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Marion County Sheriff
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Community Notification Act –
Sheriffs – Sex Offenders – Marion
County

When a sex offender establishes a
residence, this triggers both the
notification and residency provisions
of the Community Notification Act.

An offender must be “domiciled” in
order to establish a residence under
the Community Notification Act.

The Community Notification Act
requires that all persons domiciled at
the Marion County nursing home be
provided community notification.

Dear Sheriff Purser:

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

QUESTION ONE

If the nursing home is within 875 feet of a
school, does the sex offender have to move?

QUESTION TWO

Is the nursing home considered a
residence?

QUESTION THREE

Does each room within the nursing home have to be notified under the Community Notification Act?

FACTS

A physically disabled criminal sex offender was released from a state correctional facility on June 21, 2000, after which he was transported by ambulance to a hospital in Marion County. The offender was subsequently moved to a nursing home in Walker County, where he remained for a brief period of time. He has recently located to another nursing home in Marion County, and he intends to remain at that facility indefinitely.

ANALYSIS

The answer to your queries depends first of all upon whether the criminal sex offender in question has "established a residence" at the Marion County nursing home. If he has indeed established a residence, this fact would trigger both the notification and residency provisions of the Act.

Appellate decisions have observed that the terms "residing" or "residence" are oftentimes "vague, elastic, or relative." *See State Farm Mut. Auto Ins. Co. v. Hanna*, 277 Ala. 32, 37 (1964). The Act, however, has set forth its own definitions of "residence" as follows:

(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.

ALA. CODE § 15-20-23(b)(Supp. 2001). Under either subsection (1) or (2), an offender must be "domiciled" in order to establish a residence under the Act. "Domicile" has been defined as follows:

A person's domicile is that place in which his habitation is fixed, without any present intention of removing, and it embraces (1) the fact of residence and (2) the intention to remain. As a general proposition, a person can have but one domicile, [which] once acquired is presumed to continue until a new one is gained. . . .

Harris v. McKenzie, 703 So. 2d 309, 313 (Ala. 1997) (quoting *Ex parte Weissinger*, 247 Ala. 113 (1945)).

Significantly, the criminal sex offender in question has indicated his intent to remain at the Marion County nursing home indefinitely. It follows that he has become domiciled there and, assuming he has remained at the facility for at least five days, he has effectively established a residence at the nursing home for purposes of the Act. Consequently, the offender must be subjected to the Act's notification and residency provisions set forth in sections 15-20-25 and -26.

Section 15-20-26(a) plainly provides that an adult criminal sex offender cannot lawfully establish a residence within 2,000 feet of the property on which a school is located. ALA. CODE § 15-20-26(a) (Supp. 2001). Thus, if a school is located 875 feet from the Marion County nursing home, the offender's residence at the facility is unlawful and he cannot be allowed to remain there.

If the offender is to remain at the nursing home for any further period of time, those persons who are also residing at the nursing home should be notified according to the procedures set forth in section 15-20-25. The Act requires that "all persons who have a legal residence" in proximity to the offender receive community notification. ALA. CODE § 15-20-25(a) (Supp. 2001). This will require that all persons domiciled at the Marion County nursing home be provided community notification. Dependent on the individual circumstances of the residents of the facility, this could require that all rooms at the nursing home receive community notification flyers.

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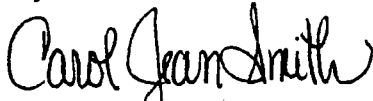
CONCLUSION

When a sex offender establishes a residence, this triggers both the notification and residency provisions of the Community Notification Act. An offender must be "domiciled" in order to establish a residence under the Community Notification Act. The Community Notification Act requires that all persons domiciled at the Marion County nursing home be provided community notification.

I hope this sufficiently answers your questions. 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
Chief, Opinions Division

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