

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 Frank W. Gregory
Administrative Director of Courts
300 Dexter Avenue
Montgomery, AL 36104

Community Notification Act – Juveniles – Youthful Offenders - Notice

The Community Notification Act applies to persons adjudicated as delinquent in juvenile court for a sexual offense, or persons granted youthful offender status with respect to a sexual offense.

The agency from whose custody a defendant is released is the "responsible agency" for purposes of implementing the provisions of Act No. 98-489.

Where a defendant is released to the community following imposition of sentence, the sentencing court is the "responsible agency" under the provisions of Act No. 98-489.

Dear Mr. Gregory:

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 sections 15-20-21 through 15-20-24 of the Code of Alabama, commonly known as the Community Notification Act. Act No. 98-489 became effective August 1, 1998.

QUESTION 1

Are persons adjudicated as delinquent in juvenile court or persons granted youthful offender status for committing a sexual offense subject to the requirements of the amended Community Notification Act?

FACTS AND ANALYSIS

Act No. 98-489 made substantial amendments to the Community Notification Act found in sections 15-20-21 through 15-20-24 of the Code of Alabama. This Office previously advised that persons adjudicated as delinquent in juvenile court or persons granted youthful offender status with respect to a sexual offense were not subject to the notification requirements of the Community Notification Act. Attorney General's Opinion to Honorable L.N. Hagan, Director, Alabama Department of Public Safety, dated July 22, 1997, A.G. No. 97-00230. This opinion, however, was based on the 1996 Community Notification Act. The 1996 Act was only applicable to sex offenders who were "convicted" and did not expressly include youthful offenders or juvenile delinquent adjudications within the scope of the Act's provisions. ALA. CODE §15-20-21 (Supp. 1997).

Section 15-20-21(a), as amended by Act No. 98-489, now defines the term "conviction" to expressly include youthful offenders and juveniles adjudicated delinquent based on one (or more) of the sexual offenses for which the notification provisions are applicable. ALA. CODE § 15-20-21(a) (Supp. 1997), *as amended by* 1998 Ala. Acts No. 98-489. The parts of subsection (a), pertinent to this issue, are as follows:

(3) **CONVICTION.** A determination of guilt as a result of a plea, trial, or adjudication as either a youthful offender or a delinquent, regardless of whether adjudication is withheld.

(4) **CRIMINAL SEX OFFENDER.** A person convicted of a criminal sex offense.

(5) CRIMINAL SEX OFFENSE. Any of the following offenses:

- a. Rape in the first or second degree, as proscribed by Section 13A-6-61 or 13A-6-62.
- b. Sodomy in the first or second degree, as proscribed by Section 13A-6-63 or 13-6-64.
- c. Sexual torture, as proscribed by Section 13A-6-65.1.
- d. Sexual abuse in the first or second degree as proscribed by Section 13A-6-66 or 13A-6-67.
- e. Enticing a child to enter a vehicle, room, house, office, or other place for immoral purposes, as proscribed by Section 13A-6-69.
- f. Promoting prostitution in the first or second degree, as proscribed by Section 13A-12-111 or 13A-12-112.
- g. Violation of the Alabama Child Pornography Act, as proscribed by Section 13A-12-191, 13A-12-192, 13A-12-196, or 13A-12-197.
- h. Kidnapping of a minor, except by a parent, in the first or second degree, as proscribed by Section 13A-6-43 or Section 13A-6-44.
- i. Incest, as proscribed by Section 13A-13-3, when the offender is an adult and the victim is a minor.
- j. Soliciting a child by computer for the purposes of committing a sexual act and transmitting obscene material to a child by

computer as proscribed by Act 97-486, 1997 Regular Session, now appearing as Sections 13A-6-110 and 13A-6-111.

k. Any solicitation, attempt, or conspiracy to commit any of the offenses listed in paragraphs a. to j., inclusive.

l. Any crime committed in another state or a federal, military, Indian, or a foreign country jurisdiction which, if it had been committed in this state, would constitute an offense listed in paragraphs a. to k., inclusive.

ALA. CODE § 15-20-21(a) (Supp. 1997), *as amended by* 1998 Ala. Acts No. 98-489.

Based on the expanded definition of the term "conviction," it is the opinion of this Office that Act No. 98-489 now expressly applies to persons adjudicated as delinquent or granted youthful offender status where the underlying offense is one of the enumerated sexual offenses.

Alabama law generally provides for confidentiality with regard to juvenile and youthful offender adjudications. *See* ALA. CODE § 12-15-100, *et seq.* (Supp. 1997); ALA. CODE § 15-19-7 (1995). As a general rule, when statutes on the same subject are in conflict, or cannot be reconciled, the statute enacted last takes precedence. *State v. Bryan*, 231 So. 2d 118, 121 (Ala. 1970). To the extent Act No. 98-489 is in conflict with the confidentiality provisions generally applicable to juvenile and youthful offender adjudications, Act No. 98-489 controls as the last expression of the Legislature.

CONCLUSION

Persons adjudicated as delinquent in juvenile court for a sexual offense, or persons granted youthful offender status with respect to a sexual offense, are subject to the notification requirements of the Community Notification Act, as last amended by Act No. 98-489.

QUESTION 2

If your answer to question 1 is in the affirmative, who is the "responsible agency" that is required to obtain the necessary information and notify the designated persons or government entities prior to release of the juvenile or youthful offender?

FACTS AND ANALYSIS

Act No. 98-489 amended section 15-20-21(a) to include the definitions of "Release" and generally defines "Responsible Agency" for purposes of gathering information and dissemination to law enforcement, to be the governmental entity from which the person will be released into the community. Subsection (a)(7) and (8) are quoted in their entirety below:

(7) RELEASE. In addition to release from a state prison, county jail, or municipal jail, placement on probation or parole.

(8) RESPONSIBLE AGENCY. The person or government entity whose duty it is to obtain information from a criminal sex offender before release and to transmit that information to police departments or sheriffs responsible for providing community notification. For a criminal sex offender being released from state prison, the responsible agency is the Department of Corrections. For a criminal sex offender being released from a county jail, the responsible agency is the sheriff of that county. For a criminal sex offender being released from a municipal jail, the responsible agency is the police department of that municipality. For a criminal sex offender who is being placed on probation, including conditional discharge or unconditional discharge, without any sentence of incarceration, the responsible agency is the sentencing court. For a criminal sex offender who is being released from a jurisdiction outside this state and who is to reside

in this state, the responsible agency is the
Department of Public Safety.

ALA. CODE § 15-20-21(a)(7)-(8) (Supp. 1997), *as amended by* 1998 Ala. Acts No. 98-489.

Although Act No. 98-489 is expressly made applicable to delinquents and youthful offenders who commit one or more of the listed sex offenses, there is no express provision pertaining to the release of juvenile delinquents who are committed to the custody of the Alabama Department of Youth Services. The fundamental rule of statutory 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, 924 (Ala. 1994). The intent of the Legislature was to develop an efficient system for obtaining and disseminating information regarding sex offenders prior to their release. The Legislature generally conferred the responsibility of obtaining information on the agency in whose custody the offender has been placed. 1998 Ala. Acts No. 98-489. It is the opinion of this Office that the Department of Youth Services would be the "responsible agency" for any juvenile subject to the Act's provisions who is committed to its care, and the Department of Corrections would be the "responsible agency" for youthful offenders committed to that department pursuant to the provisions of section 15-19-6. *See* ALA. CODE § 15-19-6 (1995). The "responsible agency" for any person, including a juvenile delinquent or a youthful offender, who is not sentenced to a term of incarceration or committed to the custody of another department, and is released, with or without conditions, would be the adjudicating court.

CONCLUSION

The agency from whose custody a defendant is released is the "responsible agency" for purposes of implementing the provisions of Act No. 98-489. The Department of Youth Services would be the "responsible agency" for juvenile delinquents committed to that department, and the Department of Corrections would be the "responsible agency" for youthful offenders committed to its care.

QUESTION 3

Is the sentencing court required to act as
the "responsible agency" or perform any duty

pursuant to the Act's provisions if a criminal sex offender is not sentenced to any period of incarceration?

FACTS AND ANALYSIS

As previously noted, in defining the term "responsible agency," section 15-20-21(a)(8) provides that the sentencing court is responsible "[f]or a criminal sex offender who is being placed on probation, including conditional discharge or unconditional discharge, without any sentence of incarceration. . . ." ALA. CODE § 15-20-21(a)(8) (Supp. 1997), *as amended* by 1998 Ala. Acts No. 98-489. Subsection (k) of section 15-20-21 further provides as follows:

(k) If a sentencing court does not impose as [sic] sentence of incarceration upon conviction of the criminal sex offender to a criminal sex offense, notification shall be provided by the responsible agency in accordance with subsection (a) within 24 hours of release. After conviction, the sentencing courts shall order the criminal sex offender to submit to the probation officer or sheriff a DNA sample that will be sent to the Department of Forensics.

ALA. CODE § 15-20-21(k) (Supp. 1997), *as amended* by 1998 Ala. Acts No. 98-489.

A strict interpretation of the above provisions would lead to the conclusion that a sentencing court would not have any responsibilities under the Act if any sentence of imprisonment was imposed. In some instances, however, a sentence of incarceration along with probation is imposed (i.e., a split sentence or a reverse split sentence). Under some circumstances a sentence of probation is given first with the jail time to be served following probation. In these instances, in order to carry out the intent of the Legislature, it is the opinion of this Office that the sentencing court should order that the DNA sample be obtained from a convicted sex offender by the probation officer or sheriff. Furthermore, the sentencing court should obtain or make arrangements for obtaining and for disseminating the required information for any convicted sex offender who is to be released into the community immediately following sentencing.

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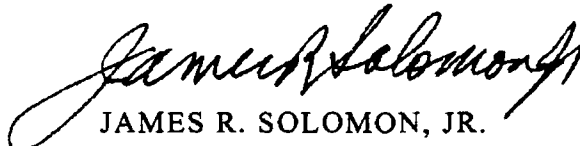
CONCLUSION

Where a defendant is not sentenced to incarceration or to the custody of a department or agency and is released to the community following imposition of sentence, the sentencing court is the "responsible agency" under the provisions of Act No. 98-489.

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

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