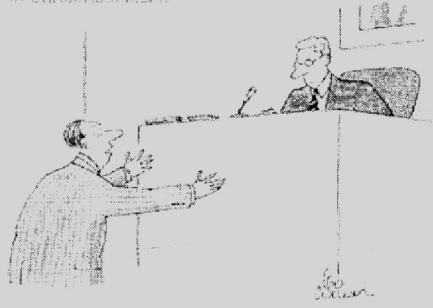


CHECKLIST FOR SEX OFFENDER REGISTRATION

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"Can we, just for a moment, Your Honor,
ignore the facts?"

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LIFE AS A CONVICTED ADULT SEX OFFENDER
THE THINGS YOU NEED TO KNOW IN DECIDING TO SETTLE YOUR CASE OR GO TO TRIAL AND, IF CONVICTED;
HOW TO KEEP FROM RETURNING TO THE PENITENTIARY

GENERAL CONSIDERATIONS

- As a convicted adult sex offender, you will be covered by these measures for the rest of your life. Ala. Code § 15-20-33 (1975). While many of the more egregious requirements are now being challenged in Court, the history of these laws is they get worse, not better, every year.
- If your conviction involves a child as defined by Ala. Code § 15-20-21(5) (1975) (A conviction for any criminal offense in which the victim was a child under the age of 12 or any offense involving child pornography) you will not be eligible to receive incentive (good time) time and will serve out your sentence day for day. Ala. Code § 14-9-41(e) (1975)
- If your conviction involves a child as defined in § 15-20-21(5), you will not be eligible for a split sentence. Ala. Code § 15-18-8(a) (1975).
- If you are convicted of a Class A or B felony sex offense involving a child as defined in § 15-20-21(5) you will not be eligible for probation. Ala. Code § 15-18-8(b) (1975).
- Any conviction for a criminal sex offense involving a child as defined in § 15-20-21(5) prohibits parole. Ala. Code § 15-22-27(3) (1975)
- If you are convicted of a Class A felony criminal sex offense involving a child as defined in § 15-20-21(5) the court will be required to impose a minimum sentence of 20 years. Ala. Code § 13A-5-6(a)(4) (1975).
- If you are convicted of a Class B felony criminal sex offense involving a child as defined in § 15-20-21(5) the court will be required to impose a minimum sentence of 10 years. Ala. Code § 13A-5-6(a)(5) (1975).
- If you are unfortunate enough to be designated a Sexually Violent Predator as defined in Ala. Code § 15-20-25.3 (1975) or are convicted of a Class A criminal sex offense involving a child as defined in § 15-20-21(5) the court will impose a minimum of 10 years post release supervision which will include electronic monitoring which you will be required to pay for.

REGISTRATION OF SEX OFFENDERS - Ala. Code § 13A-11-200 et seq.

- This is the least onerous of the two registration schemes developed by the Legislature. There is much overlap but there are a few offenses that are covered by this section and not the Community Notification Act. A plea bargain which avoids registration under the CNA is one that should be given serious consideration.
- This section is only applicable to adult offenders. It has no application to juveniles or youthful offenders.
- Convictions for the following crimes triggers application of this registration scheme:
 - **Rape 1st** § 13A-6-61 (Class A) and **Rape 2nd** § 13A-6-62 (Class B)
 - **Sodomy 1st** § 13A-6-63 (Class A) and **Sodomy 2nd** § 13A-6-64 (Class B)
 - **Sexual Misconduct** § 13A-6-65 (Class A misdemeanor)
 - **Indecent Exposure** § 13A-6-69 (Class A misdemeanor)
 - **Promoting Prostitution 1st** § 13A-12-111 (Class B) and **Promoting Prostitution 2nd** § 13A-12-112 (Class C)
 - **Obscenity** § 13A-12-131 (Bumper Sticker) (Class C misdemeanor)
 - **Incest** § 13A-13-3 (Class C)
 - Any attempt to commit the above.
- Upon release from legal custody, any person subject to this statute must register with the sheriff of the county of his or her legal residence within 7 days of release.¹ Although this statute does not define "release from custody" I take it to comply with the definition contained in Ala. Code § 15-20-21(10). (1975) A literal reading of § 13A-11-200 would suggest that registration was only required after an actual release from incarceration

¹ Throughout this handout I refer to registration with the Sheriff. As you know, many of the provisions of these statutes refer to registering with the sheriff as well as the chief of police. It is my understanding that in Jefferson County, registration with the sheriff is sufficient to be compliant.

- This statute requires notification of the sheriff within 7 days of a relocation of residence. If the relocation involves changing counties, sheriffs in both counties should be notified.
- A willful failure or refusal may result in a Class C felony charge.
- Failure to register under this statute is a continuing offense so just because it takes 5 years to discover you failed to register, the State will still be able to prosecute. State v. Goldberg, 819 So.2d 123 (Ala. Crim. App. 2001).
- A conviction for failure to register pursuant to § 13A-11-200 will be enhanced under the habitual offender act. Hampton v. State, 815 So.2d 571 (Ala. Crim. App. 2001).
- Theoretically, this sex offender registration list will only be maintained by the sheriff and the department of Public Safety and available only to law enforcement. Ala. Code §§ 13A-11-201, 13A-11-212 (1975).

COMMUNITY NOTIFICATION ACT - Ala. Code § 15-20-20 et seq.

- This is the most onerous of the registration schemes. Many of these restrictions will be challenged as unconstitutional and there may be some relief in the future. However, if past history is any indication, more restrictive provisions may be passed and applied retroactively as they are not "punishment". There is nothing about this registration scheme that is fair or balanced. So far our appellate court's have avoided many of the issues that may ultimately bring relief.
- Convictions for the following crimes triggers application of this registration scheme:
 - **Rape 1st** § 13A-6-61 (Class A) and **Rape 2nd** § 13A-6-62 (Class B) (Note that the statute allows the Court to exempt a defendant from this article if he is granted youthful offender status on the underlying crime of Rape 2nd as defined by § 13A-6-62(a)(1).
 - **Sodomy 1st** § 13A-6-63 (Class A) and **Sodomy 2nd** § 13A-6-64 (Class B)
 - **Sexual Torture** § 13A-6-65.1 (Class A)
 - **Sexual Abuse 1st** § 13A-6-66 (Class C) and **Sexual Abuse 2nd** § 13A-6-67 (Class A misdemeanor or Class C felony)
 - **Child Molestation** § 13A-6-69 (Class C)
 - **Promoting Prostitution 1st** § 13A-12-111 (Class B) and **Promoting Prostitution 2nd** § 13A-12-112 (Class C)
 - **Violation of Alabama Child Pornography Act** §§ 13A-12-191 (Class B), 13A-12-192 (Class C), 13A-12-196 (Class A) and 13A-12-197 (Class A)
 - **Kidnapping of a minor, except by a parent 1st and 2nd** §§ 13A-6-43 (Class A) and 13A-6-44 (Class B)
 - **Incest** § 13A-13-3 (Class C) (Only applicable when offender is an adult and victim is minor)
 - **Child Solicitation by computer** § 13A-6-110 (Class B)
 - **Transmission of obscene material to a child** § 13A-6-111 (Class B)
 - Any solicitation, attempt or conspiracy to commit any of the above offenses
 - Any crime committed in any state or a federal, military, Indian, or a foreign country jurisdiction which, if it had been committed in this state under current provisions of law, would constitute an offense listed above.
 - Any crime committed in any jurisdiction which, irrespective of the specific description or statutory elements thereof, is in any way characterized or known as rape, sodomy, sexual assault, sexual battery, sexual abuse, sexual torture, solicitation of a child, enticing or luring a child, child pornography, lewd and lascivious conduct, taking indecent liberties with a child or molestation of a child. Ala. Code § 15-20-21(4) (1975).

WHAT YOU NEED TO KNOW, DO AND NOT DO IF YOU WANT TO GET OUT AND STAY OUT OF JAIL

- Release, in the context of these statutes, means release from a state prison, county jail, or municipal jail, or release or placement on an 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(10).
- Responsible agency is the person or governmental entity whose duty it is to obtain information from you before your release. They will in turn transmit your information to the police departments and sheriff's responsible for informing all your neighbors that they will soon have a sex offender living in their neighborhood.
 - If you are being released from a state prison; it is the Department of Corrections
 - If you are being released from a county jail; it is the sheriff.

- If you are being released from a municipal jail it is the police department.
- If you are given probation or placed on appeal bond it is the sentencing court.

Ala. Code § 15-20-21(11) (1975)

- 45 days before your release you will have to declare in writing where you will reside or live and the name and address of your employer. Failure to provide this information will make you ineligible for release on probation or parole. If you have not provided this information at the expiration of your sentence, upon release, you will be remanded to the custody of the sheriff. You may then only be released on bond on the condition that you are in compliance with this section. Willful failure or refusal to comply with this provision subjects you to being charged with a Class C felony. Ala. Code § 15-20-22(a)(1) (1975).
- If a sentencing court does not impose a sentence of incarceration upon conviction, notification shall be provided within 24 hours of release. Ala. Code § 15-20-22(b) (1975).
- Prior to release you will be required to submit to the probation office or sheriff a DNA sample. A willful failure or refusal to provide this sample will subject you to being charged with a Class C felony. Ala. Code § 15-20-22 (c) (1975).
- If upon release you are not employed, you are required to report, in writing, to the sheriff your employer and his physical address by the end of the next business day after you obtain employment. Failure to do this will subject you to being charged with a Class C. Felony. Ala. Code § 15-20-22(d) (1975).
- If you decide to transfer your residence to a different location, you will need to notify the sheriff in writing 30 days prior to relocating. If you are moving to a different county you will need to notify the sheriff in the new county also. Failure to provide this notice subject you to being charged with a class C felony. The law deems you to have established a new residence in any of the following circumstances:
 - Whenever you are domiciled for three consecutive days;
 - When you return to a domicile following your release regardless of whether you were domiciled at that location prior to your conviction;
 - Whenever you spend 10 or more aggregate days at a location during a calendar month.
 Ala. Code § 15-20-23 (1975).
- If you decide to change employment you must notify the sheriff in writing at least seven days in advance of the change. If you are going to a different county that sheriff should also be notified 7 days in advance. The notice should be in writing and failure to comply constitutes a Class C felony. Ala. Code § 15-20-23.1 (1975).
- Sixty days after your release and thereafter on your birthday and again six months after each birthday you will be mailed a verification notice from the Department of Public Safety. Within 10 days of receiving this notice you must report in person to the sheriff and have your fingerprints taken, a photograph made and verify that you are still living at your authorized residence. If you do not get the notice, it is still your responsibility to report to the sheriff within 10 days of these check point dates. Failure to do this will subject you to a class C felony. Ala. Code § 15-20-24 (1975).
- You will also need to notify the sheriff in writing if you become employed, become a student or carry on a vocation at an institution of higher learning. Further written notice should be given for any change in status. This notice should be given within 5 days of any change in status. Willful failure or refusal will subject you to a class C felony. Ala. Code § 15-20-25.2

WHERE YOU CANNOT LIVE OR WORK AND CANNOT DO

- You cannot live or accept employment within 2000 feet of the property on which a school or child care facility is located.
- You cannot live within 1000 feet of the property on which any of your victims, or the victim's immediate family members reside.
- You cannot live where a minor resides unless you are the parent, grandparent, or stepparent of the minor. But wait, that does not apply if your parental rights have been or are in the process of being terminated by law. Or if you have been convicted of a sex offense in which any of your minor children, grandchildren, or stepchildren were a victim. Or if you have been convicted of any sex offense in which a minor was a victim and that minor was living with you at the time of the offense. Or you have been convicted of a sex offense involving a child regardless of whether you were related to or shared a residence with the child victim.
- You cannot willfully or knowingly come within 100 feet of any former victim or make any visual or audible sexually suggestive or obscene gesture, sound, or communication at or to a former victim or member of the victim's immediate family.
- If your offense involved a child, you cannot loiter on or within 500 feet of any property on which there is a school, child

care facility, playground, park, athletic field or facility, or any other business or facility having a principal purpose of caring for, educating, or entertaining minors. Loitering means to enter or remain on property while having no legitimate purpose or if you had a legitimate purpose, remaining on the property beyond the time necessary to fulfill the purpose. Before you are in violation of this, someone in authority must ask you to leave.

- If your offense involved a child, you cannot accept, maintain, or carry on any employment or vocation at or within 500 feet of a school, child care facility, playground, park, athletic field or facility, or any other business or facility having a principal purpose of caring for, educating, or entertaining minors.
- A bright spot. Once you have established your residence, changes to property within 2000 feet of your residence shall not form the basis for finding you in violation. Just don't get arrested again. When you are released, you can't go home again. And of course, any willful violation of the above will get you a Class C felony.

Ala. Code § 15-20-26 (1975)

YOUR WELCOME TO YOUR NEW NEIGHBORHOOD

- Once the responsible agency has the information on where you plan to start your new life, if it's in Birmingham, Mobile, Huntsville or Montgomery the sheriff will notify everyone within 1000 feet of your declared residence that you are joining the neighborhood. The sheriff will also notify all schools and child care facilities within three miles of your new residence. If you are moving to a town with a population of 5,000 or more the sheriff will notify all your neighbors within 1500 feet of your new residence. In towns with less than 5,000 residents the sheriff will send the information to everyone within 2,000 feet of you.
- This notification will be in the form of a community notification flyer and will be mailed or hand delivered. This flyer will inform your new neighbors of your 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. It will also describe the sex offense for which you were convicted, the age and gender of the victim, the geographic area where the offense occurred. Ala. Code § 15-20-21(3) (1975). You probably don't need to wait around for the Welcome Wagon.
- You can also expect to see yourself in the newspaper and on the internet.

Ala. Code § 15-20-25 (1975)

WELL CAN IT GET WORSE: SEXUALLY VIOLENT PREDATOR STATUS

- Yes!
- At sentencing the lawyer from the dark side can petition the court to label you a sexually violent predator. If he/she presents clear and convincing evidence that you suffer a mental abnormality or personality disorder that makes you likely to engage in predatory criminal sex activity the judge will adjudge you a sexually violent predator. That means if you get out of jail, you will have more nasty things said about you in the community notification flyer, you will have to report quarterly and be subject to electronic monitoring for a minimum of ten years.

Ala. Code § 15-20-25.3 (1975).

YOUR SCARLET LETTER

- The degradation just never ends. When convicted you will be required to have a drivers license or identification card issued by the Department of Public Safety which will bear some designation that will enable law enforcement officers to know that you are a sex offender. Ala. Code § 15-20-26.2
- It's enough to make you want to change your name. Sorry! Only if you get married or change religion and need another name. Ala. Code § 15-20-36 (1975).
- One thing to think about. I know all those rules and regulations are awful. Nobody understands them. Hell, I have to look them up. Because every violation is a Class C felony and compliance is difficult it will not be unlikely that you will face additional charges for violating the conditions of the CNA.
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YOUTHFUL OFFENDER STATUS

- If the trial court granted you youthful offender status and you do not have a previous juvenile sex offense adjudication, you will be treated as a juvenile sex offender. If you are granted youthful offender status and you have a prior sex offense adjudication as a juvenile, you will be treated as an adult criminal sex offender. Ala. Code § 15-20-31 (1975)
- Upon adjudication as a youthful offender, you will be required to receive sex offender treatment by a licensed sex offender treatment program and submit to the probation officer or sheriff a DNA sample. Ala. Code § 15-20-27 (1975)
- The treatment provider will provide a risk assessment to the probation officer who in turn will notify all parties.
- Unless ordered by the sentencing Court, the juvenile sex offender shall not be subject to notification upon release.
- Within 30 days of receiving the risk assessment, the State may petition the Court to apply notification.
- Upon receiving a petition to apply notification, the sentencing Court will conduct a hearing on the risk of the juvenile sex offender to the community.
- If the Court determines there is a need for notification it will determine whether the risk is low, moderate or high.
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| Low | Notification will be made to the principal of the school where the offender will attend. The information will include the offender's name, living address, date of birth, and a statement of the criminal sex offense for which he has been adjudicated a youthful offender, including the age and gender of the victim. This information is considered confidential and any knowing misuse subjects a person to a Class A misdemeanor. |
| Moderate | Notification that the offender will be establishing his or her residence shall be provided to all schools and child care facilities within three miles of the declared residence. A community notification flyer shall be made by mail or hand delivery to all schools and child care facilities and will be of file with the sheriff for public inspection. No other methods may be used to disseminate this information. |
| High | Notification to the public as an adult offender pursuant to Ala. Code § 15-20-25 (1975) |
- The determination of risk by the sentencing court is not subject to appeal.

Ala. Code § 15-20-28 (1975)

NOTES