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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Community Notification Act - Sex
Offenders - Sexual Misconduct - District
Attorneys - Escambia County

The Community Notification Act applies to
persons who have committed a "criminal
sex offense."

Effective October 1, 2005, the Community
Notification Act applies to those persons
who have pleaded nolo contendere to a
"criminal sex offense."

The Community Notification Act does not
apply to a person convicted of custodial
sexual misconduct.

Dear Mr. Billy:

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

QUESTION

Does the Community Notification Act apply to
custodial sexual misconduct, codified at section 14-11-
31 of the Code of Alabama?

FACTS AND ANALYSIS

The Community Notification Act ("the Act") (codified at sections 15-20-
21 through -38 of the Code of Alabama) is applicable to persons who have

committed a "criminal sex offense." *See* ALA. CODE § 15-20-21(4) (Supp. 2004). Under current law, this includes adults who have been convicted of a criminal sex offense [*see* ALA. CODE § 15-20-21(1) (Supp. 2004)], as well as juveniles and youthful offenders who have been adjudicated for having committed a criminal sex offense. *See* ALA. CODE §§ 15-20-21(6) & (16) (Supp. 2004). This Office has previously determined that a person who has pleaded nolo contendere to a criminal sex offense in another jurisdiction is not subject to the provisions of the act. Opinion of the Attorney General to the Honorable Donald L. Parker, Executive Director, Board of Pardons and Paroles, dated May 26, 2000, A.G. No. 2000-158. The Act, however, as it pertains to nolo contendere pleas, was recently changed in a special session of the Alabama Legislature in which the act was substantially amended. 2005 Ala. Acts 2005-301. Pursuant to Act 2005-301, which became effective on October 1, 2005, the Community Notification Act will also be applicable to offenders who have pleaded nolo contendere to a criminal sex offense.

Your question concerns whether a person convicted of custodial sexual misconduct, as proscribed by section 14-11-31 of the Code of Alabama, is subject to the provisions of the Community Notification Act. Section 14-11-31 provides as follows:

(a) It shall be unlawful for any employee to engage in sexual conduct with a person who is in the custody of the Department of Corrections, the Department of Youth Services, a sheriff, a county, or a municipality.

(b) It shall be unlawful for any probation or parole officer to engage in sexual conduct with a person who is under the supervisory, disciplinary, or custodial authority of the officer engaging in the sexual conduct with the person.

(c) Any person violating subsection (a) or (b) shall, upon conviction, be guilty of custodial sexual misconduct.

(d) Custodial sexual misconduct is a Class C felony.

(e) For purposes of this article, the consent of the person in custody of the Department of Corrections, the Department of Youth Services, a sheriff, a county, or a

municipality, or a person who is on probation or on parole, shall not be a defense to a prosecution under this article.

ALA. CODE § 14-11-31 (Supp. 2004).

Section 15-20-21(4) of the Code defines "criminal sex offense" by reference to a list of several specific criminal provisions, but custodial sexual misconduct is not included in that list. In fact, a person convicted of the more general crime of sexual misconduct, as proscribed by section 13A-6-65 of the Code of Alabama, is not subject to the Community Notification Act. *But see* ALA. CODE § 13A-11-200 (1994) (requiring persons convicted of sexual misconduct to register under a separate statute). The amendments to the Community Notification Act amplify the definition of "criminal sex offense" to include offenses such as lewd and lascivious conduct, sexual battery, and molestation of a child. 2005 Ala. Acts 2005-301 (to be codified at ALA. CODE § 15-20-21(4)(m)). Again, however, this new definition does not reference custodial sexual misconduct or even sexual misconduct generally. Thus, the plain language of the Community Notification Act indicates no intent to, in any way, affect those persons convicted of custodial sexual misconduct.

CONCLUSION

The Community Notification Act does not apply to a person convicted of custodial sexual misconduct.

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

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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