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OFFICE OF THE ATTORNEY GENERAL

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Community Notification Act – Sex Offenders  
Registration Act – Juveniles – Youthful  
Offender – Exemptions

The Community Notification Act ("Act") provides that a sentencing court may exempt a juvenile or youthful offender criminal sex offender for a criminal sex offense defined in section 13A-6-62(a)(1) of the Code of Alabama from the requirements of the Community Notification Act.

The exemption provisions of section 15-20-21(4)(a) for youthful offender adjudications based on a crime as defined in section 13A-6-62(a)(1) do not apply to a youthful offender criminal sex offender who has been previously adjudicated or convicted of a criminal sex offense. A youthful offender criminal sex offender who re-offends shall be treated as an adult criminal sex offender. *-Rape 2*

The Sex Offender Registration Act does not apply to persons who are adjudicated as youthful offenders. The Alabama Community Notification Act, however, places certain registration and verification requirements upon juvenile and youthful offenders.

Dear Ms. Dietz:

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

### QUESTION 1

Can a person adjudicated a youthful offender or juvenile delinquent based on actions constituting statutory rape as prohibited by section 13A-6-62(a)(1) of the Code of Alabama be exempted from all the requirements of the Community Notification Act (sections 15-20-20 through 15-20-38)?

### FACTS AND ANALYSIS

The fundamental rule of construction is to ascertain and give effect to the intent of the Legislature in enacting the statute. *Ex parte Ala. Dept. of Mental Health & Mental Retardation*, 840 So. 2d 863, 867 (Ala. 2002). "The court looks for the legislative intent in the language of the act; that language may be explained; it cannot be detracted from or added to." *Ala. Indus. Bank v. State ex rel. Avinger*, 286 Ala. 59, 62, 237 So. 2d 108, 110 (1970); *May v. Head*, 96 So. 869, 870 (Ala. 1923). Where a statutory pronouncement is distinct and unequivocal, there remains no room for judicial construction, and the clearly expressed intent of the Legislature must be given effect. *Ex parte Holladay*, 466 So. 2d 956, 960 (Ala. 1985).

The Alabama Community Notification Act provides "that a sentencing court *may* exempt from [the requirements of the Alabama Community Notification Act] a juvenile or youthful offender criminal sex offender for a criminal sex offense as defined in Section 13A-6-62(a)(1)." ALA. CODE § 15-20-21(4)(a) (Supp. 2007) (emphasis added). The crime defined in section 13A-6-62(a)(1) is defined as rape in the second degree if the person who commits the crime is "16 years old or older, he or she engages in sexual intercourse with a member of the opposite sex less than 16 and more than 12 years old; provided, however, the actor is at least two years older than the member of the opposite sex." ALA. CODE § 13A-6-62(a)(1) (2006).

In addition to the specific provision in section 15-20-21(4)(a), the Legislature set forth its legislative findings, which state, in pertinent part, as follows:

Juvenile sex offenders, like their adult counterparts, pose a danger to the public. Research has shown, however, that there are significant differences between adult and juvenile criminal sexual offenders. Juveniles

are much more likely to respond favorably to sexual offender treatment. Juvenile offenders have a shorter history of committing sexual offenses. They are also less likely to have deviant sexual arousal patterns and are not as practiced in avoiding responsibility for their abusive behavior. Juveniles are dependent upon adults for food and shelter, as well as the emotional and practical support vital to treatment efforts. Earlier intervention increases the opportunity for success in teaching juveniles how to reduce their risk of sexually reoffending. The Legislature finds that juvenile criminal sex offenders should be subject to the Community Notification Act, but that certain precautions should be taken to target the juveniles that pose the more serious threats to the public.

ALA. CODE § 15-20-20.1 (Supp. 2007). The above-mentioned language affords sentencing courts, on a case-by-case basis, the opportunity to review the facts and circumstances by which the conduct occurred and to exempt certain juveniles and youthful offenders from the extensive provisions of the Alabama Community Notification Act.

### CONCLUSION

The Community Notification Act provides that a sentencing court may exempt a juvenile or youthful offender criminal sex offender for a criminal sex offense defined in section 13A-6-62(a)(1) of the Code from the requirements of the Community Notification Act.

### QUESTION 2

Do the exemption provisions of section 15-20-21(4)(a) for youthful offender adjudications based on acts constituting statutory rape, apply to include an exemption of such offenders from the provisions of section 15-20-31 providing that a youthful offender that has been previously adjudicated or convicted of a criminal sex offense shall be treated as an adult criminal sex offender?

### FACTS AND ANALYSIS

Section 15-20-31 reads as follows:

For the purposes of this article, if a youthful offender criminal sex offender has not been previously adjudicated for a criminal sex offense, he or she shall be considered a juvenile criminal sex offender. *If a youthful offender criminal sex offender has been previously adjudicated or convicted of a criminal sex offense, he or she shall be treated as an adult criminal sex offender.* A youthful offender criminal sex offender who is treated as a juvenile criminal sex offender for purposes of this article may not be released from the jurisdiction of the sentencing court until the offender has undergone sex offender treatment and a risk assessment as required by Sections 15-20-27 and 15-20-28.

ALA. CODE § 15-20-31 (Supp. 2007) (emphasis added).

In this scenario, the status of the offender has clearly changed. The exemption previously noted in Question 1 applies only to juveniles and first-time youthful offenders. The same exemption does not apply to adult criminal sex offenders. By re-offending, the offender becomes classified as an *adult criminal sex offender* and, for all intents and purposes, forfeits the privilege to be precluded from the application of the Alabama Community Notification Act.

### CONCLUSION

The exemption provisions of section 15-20-21(4)(a) for youthful offender adjudications based on a crime as defined in section 13A-6-62(a)(1) do not apply to a youthful offender criminal sex offender who has been previously adjudicated or convicted of a criminal sex offense. A youthful offender criminal sex offender who re-offends shall be treated as an adult criminal sex offender.

### QUESTION 3

Is a youthful offender subject to the registration requirements of section 13A-11-200?

FACTS AND ANALYSIS

Section 13A-11-200, Alabama's Sex Offender Registration Act, reads as follows:

(b) 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 similar to the 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. For purposes of this article, a *conviction* includes a plea of nolo contendere, regardless of whether adjudication was withheld. . . .

ALA. CODE § 13A-11-200 (2006) (emphasis added).

Although juvenile delinquency adjudications are expressly exempt from the provisions of the Sex Offender Registration Act, there is no like provision, either specifically exempting or applying, the Registration Act to youthful offender adjudications. Persons who are adjudicated as youthful offenders, however, are not deemed to have been *convicted* of a crime. ALA. CODE § 15-19-7 (1995). Thus, the Sex Offender Registration Act, which applies to persons convicted of crimes, does not apply to persons who are adjudicated as youthful offenders.

Furthermore, Alabama enacted the Registration Act in 1967. Alabama's laws, however, pertaining to youthful offenders were not enacted until 1971. When initially considering the need for registration of criminal sex offenders, the Legislature never considered the classification of youthful offenders because, simply put, the classification did not exist. No subsequent amendment has applied registration to youthful offenders.

It must be noted, however, that the Alabama Community Notification Act places certain registration and verification requirements upon juvenile and

youthful offenders. For example, under section 15-20-30, juvenile offenders, including first-time youthful offenders (see 15-20-31 of the Code), must complete **annual** verification.

Section 15-20-30 reads as follows:

(a) Sixty days after a juvenile criminal sex offender's most current release and except during periods of incarceration, thereafter on the anniversary date of a juvenile criminal sex offender's birthday occurring more than 90 days after the release, the Department of Public Safety shall mail a non-forwardable verification form to the address of the juvenile criminal sex offender addressed to the parent, guardian, or custodian of the juvenile criminal sex offender. The sheriff, or chief of police where applicable, where the juvenile criminal sex offender resides shall be notified of the pending verification and whether the verification form was received by the parent, guardian, or custodian of the juvenile criminal sex offender.

(b) Within 10 days of the receipt of the verification form, the parent, guardian, or custodian of the juvenile criminal sex offender, ***accompanied by the juvenile criminal sex offender, shall present in person the completed verification form*** to the sheriff, or chief of police where applicable, who shall obtain fingerprints and a photograph of the juvenile criminal sex offender. The verification form shall be signed by the parent, guardian, or custodian of the juvenile criminal sex offender and shall state that the juvenile criminal sex offender still resides at that address.

ALA. CODE § 15-20-30 (Supp. 2007) (emphasis added).

The parental and custodial responsibility ends when the juvenile becomes the age of majority. See ALA. CODE § 15-20-29(c) (Supp. 2007). Once a juvenile becomes the age of majority, the juvenile criminal sex offender shall instead be subject to verification procedures outlined in section 15-20-22 or section 15-20-23 as though he or she were an adult criminal sex offender. Community notification, however, shall not be allowed unless so ordered by the sentencing court. *Id.* Finally, under section 15-20-33(b) provides as follows:

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A juvenile criminal sex offender, whether having been incarcerated or not, who resides within this state, shall be subject to this article for a period of *ten years* from the last date of release. A juvenile criminal sex offender who is subsequently convicted as an adult criminal sex offender within the ten-year period shall be considered solely an adult criminal sex offender.

ALA. CODE § 15-20-33(b) (Supp. 2007) (emphasis added).

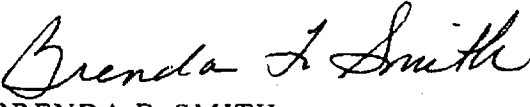
#### CONCLUSION

The Sex Offender Registration Act, section 13A-11-200 of the Code, does not apply to persons who are adjudicated as youthful offenders. The Alabama Community Notification Act, however, places certain registration and verification requirements upon juvenile and youthful offenders.

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

Sincerely,

TROY KING  
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By:

  
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