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September 2, 1999

Honorable Michael W. Haley
Commissioner
Department of Corrections
P.O. Box 301501
Montgomery, Alabama 36130-1501

Community Notification Act — Corrections,
Department of

The 1999 amendments to the Community Notification Act will not alter the Department of Corrections' duties as a "responsible agency" under the Act.

The provision to be codified at section 15-20-33(c) of the Alabama Code merely codifies this Office's previous opinions indicating that the Community Notification Act applies to criminal sex offenders convicted prior to the Act only when they establish a new residence.

A criminal sex offender being released from incarceration would not be entitled to the exemption contained in the provision to be codified at section 15-20-33(c) of the Code of Alabama.

Dear Commissioner Haley:

This opinion of the Attorney General is issued in response to your request on behalf of the Department of Corrections.

QUESTION

Will the Department of Corrections continue to collect information as required by the current Sex Offender Notification Act, sections 15-20-20.1 through 15-20-24 of the Code of Alabama, since Act No. 99-572 repeals all of the above statute and the new Act states the following:

“§ 15-20-33(c) Any adult criminal sex offender convicted prior to the implementation of this act shall be exempt from the notification and residency provisions unless he or she establishes a new residence.”

FACTS AND ANALYSIS

Under the provisions of the prior Community Notification Act, sections 15-20-20 through -24 of the Code of Alabama, the Department of Corrections was deemed a “responsible agency” and charged with the duty of collecting information regarding the intended residences of criminal sex offenders who are to be released from state prison. *See* ALA. CODE §§ 15-20-21(a)(8) and (b)(1) (Supp. 1998). Once this information was gathered, it was to be conveyed to state and local law enforcement agencies for the purpose of effecting community notification and tracking the whereabouts of these criminal sex offenders. *See, generally*, ALA. CODE §§ 15-20-21(b) through (g) and 15-20-22(a)(1) through (3).

In its most recent session, the Alabama Legislature substantially amended the Community Notification Act. *See* 1999 Ala. Acts No. 99-572 (to be codified at ALA. CODE §§ 15-20-21 through -37). The amendments to the Community Notification Act, which became effective on September 1, 1999, are primarily intended to clarify certain provisions of the Act and to change how juveniles and youthful offenders are treated under the Act. The process, however, by which “responsible agencies” are to gather information from criminal sex offenders for the purpose of disseminating community notification has remained unchanged.

The question you pose concerns whether the recent amendments to the Community Notification Act, particularly the provision to be codified at section 15-20-33(c) of the Code of Alabama, will alter that agency's duties as a "responsible agency" under the Act. For the reasons that follow, this Office concludes that the 1999 amendments to the Community Notification Act will not alter the Department of Corrections' duties.

The provision to be codified at section 15-20-33(c) of the Code of Alabama in essence states that those criminal sex offenders who were convicted prior to the May 29, 1996, implementation of the Community Notification Act are to be exempted from the Act's notification and residency provisions until such time as they establish a new residence. This provision merely codifies this Office's previous opinions indicating that the Community Notification Act applies to criminal sex offenders convicted prior to the Act only when they establish a new residence. *See* Attorney General's Opinion to Honorable Robert Owens, dated June 16, 1998, A.G. No. 98-00164; Attorney General's Opinion to William C. Young, dated September 20, 1996, A.G. No. 96-00320. Therefore, to that extent, the Legislature's 1999 amendments to the Community Notification Act have done nothing to change the procedure that has already been in place for enforcing the Act's provisions, including those requiring the Department of Corrections to collect information from criminal sex offenders before their release from prison.

Additionally, the exemption contained in the provision that will be codified at section 15-20-33(c) of the Code of Alabama is only available until such time as a criminal sex offender establishes a new residence. This is especially pertinent to the Department of Corrections' situation, because all the criminal sex offenders for which it will be the "responsible agency" will be deemed to have established new residences upon their being released from incarceration. In fact, that provision to be codified at section 15-20-23(b) of the Code of Alabama, specifies that:

(b) Notwithstanding other provisions of law regarding establishment of residence, an adult criminal sex offender shall be deemed to have established a new residence:

(1) Whenever that adult criminal sex offender is domiciled for five consecutive days or more [or]

(2) Whenever that adult criminal sex offender is domiciled following his or her release from a period of incarceration imposed as a result of a conviction for a criminal sex

offense, regardless of whether that criminal sex offender has been domiciled at the same location prior to the time of conviction.

1999 Ala. Acts No. 99-572. In the light of this provision, it is evident that any criminal sex offender being released from incarceration would not be entitled to the exemption contained in the provision to be codified at section 15-20-33(c) of the Code of Alabama. Thus, that provision cannot alter the Department of Corrections' duties as a "responsible agency" under the Community Notification Act.

CONCLUSION

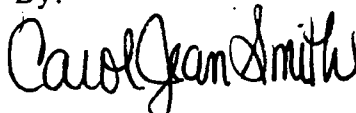
Based on the foregoing, this Office concludes that the provision of the 1999 amendment to Community Notification Act, which will be codified at section 15-20-33(c) of the Code of Alabama, will not affect the Department of Corrections' duty to collect information as presently required by the Act.

I hope this sufficiently answers your question. If this Office can be of further assistance, please contact Scott L. Rouse of my staff.

Sincerely,

BILL PRYOR
Attorney General

By:



CAROL JEAN SMITH
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