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Community Notification Act –
Residence Requirements – Sex
Offenders – Madison County

A sex offender is deemed to
“establish a residence” within the
meaning of section 15-20-26 of the
Code of Alabama when he returns to
his prior dwelling after being
incarcerated for a criminal sex
offense.

An incarcerated sex offender, even if
the period of incarceration is time
served, is deemed to “establish a
residence” within the meaning of
section 15-20-26 of the Code of
Alabama.

Dear Mr. Morgan:

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

QUESTION 1

Is a sex offender deemed to “establish a
residence” within the meaning of section 15-20-
26 of the Code of Alabama when he returns to his
prior dwelling after being incarcerated for a
criminal sex offense?

FACTS AND ANALYSIS

The Community Notification Act is found at sections 15-20-20 through 15-20-38 of the Code of Alabama. The purpose of the act is "to assist local law enforcement agencies' efforts to protect their communities by requiring criminal sex offenders to register, record their address of residence, to be photographed, fingerprinted, to authorize the release of necessary and relevant information about criminal sex offenders to the public, to mandate residency and employment restrictions upon criminal sex offenders, and to provide certain discretion to judges for application of these requirements as provided in this article." ALA. CODE § 15-20-20.1 (Supp. 2002). Section 15-20-26 of the Code sets various restrictions on where criminal sex offenders may establish a residence or accept employment. ALA. CODE § 15-20-26 (Supp. 2002). In defining what "establishment of a residence" means, section 15-20-23(b)(2) of the Code states 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:*

* * *

(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)(2) (Supp. 2002) (emphasis added).

In determining the meaning of a statute, courts look to the plain meaning of the words as written by the Legislature. *DeKalb Co. LP Gas Co. v. Suburban Gas*, 729 So. 2d 270 (Ala. 1998). "The fundamental rule of statutory construction is to ascertain and give effect to the intent of the Legislature in enacting the statute. Words used in a statute must be given their natural, plain, ordinary and commonly understood meaning, and

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where plain language is used a court is bound to interpret that language to mean exactly what it says." *IMED Corp. v. Systems Eng'g Assocs. Corp.*, 602 So. 2d 344 (Ala. 1992).

The plain language of section 15-20-23(b) of the Code of Alabama says that a person is deemed to have "established a residence" for purposes of this act even if he returns to the domicile he resided in prior to his conviction. This shows the intent of the Legislature to impose the restrictions set forth in section 15-20-26 of the Code regardless of whether the adult criminal sex offender desires to return to his former residence. This interpretation is also consistent with our opinion to Honorable Robert E. Owens, Jr., District Attorney, Shelby County District Attorney's Office, dated November 14, 2000, A.G. No. 2001-032.

CONCLUSION

It is the opinion of this Office that a sex offender is deemed to "establish a residence" within the meaning of section 15-20-26 of the Code of Alabama when he or she returns to his or her prior dwelling after being incarcerated for a criminal sex offense.

QUESTION 2

If the answer to question one is "yes," is this still true if the period of incarceration is "time served" for which the offender is given credit as part of a split sentence?

FACTS AND ANALYSIS

Section 15-20-23(b)(2) states that "[w]hensoever 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)(2) (emphasis added). This Office has previously opined that, in order for section 15-20-23(b)(2) of the Code to apply, the offender returning to a previous residence must be doing so after a period of incarceration. See Opinion to Honorable Terry R. Surles, Sheriff, St. Clair County, dated February 10, 2000, A.G. No. 2000-081 (opining that an

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offender placed only on probation does not trigger the application of section 15-20-23(b)(2) of the Code of Alabama).

In the situation presented here, part of the offender's sentence is "time served." Under Alabama law, anyone convicted of and imprisoned for a felony or misdemeanor is credited with all of the actual time spent incarcerated pending trial for the offense. ALA. CODE § 15-18-5 (1995). The time an offender spends incarcerated prior to conviction is, therefore, considered part of the offender's total period of incarceration. Section 15-20-23(b)(2) of the Code only requires a period of incarceration imposed as a result of a conviction for a criminal sex offense. It is the opinion of this Office that "time served" is incarceration imposed as a result of a conviction for a criminal sex offense and would trigger the application of section 15-20-23(b)(2) of the Code.


CONCLUSION

A sex offender is deemed to "establish a residence" within the meaning of section 15-20-26 of the Code of Alabama when he or she returns to his or her prior dwelling after being incarcerated for a criminal sex offense, even if the period of incarceration is "time served" for which the offender is given credit as part of a split sentence.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Albritton of my staff.

Sincerely,

BILL PRYOR
Attorney General
By:


CAROL JEAN SMITH
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