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Community Notification Act - Effective
Date - Relatives - Residence Requirements

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
apply to criminal sex offenders released
from legal custody after October 1, 2005.

Dear Mr. Morgan:

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

QUESTION

If the incident and arrest of a criminal sex
offender occurred prior to October 1, 2005, but he pled
guilty after October 1, 2005, to the charge of sexual
abuse in the first degree of a stepdaughter under the
age of twelve years, can the defendant reside with his
own children under the amended Community Notifica-
tion Act?

FACTS AND ANALYSIS

The Community Notification Act ("Act") (codified at sections 15-20-21 through -38 of the Criminal Code of Alabama) is applicable to persons who have committed a "criminal sexual offense." See ALA. CODE § 15-20-21(4) (Supp. 2005). Under current law, this includes adults who have been convicted of a criminal sexual offense [see ALA. CODE § 15-20-21(1) (Supp. 2005)], as well as juveniles and youthful offenders who have been adjudicated for having committed a criminal sexual offense [see ALA. CODE §§ 15-20-21(7) & (17) (Supp. 2005)]. Moreover, pursuant to Act 2005-301, which became effective on October 1, 2005, the Act will also be applicable to offenders who have pleaded nolo contendere to a criminal sex offense.

Your facts relate to sexual abuse in the first degree, which is a criminal sex offense. The Code defines "criminal sex offense" by reference to a list of several specific criminal provisions, and section 15-20-21(4)(d) acknowledges sexual abuse in the first degree as a proscribed criminal sex offense.

In this instance, your question concerns whether a person arrested prior to October 1, 2005, but not convicted until after October 1, 2005, is subject to the amended residency provisions of the Community Notification Act.

Section 15-20-21 provides the following relevant definitions:

(1) ADULT CRIMINAL SEX OFFENDER. A person convicted of a criminal sex offense, including a person who has pleaded nolo contendere to a criminal sex offense, regardless of whether adjudication was withheld.

...

(10) RELEASE. Release from a state prison, county jail, or municipal jail, or release or discharge from the custody of the Department of Youth Services or other juvenile detention, or placement on appeal bond, probation or parole or aftercare, or placement into any facility or treatment program that allows the offender to have unsupervised access to the public.

ALA. CODE § 15-20-21(Supp. 2005).

Section 13A-11-200(b) of the Code states as follows:

If any person, except a delinquent child, as defined in Section 12-15-1, residing in Alabama, has heretofore been convicted, or shall be convicted in any state or municipal court in Alabama, or federal court, or so convicted in another state in any court having jurisdiction of state and municipal courts in Alabama for any of the offenses hereinafter enumerated, such person shall, upon his or her *release from legal custody*, register with the sheriff of the county of his or her legal residence within seven days following such release or within 30 days after September 7, 1967, in case such person was released prior to such date.

ALA. CODE § 13A-11-200(b) (Supp. 2005) (emphasis added).

Upon a plea of guilty, the defendant's conviction attaches, and he or she will ultimately be released from incarceration or released to probation, to placement into a facility, or to treatment. Any of these circumstances qualify as a release from legal custody as defined by section 15-20-21(10), thus triggering application of the new law, specifically new residency requirements as noted in section 15-20-23.

Section 15-20-23 of the Code provides as follows:

(a) If an adult criminal sex offender intends to transfer his or her residence to a different location, he shall submit a notice of intent to move to the sheriff of the county and the chief of police of the municipality in which he or she resides, and to the sheriff of the county and chief of police of the municipality to which he or she plans to move, if such are different, at least thirty days prior to moving to the new location. The notice of intent to move shall be on a form developed by the Department of Public Safety provided by the sheriff and shall include all the information required by this article for community notification. Failure to provide a timely and accurate written declaration shall constitute a Class C felony.

(b) Notwithstanding other provisions of law regarding establishment of residence, an adult criminal

sex offender shall be deemed to have established a new residence in any of the following circumstances:

(1) Whenever that adult criminal sex offender is domiciled for three consecutive days or more.

(2) *Whenever that adult criminal sex offender is domiciled following his or her release, regardless of whether that criminal sex offender has been domiciled at the same location prior to the time of conviction.*

(3) Whenever an adult criminal sex offender spends 10 or more aggregate days at a location during a calendar month.

ALA. CODE § 15-20-23 (Supp. 2005) (emphasis added).

Thus, even a release from legal custody back to the same residence qualifies as a change in residency. Moreover, a change in residency after October 1, 2005, puts the offender under the amended Community Notification Act, and the Act has additional provisions limiting an offender's ability to reside with minor children. Specifically, section 15-20-26(c) of the Code provides as follows:

(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) *The adult criminal sex offender has been convicted of any criminal sex offense in which any of the offender's minor children, grandchildren, or stepchildren were the victim.*

(3) *The adult criminal sex offender has been convicted of any criminal sex offense in which a*

minor was the victim and the minor resided or lived with the offender at the time of the offense.

(4) The adult criminal sex offender has ever been convicted of any criminal sex offense involving a child, regardless of whether the offender was related to or shared a residence with the child victim.

ALA. CODE § 15-20-26 (Supp. 2005) (emphasis added). Therefore, when read together, the pertinent statutes of the Community Notification Act indicate an intent to prohibit certain adult criminal sex offenders from residing with minor children upon release from legal custody.

CONCLUSION

The Community Notification Act does apply to criminal sex offenders released from legal custody after October 1, 2005. Release from legal custody qualifies as a change in residency, and the Act sets forth residence requirements for the released criminal sex offender, including prohibitions against the offender residing or living with any minor child if that offender has ever been convicted of any criminal sexual offense involving a child, including, but not limited to, specifically his own child, grandchild, or stepchild.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Joshua Bearden of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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