



2019-055

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

STEVEN T. MARSHALL
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

September 9, 2019

Honorable Barry D. Matson
Executive Director, Office of Prosecution Services
515 South Perry Street
Montgomery, Alabama 36117

District Attorneys – Sex Offenders
Registration Act – Community
Notification Act – Residence
Requirements – Convictions – Child
Pornography Act

A person convicted of a violation of
the Alabama Child Pornography Act
is prohibited from residing with a
minor.

Dear Mr. Matson:

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

QUESTION

May a person convicted of a violation of the
Alabama Child Pornography Act reside with a
minor?

FACTS AND ANALYSIS

“In 2011, the Alabama Legislature enacted Act 2011-640, further
expanding the requirements and procedures related to sex offender
registration. [Known as the Alabama Sex Offender Registration and
Community Notification Act,] [t]he provisions of the act . . . are codified

in section 15-20A-1, *et seq.* of the Code of Alabama. ALA. CODE §§ 15-20A-1 to 15-20A-48 (2011).” Opinion to Honorable Ana W. Franklin, Sheriff of Morgan County, dated August 2, 2012, A.G. No. 2012-074 at 1-2. Although the previous version of the sex offender registration law contained residency requirements, the act altered some of the language of these provisions that were repealed by the act. You ask whether, under the current sex offender registration law, a person convicted of violating the Alabama Child Pornography Act may live with a minor.

Section 15-20A-11(d)(4) states as follows:

(d) No adult sex offender shall reside or conduct an overnight visit with a minor. Notwithstanding the foregoing, an ***adult sex offender may reside with a minor*** if the adult sex offender is the parent, grandparent, stepparent, sibling, or stepsibling of the minor, ***unless*** one of the following conditions applies:

....

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

ALA. CODE § 15-20A-11(d)(4) (Supp. 2016) (emphasis added). Under this provision, any adult sex offender who has been convicted of “any sex offense involving a child” may not reside with a minor, even if the minor is related to the offender.

Act 2011-640 affected two changes possibly relevant to the determination of what constitutes a “sex offense involving a child.” Prior to 2011, this term was defined as “[a] conviction for any criminal sex offense in which the victim was a child ***under the age of 12*** and any offense involving child pornography.” ALA. CODE § 15-20-21(5) (2010) (emphasis added). This language was changed to remove the age qualifier so that it now merely reads as “[a] conviction for any sex offense in which the victim was a child or any offense involving child pornography.” ALA. CODE § 15-20A-4(26) (Supp. 2016). In addition, the qualifier was moved under a new definition for “child,” a term not previously defined separately, so that the term is defined as “[a] person who has not attained the age of 12.” ALA. CODE § 15-20A-4(2) (Supp. 2016).

Although “child” is now expressly defined as anyone under the age of 12 years, the term “child pornography” has been used as its own distinct definition, independent of the definition of “child.” The list of sex offenses in section 15-20A-5 includes violations of “the Alabama **Child** Pornography Act” codified in section 13A-12-190, *et seq.*, of the Code of Alabama. ALA. CODE § 15-20A-5(14) (Supp. 2018) (emphasis added). Section 13A-12-192 of the act criminalizes the knowing possession of obscene matter depicting a person “***under the age of 17 years.***” ALA. CODE § 13A-12-192 (2015) (emphasis added). Furthermore, the child pornography statutes are entitled, “Obscene Materials Containing Visual Reproduction of **Children.**” ALA. CODE §§ 13A-12-190 to 13A-12-198 (2015) (emphasis added). Finally, the Alabama Court of Criminal Appeals has used the term “child pornography” to mean “obscene matter displaying or depicting in any way a person under the age of 17 years engaged in or involved in any obscene act.” *Rutledge v. State*, 745 So. 2d 912, 916 (Ala. Crim. App. 1999).

Defining “child pornography” as “obscene matter displaying or depicting in any way a person under the age of **[12]** years engaged in or involved in any obscene act” would render the definition of “sex offense involving a child” superfluous. Since child pornography is a sex offense, child pornography involving the depiction of a person under the age of 12 years would fall within the parameters of “any sex offense in which the victim was a child” and there would be no need to add the language “or any offense involving child pornography.” ““There is a presumption that every word, sentence, or provision was intended for some useful purpose, has some force and effect, and that some effect is to be given to each, and also that no superfluous words or provisions were used.”” Opinion to Honorable Tommy Flowers, State Personnel Director, dated May 16, 2003, A.G. No. 2003-143 at 5, *quoting Sheffield v. State*, 708 So. 2d 899, 909 (Ala. Crim. App.), *cert. denied*, 708 So. 2d 911 (Ala. 1997).

This reading is supported by language in section 15-20A-48(a), which refers to the definition of “sex offense involving a child” to be used in statutes outside the sex offender registration law that single out that offense for special treatment. Despite being added at the same time that the language of the general definition was changed in Act 2011-640, section 15-20A-48(a) retained the old definition, indicating that the Legislature did not intend to alter the meaning of “child pornography.” Although the sex offender registration law has since been amended several times, the Legislature has left this language intact.

Honorable Barry D. Matson
Page 4

Because it is the only interpretation that gives meaning to each word, the definition of "sex offense involving a child" should be interpreted to include all offenses involving child pornography depicting anyone under the age of 17 years. Therefore, under section 15-20A-11(d)(4), any adult sex offender who has violated Alabama's Child Pornography Act has committed "any sex offense involving a child" and is prohibited from living with a minor, even if related to the minor.

CONCLUSION

A person convicted of a violation of the Alabama Child Pornography Act is prohibited from residing with a minor.

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

Sincerely,

STEVE MARSHALL
Attorney General
By:



G. WARD BEESON, III
Chief, Opinions Division

SM/JMP/as
2592011/205644