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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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TROY KING
ATTORNEY GENERAL

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Steven D. Giddens
District Attorney
29th Judicial Circuit of Alabama
Post Office Box 572
Talladega, Alabama 35161

Sex Offenders – Sexual Misconduct
– Convictions – Crimes and Offenses
– Talladega County

Under section 13A-6-67(b) of the Code of Alabama, sexual abuse in the second degree becomes a felony if the date the sexual abuse occurs is within one year of another sexual offense, not if the conviction on the sexual abuse occurs within one year of the other offense.

Dear Mr. Giddens:

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

QUESTION

Does a person "commit" a subsequent offense of sexual abuse under section 13A-6-67(b) of the Code of Alabama by performing the sexual act itself, or must there be a conviction of the offense for it to trigger the greater punishment?

FACTS AND ANALYSIS

Section 13A-6-67 of the Code provides for the crime of sexual abuse in the second degree. Subsection (b) of section 13A-6-67 states

that “[s]exual abuse in second degree is a Class A misdemeanor, except that if a person commits a second or subsequent offense of sexual abuse in the second degree within one year of another sexual offense, the offense is a Class C felony.” ALA. CODE § 13A-6-67 (2006).

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997).

“Commit” means “[t]o perpetrate (a crime).” BLACK’S LAW DICTIONARY 288 (8th ed. 2004). Section 13A-6-67(b) clearly provides that if “a person *commits* a second or subsequent offense of sexual abuse in the second degree within one year of another sexual offense, the offense is a Class C felony.” ALA. CODE § 13A-6-67(b) (2006) (emphasis added).

The Legislature could have provided that sexual abuse in the second degree becomes a felony if the defendant is convicted of a second or subsequent offense within one year of another sexual offense. See e.g. ALA. CODE § 32-5-92 (1999) (emphasis added) (“for a second such *conviction* [of speeding on a bridge] *within one year* thereafter such person shall be punished by a fine of not more than \$200.00 or by imprisonment in the county or municipal jail . . .”). The Legislature, however, did not do so. It chose to heighten the punishment of sexual abuse in the second degree if a person “committed” the aforementioned sex crime within one year of another sex crime. “When the statutory pronouncement is clear and not susceptible to a different interpretation, it is the paramount judicial duty of a court to abide by that clear pronouncement.” *Parker v. Hilliard*, 567 So. 2d 1343, 1346 (Ala. 1990). This opinion should not be construed to say that a person can be convicted of the offense of sexual abuse in the second degree and have the offense elevated to a Class C felony without a conviction of guilt for the first sexual offense.

CONCLUSION

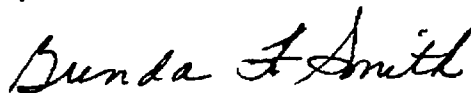
Under section 13A-6-67(b) of the Code, sexual abuse in the second degree becomes a felony if the date the sexual abuse occurs is within one year of another sexual offense, not if the conviction on the sexual abuse occurs within one year of the other offense.

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

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/PJS
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