

# OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL  
STATE OF ALABAMA  
DEC 8 1998

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Honorable Donald L. Parker  
Acting Executive Director  
Board of Pardons and Paroles  
P. O. Box 302405  
Montgomery, AL 36130

Community Notification Act - Pardons  
and Paroles - Sex Offenders - Convic-  
tions

A person who has received an unconditional pardon restoring all civil and political rights is not a convicted person for purposes of the Community Notification Act. A person who has received a pardon with restoration of civil and political rights which contains limiting language expressly requiring him to comply with the Community Notification Act remains subject to the requirements of that Act.

Dear Mr. Parker:

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

QUESTION

Does a pardon relieve a convicted sex offender from the requirements of the Community Notification Act?

FACTS, LAW, AND ANALYSIS

The Community Notification Act is codified in section 15-20-20, *et seq.*, of the Code of Alabama. Criminal sex offenders living in the State of Alabama are subject to the provisions of the Community Notification Act. A criminal sex offender is defined as a person convicted of a criminal sex offense. ALA. CODE § 15-20-21(4) (Supp. 1998). Section 15-20-21(5) provides a list of offenses qualifying as a "criminal sex offense" under the provisions of the Community Notification Act. A "conviction" for purposes of the Act is 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.

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

The Community Notification Act does not address the issue whether it applies to an individual who is given a pardon. Because the Community Notification Act does not specifically address the issue of pardons, the general law regarding pardons must be examined.

There are two types of pardons under Alabama law. This distinction arises from the language of amendment 38, which provides in pertinent part, that "[n]o pardon shall relieve from civil and political disabilities unless specifically expressed in the pardon." In the absence of express language in the pardon, an individual is relieved only of the balance of the punishment due on a particular sentence. For instance, a prisoner with a life sentence might be paroled after serving ten years in prison. After he has been on parole for several more years, the Board might grant a pardon relieving him of the balance of his sentence. If the pardon does not contain express language relieving him of civil and political disabilities, he would remain ineligible to vote, hold office, serve on a jury, etc. An interesting tangential question would be the

effect of such a pardon under the 1986 amendments to the 1968 Federal Gun Control Act. That question is beyond the scope of this inquiry, but is relevant to an understanding of the Board's current practices. The federal statute provides that a pardon will restore the right to possess firearms, otherwise prohibited by that act, unless the pardon contains certain specific language denying restoration of those rights. The Board's current practice is to exclude restoration of gun rights from the civil and political rights restored by a pardon. *See* Title 18 U.S.C. § 922(g); U.S. v. Swanson, 947 F. 2d 914 (11th Cir. 1991).

For many years, the Board has included in the vast majority (if not all) pardons, blanket language restoring civil and political rights. The majority of pardons are granted after a sentence is completed, and the applicant's stated purpose is usually to regain the right to vote. For several decades, the courts construed Alabama pardons as having very narrow effect. *See, e.g.,* Mason v. State, 39 Ala. App. 1, 103 So. 2d 337 (1956), *aff'd* 267 Ala. 507, 103 So. 2d 341 (1958); Johnson v. State, 421 So. 2d 1306 (Ala. Cr. App. 1982); Randolph County v. Thompson, 502 So. 2d 357 (Ala. 1987).

The Alabama Supreme Court, however, has overruled that line of cases. Sokira v. Burr, 580 So. 2d 1340 (Ala. 1991), holds that a pardon restoring all civil and political rights leaves the former offender without a conviction. This opinion expressly overruled the Mason-Randolph County line of cases and adopted the reasoning previously expressed in Hogan v. Hartwell, 242 Ala. 646, 7 So. 2d 889 (1942). If the Board grants a pardon and expressly relieves the offender of all civil and political disabilities, or as the certificates used to read, with restoration of all civil and political rights, that pardon dissolves the conviction. Under the reasoning of Sokira, that individual would not be obliged to register as a convicted felon or as a sex offender.

To say that a pardon "forgives but does not forget" or that a pardoned person remains a convicted felon, is to rely on those opinions expressly overruled by Sokira. When Mr. Justice Coleman dissented from Mason, he suggested that the Legislature could, by clearly drafted legislation, limit the effect of a pardon issued pursuant to amendment 38, which transferred pardoning power to the Legislature, but that an act adopted prior to that time could not have limited the effect of an unconditional pardon issued by the governor, because of the separation of powers doctrine. The dissent also discussed the power of the pardoning

authority to grant pardons with conditions attached, citing Fuller v. State, 122 Ala. 32, 26 So. 2d 146 (1899).

There are two ways in which a pardoned offender may be required to comply with the Act. The first is that the Board may, of its own motion, properly limit the effect of a pardon, by restricting the civil and political rights in the pardon. The second possibility is that the Legislature may clearly express its intent to expand the definition of "convicted sex offender" to include an offender who has received a pardon restoring all civil and political rights. The Community Notification Act expressly requires two classes of offenders to register and requires community notification of their residence, although they are not otherwise considered to have been "convicted." The Legislature accomplished this result by including juvenile delinquency adjudications and youthful offender adjudications in the definition of "conviction" for purposes of this Act. See ALA. CODE § 15-20-21(a)(3) (Supp. 1998).

Since Sokira, the Board's practice has been to grant pardons that restore all civil and political rights, except as noted on the certificate. Two specific exceptions frequently listed relate to gun rights and the habitual offender act. The gun rights exclusions track the language of the federal statute and say that the pardon does not restore the rights forfeited under federal law. A similar phrasing is repeated, stating that rights lost under Alabama's gun laws are not restored. The certificates also recite that the pardon does not destroy the effect of the conviction for purposes of the Habitual Offender Act.

#### CONCLUSION

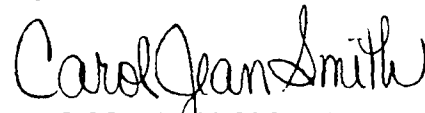
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Honorable Donald L. Parker  
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I hope this opinion answers your question. If this Office can be of further assistance, please contact Carol Jean Smith of my staff.

Sincerely,

BILL PRYOR  
Attorney General  
By:

  
CAROL JEAN SMITH  
Chief, Opinions Division

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