

OFFICE OF THE ATTORNEY GENERAL



97-00004

JEFF SESSIONS
ATTORNEY GENERAL
STATE OF ALABAMA

OCT 8 1996

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

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (204) 242-7300

Honorable James B. Johnson
Sheriff, Baldwin County
Bay Minette, AL 36507

Community Notification Act
- Sheriffs - Sex Offenders
- Notices - Condominiums

The Community Notification
Act does not apply to
offenders who get
probation.

Persons who stay in a
community for a short
period of time are not
residents thereof.

There are no inspection
requirements imposed upon
law enforcement officials
by the Community
Notification Act.

The manner in which to
accomplish the
requirements of the Act is
not specified but is left
to the discretion of law
enforcement officials.

The terms of the statute
require notification of
residents within 2,000
feet of the intended
residence of the released
convicted sex offender.

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The Act applies to offenders who have had their civil rights restored.

The Act does not authorize law enforcement officials to order a released sex offender to change his legal residence.

The Community Notification Act applies only to those persons convicted of the offenses specified in the statute.

Dear Sheriff Johnson:

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

QUESTION 1

Section 2 of the Act states "subsequent to incarceration" while the remainder of the Act uses the word "released" individual. What about those individuals who pled to a sex crime and received probation? Is notification to the public to be made in reference to those who receive probation?

FACTS AND ANALYSIS

According to the express language of the statute, the provisions of the Community Notification Act apply only to an offender who has been incarcerated. An offender who receives probation is not required to comply with the provisions of the Act.

CONCLUSION

The Community Notification Act does not apply to offenders who get probation.

QUESTION 2

Who is considered a resident for the purposes of notification? For example, Gulf Shores and Orange Beach have many condominiums, apartments, and motels. Should those who stay for short periods in the aforementioned be notified?

FACTS AND ANALYSIS

Persons who stay for short periods of time in condominiums, apartments, and motels and who are not residents of a community need not be notified by law enforcement officials in compliance with the terms of the Community Notification Act.

CONCLUSION

Persons who stay in a community for a short period of time are not residents thereof.

QUESTION 3

(a) Whose responsibility is it to inspect the residence of the sex offender to determine if a person under the age of 18 is residing there?

(b) How often is this inspection to be made?

FACTS AND ANALYSIS

There are no inspection requirements imposed upon law enforcement officials by the Community Notification Act. Law enforcement officials may continue to use their discretion and their usual law enforcement skills and techniques to ferret out crime.

CONCLUSION

There are no specific inspection requirements imposed upon law enforcement officials by the Community Notification Act. However, there is no prohibition which would prevent law enforcement officials from verifying whether a person under the age of 18 resides at the residence of the sex offender.

QUESTION 4

(a) Section 4a, paragraph 6, addresses those who are already released prior to the passage of this Act. It states the responsible agency has 48 hours to fulfill the notification requirements. How is this possible?

(b) What authority does the responsible agency have in obtaining a current photograph of the individual?

FACTS AND ANALYSIS

The manner in which to accomplish the requirements of the Act is not specified but is left to the discretion of law enforcement officials. The Act requires that the notification includes "all information available to the warden which would be necessary to identify and trace the offender, including, but not limited to, fingerprints and a current photograph of the offender." Presumably, the warden of the facility from which the offender is being released would have access to this information, which he would then disseminate to the required law enforcement officials for their use in notifying the community.

CONCLUSION

The manner in which to accomplish the requirements of the Act is not specified but is left to the discretion of law enforcement officials.

QUESTION 5

The Act requires (in the case of the Sheriff's Office) notification of residents within 2,000 feet. Why limit it to 2,000 feet? Why not publish the individual's picture and required data in the newspaper?

FACTS AND ANALYSIS

The statute by its terms requires notification of persons who have a legal residence or who own property within 2,000 feet of the declared residence of the released offender that the convicted sex offender who is being released from prison intends to establish a residence in close proximity to the persons who live nearby in the community. The statute, as passed by the legislature, does not require the publication of the information in the newspaper.

CONCLUSION

The terms of the statute require notification of residents within 2,000 feet of the intended residence of the released convicted sex offender.

QUESTION 6

(a) Does the Act apply to an individual that has had his/her civil rights restored?

(b) If so, how does that agency determine if an individual's civil rights have been restored?

FACTS AND ANALYSIS

The Act makes no exception for convicted sex offenders who have had their civil rights restored. Such factor need not be considered by law enforcement officials as they comply with the provisions of the Community Notification Act.

CONCLUSION

The Act applies to offenders who have had their civil rights restored.

QUESTION 7

Section 4Bb states that a released sex crime offender shall not establish a legal residence within 1000 feet of any public school, private school, day care center, or any other child care facility. What if one of the aforementioned facilities locates within 1000 feet of a sex crime offender? Would the law enforcement agency have the authority to order the offender to move?

FACTS AND ANALYSIS

The Community Notification Act makes it a Class A misdemeanor for a criminal sex offender to establish a legal residence within 1,000 feet of any of the specified facilities where children are cared for. However, the statute specifies that the Act prohibited is the establishment of a residence. We see no provisions in the law authorizing a law enforcement official to order the offender to move after he has established a legal residence.

CONCLUSION

The Act does not authorize law enforcement officials to order a released sex offender to change his legal residence.

QUESTION 8

Is the notification limited to the offenses specifically listed in the Act? For example (please see attached), the Department of Corrections has sent notice of a released sex offender. However, they indicate that the crime for which

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the offender was convicted is enticing a child for immoral purposes. This crime is not listed in the Act. Therefore, are we required to make public notice?

FACTS AND ANALYSIS

The law applies only to the criminal sex offender as defined in Section 2(a) of the Act, i.e., those persons convicted of rape in the first or second degree; sodomy in the first or second degree; sexual torture; sexual abuse; or incest when the offender is 20 years old or older and the victim is 18 years old or younger. The offense of enticing a child for immoral purposes is not one designated in the Act.


CONCLUSION

The Community Notification Act applies only to those persons convicted of the offenses specified in the statute.

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

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