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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Terry Surles
St. Clair County Sheriff's Office
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Ashville, Alabama 35953

Community Notification Act — Sex Offenders — Venue — Sheriffs

Section 15-20-22(a)(1)a of the Community Notification Act requires the sheriff from the county of the last conviction for a criminal sex offense to make arrangements to take custody of a criminal sex offender charged with violating this section. Should he or she fail or refuse to take custody of the offender, then the appropriate action for the Department of Corrections or responsible agency is to notify the local sheriff, who should arrest and take custody of the prisoner. The sheriff should then initiate the procedures for the intrastate transfer of the prisoner to the county of last conviction for prosecution.

If a sex offender violates section 15-20-22 and said offender's last conviction for a criminal sex offense was had in a foreign jurisdiction, it is the opinion of this Office that venue is proper where the violation of section 15-20-22 occurred.

Dear Sheriff Surles:

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

QUESTION 1

> Because venue lies in the county of last conviction for a sex crime, what happens when the authorities from that county refuse to arrange for transfer of the offender who is in violation of section 15-20-22(a)(1)?

FACTS AND ANALYSIS

Section 15-20-22(a)(1) of the Code of Alabama provides as follows:

> (a) One hundred eighty days prior to the release of an adult criminal sex offender, the following shall apply:
>
> > (1) The responsible agency shall require the adult criminal sex offender to declare, in writing or by electronic means approved by the Director of the Department of Public Safety, the actual physical address at which he or she will reside or live upon release and the name and physical address of his or her employer, if any. . . .

ALA. CODE § 15-20-22 (Supp. 2009). Any failure by the offender to provide an address in compliance with this section is guilty of a Class C felony. *Id.* This section also provides that "the county where the last conviction for a criminal sex offense took place . . . shall be the proper venue for arrest and prosecution of violation of this section." ALA. CODE § 15-20-22(a)(1)a (Supp. 2009). Paragraph (a) continues as follows:

> Upon notice of the release date, the sheriff from the county of the last conviction for a criminal sex offense shall make arrangements to have the offender immediately remanded to his or her custody at the time of release. Any adult criminal sex offender charged with violating this section may only be released on bond on the condition that the offender is in compliance with this section before being released.

Id.

You question what to do when the authorities from the county of the "last conviction for a criminal sex offense" refuses to arrange for the transfer of the offender to his or her custody when the offender is in violation of section 15-20-22(a)(1) of the Code of Alabama.

The Department of Corrections no longer has authority to detain a prisoner once the he or she has reached the end of sentence. *See* ALA. CODE § 14-11-2 (2003); *see also* opinion to Honorable Joe W. Whisante, Madison County Sheriff, dated November 18, 2002, A.G. No. 2003-035, at 6. In a situation analogous to the current situation, this Office previously stated that it is appropriate for the sheriff of one county who arrested a prisoner and has custody of him or her to hold the prisoner for a period of time until he or she can be transferred to another county or municipality where the prisoner is wanted on another charge. Opinion to Honorable James B. Jones, Baldwin County Sheriff, dated January 30, 2006, A.G. No. 2006-004.

Section 15-10-70 provides as follows:

> When any person charged with the commission of any offense is arrested in any county other than that in which he is triable by an officer of the county in which he is arrested, such arresting officer shall immediately commit him to a jail or guardhouse nearest to the place of arrest, and the sheriff of such county shall at once notify the sheriff of the county in which such person is triable of the fact of such arrest and confinement.

ALA. CODE § 15-10-70 (1995).

It is the opinion of this Office that when the sheriff of the county of last conviction fails or refuses to make arrangements to take custody of a criminal sex offender charged with violating section 15-20-22(a)(1), then the sheriff of the county where the sex offender is located should arrest and take custody of the prisoner, and then follow section 15-10-70, *et seq.*, providing for the transfer of prisoners to other counties for prosecution.

CONCLUSION

Section 15-20-22(a)(1)a of the Community Notification Act requires the sheriff from the county of the last conviction for a criminal sex offense to make arrangements to take custody of a criminal sex offender charged with violating

this section. Should he or she fail or refuse to take custody of the offender, then the appropriate action for the Department of Corrections or responsible agency is to notify the local sheriff, who should arrest and take custody of the prisoner. The sheriff should then initiate the procedures for the intrastate transfer of the prisoner to the county of last conviction for prosecution.

QUESTION 2

> Where does venue lie if the county of last conviction is in another state?

FACTS AND ANALYSIS

As previously discussed, criminal sex offenders who have failed to comply with the requirements of section 15-20-22 prior to release shall be charged with a Class C felony. The statute states that venue for arrest and prosecution for such would be proper "in the county where the last conviction for a criminal sex offense took place." ALA. CODE § 15-20-22(a)(1)a (Supp. 2009). Your question, however, deals with what to do with the offenders who were convicted of a criminal sex offense in a state other than Alabama.

Section 15-20-22 does not specify venue when an offender was convicted of a sex offense in a foreign jurisdiction. *See* ALA. CODE § 15-20-22 (Supp. 2009). "When a statute is silent, [the] Court will look outside of the plain language of the statute to determine the intent of the legislature." *Fausnight v. Perkins*, 994 So. 2d 912, 922 (Ala. 2008).

It is clear from the stated intent of the Legislature in adopting the Alabama Community Notification Act that all sex offenders are required to comply with section 15-20-22 and that those offenders who were convicted of a sex offense outside the state of Alabama are not exempted from its registration requirements. Section 15-20-20.1 states as follows:

> [T]he state policy 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. 2009).

Because section 15-20-22 does not specifically provide where venue is proper in these situations, the question of where venue lies will be answered by looking at the general venue statute contained in section 15-2-2 of the Code. Section 15-2-2 provides that "[u]nless otherwise provided by law, the venue of all public offenses is in the county in which the offense was committed." ALA. CODE § 15-2-2 (1995). If an offender who was convicted in a foreign jurisdiction fails to provide an address while in prison or jail, then the offense occurs in that county wherein the offender is in custody.

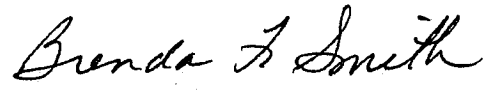
CONCLUSION

If a sex offender violates section 15-20-22 and said offender's last conviction for a criminal sex offense was had in a foreign jurisdiction, it is the opinion of this Office that venue is proper where the violation of section 15-20-22 occurred.

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

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
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