

# 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 William C. Young  
Executive Director  
Board of Pardons and Paroles  
500 Monroe Street  
P.O. Box 302405  
Montgomery, Alabama 36130-2405

Community Notification Act -  
Youthful Offender Act - Relatives

The Community Notification Act applies to sex offenders convicted prior to the Act when they establish a new residence. The legality of a residence is determined at the time the residence is established.

With regard to the Community Notification Act, the term "conviction" includes adjudication as a youthful offender or delinquent. Under the Community Notification Act, youthful offenders are required to register as convicted sex offenders.

Dear Mr. Young:

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

QUESTION 1

Does the Community Notification Act apply retroactively to sex offenders convicted prior to the passage of the Act? If so, may the offender continue living with unadopted step-children? The Act only refers to natural children.

FACTS AND ANALYSIS

This Office has previously addressed the issue of whether the Community Notification Act applies to sex offenders convicted prior to the passage of the Act. This Office has concluded that the provisions of the Community Notification Act apply to sex offenders convicted prior to the Act when they establish a new residence. Attorney General's Opinion to Honorable Robert Owens, dated June 16, 1998, A.G. No. 98-00164; Attorney General's Opinion William C. Young, dated September 20, 1996, A.G. 96-00320.

Section 15-20-22(b) states that any criminal sex offender, whether having been incarcerated or not, who resides within the geographical boundaries of the State of Alabama, shall always be subject to the law requiring that other residents living in proximity to the offender be notified. ALA. CODE § 15-20-22(b) (Supp. 1998). The question then becomes, what triggers or mandates the registration of a criminal sex offender convicted prior to the passage of the Act? Section 15-20-22(d) requires criminal sex offenders to give notice to the sheriff or police chief prior to changing their legal residence. ALA. CODE § 15-20-22(d) (Supp. 1998). A change in legal residence by a criminal sex offender convicted prior to the passage of the Community Notification Act triggers the registration and notification provisions of the Act. If the change in legal residence is the first time a criminal sex offender has registered pursuant to the Community Notification Act, 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. ALA. CODE § 15-20-22(c) and (d) (Supp. 1998).

This Office has consistently stated that the legality of a residence is determined at the time the residence is established. A.G. No. 98-00164 at 3; A.G. No. 96-00320 at 6. Under your fact situation, if the criminal sex offender established his residence with his stepchildren prior to the pas-

sage of the Community Notification Act, the criminal sex offender may continue to reside with his stepchildren. At the time the criminal sex offender established his residence with his stepchildren, there was no law prohibiting him from doing so. Accordingly, if the residence was "legal" at the time the offender moved in, the residence remains "legal." By the term "legal" this Office means that there was no law prohibiting the establishment of such a residence at the time the residence was established.

If at the time a convicted sex offender established a residence with his wife and stepchildren, the residence was legal, the convicted sex offender may remain in the residence. Pursuant to section 15-20-22(g) of the Code of Alabama, a convicted sex offender may not now, however, establish a new residence with his wife and stepchildren. A criminal sex offender who knowingly fails to comply with the provisions of the Community Notification Act shall have committed a Class C felony, unless otherwise provided. ALA. CODE § 15-20-24 (Supp. 1998).

### CONCLUSION

The Community Notification Act applies to sex offenders convicted prior to the Act when they establish a new residence. The legality of a residence is determined at the time the residence is established.

### QUESTION 2

Does the Community Notification Act conflict with section 15-19-7 of the Code of Alabama? (a) Is the adjudication of a youthful offender treated as a "conviction?" Section 15-19-7 seems to say no, while the Community Notification Act seems to treat it as a conviction. (b) Probation and Parole Officers have not required persons adjudicated youthful offenders to register as a sex offender, since adjudication was not treated as a felony conviction. The Community Notification Act requires youthful offenders (in sex cases) to register. Do these laws conflict and should the registration of youthful offenders (in sex cases) be retroactive?

FACTS AND ANALYSIS

Chapter 19 of Title 15 of the Code of Alabama is also known as the Youthful Offender Act. Section 15-19-7 of the Code of Alabama provides:

(a) No determination made under the provisions of this chapter shall disqualify any youth for public office or public employment, operate as a forfeiture of any right or privilege or make him ineligible to receive any license granted by public authority, and such determination shall not be deemed a conviction of crime; provided, however, that if he is subsequently convicted of crime, the prior adjudication as youthful offender shall be considered.

(b) The fingerprints and photographs and other records of a person adjudged a youthful offender shall not be open to public inspection; provided, however, that the court may, in its discretion, permit the inspection of papers or records.

ALA. CODE § 15-19-7 (1995).

These provisions seem to be in conflict with several provisions of the Community Notification Act. Although section 15-19-7 states that an adjudication as a youthful offender shall not be treated as a conviction, the Community Notification Act specifically includes adjudication in its definition of "conviction." Section 15-20-21(3) provides:

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.

ALA. CODE § 15-20-21(3) (Supp. 1998).

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). The Community Notification Act was amended in 1998 to include adjudication as a youthful offender in its definition of "conviction." This is the last expression of the Legisla-

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ture and is controlling. Therefore, with regard to the Community Notification Act, the term "conviction" includes adjudication as a youthful offender or delinquent.

Under the Community Notification Act, youthful offenders are required to register as criminal sex offenders upon their release or at the time they establish a new residence. Your question also concerns whether the registration should be retroactive. As stated above, this Office has concluded that the provisions of the Community Notification Act apply to criminal sex offenders convicted prior to the Act when they establish a new residence.

Pursuant to section 15-20-21(j), the Board of Pardons and Paroles has the responsibility to notify the Department of Public Safety of all criminal sex offenders on parole or probation as of June 30, 1998.

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 the issue is currently pending in several Alabama courts.

#### CONCLUSION

With regard to the Community Notification Act, the term "conviction" includes adjudication as a youthful offender or delinquent. Under the Community Notification Act, youthful offenders are required to register as convicted sex offenders.

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

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