

# OFFICE OF THE ATTORNEY GENERAL

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STATE OF ALABAMA

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Honorable Edmund M. Sexton, Sr.  
Sheriff, Tuscaloosa County  
714 ½ Greensboro Avenue  
Tuscaloosa, Alabama 35401

Community Notification Act –  
Youthful Offenders

The provisions of the Community Notification Act apply 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.

Dear Sheriff Sexton:

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

## QUESTION

If a youthful offender who was residing in a legal address prior to the passage of Alabama Act No. 98-489 and was subsequently required to register by his probation officer and has not moved, does he now come under the provisions of the Act, or will he only come under the Act when he moves to a new address?

### FACTS AND ANALYSIS

The Community Notification Act, found in section 15-20-20, *et seq.*, of the Code of Alabama, was amended in 1998 by Alabama Act No. 98-489. Prior to the amendment, the Community Notification Act did not apply to youthful offenders. After the amendment, the Community Notification Act is now applicable to those adjudicated as a youthful offender. ALA. CODE § 15-20-21(3) (Supp. 1998). Your question concerns when the notification procedures and the residency requirements of the Community Notification Act begin applying to a youthful offender adjudicated prior to the passage of the Act. The Community Notification Act does not distinguish between adult offenders and youthful offenders; the notification procedures and the residency requirements apply in the same manner.

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 to 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).

It is important to note section 15-20-21(j), which 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 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 a 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 places a duty on the Board of Pardons and Paroles to notify the Department of Public Safety of all criminal sex offenders on parole or probation as of June 30, 1998. Furthermore, the Board of Pardons and Paroles has an obligation to direct each criminal sex offender on parole or probation to report for fingerprinting and photographing. Nothing in this section requires the criminal sex offender to personally register his or her residence with the sheriff or chief of police. As stated above, the notification procedures do not apply until the criminal sex offender is required to register his or her residence under the Community Notification Act. *See* ALA. CODE § 15-20-22(c) (Supp. 1998). When a criminal sex offender, convicted prior to the passage of the Community Notification Act, changes his legal residence, he is required to register with the sheriff and the chief of police. ALA. CODE § 15-20-22(d) (Supp. 1998). This registration triggers notification.

The Community Notification Act also places prohibitions on establishing a residence. ALA. CODE § 15-20-22(e) – (g) (Supp. 1998). For example, a criminal sex offender cannot establish a residence within 1000 feet of a public school or licensed daycare center. This Office has consistently stated that the legality of a residence is determined at the time the residence is established. Attorney General's Opinion to Honorable William C. Young, dated October 29, 1998, A.G. No. 98-00164 at 3; A.G. No. 96-00320 at 6. Accordingly, if the residence was "legal" at the time

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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, the residence was legal, the convicted sex offender may remain in the residence.

This Office notes that the constitutionality of the Community Notification Act as it applies to youthful offenders is currently being challenged in several courts.

#### CONCLUSION


The provisions of the Community Notification Act apply 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.

I hope this opinion answers your question. 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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