

APA-1
07/04

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 017 Department or Agency Public Safety
Rule No. 760-X-1-21
Rule Title: Foreign Jurisdiction Convicted Sex Offender Registration, Notification, and Due Process Hearings
 New X Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? yes

Is there another, less restrictive method of regulation available that could adequately protect the public? no

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? no

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? n/a

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? yes

Does the proposed rule have an economic impact? no

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975

Certification of Authorized official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Col. Hugh B McCall
Date 7-10-2012

Public Safety
Administrative Division

NOTICE OF INTENDED ACTION

AGENCY NAME:

Public Safety

RULE NO. & TITLE:

760-X-1-.21 Foreign Jurisdiction Convicted Sex Offender Registration, Notification, and Due Process Hearings

INTENDED ACTION:

The Alabama Department of Public Safety proposes to amend Rule No. 760-X-1-.21, Foreign Jurisdiction Convicted Sex Registration

SUBSTANCE OF PROPOSED ACTION:

This proposed action will amend this rule to reflect the changes made in the sex offender laws found in Alabama Code Sections 15-20A-1 through 15-20A-48.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

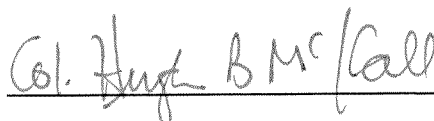
Written or oral comments may be directed to Haran Lowe, Legal Unit, P.O. Box 1511, Montgomery, Alabama 36102-1511, (334) 242-4392.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

September 4, 2012

CONTACT PERSON AT AGENCY:

Haran Lowe
Department of Public Safety
P.O. Box 1511
Montgomery, Alabama 36102-1511



Colonel Hugh B. McCall
Director

**760-X-1-.21 Foreign Jurisdiction Convicted Sex Offender
Registration, Notification, and Due Process Hearings.**

All persons convicted of any sex related crime are required by statute to register with law enforcement. This includes persons convicted in states other than Alabama, federal courts, tribal territories, United States territories, and other jurisdictions. Persons convicted in jurisdictions other than Alabama ~~may be~~ are entitled to a due process hearing prior to community notification if their conviction does not fall within the parameters of Ala. Code Sections 15-20A-1 through 15-20A-48 (2011), the Alabama Sex Offender Registration and Notification Act. Persons convicted in jurisdictions other than Alabama follow the steps below:

- (1) Persons convicted in jurisdictions other than Alabama must register by completing ABI Form 47 upon entering into Alabama to reside, work, or attend school moving into the State of Alabama.

- (2) When the Department of Public Safety receives the ABI Form 47, the department will make a determination as to the applicability of the Alabama Sex Offender Registration and Notification Act to the offender. This determination includes whether the offender is entitled to be offered a due process hearing. A convicted sex offender may waive his right to a hearing by completing ABI Form 47 and signing DPS Waiver of Hearing Form. If the offender signs this form, community notification may proceed.

- (3) If the conviction is for a sex offense as defined in Alabama Code Section 15-20A-5, except for those covered in subsection (33), then the offender is automatically subject to the entire Act without a due process hearing. However, if not and community notification is not automatically applied under the Act, the department will make a preliminary determination concerning the applicability of the Act to the offender. If it is determined that the Act should apply to the offender, the department will mail a notice to the offender of the department's determination that also explains how to appeal the determination. The notice will be mailed by certified mail, return receipt requested. If the offender does not sign DPS Waiver of Hearing Form, the registration form, ABI 47, is to be forwarded immediately to DPS at Legal Unit, P.O. Box 1511, Montgomery, Alabama 36102-1511.

- (4) ~~When DPS receives the ABI 47, the department will make determination as to the applicability of Alabama's community notification law. Code of Ala. 1975, Section 15-20-21(4)(1).~~
- (5) ~~If a determination is made that the Act applies, a notice will be mailed, certified mail return receipt requested, to the offender's last known address. The notice will inform the offender of the department's determination and explain the process to appeal the determination.~~
- (4) If the notice is returned unclaimed or incorrect address, this will result in waiver of a hearing.
- (5) If the offender disagrees with the department's determination by DPS, he or she must notify the Department of Public Safety's DPS Legal Unit at P.O. Box 1511, Montgomery, Alabama 36102-1511, in writing within twenty (20) days of receipt of the notice. If the offender fails to timely notify the department of the hearing request within this time period, this will result in waiver of a hearing.
- (6) Appeals of the department's determination will be heard by an Administrative Law Judge provided by the department Office of the Attorney General.
- (7) Appeals will be held at the department's office closest to the address of the offender. in Huntsville, Birmingham, Montgomery, Mobile, and Dothan, Alabama. Whichever is closer to the address of the offender
- (8) Appeal of the decision of the Administrative Law Judge will be with the Circuit Court in of Montgomery County, Alabama.

WAIVER OF HEARING
REGISTRATION AND COMMUNITY NOTIFICATION LAWS

Having been convicted of _____ in _____, _____, you are considered a Criminal Sex Offender as defined by State of Alabama Act 01-1127 and 42 United States Code, Section 14071. You are entitled to a hearing by the Alabama Department of Public Safety regarding whether the Community Notification Act is applicable to the aforementioned conviction.

_____ agrees by signing this waiver of hearing, accepting its terms, and by acknowledging that his/her waiver is voluntarily and knowingly made, _____ waives the right to a hearing on the applicability of the community notification laws and any appeal on the application of the community notification laws in this case.

Having waived your right to a hearing, you will be required to follow the following conditions:

1. Report to your local Sheriff's Office to register as a sex offender, submit to fingerprinting, photographing, and DNA testing.
2. At least thirty days before changing your residence (any place you live more than five days), you must give notice of your intent to move on a form provided to the Sheriff and Chief of Police in the county and city where you presently live and also to the Sheriff and Chief of Police where you intend to move.
3. Within 10 days of receiving an address verification form from the Department of Public Safety, you will take the completed and signed form to the Sheriff or Chief of Police and submit to photographing and fingerprinting.
4. You shall not establish a residence or accept employment within 2,000 feet of the property on which any school or childcare facility is located.
5. You shall not establish a residence within 2,000 feet of the property on which any of your former victim(s) or their immediate family members reside. You will not come within 100 feet of a former victim or make any

~~visual or audible sexually suggestive or obscene gesture, sound or communication to a former victim.~~

~~6. You shall not establish a residence where a minor resides, unless you are the parent of the minor, and (a) your parental rights have not or are not in the process of being terminated, and (b) you have been convicted of a sex offense against any of your children.~~

~~7. You shall not change your name unless you are changing your name due to a change in marital status or religion, and you must report such name change to the Sheriff's Office within 30 days of the change.~~

~~8. If you move to another state, you shall report the change of address as provided by state law, and you comply with registration requirements of the new state of residence. You must also register with any state in which you are employed or are a student.~~

~~You are to comply with these conditions for the remainder of your natural life in accordance with Code of Ala. 1975, Section 15-20-33(a).~~

~~A copy of the foregoing was received by the registered offender on the _____ day of _____, _____.~~

Name

~~Sworn to and subscribed before me this the _____ day of _____, _____.~~

~~Notary Public
My Commission Expires: _____~~

Author: ~~Lindsey W. Clements Michael W. Robinson~~
Statutory Authority: Code of Ala. 1975, § 15-20A-44 ~~15-20-38(a)~~.