

Victim Criminal Notification Proceeding

HB19-1064 attempts to improve the victim criminal notification system for courts in Colorado by changing from an opt-in to an opt-out process. The opt-in system requires victims to request notifications by contacting “the post-sentencing agency to which the offender was sentenced” by phone, email, or mail-in application (Division of Criminal Justice, 2019). The notifications that the justice system offers to victims post sentencing include notices of filing of petitions for verdicts, opportunities to provide testimonies, medical and mental health treatment changes, parole actions, and facility actions for the offender. Victims qualify for notification if they fall under the categories listed in the Victim’s Rights Act, which include murder, sex crimes, and bias motivated crimes. Courts, county jails, mental health and medical programs, and parole programs would provide updates about changes regarding the offender at the victim’s provided contact information until the victim declines notifications by communicating their request to the organizations involved with the offender in an opt-out system. This paper argues that an opt-out system would be more harmful than an opt-in system and that HB19-1064 should not be passed.

This bill changes the way victims are treated in the criminal justice system. Since there are no explicit market prices which reflect change, all changes to the notification system impose externalities on the parties involved. In the context of HB19-1064, victims and those providing resources to victims are the most directly affected. The scope of people who feel the externalities extend to the remaining residents of Colorado, because the way victims manage recovery from crime affects public safety.

Victims at large are at a high risk of trauma in both opt-out and opt-in systems. In both systems, victims cannot know how they will react to notifications about their offenders. If victims are unaware of the notification process in an opt-out system, they may be caught off guard by information about their offender which can cause trauma or similar emotions victims felt at the time of the offense. “The human response to psychological trauma is one of the most important health problems in the world” because it affects victims’ ability to cope and may turn victims to unhealthy coping habits (Kolk, 2000). Hence, when reworking the opt-in victim criminal notification system, we must work towards a system that minimizes traumatic impact for victims and encourages public safety.

A negative aspect of the opt-in system is that victims who are emotionally distraught may make the wrong decision when initially offered notifications regarding their offender. Victims are not always in a state to make an informed decision to consent to or forgo notifications about their offender, since their emotional disturbance may interfere with their ability to understand what the notification program entails (Fagan, 2019). If a victim who wishes to be prepared for interaction with their offender forgoes notifications as a result of emotional distress and encounters an offender in public when they expect the offender to be in a program or custody, the victim may have a more difficult recovery.

The initial emotional disturbance does not pose enough of a risk to victims to warrant the switch to an opt-out notification program, especially because victims maintain “the right to be heard when relevant, informed and present at all stages of the criminal justice process” through the Victim Rights Act. Even if a victim is incapable of making the decision to opt-in when initially offered at court or by mail from the District Attorney’s office, the victim keeps the

right to change their decision and file a request for notification with the court or post-sentencing agency at any stage of the criminal justice process (Fagan, 2019). Giving victims time to make an appropriate decision without unwanted or disturbing notifications from an auto-enrolled system gives victims space to properly evaluate the costs and benefits of notifications regarding the victim's offender.

The suggested opt-out system has some benefits. The most worrying aspect of the opt-in system is that victims may have an irrational fear that if they opt-in for notifications, their perpetrator may find out about the notifications and use it as a reason to retaliate against the victim and cause harm, once again (Kruegel, 2019). This is another barrier to entry that victims face when they consider taking the effort to register for victim criminal notifications. Switching to an opt-out notification system gives victims solace in that they cannot be blamed for any notifications, since it is a system that puts victims in a position of power without any effort of their own.

Another argument to be made in favor of an opt-out system is that victims are sometimes unaware of the opportunity to receive notifications about their offenders. The initial registration opportunity may get overlooked when delivered to the victim by mail (Fagan, 2019). Through automatic registration and continued contact with victims, victims would have easier access to information about their offenders.

The harm in using an opt-out system is that removing the barrier of entry in the victim notification system imposes the barrier to exit of contacting officials in charge of notification cancellation by phone, email, or in person contact (Fagan, 2019). Forcing victims who may be disturbed by notifications imposed by the State to change their notification status in order to

protect their own well-being and, in turn, public safety, is an inappropriate change for the State to make.

Creating an opt-out system automatically enrolls all victims in notification processes, regardless of their presence at sentencing or direct request. Hence, the number of victims requiring notification would increase in the programs that work with offenders from an average of 3-4% to an initial registration of victims of 100% (Fagan, 2019). The judicial and health professionals in charge of victim notification will have a significantly heavier load of victims who need assistance and notification. Since each offender and case is different, these actions take time and effort.

With an increased demand for released information comes an increase in required labor for processing documents. Requiring establishments to send information about offenders that may not be desired by victims, takes focus away from rehabilitation or management of offenders and the original purpose of the work of organizations which manage offenders. If establishments are forced to focus on paperwork that may not be helpful, rather than their purpose of working with offenders, establishments would experience inefficiency and a misallocation of resources.

Since the manner in which notifications are delivered is not specified in the bill, post-sentencing agencies would need to choose how to deliver an increased load of notifications. At the moment, victims who have requested notification receive calls, detailed emails, or detailed letters from staff (Fagan, 2019). In an opt-out system, post-sentencing agencies would either need to significantly increase staff for victim support or turn to automated notification. Automation takes away the personal support and catered victim services from all victims in

order to serve notifications to victims who may not benefit or want notifications in the first place. This would impose a negative externality on victims who deserve access to quality resources.

Both systems have potential to cause trauma and force victims to make decisions. The best solution is to give victims a greater advantage when making decisions. Instead of spending resources on notifications which could cause damage to residents, courts should be mandated to create a Victim's Rights department that works with victims to help them make appropriate decisions regarding notifications. This department would inform victims about all potential risks and benefits of opting into the notification system. Thus, all residents would be able to make informed decisions regarding their future involvement with the criminal justice system.

Simply providing resources to victims to use keeps victims empowered by allowing them to make their own decisions about whether or not they would like to receive victim criminal notifications. Barriers to entry would be decreased, but not to the extent that victims are forced into entry for receiving notifications which may cause trauma. A Victim's Rights department would appropriately assist victims by providing information and resources that would help victims make the best choices they can with ease and safety.

Works Cited

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Victims Rights Act.