

CHAPTER 151

CORRECTIONS

SENATE BILL 18-014

BY SENATOR(S) Cooke and Fields, Court, Donovan, Fenberg, Garcia, Gardner, Guzman, Holbert, Jahn, Jones, Kagan, Kefalas, Kerr, Lambert, Marble, Martinez Humenik, Merrifield, Neville T., Scott, Smallwood, Tate, Todd, Williams A., Zenzinger, Grantham;
also REPRESENTATIVE(S) Wist and Herod, Coleman, Gray, Hooton, Kraft-Tharp, Lontine, Melton, Michaelson Jenet, Neville P., Roberts, Saine, Young.

AN ACT**CONCERNING REQUIRING THE DEPARTMENT OF CORRECTIONS TO DISCLOSE THE LOCATION OF INMATES WHO ARE RELOCATED TO FACILITIES OUTSIDE OF THE STATE.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds that:

(a) The "Interstate Corrections Compact", part 16 of article 60 of article 24, was adopted and ratified in 1963 and is a critical management tool for the department of corrections; and

(b) In rare cases, the department may place offenders in out-of-state penal institutions through the interstate corrections compact to address safety and security concerns for inmates, corrections staff, or facilities.

(2) The general assembly further finds that:

(a) Existing law demonstrates the policy of the general assembly to empower crime victims who wish to be informed of changes in the custody status of offenders who have harmed them or their loved ones, including changes in such offenders' locations;

(b) Many crime victims wish to remain informed of the locations of offenders who have harmed them or their loved ones; and

(c) The general assembly must balance its policy regarding crime victims against

Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

safety and security concerns for inmates, corrections staff, and facilities.

(3) Now, then, the general assembly declares that crime victims have a right to be informed of the location of an inmate who has harmed them or their loved ones and been placed in an out-of-state penal institution through the interstate corrections compact; except that, under certain circumstances, including where the disclosure of such information could undermine the safety or security of inmates, corrections staff, or facilities, such information shall not be disclosed.

SECTION 2. In Colorado Revised Statutes, **add** 17-42-104 as follows:

17-42-104. Inmates incarcerated in other states - notifications to victims required - exceptions - definitions. (1) IF THE DEPARTMENT DETERMINES THAT AN INMATE IS ELIGIBLE FOR RELOCATION TO A PENAL INSTITUTION IN ANOTHER STATE PURSUANT TO THE "INTERSTATE CORRECTIONS COMPACT", PART 16 OF ARTICLE 60 OF ARTICLE 24, THEN NOT LATER THAN TWENTY-FOUR HOURS AFTER SUCH DETERMINATION, THE DEPARTMENT SHALL NOTIFY THE PROSECUTING ATTORNEY AND ANY REGISTERED VICTIM OF ONE OR MORE CRIMES FOR WHICH THE INMATE IS SERVING HIS OR HER SENTENCE THAT:

(a) SUCH A DETERMINATION HAS BEEN MADE; AND

(b) IF THE INMATE IS RELOCATED, THE DEPARTMENT, PURSUANT TO SUBSECTION (2) OF THIS SECTION, MAY BE REQUIRED TO NOTIFY THE PROSECUTING ATTORNEY AND ANY REGISTERED VICTIM OF ONE OR MORE CRIMES FOR WHICH THE INMATE IS SERVING HIS OR HER SENTENCE OF THE NAME AND LOCATION OF THE PENAL INSTITUTION WHERE THE INMATE IS TO BE HOUSED FOR ANY PERIOD OF TIME.

(2) IF THE DEPARTMENT RELOCATES AN INMATE FOR INCARCERATION OR CONTRACTS WITH ANOTHER STATE FOR THE INCARCERATION OF AN INMATE IN A PENAL INSTITUTION IN ANOTHER STATE, THEN NOT LATER THAN FORTY-EIGHT HOURS AFTER SUCH RELOCATION, THE DEPARTMENT SHALL NOTIFY THE PROSECUTING ATTORNEY AND ANY REGISTERED VICTIM OF ONE OR MORE CRIMES FOR WHICH THE INMATE IS SERVING HIS OR HER SENTENCE OF THE NAME AND LOCATION OF THE PENAL INSTITUTION WHERE THE INMATE IS TO BE HOUSED FOR ANY PERIOD OF TIME.

(3) SUBSECTION (2) OF THIS SECTION DOES NOT APPLY IF ANY OF THE FOLLOWING FACTORS APPLY AND THE PROSECUTING ATTORNEY CONFIRMS SUCH FACT IN WRITING AS DESCRIBED IN SUBSECTION (4)(b) OF THIS SECTION:

(a) THE INMATE IS A WITNESS AND THE EXECUTIVE DIRECTOR DETERMINES THAT DISCLOSING THE LOCATION OF THE INMATE WOULD POSE A RISK TO THE PERSONAL SAFETY OF THE INMATE, CORRECTIONS STAFF, OTHER INMATES, OR FACILITIES;

(b) THE PROSECUTING ATTORNEY REQUESTS IN WRITING THAT THE DEPARTMENT NOT DISCLOSE THE LOCATION OF THE PENAL INSTITUTION WHERE THE INMATE IS LOCATED;

(c) THE REGISTERED VICTIM IS CURRENTLY INCARCERATED; OR

(d) THE INMATE HAS BEEN EMPLOYED BY THE DEPARTMENT OR AS A LAW

ENFORCEMENT OFFICER AND THE EXECUTIVE DIRECTOR DETERMINES THAT DISCLOSING THE LOCATION OF THE INMATE POSES A RISK TO THE PERSONAL SAFETY OF THE INMATE, CORRECTIONS STAFF, OTHER INMATES, OR FACILITIES.

(4) (a) IF THE DEPARTMENT RELOCATES AN INMATE AND THE EXECUTIVE DIRECTOR DETERMINES THAT ANY FACTOR DESCRIBED IN SUBSECTION (3) OF THIS SECTION APPLIES, THEN NOT LATER THAN FORTY-EIGHT HOURS AFTER SUCH RELOCATION, THE DEPARTMENT SHALL NOTIFY THE PROSECUTING ATTORNEY:

(I) THAT THE INMATE HAS BEEN RELOCATED; AND

(II) WHICH OF THE FACTORS DESCRIBED IN SUBSECTION (3) OF THIS SECTION THE EXECUTIVE DIRECTOR HAS DETERMINED APPLIES.

(b) IF THE PROSECUTING ATTORNEY AGREES WITH THE EXECUTIVE DIRECTOR'S DETERMINATION THAT A FACTOR DESCRIBED IN SUBSECTION (3) OF THIS SECTION APPLIES, THEN:

(I) THE PROSECUTING ATTORNEY SHALL CONFIRM THE EXECUTIVE DIRECTOR'S DETERMINATION IN WRITING;

(II) THE DEPARTMENT SHALL RETAIN SUCH WRITTEN CONFIRMATION; AND

(III) THE DEPARTMENT SHALL NOTIFY ANY REGISTERED VICTIM OF ONE OR MORE CRIMES FOR WHICH THE INMATE IS SERVING HIS OR HER SENTENCE THAT THE INMATE HAS BEEN RELOCATED AND THE DEPARTMENT IS UNABLE TO DISCLOSE THE INMATE'S LOCATION BECAUSE ONE OF THE FACTORS DESCRIBED IN SUBSECTION (3) OF THIS SECTION APPLIES.

(c) (I) IF THE PROSECUTING ATTORNEY DISAGREES WITH THE EXECUTIVE DIRECTOR'S DETERMINATION THAT A FACTOR APPLIES, THEN THE EXECUTIVE DIRECTOR HAS THIRTY DAYS TO REVIEW THE NOTICE OF DISAGREEMENT. IF, AFTER SUCH REVIEW, THE EXECUTIVE DIRECTOR STILL DETERMINES THAT A FACTOR APPLIES AND THE INMATE'S LOCATION SHOULD NOT BE DISCLOSED, THE DEPARTMENT SHALL NOTIFY THE PROSECUTOR OF SUCH FACT AND NOTIFY ANY REGISTERED VICTIMS THAT THE PROSECUTOR DISAGREES WITH THE EXECUTIVE DIRECTOR'S DETERMINATION.

(II) EITHER THE PROSECUTOR OR ANY REGISTERED VICTIM OF THE INMATE MAY BRING AN ACTION IN THE DISTRICT COURT FROM WHICH THE INMATE'S SENTENCE WAS ISSUED FOR THE COURT TO DETERMINE WHETHER A SUBSTANTIAL BASIS EXISTED AND STILL EXISTS TO SUPPORT THE EXECUTIVE DIRECTOR'S DETERMINATION. IF THE DISTRICT COURT FINDS THAT NO SUBSTANTIAL BASIS EXISTS, THE EXECUTIVE DIRECTOR SHALL DISCLOSE THE INMATE'S LOCATION TO ANY REGISTERED VICTIMS, AS DESCRIBED IN SUBSECTION (2) OF THIS SECTION. ANY HEARING CONDUCTED FOR THE PURPOSE OF THIS SUBSECTION (4)(c)(II) MUST BE HELD IN CAMERA.

(III) IN AN ACTION BROUGHT PURSUANT TO THIS SUBSECTION (4)(c), THE PARTIES ARE ENTITLED TO FULL DISCOVERY UNDER THE COLORADO RULES OF CIVIL PROCEDURE THAT ARE APPLICABLE TO ACTIONS FOR DECLARATORY JUDGMENT; EXCEPT THAT THE EXECUTIVE DIRECTOR IS NOT REQUIRED TO DISCLOSE THE LOCATION OF THE INMATE PENDING THE RESOLUTION OF THE CIVIL ACTION AND ANY

APPEALS. ANY APPEAL OF A JUDGMENT FROM AN ACTION BROUGHT UNDER THIS SUBSECTION (4)(c) MUST BE MADE PURSUANT TO THE RULES OF APPELLATE PROCEDURE.

(5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "LAW ENFORCEMENT OFFICER" MEANS A PEACE OFFICER DESCRIBED IN ARTICLE 2.5 OF TITLE 16.

(b) "PROSECUTING ATTORNEY" MEANS THE OFFICE OF THE DISTRICT ATTORNEY OR OTHER PROSECUTOR WHO PROSECUTED AN OFFENDER WHO WAS SUBSEQUENTLY CONVICTED AND INCARCERATED.

(c) "REGISTERED VICTIM" MEANS A VICTIM WHO HAS REGISTERED WITH THE VICTIMS SERVICES UNIT WITHIN THE DEPARTMENT.

(d) "VICTIM" HAS THE SAME MEANING AS SET FORTH IN SECTION 24-4.1-302 (5).

(e) "WITNESS" HAS THE SAME MEANING AS SET FORTH IN SECTION 24-4.1-302 (7).

SECTION 3. Applicability. This act applies to offenders serving a sentence on or after the effective date of this act.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 23, 2018