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## PENAL INSTITUTIONS

### *General Provisions: Provide for Victim Notification by the Commissioner of Corrections*

**CODE SECTION:** O.C.G.A. § 42-1-11 (new)  
**BILL NUMBER:** SB 252  
**ACT NUMBER:** 589  
**SUMMARY:** The Act requires the Commissioner of Corrections to make a good faith effort to notify victims of crimes against the person of a change in the custodial status of the offender who victimized them. Victims who wish to be notified have the responsibility of keeping the Commissioner apprised of their current address.  
**EFFECTIVE DATE:** Six months after the effective date of an appropriations act containing a specific appropriation to fund the provisions of the Act

#### *History*

The State Board of Pardons and Paroles Victim Services Office operates the current system of victim notification.<sup>1</sup> However, the present system leads to many situations in which the state is not required to notify victims that the offender is no longer in state custody.<sup>2</sup> This statute seeks to address those gaps in the current victim notification system and to provide more protection for those victims who desire to be apprised of an offender's change in custodial status.<sup>3</sup>

#### *SB 252*

Having obtained tremendous support, this legislation<sup>4</sup> passed both the Georgia House of Representatives and the Georgia Senate unanimously. The intent of the Act was to extend protection for crime victims beyond the current system of notification performed by the State Board of Pardons and Paroles Victims Services Office.<sup>5</sup> Current

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1. Interview with Silas Moore, Director of Victim Services, State Board of Pardons and Paroles, in Atlanta (Apr. 8, 1993) [hereinafter Moore Interview].

2. *Id.*

3. *Id.*

4. The legislation was initially introduced by Rep. Tom Campbell, House District No. 42, as HB 211. The final version that passed in both houses was SB 252, which is identical to HB 211. SB 252, as passed, 1993 Ga. Gen. Assem.

5. O.C.G.A. § 42-9-47 (1991) requires that the victim of a crime against the person be notified within seventy-two hours after the Board of Pardons and Paroles

law requires<sup>6</sup> the Georgia Board of Pardons and Paroles to provide notification to certain crime victims under certain conditions, especially when a prisoner is granted an early release—which means a prisoner serves less than one-third of his or her sentence. Through the Victims Services Office of the State Board of Pardons and Paroles, Georgia has an active and on-going process to notify victims and to solicit victim input when a prisoner's release has been tentatively planned.<sup>7</sup> The information obtained is entered into a computer system and the inmate's file.<sup>8</sup> Under current procedures, a victim can request notification from the Parole Board prior to the inmate's parole.<sup>9</sup> However, the State Board of Pardons and Paroles operates separately from the Georgia Department of Corrections.<sup>10</sup> This Act would remedy some gaps in the present system.

One major problem this legislation is designed to address is that the current system is not adequately inclusive since there are many different situations in which victims receive no notification from the State that their assailant or the perpetrator is no longer in State custody.<sup>11</sup>

In order to broaden the scope of notification and clarify responsibilities, the General Assembly created specific language setting forth key definitions. For example, the Act created Code section 42-1-11, relating to general provisions concerning penal institutions, by adding definitive language which defines "commissioner," "crime," "crime

reaches a final decision to parole an inmate if the Board has received the victim's address in a victim impact sentence. O.C.G.A. § 42-9-47 (1991).

6. *Id.* §§ 42-9-46 to -47 (1991).

7. Moore Interview, *supra* note 1. Mr. Moore stated that the Victim Services Office actively encourages participation from victims regarding their feelings and thoughts about the potential release of an inmate. *Id.* Every letter or statement received from a crime victim gets logged and specially tabbed into the file folder of the inmate about whom the correspondence concerns. *Id.* Victims can use either the furnished Georgia Victim Impact Statement form or are free to write a letter or note to the Parole Board. *Id.*

8. *Id.*

9. *Id.* A state-wide program is already in place to encourage communication between crime victims and the Parole Board. *Id.*

10. Telephone Interview with Leslie Lowe, Legislative Liaison, Georgia Department of Corrections (Mar. 29, 1993). According to Ms. Lowe, the computer base necessary to extend the present notification system would require additional funding for computer programming into the Offender Tracking Information System (OTIS). *Id.* Ms. Lowe stated the Georgia Department of Corrections is requesting for this new system, \$157,000, which includes funds for start-up costs. *Id.*

11. Telephone Interview with Brooks Hunnicutt, Official Spokesperson, Crime Victim Advocacy Council (Apr. 13, 1993) [hereinafter Hunnicutt Interview]. Ms. Hunnicutt indicated that no notice is given now if: 1) the criminal is out on temporary furlough at Christmas, 2) on work release, 3) in a half-way house, or 4) if the offender escapes. *Id.* Ms. Hunnicutt noted that victims are often stunned to meet the offender on the street when they had no idea the offender was out of prison. *Id.*

against the person," "offender," and "victim."<sup>12</sup> The Act defines "commissioner" to mean "the commissioner of corrections" and "crime" to mean "an act committed in this state which constitutes a crime as defined by state or federal law and which results in physical injury or death of the victim."<sup>13</sup>

The General Assembly chose to broadly define crimes against the person as "any crime provided for in chapter 5 of title 16."<sup>14</sup> The Act defines offender as "a person sentenced to a term of incarceration in a state or county correctional institution."<sup>15</sup> The Act defines victim as "a person who suffers personal physical injury or death as a result of a crime and shall include members of the immediate family of a victim who dies as the result of a crime and the parents and guardians of victims who are minors."<sup>16</sup>

The Act creates a process for implementation of the notification effort.<sup>17</sup> After a district attorney verifies the identity of a crime victim and upon the request of that victim, the district attorney is to mail a letter to the Commissioner of Corrections requesting notification to the victim of any change in the custodial status of the offender.<sup>18</sup> The Act requires that the commissioner of corrections or the Commissioner's designee "shall make a good faith effort to notify the victim that the offender is to be released from imprisonment, including release on extended furlough; transferred to work release; released by mandatory release upon expiration of sentence; or has escaped from confinement; or if the offender has died."<sup>19</sup>

According to Representative Tom Campbell, who sponsored the original bill in the House, the system of notification by the Georgia State Board of Pardons and Paroles is an entirely separate system which the General Assembly created earlier.<sup>20</sup> The new law significantly broadens victim notification. It seeks to accomplish this wider scope by carefully delineating what the Department of Corrections rather than the Georgia Board of Pardons and Paroles must do.<sup>21</sup>

12. O.C.G.A. § 42-1-11 (Supp. 1993).

13. *Id.* § 42-1-11(a)(1)-(2) (Supp. 1993).

14. *Id.* § 42-1-11(a)(3) (Supp. 1993).

15. *Id.* § 42-1-11(a)(4) (Supp. 1993).

16. *Id.* § 42-1-11(a)(5) (Supp. 1993).

17. *Id.* § 42-1-11(b) (Supp. 1993).

18. *Id.*

19. *Id.*

20. Telephone Interview with Rep. Tom Campbell, House District No. 42 (Apr. 2, 1993) [hereinafter Campbell Interview]. Rep. Campbell was the sponsor of both the Parole Board system that is currently in operation, as well as the new system. *Id.* Rep. Campbell stated that the Crime Victims Advocacy Council (CVAC) and individual citizens sought his help in creating some kind of system to notify victims when the criminal was out of prison. *Id.*

21. Hunnicutt Interview, *supra* note 11. CVAC feels there is a need to work on

The Act essentially divides the notification process into the categories of routine changes of custodial status, emergency situations, and the death of the offender.<sup>22</sup> Expected or anticipated changes in custodial status include: release from imprisonment, release on extended furlough, transfer to work release, and mandatory release upon expiration of the sentence.<sup>23</sup> Any of the above changes in custodial status trigger the notification obligation. Notification is also mandated if the offender has died.<sup>24</sup> "The good faith effort to notify the victim" must occur prior to any release or transfer.<sup>25</sup> The time requirement specified for notification for the victim of a felony crime against a person for which the offender was sentenced to imprisonment for more than eighteen months is "no later than ten days before the offender's release from imprisonment, transfer to or release from work release."<sup>26</sup> However, if there is an emergency situation, then the time requirement is "as soon as is practical."<sup>27</sup> The Act provides specific parameters for the notice itself.<sup>28</sup> The notice to be sent by the Commissioner of Corrections or the Commissioner's designee "must include the conditions governing the offender's release or transfer and either the identity of the corrections agent who will be supervising the offender's release or a means to identify the agency that will be supervising the offender's release."<sup>29</sup> Compliance with the notice requirement is achieved by mail to the address that the victim provided.<sup>30</sup> The Act also specifies the procedure to be followed when an offender escapes or is recaptured.<sup>31</sup>

If an offender escapes from imprisonment or incarceration, including from release on extended furlough or work release, the commissioner or other custodial authority shall make all reasonable efforts to notify a victim who has requested notice . . . within six hours after discovering the escape, or as soon thereafter as is practical and shall also make reasonable efforts to notify the victim within 24 hours after the offender

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intergovernmental cooperation so that crime victims will not fall into notification gaps. *Id.*

22. O.C.G.A. § 42-1-11(b) (Supp. 1993).

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. Hunnicutt Interview, *supra* note 11. "Thirty-one states have this or very similar systems. South Carolina already has essentially the same system which is awaiting funding in Georgia, and South Carolina does the notification at a small percentage of their total budget." *Id.*

29. O.C.G.A. § 42-1-11(c) (Supp. 1993).

30. *Id.*

31. *Id.* § 42-1-11(d) (Supp. 1993).

is apprehended or as soon thereafter as is practical. In emergencies, telephone notification for the victim will be attempted and the results documented in the offender's central file.<sup>32</sup>

Some members of the General Assembly were concerned that prisoners might attempt to use the information about the whereabouts of a victim against that victim.<sup>33</sup> Therefore, the Act protects the confidentiality of the victim's address and phone number(s) and also protects access to this information. To guarantee that the victim's information cannot be obtained, the Act specifies: "All identifying information regarding the victim, including the victim's request and the notice provided by the commissioner or the commissioner's designee, shall be confidential and accessible only to the victim."<sup>34</sup> The same section makes it the responsibility of the victim to provide the Commissioner with a current address.<sup>35</sup>

The final issue the General Assembly addressed was potential state liability for lawsuits from aggrieved victims who were not appropriately notified according to the statutory requirements.<sup>36</sup> The Act makes it difficult for victims to sue the state if they are not appropriately notified by the Department of Corrections.<sup>37</sup>

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32. *Id.*

33. Interview with Rep. Tim Perry, House District No. 11, in Atlanta (Mar. 3, 1993). Rep. Perry expressed assurances that the Georgia Open Records Act could not be utilized by an offender to locate his victim. *Id.* In fact, O.C.G.A. § 42-1-11(e) provides that even the victim's request for notification is confidential and accessible only to the victim. *Id.*

34. O.C.G.A. § 42-1-11(e) (Supp. 1993).

35. *Id.*

36. Rep. Denmark Groover, Jr., House District No. 125, expressed concern that the Act might open the state to lawsuits. HB 252 (HFACS), 1993 Ga. Gen. Assem. His amendment altered the original language which stated that, "[t]he commissioner and the Department of Corrections shall not be liable for damages for a failure to notify the victim." *Id.* The final language inserted by Rep. Groover's amendment reads, "[t]he commissioner and the Department of Corrections shall not be liable for a failure to notify the victim." *Id.* Rep. Groover's amendment deleted the clause "that occurs from actions that are not the result of negligence," which had appeared after the word "victim." *Id.*

37. *Id.*