

limited to pepper spray, foam and any other self-defense chemical spray against another person in the commission of a crime or against a law enforcement officer while the law enforcement officer is performing his or her official duties.

(b) Criminal use of a defense spray is a Class C felony.

**Section 2.** This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

Approved May 1, 1998

Time: 8:34 A.M.

Act No. 98-489

S. 86 – Senators Armistead, Adams, Hill,  
Lipscomb, Smith, Windom, Hale,  
Amari, Butler, Dixon, Mitchem,  
and Bailey

#### AN ACT

To amend Sections 15-20-21 to 15-20-24, inclusive, Code of Alabama 1975, to further provide for the Community Notification Act and to provide for penalties.

*Be It Enacted by the Legislature of Alabama:*

**Section 1.** The Legislature finds that the danger of recidivism posed by criminal sex offenders and that the protection of the public from these offenders is a paramount concern or interest to government. The Legislature further finds that law enforcement agencies' efforts to protect their communities, conduct investigations, and quickly apprehend criminal sex offenders are impaired by the lack of information about criminal sex offenders who live within their jurisdiction and that the lack of information shared with the public may result in the failure of the criminal justice system to identify, investigate, apprehend, and prosecute criminal sex offenders.

The system of registering criminal sex offenders is a proper exercise of the state's police power regulating present and ongoing conduct. Comprehensive registration and periodic address verification will provide law enforcement with additional information critical to preventing sexual victimization and to resolving incidents involving sexual abuse and exploitation promptly. It will allow them to alert the public when necessary for the continued protection of the community.

Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in safety and in the effective operation of government. In balancing offender's due process and other rights, and in the interests of public security,

the Legislature finds that releasing information about criminal sex offenders to law enforcement agencies and providing access to or releasing such information about criminal sex offenders to the general public will further the primary government interest of protecting vulnerable populations, and in some instances the public, from potential harm.

Therefore, the state policy is to assist local law enforcement agencies' efforts to protect their communities by requiring criminal sex offenders to register and record their address of residence, to be photographed and fingerprinted, and to authorize the release of necessary and relevant information about criminal sex offenders to the public as provided in this act.

**Section 2.** Sections 15-20-21 to 15-20-24, inclusive, Code of Alabama 1975, are amended to read as follows:

"§15-20-21.

"(a) For purposes of this article, the following words shall have the following meanings:

"(1) **ADULT.** An individual 19 years of age or older.

"(2) **COMMUNITY NOTIFICATION FLYER.** This notification shall include the following information on the criminal sex offender: Name; actual living address; sex; date of birth; complete physical description, including distinguishing features such as scars, birth marks, or any identifying physical characteristics; and a current photograph. This notification shall also include a statement of the criminal sex offense for which he or she has been convicted, including the age and gender of the victim, the geographic area where the offense occurred, and the date upon which the criminal sex offender will be released. This notification shall also include a statement that the same information is on file at the sheriff's office and police headquarters, if a police department has jurisdiction over the criminal sex offender's residence, and that the information will be available to the general public for inspection and identification purposes during regular business hours.

"(3) **CONVICTION.** A determination of guilt as a result of a plea, trial, or adjudication as either a youthful offender or a delinquent, regardless of whether adjudication is withheld.

"(4) **CRIMINAL SEX OFFENDER.** A person convicted of a criminal sex offense.

"(5) **CRIMINAL SEX OFFENSE.** Any of the following offenses:

"a. Rape in the first or second degree, as proscribed by Section 13A-6-61 or 13A-6-62.

"b. Sodomy in the first or second degree, as proscribed by Section 13A-6-63 or 13A-6-64.

"c. Sexual torture, as proscribed by Section 13A-6-65.1.

"d. Sexual abuse in the first or second degree as proscribed by Section 13A-6-66 or 13A-6-67.

"e. Enticing a child to enter a vehicle, room, house, office, or other place for immoral purposes, as proscribed by Section 13A-6-69.

"f. Promoting prostitution in the first or second degree, as proscribed by Section 13A-12-111 or 13A-12-112.

"g. Violation of the Alabama Child Pornography Act, as proscribed by Section 13A-12-191, 13A-12-192, 13A-12-196, or 13A-12-197.

"h. Kidnapping of a minor, except by a parent, in the first or second degree, as proscribed by Section 13A-6-43 or Section 13A-6-44.

"i. Incest, as proscribed by Section 13A-13-3, when the offender is an adult and the victim is a minor.

"j. Soliciting a child by computer for the purposes of committing a sexual act and transmitting obscene material to a child by computer as proscribed by Act 97-486, 1997 Regular Session, now appearing as Sections 13A-6-110 and 13A-6-111.

"k. Any solicitation, attempt, or conspiracy to commit any of the offenses listed in paragraphs a. to j., inclusive.

"l. Any crime committed in another state or a federal, military, Indian, or a foreign country jurisdiction which, if it had been committed in this state, would constitute an offense listed in paragraphs a. to k., inclusive.

"(6) MINOR. An individual 18 years of age or younger.

"(7) RELEASE. In addition to release from a state prison, county jail, or municipal jail, placement on probation or parole.

"(8) RESPONSIBLE AGENCY. The person or government entity whose duty it is to obtain information from a criminal sex offender before release and to transmit that information to police departments or sheriffs responsible for providing community notification. For a criminal sex offender being released from state prison, the responsible agency is the Department of Corrections. For a criminal sex offender being released from a county jail, the responsible agency is the sheriff of that county. For a criminal sex

offender being released from a municipal jail, the responsible agency is the police department of that municipality. For a criminal sex offender who is being placed on probation, including conditional discharge or unconditional discharge, without any sentence of incarceration, the responsible agency is the sentencing court. For a criminal sex offender who is being released from a jurisdiction outside this state and who is to reside in this state, the responsible agency is the Department of Public Safety.

"(9) SENTENCING COURT. A court whose determination is competent under state law. A sentencing court need not be the same court in which the criminal sexual offender was convicted for an underlying criminal sex offense that gave rise to the requirements of this article.

"(b) Thirty days prior to the release of a criminal sex offender for any criminal sex offense conviction from a state prison or a county or municipal jail, the following shall apply:

"(1) The responsible agency shall require the criminal sex offender to declare in writing the actual living address at which he or she will reside upon release. An intentional failure to provide a timely and accurate written declaration shall constitute a Class A misdemeanor.

"(2) If the criminal sex offender declares his or her intent to reside outside of the state, the responsible agency shall, within five days of the written declaration required by this article, notify the Director of the Department of Public Safety, the Attorney General, or the designated state law enforcement agency of the state to which the criminal sex offender has declared his or her intent to move, and shall also notify the Alabama Criminal Justice Information Center. The notification shall include all information available to the responsible agency which would be necessary to identify and trace the criminal sex offender, including, but not limited to, each sex offense history or presentence investigation of the sex offense, fingerprints, and a current photograph of the criminal sex offender.

"(3) If the criminal sex offender declares his or her intent to reside within this state, the responsible agency shall, within five days of the written declaration, notify the Attorney General, the Director of the Department of Public Safety, the district attorney and the sheriff of the county in which the criminal sex offender intends to reside, the chief of police of any municipality in which the criminal sex offender intends to reside, and the Alabama Criminal Justice Information Center. The notification shall include all information available to the responsible agency which would be necessary to identify and trace the criminal sex offender,

including, but not limited to, each sex offense history or presentence investigation of the sex offense, fingerprints, and a current photograph of the criminal sex offender.

"(4) The Alabama Criminal Justice Information Center shall be responsible for notifying the Federal Bureau of Investigation with sex offender information upon receiving this information from the responsible agency.

"(c) In every case when a criminal sex offender is released, he or she must reside for a minimum of 30 days at the address stated in his or her declaration of intent unless he or she obtains written approval from the sheriff of the county of residence, or chief of police if he or she resides in a municipality with a population of 5,000 or more, before changing his or her residence.

"(d) If a criminal sex offender transfers his or her residence to a different location after the minimum 30 day period, or earlier with prior written approval from the sheriff or chief of police where applicable, all other provisions for reporting the move shall apply.

"(e) The responsible agency shall cooperate with the Director of the Department of Public Safety in a reasonable manner that enables the Department of Public Safety to prepare a criminal sex offender release notification form, designed by the Department of Public Safety.

"(f) The information collected or maintained by the Department of Public Safety, sheriff, or police department under this article shall be used to track the locations and movements of criminal sex offenders in this state and shall be disclosed to any of the following:

"(1) Federal, state, and local criminal justice agencies for law enforcement purposes and community notification in accordance with Section 15-20-22 or another state's similar provision.

"(2) Federal, state, and local governmental agencies responsible for conducting employment-related confidential background checks.

"(g) The information in subsection (f) may be made available through the Alabama Criminal Justice Information Center network immediately upon the effective date of the act adding this subsection, and shall be made available beginning January 1, 1999, through the ACJIC/NCIC network for criminal justice purposes only.

"(h) (1) Sixty days after a criminal sex offender's most current release and, except during ensuing periods of incarceration, thereafter

on the anniversary date of a 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 criminal sex offender. Results of the verification shall be provided to the sheriff and chief of police, where applicable, where the criminal sex offender resides.

"(2) Within 10 days of the receipt of the verification form, the 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 criminal sex offender. The verification form shall be signed by the criminal sex offender and shall state that the criminal sex offender still resides at that address and that the criminal sex offender is in compliance with the residence restrictions established in this article.

"(3) Failure to present in person a completed verification form to the sheriff, or chief of police where applicable, within 10 days or to fail to permit law enforcement personnel to obtain fingerprints or a photograph are violations of this article.

"(4) Within 30 days of the annual date of a criminal sex offender's address verification, the Department of Public Safety shall, in accordance with guidelines promulgated by the Department of Public Safety, receive from the appropriate sheriff or chief of police verification of the criminal sex offender's address. Such guidelines shall ensure that address verification is accomplished with respect to these individuals and shall require the submission of fingerprints and photographs of the individuals.

"(i) In the case in which any criminal sex offender escapes from a state or local correctional facility, the responsible agency shall, within 24 hours, notify the Department of Public Safety, the sheriff and the chief of police having had jurisdiction at the times of the criminal sex offense convictions, informing such of the name and aliases of the criminal sex offender, of time remaining to be served, if any, on the full term for which the criminal sex offender was incarcerated, and the nature of the crime for which he or she was sentenced, transmitting at the same time a copy of such criminal sex offender's fingerprints and current photograph and a summary of his or her criminal record.

"(j) In the case of any criminal sex offender, who on June 30, 1998, is on parole or probation, the Board of Pardons and Paroles shall notify the Department of Public Safety of the name and aliases of such criminal sex offender, the address at which he or she resided, the amount of time to be served on parole or probation, the nature of the criminal sex offense for which a conviction was obtained, and a summary of his or her criminal record. For purposes of this subsection, a criminal sex offender on probation or

parole includes a person convicted in another state or a federal, military, Indian, or foreign country jurisdiction of any crime which would have been punishable as a criminal sex offense if committed in this state and who is serving a term of probation or parole on or after June 30, 1998, and who resides in or enters this state. The Board of Pardons and Paroles shall direct each criminal sex offender on probation or parole to report to the appropriate law enforcement agency for fingerprinting and photographing that shall be sent to the Department of Public Safety.

"(k) If a sentencing court does not impose as sentence of incarceration upon conviction of the criminal sex offender to a criminal sex offense, notification shall be provided by the responsible agency in accordance with subsection (a) within 24 hours of release. After conviction, the sentencing courts shall order the criminal sex offender to submit to the probation officer or sheriff a DNA sample that will be sent to the Department of Forensics.

"(l) Nothing in this article shall be construed as creating a cause of action against the state or any of its agencies, officials, employees, or political subdivisions based on the performance of any duty imposed by this article or the failure to perform any duty imposed by this article.

"§15-20-22.

"(a) Within five days after the notification by a responsible agency of the release of any criminal sex offender, the following procedure shall apply:

"(1) In the cities of Birmingham, Mobile, Huntsville, and Montgomery, the Chief of Police shall notify all persons who have a legal residence within 1,000 feet of the declared residence of the released criminal sex offender, and all public and private schools, licensed daycare centers, and any other child care facilities within three miles of the declared residence of the released criminal sex offender, that the criminal sex offender will be establishing his or her residence. A community notification flyer shall be made by regular mail or hand delivered to all legal residences required by this section. In addition, any other method reasonably expected to provide notification may be utilized, including, but not limited to, posting a copy of the notice in a prominent place at the office of the sheriff and at the police station closest to the declared residence of the released criminal sex offender, publicizing the notice in a local newspaper, or posting electronically, including the Internet, or other means available.

"(2) In all other cities in Alabama with a resident population of 5,000 or more, the chief of police, or if none then the sheriff of the

county, shall notify all persons who have a legal residence within 1,500 feet of the declared residence of the released criminal sex offender and all public and private schools, licensed daycare centers, and any other child care facilities within three miles of the declared residence of the released criminal sex offender, that the criminal sex offender will be establishing his or her residence. A community notification flyer shall be made by regular mail or hand delivered to all legal residences required by this section. In addition, any other method reasonably expected to provide notification may be utilized including, but not limited to, posting a copy of the notice in a prominent place at the office of the sheriff and at the police station closest to the declared residence of the released criminal sex offender, publicizing the notice in a local newspaper, or posting electronically, including the Internet, or other means available.

"(3) In all other municipalities with a resident population of less than 5,000, and in all unincorporated areas, the sheriff of the county in which the released criminal sex offender intends to reside shall notify all persons who have a legal residence within 2,000 feet of the declared residence of the released criminal sex offender, and all public and private schools, licensed daycare centers, and any other child care facilities within six miles of the declared residence of the released criminal sex offender, the criminal sex offender will be establishing his or her residence. A community notification flyer shall be made by regular mail or hand delivered to all legal residences required by this section. In addition, any other method reasonably expected to provide notification may be utilized including, but not limited to, posting a copy of the notice in a prominent place at the office of the sheriff in the county in which the released criminal sex offender will reside and the police station closest to the declared residence of the released criminal sex offender, publicizing the notice in a local newspaper, or posting electronically, including the Internet, or other means available.

"(4) Nothing in this article shall be construed as prohibiting the Department of Public Safety, a sheriff, or a chief of police from providing community notification electronically or by publication or periodically to persons whose legal residence is more than the applicable distance from the residence of a criminal sex offender.

"(b) Any criminal sex offender, whether having been incarcerated or not, who resides within the geographical boundaries of the state, shall always be subject to the law requiring that other residents living in proximity to the criminal sex offender be notified.

"(c) At the time a criminal sex offender who was convicted prior to the implementation of this notification law registers his or her residence as required under other provisions of this notification



law, the notification procedures required of chiefs of police and sheriffs shall apply in the same manner as if the criminal sex offender was being released from incarceration.

"(d) Except as provided in Section 15-20-21(c), any criminal sex offender for whom the notification requirements of this article apply, shall give 30 days written notice of his or her intent to change his or her legal residence 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. 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. The sheriff shall transfer the information to the Department of Public Safety and the sheriff of the county to which the criminal sex offender intends to move or chief of police responsible for notifying residents who will be living in proximity to the criminal sex offender. Notwithstanding other provisions of law regarding establishment of residence, a criminal sex offender shall be deemed to have established a new residence during any period in which that criminal sex offender is domiciled for five consecutive days or more.

"(e) No criminal sex offender shall be allowed to establish a residence or accept employment within 1,000 feet of the property on which any public school, private or parochial school, licensed daycare center, or any other child care facility is located.

"(f) No criminal sex offender shall be allowed to establish a residence or any other living accommodation within 1,000 feet of the property on which any of his or her former victims, or the victims' immediate family members reside nor shall the criminal sex offender be permitted to willfully or knowingly come within 100 feet of any of his or her former victims, except as elsewhere provided by law, or make any visual or audible sexually suggestive or obscene gesture, sound, or communication at or to a former victim.

"(g) No criminal sex offender shall be allowed to establish a residence or any other living accommodation where a minor resides. Notwithstanding the foregoing, a criminal sex offender may reside with a minor if the criminal sex offender is the parent of the minor, unless one of the following conditions applies:

"(1) The criminal sex offender's parental rights have been or are in the process of being terminated as provided by law.

"(2) Any minor or adult child of the criminal sex offender was a victim of a criminal sex offense committed by the criminal sex offender.

"(h) Changes to property within 1,000 feet of a criminal sex offender's registered address which occur after a criminal sex offender establishes residency or accepts employment shall not form the basis for finding that a criminal sex offender is in violation of the residence restrictions of this article.

"(i) No criminal sex offender shall be allowed to change his or her name.

"(j) Any notice provided to the community pursuant to this article shall not contain the name or any other information identifying the victim.

"§15-20-23.

"If the last known address of a victim is in the State of Alabama, the responsible agency shall notify the Attorney General's Office of Victim Assistance and they shall send a notice to the victim that the criminal sex offender will be released and the location at which the criminal sex offender intends to reside.

"§15-20-24.

"A criminal sex offender who knowingly fails to comply with any provision of this article, except Section 15-20-21(b)(1), shall have committed a Class C felony."

**Section 3.** All laws or parts of laws which conflict with this act are repealed.

**Section 4.** The provisions of this act are severable. If any part of this act or the application of such part to any person or circumstance is declared invalid or unconstitutional, that declaration shall not affect either the part which remains or the application of such parts to any person.

**Section 5.** This act shall become effective on the first day of the third month following the month of its passage and approval by the Governor, or upon its otherwise becoming law.

Approved May 1, 1998

Time: 8:35 A.M.

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Act No. 98-490

H. 827 -- Rep. Box

# AN ACT

To define the crime of compelling streetgang membership; to prescribe the relationship between this act and other provisions of law when the same conduct is proscribed; and to provide for felony penalties.