 98-489 the notification provisions apply to criminal sex offenders who are "released." 1998 Ala. Act No. 98-489. "Release" is defined as "[i]n addition to release from a state prison, county jail, or municipal jail, placement on probation or parole." 1998 Ala. Acts No. 98-489 (emphasis added). It is the opinion of this Office that under the revised definition of "released," a convicted sex offender sentenced to probation is subject to the Act.

### CONCLUSION

A convicted sex offender sentenced to probation will fall under the definition of "released" in section 15-20-21(7) of the Code of Alabama pursuant to the enactment of Act No. 98-489, effective August 1, 1998.

### QUESTION 2

Is a convicted sex offender who is residing with minors prior to the 1996 passage of the Community Notification Act subject to the restriction on living with minors contained in section 15-20-22(g) of the Code of Alabama after passage of the revisions to the Community Notification Act contained in Alabama Act No. 98-489?

### FACTS AND ANALYSIS

Currently, section 15-20-22(g) of the Code of Alabama states that 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." ALA. CODE § 15-20-22(g) (Supp. 1997). The

amended section 15-20-22(g), as set forth in Act No. 98-489, however, states:

No criminal sex offender shall be allowed to establish a residence or any other living accommodation where a minor resides. Notwithstanding the foregoing, a criminal sex offender may reside with a minor if the criminal sex offender is the parent of the minor, unless one of the following conditions applies: (1) The criminal sex offender's parental rights have been or are in the process of being terminated as provided by law. (2) Any minor or adult child of the criminal sex offender was a victim of a criminal sex offense committed by the criminal sex offender.

1998 Ala. Acts No. 98-489.

The current Community Notification Act, as well as the amendment to the Act, does not address the restriction of a convicted sex offender residing with minors when the conviction occurred prior to the passage of the current Community Notification Act. ALA. CODE § 15-20-20 to 15-20-24 (Supp. 1997), 1998 Ala. Acts No. 98-489. We have stated that the legality of a residence is determined at the time the residence is established. A.G. No. 96-00320 at 6. Accordingly, if the residence is legal at the time the offender moves in, the residence remains legal. Id.

Like the current Community Notification Act, Act No. 98-489 is not expressly retroactive. The restrictions in the Community Notification Act would, however, apply to a criminal sex offender convicted prior to the passage of the 1996 Community Notification Act upon his change of residence.

#### CONCLUSION

The Community Notification Act, as amended by Act No. 98-489, is not retroactive. A convicted sex offender residing with minors prior to the 1996 passage of the Community Notification Act is not subject to the restrictions on living with minors contained in section 15-20-22(g) after passage of the revisions to the Community Notification Act contained in Act No. 98-489.

QUESTION 3

Is a convicted sex offender who is residing within 1000 feet of a daycare prior to the 1996 passage of the Community Notification Act subject to the restriction on living within 1000 feet of a daycare contained in section 15-20-22(e) of the Code of Alabama after the passage of the revisions to the Community Notification Act contained in Alabama Act No. 98-489?

FACTS, ANALYSIS, AND CONCLUSION

Section 15-20-22(e) prohibits a convicted sex offender from establishing a residence within 1000 feet of any day care center. ALA. CODE § 15-20-22(e) (Supp. 1997). Alabama Act No. 98-489 clarifies this prohibition by adding the word "licensed" in front of daycare center. As stated above, the current Community Notification Act, as well as the amended version, is not retroactive. The legality of a residence is determined at the time the residence is established. A.G. No. 96-00320 at 6. If a convicted sex offender established a legal residence within 1000 feet of a daycare prior to the passage of the 1996 Community Notification Act, then the residence remains legal. A sex offender convicted prior to the passage of the Community Notification Act could not establish a residence within 1000 feet of a daycare.

QUESTION 4

Is a convicted sex offender who was convicted prior to the passage of the 1996 Community Notification Act subject to any notification provisions after passage of the revisions to the Community Notification Act contained in Alabama Act No. 98-489?

FACTS AND ANALYSIS

As stated above, Alabama Act No. 98-489 does not make the provisions of the Community Notification Act retroactive. In Opinion No. 96-00320 we stated:

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.

Attorney General's Opinion to William C. Young, dated September 20, 1996, A.G. No. 96-00320 (emphasis added).

A criminal sex offender who was convicted prior to the enactment of the Community Notification Act must notify the chief of police or sheriff of his intention to change his legal residence when he moves. A.G. No. 96-00320; A.G. No. 97-00255. The Community Notification Act is not an additional penalty, "but applies only to previously convicted sex offenders who change residences, and are now required by law to register as sex offenders upon change of residence." Attorney General's Opinion to William C. Young, dated September 20, 1996, A.G. No. 96-00320. Upon his or her change of residence, "the notification procedures required of chiefs of police and sheriffs shall apply in the same manner as if the criminal sex offender was being released from incarceration." 1998 Ala. Acts No. 98-489; §15-20-22(c).

Honorable Robert Owens  
Page 6

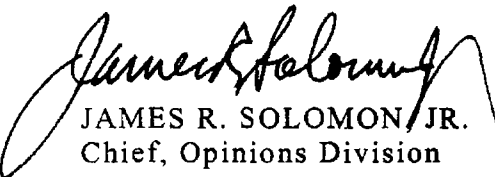
CONCLUSION

The notification provisions contained in the Community Notification Act do not apply to sex offenders convicted prior to the passage of the Act until they change their residence. At that time, the notification provisions apply in the same manner as if the criminal sex offender was being released from incarceration.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Wendi B. Molz of my staff.

Sincerely,

BILL PRYOR  
Attorney General  
By:

  
JAMES R. SOLOMON, JR.  
Chief, Opinions Division

BP/WBM  
O6.98/W