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June 11, 2008

Honorable J. Christopher Murphy
Director, Department of Public Safety
Post Office Box 1511
Montgomery, Alabama 36102-1511

Community Notification Act – Sex Offenders – Records – Criminal Records – Montgomery County

An offender who requests an administrative hearing can be subjected to the Community Notification Act and posted on the sex offender website if evidence has been presented to an administrative law judge from which the judge determines by a preponderance of the evidence that the offender was convicted in another jurisdiction of an offense that is analogous to a sex offense under Alabama law.

Whether such evidence has been presented, by certified copy of conviction or otherwise, must necessarily be decided by the administrative law judge on a case-by-case basis.

Dear Colonel Murphy:

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

QUESTIONS

1. If a sex offender convicted in another jurisdiction requests an administrative hearing to determine whether the offender is subject to the Community Notification Act, is it possible to only require a certified copy of the conviction from the

> other jurisdiction if the information on the Form 47 Sex Offender Registration Form submitted by the offender identifying the offense does not match the offender's criminal history information from a background check?
>
> 2. If this information does not match and there are no records available, can we post the offender on the sex offender website?

FACTS AND ANALYSIS

Your request states as follows:

> I am writing to request an opinion regarding due process hearings for sex offenders that move to Alabama from another state. Currently, we are requiring the state from which the offender is moving to provide us with certified copies of any court records they have concerning the conviction. However, since it often takes quite some time to receive these copies, the hearing process is delayed. Therefore, we have many more sex offenders awaiting a hearing than necessary.
>
> Also, we have several sex offender files that cannot be completed because the state from which the offender is moving no longer has any court records concerning the offense committed in that state. They have been expunged, lost, or never existed in the first place. These files are also contributing to the large number of sex offenders that are awaiting a hearing.

The Community Notification Act is codified at section 15-20-20, *et. seq.*, of the Code of Alabama. ALA. CODE § 15-20-21 to 15-20-38 (Supp. 2007). The class of sex offenders covered by the act is defined in section 15-20-21(4), which sets forth various "criminal sex offenses." ALA. CODE § 15-20-21(4)(a)-(k) (Supp. 2007). In addition to those offenses, the act provides that "[a]ny crime committed in any state or a federal, military, Indian, or a foreign country jurisdiction which, if it had been committed in this state under the current provisions of law, would constitute an offense listed in paragraphs a. to k., inclusive." ALA. CODE § 15-20-21(4)(l) (Supp. 2007).

This Office has stated as follows regarding section 15-20-21(4)(l):

> To determine whether a person convicted in another jurisdiction is subject to the Community Notification Act, the elements of the crime for which the person was convicted must be examined. If the elements of the crime for which the person was convicted correspond to the elements of a crime listed in section 15-20-21[(4)] a-k, then the Community Notification Act applies.

Opinion to Honorable Bob Bunting, Mayor, City of Ozark, dated January 13, 1999, A.G. No. 99-00082, at 2.

It has been held, however, that before any determination can be made that would definitively subject the offender to the Act, the state must give the offender an "opportunity to be heard." *Doe v. Pryor*, 61 F. Supp. 2d 1224, 1234 (M.D. Ala. 1999). In reliance on *Doe*, this Office has stated that the Alabama Department of Public Safety should provide procedural due process hearings for offenders convicted in other jurisdictions. Opinion to Honorable Joe W. Whisante, Madison County Sheriff, dated December 27, 2001, A.G. No. 2002-101.

American Jurisprudence explains the burden of proof for due process or administrative hearings as follows:

> The general standard of proof for administrative hearings is by a preponderance, that is, the greater weight, of the evidence. . . . A party establishes a claim by a preponderance of the evidence by presenting for each element of the claim reliable, probative, and substantial evidence of such sufficient quality and quantity that a reasonable administrative law judge could conclude that the existence of facts supporting the claim are more probable than their nonexistence.

2 AM. JUR. 2d *Administrative Law* § 357 (2008).

An offender can be subjected to the act and posted on the sex offender website if evidence has been presented to an administrative law judge from

which the judge determines by a preponderance of the evidence that the offender was convicted in another jurisdiction of an offense that is analogous to a sex offense under Alabama law. Whether such evidence has been presented, by certified copy of conviction or otherwise, must necessarily be decided by the administrative law judge on a case-by-case basis. Opinion to Honorable Johnny Rogers, Lamar County Probate Judge, dated August 13, 2003, A.G. No. 2003-217 (considering whether the burden of proof for an involuntary commitment hearing may be met by testimony from a therapist only).

CONCLUSION

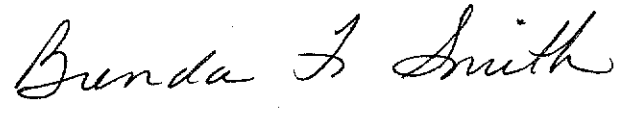
An offender who requests an administrative hearing can be subjected to the Community Notification Act and posted on the sex offender website if evidence has been presented to an administrative law judge from which the judge determines by a preponderance of the evidence that the offender was convicted in another jurisdiction of an offense that is analogous to a sex offense under Alabama law.

Whether such evidence has been presented, by certified copy of conviction or otherwise, must necessarily be decided by the administrative law judge on a case-by-case basis.

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

Sincerely,

TROY KING
Attorney General
By:



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