

OFFICE OF THE ATTORNEY GENERAL



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Honorable James Hayes
Sheriff, Etowah County
827 Forrest Avenue
Gadsden, AL 35901

Community Notification Act -
Juveniles - Child Care Centers -
Schools

A certified group home of the
Department of Youth Services is a
child care facility coming within the
purview of the Community Notifica-
tion Act.

The Community Notification Act
applies to persons adjudicated as
delinquent in juvenile court for a
sexual offense and to persons
granted youthful offender status for
a sexual offense. Such persons are
not prohibited from attending school.

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

Dear Sheriff Hayes:

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

QUESTION 1

Is a State of Alabama certified youth services home considered to be a child care facility that would fall under the sex offender law?

FACTS, LAW, AND ANALYSIS

Under the Community Notification Act all licensed day care centers, and any other child care facilities within three miles of the declared residence of a released criminal sex offender, are to be notified by a community notification flyer that the criminal sex offender will be establishing his or her residence there. ALA. CODE § 15-20-22 (Supp. 1998). No criminal sex offender is permitted to establish residence or accept employment within 1000 feet of the property on which a licensed day care center or any other child care facility is located. ALA. CODE § 15-20-22(e) (Supp. 1998). "Licensed day care center" and "child care facilities" are not defined in the Community Notification Act.

The Alabama Department of Youth Services is authorized to "license and subsidize foster care facilities or group homes for youths alleged to be delinquent pending hearing before a juvenile court or adjudged delinquent following such hearing, including detention, examination, study, care, treatment and training. . . ." ALA. CODE § 44-1-24 (1991).

A "foster care facility or group home" as used in the statutes relating to the Department of Youth Services is defined as "[a]ny place providing care for one or more youths alleged or adjudicated delinquent, exclusive of state training schools." ALA. CODE § 44-1-2 (1991).

While "child care facility," as used in the Community Notification Act, is not defined in that Act, guidance can be found at section 38-7-2(7) of the Code of Alabama where "child care facility" is defined as it relates to childcare:

FACILITY FOR CHILD CARE OR CHILD-CARE FACILITY. A facility established by any person, group of persons, agency, association or organization, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the par-

ents, with or without the transfer of the right of custody, in any facility in this chapter, established and maintained for the care of children.

ALA. CODE § 38-7-2(7) (Supp. 1998). Using this definition as a guide, a group home of the Department of Youth Services should be considered a child care facility under the purview of the Community Notification Act. It is a facility established by an agency, the Department of Youth Services, which receives or arranges for the care or placement of one or more children unrelated to the operator of the home, apart from the parents, with or without the transfer of the right of custody.

CONCLUSION

A certified group home of the Department of Youth Services is a child care facility coming within the purview of the Community Notification Act.

QUESTION 2

If a juvenile is convicted of a sexual offense, does he fall under the same rules as an adult? Can he go to school? Can he live at home with siblings?

FACTS, LAW, AND ANALYSIS

This Office has determined that the Community Notification Act applies to persons adjudicated as delinquent in juvenile court for a sexual offense and persons granted youthful offender status with respect to a sexual offense. Opinion to Honorable Frank W. Gregory, dated August 12, 1998, A.G. No. 98-00199.

The Community Notification Act, as amended by Act No. 98-489, does not prohibit persons adjudicated as delinquent for a sexual offense or persons granted youthful offender status with respect to a sexual offense from attending school. 1998 Ala. Acts No. 98-489. All children between the ages of seven and sixteen years are required to attend a public school, private school, church school, or be instructed by a competent private tutor for the entire length of the school term in every scholastic year. ALA. CODE § 16-28-3 (1995). There is no exception for those who have been adjudged as sexual offenders.

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This Office has determined that 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 minors, reside. Opinion to Honorable Samuel Russell, dated September 9, 1998, A.G. No. 98-00215.

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

The Community Notification Act applies to persons adjudicated as delinquent in juvenile court for a sexual offense and to persons granted youthful offender status for a sexual offense. Such persons are not prohibited from attending school. 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 minors, reside.

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

Sincerely,

BILL PRYOR
Attorney General
By:


CAROL JEAN SMITH
Chief, Opinions Division

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