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ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

P.O. BOX 94005

BATON ROUGE

70804-9005

JAN 30 2004
OPINION 03-0435

Frank Perez
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Department of Health and Hospitals
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1201 Capitol Access Road
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Baton Rouge, Louisiana 70821-3836

16 - A CRIMINAL LAW PROCEDURE

LSA-RS 15:541 and LSA-RS 15:542(A)

It is the opinion of the Attorney General that the sex offender registration mandated pursuant to LSA-R.S. 15:541(A) does not apply because of the lack of an adverse result in Court (i.e. conviction, finding of not guilty by reason of insanity (at trial), a deferred adjudication, adjudication withheld and/or some comparable resolution resulting in the defendant having been adjudged legally responsible for the offense charged).

Dear Mr. Perez:

This office has received your opinion request dated November 25, 2003, regarding whether the underlined provision of LSA-R.S. 15:542(A) means that you must register an individual in your custody as a sex offender if he is discharged to a community setting.

Your request for an opinion relates to a specific person in your custody. The specific facts relating to this person (and therefore this Opinion) are as follows: (a) the individual in your custody is alleged to have committed a sex offense in the year 1986; (b) the criminal charges against the individual for the alleged sex offense in 1986 have not been resolved in Court; (c) this individual has been in the custody of the Department of Health and Hospitals since 1998 because of his incompetence to stand trial for the alleged sex offense at issue herein.

LSA-R.S. 15:542(A) states: "Any adult residing in this state who has pled guilty to, has been convicted of or where adjudication has been deferred or withheld for the perpetration or attempted perpetration of any sex offense ... shall register with the sheriff of the parish of the person's residence."

According to LSA-R.S. 15:541, "sex offense" is statutorily defined to mean "deferred adjudication, adjudication withheld, or conviction for the perpetration or attempted perpetration ... committed on or after June 18, 1992, or committed prior to June 18, 1992, if the person, as a result of the offense, is under the custody of the Department of Public Safety and Corrections on or after June 18, 1992."

Relating to the underlined provisions of LSA-R.S. 15:542(A) as regards the terms "where adjudication has been deferred or withheld," it is the opinion of the Attorney General that "deferred adjudication" and adjudication withheld" are

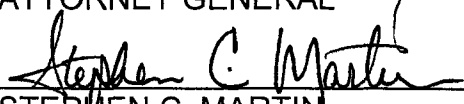
terms of art relating specifically to criminal cases where a defendant has knowingly and voluntarily resolved his case by either making some form of admission of guilt or by agreeing with the Court to take responsibility for the crime charged in return for some form of probationary type of sentence. In contrast, the mere fact of a delay caused by the fact that a defendant is incompetent to proceed to trial does not describe a case where adjudication has been "deferred" or "withheld".

Therefore, predicated on the specific facts set forth above wherein (a) the alleged offender has neither stood trial, entered a plea of guilty, or otherwise taken responsibility for having committed the crime charged, it is the opinion of the Attorney General that the sex offender registration mandated pursuant to LSA-R.S. 15:541(A) does not apply because of the lack of an adverse result in Court (i.e. conviction, finding of not guilty by reason of insanity (at trial), a deferred adjudication, adjudication withheld and/or some comparable resolution resulting in the defendant having been adjudged legally responsible for the offense charged).

Very truly yours,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

BY:


STEPHEN C. MARTIN
ASSISTANT ATTORNEY GENERAL

