

# OFFICE OF THE ATTORNEY GENERAL



96-00285

JEFF SESSIONS  
ATTORNEY GENERAL  
STATE OF ALABAMA

THIS OPINION HAS BEEN  
OVERRULED, IN PART, BY  
ACT NO. 98-489.

August 5, 1996

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (334) 242-7300

Honorable Randy Hinshaw  
Member, House of Representatives  
218 Constitution Drive  
Meridianville, AL 35759

Community Notification Act  
- Notices - Sex Offenders  
- Crimes and Offenses

In municipalities with a population of 5,000 or more, the chief of police must comply with the notification requirements imposed by Act No. 96-793. In all other municipalities and in all unincorporated areas, the sheriff must fulfill that responsibility.

The criminal sex offender cannot establish a residence at any place where any child 18 years old or younger resides. There is no exception for relatives or stepchildren.

Dear Representative Hinshaw:

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

QUESTION 1

What agency or who is responsible for verifying and not allowing the offender to establish residency under Alabama's Community Notification Act?

FACTS AND ANALYSIS

Alabama's Community Notification Act requires the notification of law enforcement officials and communities of the residence location of criminal sex offenders. Section 3(a)(4) of Act No. 96-793 provides:

"(4) Any person convicted of any sex crime against any person, 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 offender be notified.

"(A) At the time offenders who were released prior to the implementation of this notification law register their residence as required under other provisions of the law, the notification procedures required of chiefs of police and sheriffs shall apply in the same manner as if the offender were being released from incarceration, with the exception that notification of residents living in proximity to the offender must be notified within 48 hours of the registration of the offender.

"(B) Any released sex crime offender for whom the notification requirements of this act 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 in which he or she resides, and to the sheriff of the county to which he or she plans to move if such are different. The notice of intent to move

shall be on a form provided by the sheriff and shall include all the necessary and relevant information required by this act. The sheriff shall transfer the information to the appropriate persons responsible for communicating this information to the proper law enforcement officials and to residents who will be living in proximity to the offender.

Sections 3(b), (c), (d), and (e) are set out as follows:

"(b) No released sex crime offender shall be allowed to establish a legal residence within 1,000 feet of any public school, private school, day care center, or any other child care facility.

"(c) No released sex crime offender shall be allowed to establish a legal residence within 1,000 feet of any of his or her former victims, nor shall the offender be permitted to willfully or knowingly come within 1,000 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. Violation of this subsection shall constitute a Class A misdemeanor.

"(d) No released sex crime offender shall be allowed to establish a legal residence where a person 18 years of age or younger resides, except as elsewhere provided by law.

"(e) Violation of any residency restriction by a released sex crime offender shall constitute a Class A misdemeanor."

Thus, the violation of the residency requirements by a criminal sex offender is a criminal act in and of itself for which he can be prosecuted. Section 3(e) makes such a crime a Class A misdemeanor.

The criminal sex offender who intends to change residency after his initial residency is established upon being released from prison must give written notice to the sheriff in the county where he lives and the sheriff in the county to which he is moving 30 days prior to his move. The sheriffs should have forms available for use by the criminal sex offender, and the forms should be detailed in nature so that all necessary and relevant information is easily obtained by the sheriff. According to Section 3(a)(4)(B) of the Act, the sheriff shall then transfer the information provided to the "appropriate persons," which includes communicating this information to the proper law enforcement officials in the community to which the offender intends to move, thereby enabling those officials to notify the residents who will be living in proximity to the offender upon the offender's relocation. The "appropriate person" for the sheriff of the county from which the offender is moving to notify is the sheriff of the county or the chief of police of the city to which the offender is moving.

When the sheriff receives notification from a criminal sex offender that he intends to change locations, the sheriff should follow the notification procedures required by Section 3(a)(1) through (3) as stated heretofore. The Act itself requires the criminal sex offender to notify the sheriffs of both counties if he intends to move from one county to another. In addition, the Act places a duty of notification upon the sheriff to whose county the offender intends to move. The sheriff in the county to which the offender intends to move must either notify community residents himself or he must notify the chief of police so that the chief of police can notify community residents of the impending relocation.

In the cities of Birmingham, Mobile, Huntsville, and Montgomery and in all other cities with a population of 5,000 or more, it is the chief of police who is to notify all persons who have a legal residence within 1,000 feet of the declared residence of the released offender that the offender will be establishing or relocating his residence nearby. The notification should include all the information set out in the notification requirements of

the Act. In all municipalities with a resident population of less than 5,000 and in all unincorporated areas, it is the sheriff of the county in which the offender intends to reside who must comply with the required notification requirements.

#### CONCLUSION

In municipalities with a population of 5,000 or more, the chief of police must comply with the notification requirements imposed by Act No. 96-793. In all other municipalities and in all unincorporated areas, the sheriff must make the notification.

#### QUESTIONS 2 AND 3

Is it the intent of subparagraph "D" that a parent or stepparent cannot be released back to a home with his/her own children? Who verifies? Does an offender who lives at a residence with a niece/nephew or cousin violate subparagraph "D" and who verifies?

#### FACTS AND ANALYSIS

A criminal sex offender may not establish a legal residence with any child 18 years old or younger. Attorney General's opinion to Randy Hinshaw, dated July 12, 1996, A.G. No. 96-00259. The Community Notification Act provides that the legal residence of a criminal sex offender cannot be at a place where a person 18 years of age or younger resides. It is the clear intent of the law that a criminal sex offender may not be released from prison into a home with his own children. There is no exception in the law for children who are related to the offender or over whom the offender has custody. There is no exception in the law for stepchildren.

The verification here should be made by the chief of police in municipalities with populations of over 5,000 and by the sheriff in all other areas.

Honorable Randy Hinshaw  
Page 6

CONCLUSION

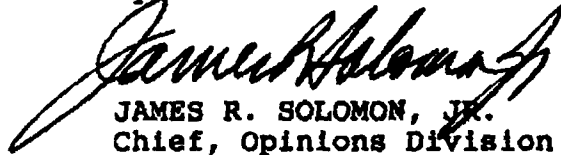
The criminal sex offender cannot establish a residence at any place where any child 18 years old or younger resides. There is no exception for relatives. In municipalities with populations of over 5,000 people, the chief of police must ensure that the residence prohibitions of Act No. 96-793 are not violated. In all other areas, the sheriff must make that determination.

I hope this sufficiently answers your questions. If our office can be of further assistance, please contact Jane Lecroy Brannan of my staff.

Sincerely,

JEFF SESSIONS  
Attorney General

By:



JAMES R. SOLOMON, JR.  
Chief, Opinions Division

JS/JLB/jho  
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