

OFFICE OF THE ATTORNEY GENERAL



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SEP 9 1998

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Honorable Samuel L. Russell
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Community Notification Act –
Minors – Relatives – Sex Offender –
Residence Requirements

A juvenile sex offender is prohibited from living in the home with his parents where his sibling victim resides and where his siblings, who are all minors, reside.

Dear Mr. Russell:

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

QUESTIONS

1. Does section 15-20-22(f) prohibit a juvenile sex offender from returning home following his treatment while his sibling victim is living in the home?
2. Does section 15-20-22(g) prohibit a juvenile sex offender from returning home following his treatment while his siblings, who are all minors, are living in the home?

FACTS AND ANALYSIS

Your request states that a juvenile has been adjudicated delinquent based upon a charge to which the Community Notification Act applies. The victim of this juvenile sex offender was the juvenile sex offender's sibling, a minor. At the time of the offense, the offender and the victim both resided within the same household. The offender and the victim have both parents in common.

The Community Notification Act found in sections 15-20-21 through 15-20-24 of the Code of Alabama was substantially amended by Act No. 98-489. Based upon these amendments, this Office opined that persons adjudicated as delinquent in juvenile court for sexual offenses, or persons granted youthful offender status with respect to sexual offenses, are subject to the notification requirements of the Community Notification Act. Opinion to Honorable Frank W. Gregory, Administrative Director of Courts, dated August 12, 1998, A. G. No. 98-00199.

Section 15-20-22(f) of the Code of Alabama states:

(f) No criminal sex offender shall be allowed to establish a residence or any other living accommodation within 1,000 feet of the property on which any of his or her former victims, or the victims' immediate family members reside nor shall the criminal sex offender be permitted to willfully or knowingly come within 100 feet of any of his or her former victims, except as elsewhere provided by law, or make any visual or audible sexually suggestive or obscene gesture, sound, or communication at or to a former victim.

ALA. CODE § 15-20-22(f) (Supp. 1998).

This section prohibits a sex offender from establishing a residence within 1000 feet of the property on which his victim or the victim's immediate family resides. No exceptions are made for juveniles or youthful offenders. Thus, a juvenile sex offender could not live in the home of his parents, which is also the home where his sibling victim resides.

Section 15-20-22(g) of the Code of Alabama states:

(g) 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.

ALA. CODE § 15-20-22(g) (Supp. 1998).

Subsection (g) of section 15-20-22 prohibits a sex offender from establishing a residence where a minor resides. A minor is defined as an individual 18 years of age or younger. ALA. CODE § 15-20-21(6) (Supp. 1998). An exception in section 15-20-22(g) allows a sex offender who is the parent of a minor to reside with the minor child unless parental rights have been or are being terminated or the minor child was the victim of the parent sex offender. No exceptions are made for juvenile or youthful offender sex offenders to reside with minors who are the sex offender's siblings.

This Office notes that the constitutionality of the Community Notification Act with respect to its application to juveniles and youthful offenders has been challenged, and an appeal is pending in the Alabama Court of Criminal Appeals in C.M. v. State, CR-97-2253.

CONCLUSION

A juvenile sex offender is prohibited from living in the home with his parents where his sibling victim resides and where his siblings, who are all minors, reside.

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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

BILL PRYOR
Attorney General
By:

A handwritten signature in cursive script that reads "Carol Jean Smith".

CAROL JEAN SMITH
Chief, Opinions Division

BP/BFS
R/8.98/f