

OFFICE OF THE ATTORNEY GENERAL

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Honorable Joe W. Whisante
Sheriff, Madison County
Madison County Courthouse
100 Northside Square
Huntsville, Alabama 35801

Community Notification Act – Residency Requirements

The term "child care facility" as used in the Community Notification Act only refers to facilities that are required to be licensed or certified by the Department of Human Resources or other agency, or those facilities specifically exempted by section 38-7-3 of the Code of Alabama.

A residence is established when an individual resides in a place, coupled with the intent to remain there.

Dear Sheriff Whisante:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

Is a part-time daycare residence a child care facility pursuant to section 15-20-22 of the Code of Alabama? What is required in order to establish a residence pursuant to the Community Notification Act?

FACTS AND ANALYSIS

The Community Notification Act is found in section 15-20-20 through section 15-20-24 of the Code of Alabama. Section 15-20-22(e) of the Code of Alabama provides:

No criminal sex offender shall be allowed to establish a residence or accept employment within 1,000 feet of the property on which any public school, private or parochial school, licensed daycare center, or any other child care facility is located.

ALA. CODE § 15-20-22(e) (Supp. 1998) (emphasis added).

The Community Notification Act was amended in 1998. 1998 Ala. Acts 98-489. Among the many changes made by the amendment, in section 15-20-22(e) the word "licensed" was added in front of the term "daycare center." Practically speaking, there had to be a way law enforcement officials, as well as criminal sex offenders, could determine whether a daycare center was located within 1000 feet of a proposed residence. By limiting the prohibition to licensed daycare centers this problem was resolved. The Department of Human Resources licenses daycare centers and can readily provide a listing of licensed daycare centers in a specific area. See ALA. CODE § 38-7-4 (1992).

In addition to daycare centers, the Department of Human Resources licenses other child care facilities such as day care homes, group homes, and foster family homes. See ALA. CODE § 38-7-2 (Supp. 1998); ALA. CODE § 38-7-4 (1992). Preschool programs that are an integral part of a local church ministry or a religious nonprofit elementary school are specifically exempted from the Department of Human Resources' licensure procedures. ALA. CODE § 38-7-3 (1992). These facilities, however, have to file a notice with the Department of Human Resources. *Id.* Therefore, law enforcement officials can easily determine the location of these facilities. Other agencies also license or certify facilities that primarily provide for the care of children. See Attorney General's Opinion to Honorable James Hayes dated October 19, 1998, A.G. No. 99-00006 (stating that a group home certified by the Department of Youth Services is a child care facility pursuant to section 15-20-22(e) of the Code of Alabama).

The Community Notification Act does not provide a definition of "child care facility." In implementing the Community Notification Act, it is imperative that law enforcement officials, as well as criminal sex offenders, be able to determine readily whether a child care facility is located within 1000 feet of a proposed residence. In addition, law enforcement officials must have a way of determining whether a residence qualifies as a child care facility or is merely a place where children are periodically kept, such as for babysitting purposes.

It is the Opinion of this Office that the term "child care facility" as used in the Community Notification Act refers only to facilities that are required to be licensed or certified by the Department of Human Resources or other agency, or those facilities specifically exempted by section 38-7-3 of the Code of Alabama.

Your question also addresses the issue of what action is necessary in order to have "established a residence" under the Community Notification Act. As this Office has stated in prior opinions, the question of legal residency is a factual question based upon the surrounding circumstances of each individual case. Attorney General's Opinion to Honorable William C. Young, dated September 20, 1996, A.G. No. 96-00320. The ultimate question in determining residency is where the person evidences an intention to reside and where he actually resides. Attorney General's Opinion to Honorable Steve Clouse, dated January 9, 1996, A.G. No. 96-00088. Generally speaking, a residence is established when an individual resides in a place, coupled with the intent to remain there.

The 1998 amendment to the Community Notification Act added language regarding the establishment of a residence. Section 15-20-22(d) states in pertinent part:

Notwithstanding other provisions of law regarding establishment of residence, a criminal sex offender shall be deemed to have established a new residence during any period in which that criminal sex offender is domiciled for five consecutive days or more.

ALA. CODE § 15-20-22(d) (Supp. 1998).

Based upon the above language, in addition to other provisions of law, a criminal sex offender is deemed to have established a residence during any period in which he is domiciled for five consecutive days or more. The word "domiciled" means to be established in a given domicile.

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BLACK'S LAW DICTIONARY 338 (6th ed. 1991). A "domicile" is defined as a person's legal home; the place where a man has his true, fixed, and permanent home, and to which, whenever he is absent, he has the intention of returning. *Id.* Therefore, notwithstanding other provisions of law, when a criminal sex offender is established in his permanent home for five consecutive days or more, he is deemed to have a new residence.

CONCLUSION

The term "child care facility" as used in the Community Notification Act only refers to facilities that are required to be licensed or certified by the Department of Human Resources or other agency, or those facilities specifically exempted by section 38-7-3 of the Code of Alabama.

A residence is established when an individual resides in a place, coupled with the intent to remain there.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Wendi B. Molz of my staff.

Sincerely,

BILL PRYOR
Attorney General
By:



CAROL JEAN SMITH
Chief, Opinions Division

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