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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Edmund M. Sexton, Sr.
Sheriff, Tuscaloosa County
Sheriff's Office
714½ Greensboro Avenue
Tuscaloosa, Alabama 35401

Community Notification Act – Child
Pornography - Sex Offenders Registration
Act - Child Pornography Act - Tuscaloosa
County

The Sex Offenders Registration Act has a
broader application than the Community
Notification Act.

The Sex Offenders Registration Act applies
to offenders convicted under the Alabama
Child Pornography Act.

Adult criminal sex offenders must also
register under the Community Notification
Act.

Dear Sheriff Sexton:

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

QUESTION

Is there any provision of the Community Notifi-
cation Act that requires registration of offenders not
covered by the Sex Offenders Registration Act?

FACTS AND ANALYSIS

Your question specifically concerns whether a person convicted under the Alabama Child Pornography Act (codified at sections 13A-12-190 through -198 of the Code of Alabama) may be compelled to register under the Community Notification Act, notwithstanding that such offender is not expressly subject to the Sex Offenders Registration Act.

First, it is not a certainty that a person convicted of possessing child pornography would not be subject to the Sex Offenders Registration Act. Unlike the Community Notification Act, which designates a more specific class of offenders to which its provisions apply [see section 15-20-21(4) of the Code of Alabama], the Sex Offenders Registration Act has, by its own terms, a broader application. The Sex Offenders Registration Act applies to all offenses that "are generally any act of sexual perversion involving a member of the same or the opposite sex, or any sexual abuse of any member of the same or the opposite sex or any attempt to commit any of these acts." ALA. CODE § 13A-11-200 (1994). Although the statute sets forth a listing of specific offenses to which it applies—including rape, sodomy, sexual misconduct, indecent exposure, promoting prostitution, obscenity, and incest—this listing does not "limit[] the generality" of the types of sex offenses to which the statute applies. *Id.*

Thus, the crux of the question becomes whether the possession of child pornography may properly be considered an "act of sexual perversion involving a member of the same or the opposite sex." *Id.* The use of child pornography is a form of sexual perversion. See generally *New York v. Ferber*, 458 U.S. 747 (1982) (discussing the severe nature and dire consequences of child pornography). Moreover, because the Sex Offenders Registration Act specifically includes within its scope the offense of obscenity, the doctrine of *ejusdem generis* dictates that the phrase "involving a member of the same or the opposite sex" does not necessarily require the perpetration of a "hands-on" sexual offense, such as rape or sodomy. See *Lambert v. Wilcox County Comm'n*, 623 So. 2d 727, 731 (Ala. 1993) (applying the doctrine of *ejusdem generis*, which is "a general principle of statutory construction under which general words, following the enumeration of particular classes of persons or things, are construed to apply only to persons or things of the same general nature or class as those specifically enumerated"). Rather, it is sufficient that the crime committed merely involve another person, and the depiction of minors engaging in sexually explicit activity would satisfy this criterion. Consequently, this Office concludes that the Sex Offenders Registration Act would apply to an offender convicted under the Alabama Child Pornography Act.

Even if the Sex Offenders Registration Act did not require offenders convicted of child pornography offenses to register with law enforcement, they would still be bound to register under the Community Notification Act. Although the Community Notification Act does not require "registration" *per se*, inasmuch as that term is not used in the statute, the practical effect of the statute is manifest. Section 15-20-22 of the Code of Alabama requires that all adult criminal sex offenders declare their intended places of residence thirty days prior to release. ALA. CODE § 15-20-22 (Supp. 2001). This declaration, which should include the offender's sex offense history, pre-sentence investigation, fingerprints, and a current photograph, is subsequently disseminated to various agencies, including local law enforcement. ALA. CODE § 15-20-22(2) to (4) (Supp. 2001). Similarly, when an adult criminal sex offender intends to transfer his or her place of residence, section 15-20-23 requires the offender to declare this intent to local law enforcement. All this effectively requires sex offenders to submit to a kind of "registration."

CONCLUSION

The Sex Offenders Registration Act has a broader application than the Community Notification Act.

The Sex Offenders Registration Act applies to offenders convicted under the Alabama Child Pornography Act.

Adult criminal sex offenders must also register under the Community Notification Act.

I hope this sufficiently answers your question. 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