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STATE OF ALABAMA

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Criminal Law - Warrants -
Arrests - Crimes and Offenses

The offense of Harassment, Code of Alabama 1975, Section 13A-11-8(a), is an offense for which an officer may make an arrest under Section 15-10-3(a)(8) on the basis of probable cause when the offense is committed between family members.

Dear Mr. Ennis:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Is the offense of Harassment, Code of Alabama 1975, Section 13A-11-8(a) an offense for which an officer may make an arrest under Section 15-10-3(a)(8) on the basis of probable cause?

FACTS AND ANALYSIS

The Code of Alabama 1975, Section 15-10-3(a)(8), provides as follows:

"(a) An officer may arrest any person without a warrant, on any day and at any time for:

"(8) Whenever an offense involves family violence as defined by this section, and the arrest is based on probable cause, regardless of whether the offense is a felony or misdemeanor. Family violence is defined as any incident resulting in the abuse, assault or the attempt or threats thereof, between family or household members. Abuse is further defined as any offense defined under sections 13A-6-60 through 13A-6-70, or abusing children under sections 26-15-1 through 26-15-4. Assault is further defined as any offense defined under sections 13A-6-20 through 13A-6-25. Family or household members include spouses, former spouses, parents, children, or any other persons related by blood or marriage, a person with whom the victim has a child in common or present or former household member."

In addition to the Code sections enumerated in Section 15-10-3(a)(8), Section 13A-4-2 dealing with attempts would come under the provisions of this section. There are no general provisions, however, dealing with threatening action or language.

Section 13A-11-8 on Harassment seems to be the closest applicable section to cover threatening actions or words. Section 13A-11-8 provides as follows:

"(a) Harassment. -- (1) A person commits the crime of harassment if, with intent to harass, annoy or alarm another person, he:

"a. Strikes, shoves, kicks or otherwise touches a person or subjects him to physical contact; or

"b. Directs abusive or obscene language or makes an obscene gesture towards another person."

It seems clear that the legislature intended to include those acts prohibited in Section 13A-11-8 within the provisions of Section 15-10-3(a)(8).

CONCLUSION

The offense of Harassment, Code of Alabama 1975, Section 13A-11-8(a), is an offense for which an officer may make an arrest under Section 15-10-3(a)(8) on the basis of probable cause when the offense is committed between family members.

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I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact me.

Sincerely,

DON SIEGELMAN
ATTORNEY GENERAL

BY

Jack M. Curtis
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ASSISTANT ATTORNEY GENERAL

DS/JMC/sc