

# OFFICE OF THE ATTORNEY GENERAL



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Honorable Frank W. Gregory  
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Community Notification Act –  
Conviction – Appeals – Effective  
Date

The term "conviction," as provided for in section 15-20-21(a)(3) of the Code of Alabama, is not limited to a final conviction from which no appeal lies.

The Community Notification Act does not mandate a procedure for "reverse-notification;" therefore, there is no duty to provide "reverse-notification."

The "responsible agency" is the agency that is aware and, in a sense, responsible for the release of the convicted sex offender. If a convicted sex offender is released by a municipal or district court pending appeal, it is the municipal or district court that is the "responsible agency."

When a sentence of incarceration is not imposed, the sentencing court should give notification to the proper agencies in accordance with

section 15-20-21(b), within a 24-hour period.

The phrase "adjudication is withheld" refers to a situation where the court withholds adjudication.

Individuals on probation or parole at the time of June 30, 1998, are subject to section 15-20-21(j) of the Community Notification Act.

Dear Mr. Gregory:

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

#### QUESTION 1

Does the term "conviction," as provided for in section 15-20-21(a)(3) of the Code of Alabama, mean final conviction from which no appeal lies?

#### FACTS AND ANALYSIS

The Community Notification Act applies to convicted sex offenders. ALA. CODE § 15-20-20, et seq. (Supp. 1998). The Community Notification Act defines "conviction" as:

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.

ALA. CODE § 15-20-21(a)(3) (Supp. 1998).

The statute provides that there must be a determination of guilt. It does not provide, however, that the determination be a final determination of guilt.

The intent of the Legislature in enacting the Community Notification Act is to protect the public from convicted sex offenders. ALA.

CODE § 15-20-20.1 (Supp. 1998). A convicted sex offender released pending appeal is of no less threat to the public than a convicted sex offender released from incarceration.

Based on the plain language of the statute and the intent of the Legislature, it is the opinion of this Office that the term "conviction" as provided for in section 15-20-21(a)(3) of the Code of Alabama is not limited to a final determination of guilt.

### CONCLUSION

The term "conviction," as provided for in section 15-20-21(a)(3) of the Code of Alabama, is not limited to a final conviction from which no appeal lies.

### QUESTION 2

If Question #1 is answered in the negative, thereby interpreting the term "conviction" as applying to a conviction entered by any court, including municipal and district courts from which the defendant has a right to a de novo appeal, what procedure should be followed for a "reverse-notification" should the conviction be reversed on appeal?

### FACTS, ANALYSIS, AND CONCLUSION

The Community Notification Act does not provide a procedure for "reverse-notification." If the conviction of a sex offender is reversed on appeal, the offender is no longer subject to the Community Notification Act. If a convicted sex offender is released pending appeal, notification should be provided pursuant to the provisions of the Community Notification Act. The law does not, however, mandate a procedure for "reverse-notification;" therefore, there is no duty to provide "reverse-notification."

### QUESTION 3

If Question #1 is answered in the negative, where a sexual offender perfects his or her appeal to the circuit court from a district or

municipal court conviction, is the district or municipal court still the "responsible agency" for providing notice although jurisdiction under this scenario would appear to lie in the circuit court?

#### FACTS, ANALYSIS, AND CONCLUSION

The Community Notification Act defines "responsible agency" as:

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 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)(8) (Supp. 1998). As can be seen from the statutory examples given of a "responsible agency," the Legislature intended for the "responsible agency" to be the agency that is aware and, in a sense, responsible for the release of the convicted sex offender.

If a convicted sex offender is released by a municipal or district court pending appeal, it is the municipal or district court that is the "responsible agency." If a convicted sex offender serves time in jail before being released pending appeal, the sheriff, police department, or Department of Corrections would be the "responsible agency."

QUESTION 4

What is the applicable notification procedure the court is required to follow?

FACTS, ANALYSIS, AND CONCLUSION

Section 15-20-21(k) provides:

If a sentencing court does not impose a 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 Forensic Sciences.

ALA. CODE § 15-20-21(k) (Supp. 1998).

When a sentence of incarceration is not imposed upon conviction, the "responsible agency," as provided for in subsection (a), shall provide the proper notification within 24 hours. When a sentence of incarceration is not imposed, subsection (a) provides that the "responsible agency" is the sentencing court. ALA. CODE § 15-20-21(a)(8) (Supp. 1998). Therefore, the sentencing court must provide the proper notification within 24 hours.

Section 15-20-21(k) does not specifically state how the sentencing court properly gives notification. Guidance on the proper notification procedures can be found in section 15-20-21(b). Section 15-20-21(b) provides the notification procedures that are to be followed when a convicted sex offender is released from incarceration. Section 15-20-21(b) directs the "responsible agency" as to whom notification is to be given. Section 15-20-21(b) also provides time limitations for the "responsible agency;" however, these time limitations only apply when the convicted sex offender is being released from incarceration. When a sentence of incarceration is not imposed, the 24-hour time limitation applies. Therefore, the sentencing court should give notification to the proper agencies, in accordance with section 15-20-21(b), within a 24-hour period.

### QUESTION 5

Pursuant to section 15-20-21(a)(3), the term "CONVICTION" has been defined as: "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.**" (emphasis supplied). What is meant by the phrase "adjudication is withheld?"

### FACTS, ANALYSIS, AND CONCLUSION

The phrase "adjudication is withheld" refers to a situation where the court withholds adjudication. For example, under Rule 16 of the Alabama Rules of Juvenile Procedure, after a filing of delinquency or in need of supervision petition, a court is permitted to suspend the proceedings and withhold adjudication. The court withholds adjudication pending the outcome of a consent decree entered by the court. At the end of the time period for the consent decree, the court can dismiss the petition without an adjudication.

### QUESTION 6

The effective date of the amendments to the Community Notification is August 1, 1998; however, section 15-20-21(j) provides that, beginning June 30, 1998, the Board of Pardons and Paroles shall notify the Department of Public Safety of persons serving parole or probation for certain sex crimes. Accordingly, does section 15-20-21(j) have the effect of applying the provisions to probationers or parolees retroactive to June 30, 1998?

### FACTS, ANALYSIS, AND CONCLUSION

Section 15-20-21(j) provides:

In the case of any criminal sex offender, who on June 30, 1998, is on parole or probation, the Board of Pardons and Paroles shall notify the

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Department of Public Safety of the name and aliases of such criminal sex offender, the address at which he or she resided, the amount of time to be served on parole or probation, the nature of the criminal sex offense for which conviction was obtained, and a summary of his or her criminal record. . . . The Board of Pardons and Paroles shall direct each criminal sex offender on probation or parole to report to the appropriate law enforcement agency for fingerprinting and photographing that shall be sent to the Department of Public Safety.

ALA. CODE § 15-20-21(j) (Supp. 1998).


This section specifically applies to probationers or parolees beginning June 30, 1998. Individuals on probation or parole at the time of June 30, 1998, are subject to section 15-20-21(j) of the Community Notification Act.

Your request refers to an Opinion of this Office that stated the Community Notification Act was not retroactive. Attorney General's Opinion to Honorable Robert Owens, dated June 16, 1998, A.G. No. 98-00164. Generally, the Community Notification Act is not retroactive. The Opinion to Robert Owens failed to point out section 15-20-21(j) and the possible implications. This Office regrets any confusion that may have been caused by this oversight.

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:

  
CAROL JEAN SMITH  
Chief, Opinions Division

BP/WBM  
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