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Community Notification Act – Minors -
Residence Requirements – Bibb County

The first sentence of subsection 15-20-26(c) of the Code of Alabama generally prohibits all adult criminal sex offenders from residing with any minors.

The second sentence of subsection 15-20-26(c) creates a qualified exception that allows offenders to live with minors of whom the offender is a parent, grandparent, or stepparent.

Subparagraphs (1) through (3) of subsection 15-20-26(c) prescribe circumstances under which offenders cannot live with their children, grandchildren, or stepchildren.

Subparagraphs (1) through (3) are not victim-specific.

Adult criminal sex offenders are generally prohibited from residing with minors, regardless of whether they have victimized minors or only adults.

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Dear Mr. Greene:

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

QUESTION ONE

With the most recent changes to the Community Notification Act, may an adult criminal sex offender legally reside in a dwelling with a minor child other than the offender's victim?

FACTS AND ANALYSIS

In the 2001 Fourth Special Session, the Alabama Legislature approved a number of amendments to the Community Notification Act. *See* 2001 Ala. Acts No. 1127 (to be codified at ALA. CODE §§ 15-20-21, -22, -25.1, -25.2, -25.3, -26, -33, -34, and -38). These amendments were approved by the Governor on December 28, 2001, and became effective on March 1, 2002. Among these amendments was a substantial change to subsection 15-20-26(c) of the Code of Alabama, which generally prohibits adult criminal sex offenders from establishing residences or other living accommodations with minors. That statutory subsection, as amended, now provides:

(c) No adult criminal sex offender shall establish a residence or any other living accommodation where a minor resides. Notwithstanding the foregoing, an adult criminal sex offender may reside with a minor if the adult criminal sex offender is the parent, grandparent, or stepparent of the minor, unless one of the following conditions applies:

(1) The adult criminal sex offender's parental rights have been or are in the process of being terminated as provided by law.

(2) Any minor or adult child, grandchild, or stepchild of the adult criminal sex offender

was a victim of a criminal sex offense committed by the adult criminal sex offender.

(3) Any minor sharing a residence with the adult criminal sex offender at the time of the offense was a victim of a criminal sex offense committed by the adult criminal sex offender.

2001 Ala. Acts No. 1127.

Initially, it must be understood that the first sentence of subsection 15-20-26(c) prohibits *all* adult criminal sex offenders from residing with *any* minors. It is only the second sentence of this subsection that creates an exception that *generally* allows adult criminal sex offenders to live with minors of whom the offender is either a parent, grandparent, or step-parent. This second sentence, however, does not grant offenders an unqualified exception, as subparagraphs (1) through (3) prescribe circumstances under which offenders cannot live with their children, grandchildren, or stepchildren. The import of each of these subparagraphs is discussed below.

The scope of subparagraph (1) is fairly self-explanatory. If an offender's parental rights have been terminated, or if they are in the process of being terminated, that offender is not entitled to the exception provided in the second sentence of subsection 15-20-26(c). Thus, an offender who no longer has parental rights, or is in the process of being stripped of those rights, cannot establish a residence or living accommodation with a minor. This rule applies regardless of whether the minor with whom the offender wishes to live has or has not ever been victimized by the offender. Likewise, this rule applies regardless of whether the minor with whom the offender wishes to live is in any way related to the offender.

Subparagraph (2) states that an offender is not entitled to the exception provided in the second sentence of subsection 15-20-26(c) if that offender has ever sexually victimized *any* of his or her children, grandchildren, or stepchildren. Notably, subparagraph (2) is not victim-specific, and it therefore cannot be applied to merely disallow offenders from living with specific minors whom they have already victimized. Rather, subparagraph (2) is broader in application. It provides that, if an offender has *any* history of sexually victimizing minor children, grandchildren, or stepchildren, that offender is forever disallowed from living with *any* minors. This rule, moreover, would not change even if the

offender has no history of molesting the specific child with whom the offender wishes to establish a residence or living accommodation.

Subparagraph (3) is essentially an amplification of subparagraph (2). It provides that an offender is not entitled to the exception provided in the second sentence of subsection 15-20-26(c) if the offender has ever sexually victimized *any* minor with whom the offender shared a residence at the time of the offense. This provision might come into play, for example, when a "live-in" boyfriend or extended family member molests a child within a residence. Thus, just as subparagraph (2) ensures that offenders who have histories of molesting their own minor children, grandchildren, or stepchildren can never again live with minors, subparagraph (3) prohibits offenders from living with minors when those offenders have histories of victimizing children with whom they have shared residences.

CONCLUSION

Subsection 15-20-26(c) provides that an offender *generally* may establish a residence or other living accommodation with a minor of whom the offender is a parent, grandparent, or stepparent. This exception, however, must be read in conjunction with subparagraphs (1) through (3), none of which are victim-specific. Under these provisions, an offender cannot live with *any* minor — including a child, grandchild, or stepchild — if the offender: (1) has lost or is in the process of losing parental rights; (2) has ever sexually victimized *any* of his or her minor children, grandchildren, or stepchildren; or (3) has ever sexually victimized *any* child with whom the offender shared a residence at the time of the offense. If an offender falls under any of these subparagraphs, the offender cannot establish a residence or other living accommodation with *any* minor, regardless of whether the specific minor with whom the offender wishes to live has actually been victimized by the offender.

QUESTION TWO

How do the residency restrictions for the Community Notification Act apply to offenders who have adult victims as opposed to offenders who have minor victims?

FACTS AND ANALYSIS

As was stated in response to your first question, the first sentence of subsection 15-20-26(c) prohibits *all* adult criminal sex offenders from residing with *any* minors. For purposes of this general prohibition, the act draws no distinction between those offenders who have victimized minors and those who have offended only against adults.

Subparagraph (3) of subsection 15-20-26(c) does, however, only apply to offenders who have victimized minors. Because that provision specifically refers to "[a]ny *minor* sharing a residence," it would not apply to offenders who have victimized adults, even if those victims shared residences with the offenders. See 2001 Ala. Acts No. 1127 (to be codified at ALA. CODE § 15-20-26(c)(3)) (emphasis added).

CONCLUSION

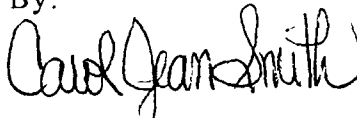
Subsection 15-20-26(c) of the Code of Alabama generally prohibits *all* adult criminal sex offenders from establishing residences or other living accommodations with *any* minors. Except to the extent that subparagraph (3) of this subsection refers only to minor victims, this general prohibition applies to all offenders without regard to whether they have victimized minors or adults.

I hope this sufficiently answers your questions. If this Office can be of further assistance, please contact Scott L. Rouse of my staff.

Sincerely,

BILL PRYOR
Attorney General

By:



CAROL JEAN SMITH
Chief, Opinions Division

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