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

Community Notification Act –  
Department of Corrections – Sex  
Offenders

The Alabama Department of Corrections  
("ADOC") is not required to provide a  
copy of the Community Notification Act  
or give information regarding the Act's  
penalties to sex offenders.

ADOC must directly notify local law  
enforcement within five business days of  
receiving a sex offender's declaration of  
intent to establish a residence.

ADOC must provide any available  
photos of sex offenders to local law  
enforcement.

ADOC has no duty to verify addresses  
provided by sex offenders.

ADOC must report known violations of  
the Act to proper authorities.

ADOC cannot "administratively hold" a  
sex offender pending verification of his  
or her declared place of residence.

Dear Sheriff Whisante:

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

### QUESTION ONE

Should the Department of Corrections provide a copy of the Community Notification Act to criminal sex offenders to be released and advise them that providing false information pertaining to intended residency is a violation of law?

### FACTS AND ANALYSIS

The Community Notification Act, codified at sections 15-20-20 through -38 of the Code of Alabama, provides that, before a criminal sex offender is released, certain procedures must be followed to forewarn citizens that the offender intends to reside in their community and to ensure that law enforcement officials are capable of tracking the offender's whereabouts. *See* ALA. CODE §§ 15-20-20.1, -22, and -25 (Supp. 2002). For offenders being released from state prison, the "responsible agency" charged with carrying out these procedures is the Alabama Department of Corrections ("ADOC"). *See* ALA. CODE § 15-20-21(10) (Supp. 2002).

Thirty days before a criminal sex offender's anticipated release from prison, ADOC "shall require the [ ] offender to declare in writing the actual living address at which he or she will reside upon release." ALA. CODE § 15-20-22(a)(1) (Supp. 2002). If the sex offender inmate declares his or her intent to reside within Alabama, ADOC must, within five business days of receiving the offender's declaration, "notify the Attorney General, the Director of the Department of Public Safety, the district attorney and the sheriff of the county in which the [ ] offender intends to reside, the chief of police of any municipality in which the [ ] offender intends to reside, and the Alabama Criminal Justice Information Center." ALA. CODE § 15-20-22(a)(3) (Supp. 2002). This notification, moreover, must include all information available to ADOC that would be necessary to identify and trace the offender, including sex offense histories, pre-sentence investigations, fingerprints, and a current photo of the offender. *See id.* Once these procedures are completed, local law enforcement agencies are responsible for disseminating community notification, and

the Department of Public Safety is made capable of verifying the offender's place of residence on an annual basis. *See* ALA. CODE § 15-20-24 and -25 (Supp. 2002).

Your first question asks whether ADOC "should" provide a copy of the Community Notification Act, and explain its criminal penalties, to offenders before they are released from prison. This would undoubtedly be a good and desirable practice, as it would apprise offenders of their obligations under the law and would aid in the prosecutions of offenders who are derelict in those responsibilities. Nonetheless, this practice, which may already be carried out at some or all state correctional facilities, is not actually *required* under the law.

### CONCLUSION

ADOC is not statutorily required to provide copies of the Community Notification Act to criminal sex offenders being released from prison. Likewise, ADOC is not legally obliged to inform sex offender inmates of the Community Notification Act's criminal penalties.

### QUESTION TWO

Should the Department of Corrections provide notification, including a current photograph, to the local law enforcement agency that will have jurisdiction of the criminal sex offender upon release within five (5) business days rather than providing this information to the Alabama Bureau of Investigation?

### FACTS AND ANALYSIS

In your opinion request, you have stated that, in your department's experience, ADOC has maintained a practice of only notifying the Alabama Bureau of Investigation ("ABI") when a sex offender inmate is released from prison. You further state that your department has been made aware that an offender intends to reside in your jurisdiction only after having received a notification flyer from ABI. Because this notification has not been given directly to you from ADOC, but rather has been filtered through ABI, your department, and the community in turn, has

often received little advance notice that an offender intends to reside in your county.

The notification scheme you have described is not in compliance with the Community Notification Act. As was set forth above, ADOC is statutorily required, before releasing any criminal sex offender from its custody, to "notify the Attorney General, the Director of the Department of Public Safety, the district attorney and the sheriff of the county in which the [] offender intends to reside, the chief of police of any municipality in which the [] offender intends to reside, and the Alabama Criminal Justice Information Center" of the release. ALA. CODE § 15-20-22(a)(3) (Supp. 2002). Merely providing notification of the release to ABI does not satisfy this requirement.

### CONCLUSION

ADOC is statutorily required to directly notify local law enforcement agencies, among others, within five business days of receiving an offender's declaration of intent to establish a residence. If a photograph of the offender is available to ADOC, it must also be provided to local law enforcement agencies.

### QUESTION THREE

If a criminal sex offender provides false information pertaining to an intended address upon release, is it the responsibility of the Department of Corrections to file criminal charges against said criminal sex offender or does that responsibility fall on the local law enforcement agency that will assume, upon release, jurisdiction over the criminal sex offender?

### FACTS AND ANALYSIS

The Community Notification Act makes no express provision for what person or agency is responsible for reporting violations of the Act. As regards an offender's obligation to provide notice of his or her intended place of residence, section 15-20-22(a) only requires ADOC to

collect such information and disseminate it to other agencies. Significantly, nothing in the Act charges ADOC with investigating or verifying the legitimacy of the address provided by an offender. Thus, it would seem that, in most instances, ADOC would lack the information needed to determine that an address provided by an offender is indeed false.

If, however, ADOC has knowledge that an offender has provided a false address, or if the offender has refused to provide an address, ADOC must investigate and report this criminal violation just as it would report the occurrence of any other crime perpetrated by an inmate at a correctional facility. See ALA. CODE § 14-3-9 (1995).

### CONCLUSION

The Community Notification Act imposes no specific obligation on ADOC to verify addresses provided by criminal sex offenders, nor does the statute expressly state what person or agency is responsible for reporting violations of the Act. Nonetheless, ADOC must report any known violations of the Act just as it would report the occurrence of any other crime perpetrated by an inmate at a correctional facility.

### QUESTION FOUR

If, as a result of providing false information pertaining to an intended address, no address can be verified by the time of a criminal sex offender's date of release, can the Department of Corrections administratively hold said criminal sex offender until such time as an address in compliance with the Community Notification Act is verified?

### FACTS AND ANALYSIS

The Community Notification Act does not allow ADOC to "administratively hold" a criminal sex offender on the grounds that his or her declared place of residence has not yet been verified. Moreover, willfully detaining any inmate past the termination of his or her sentence constitutes a criminal violation. See ALA. CODE § 14-11-2 (1995). If, however, criminal charges have been filed and are pending as a result of an

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offender's refusal to provide a timely and accurate written declaration of his or her intended place of residence, ADOC should, at the termination of the inmate's sentence, release the offender into the custody of local law enforcement for further proceedings on that charge.

CONCLUSION

ADOC cannot "administratively hold" an offender pending verification of his or her declared place of residence.

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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