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# Law Enforcement Action Forum NEWSLETTER

## The New Crime Victim's Rights Act Requires ACTION by All Departments.

*The Act Affects How Municipalities Release Information under  
FOIA!*

*By Gene King, Loss Control Consultant*

### Introduction

Effective June 1, 2001, Michigan will have a new Crime Victim's Rights Act, 2000 PA 503, MCL 780.751. The big news is that the Act requires police departments to notify victims of their rights within 24 hours of their complaints and to explain how the Act affects the release of victim information under the Freedom of Information Act, (FOIA), 1976 PA 442, MCL. 15.231 to 15.246. The discussion that follows outlines the administrative and operational changes that departments will have to make to meet the responsibilities that the Crime Victim's Rights Act places on them. It also discusses how the new Act affects a department's policy on releasing information and meeting FOIA requests.

Under the Crime Victim's Rights Act, a crime is a penal law violation punishable by imprisonment of one year, a felony, a serious misdemeanor, or a violation of a local ordinance that substantially corresponds to the penal code. The Act provides a comprehensive list.

### Requirements

The new law places law enforcement agencies on the frontlines of implementing the Act. An Agency investigating a crime must provide the following information in writing to the victim within 24 hours of the initial contact by a victim:

- The availability of emergency and medical services, if applicable.
- The availability of victim's compensation benefits and the address of the Crime Victim's Compensation Board.

- The address and telephone number of the prosecuting attorney whom the victim should contact to obtain information about victim's rights.

Many municipalities have adopted sections of the Penal Code as local ordinances in order to allow for more control by the prosecutor and to take advantage of the fines that successful prosecution may generate. These municipalities must also provide the following statement to the victim:

*The defendant in your case will be prosecuted under a local ordinance, rather than a state statute. Nonetheless, you have all the rights and privileges afforded to victims under the state constitution and the State Crime Victims Rights Act.*

Finally, every notice must include the following statements:

*If you would like to be notified of an arrest in your case or the release of the person arrested, or both, you should call (identify the law enforcement agency and telephone number) and inform them.*

and

*If you are not notified of an arrest in your case, you may call this (list the law enforcement agency and telephone number) for the status.*



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The Act further requires that the law enforcement agency having responsibility for the investigation shall notify the victim of the availability of pretrial release for the defendant within 24 hours of the defendant's arraignment. The Agency must give the victim the telephone number for the sheriff or juvenile facility where the defendant is being held and tell them that he or she may call to find out whether the defendant has been released from custody. If the victim makes the request, the agency investigating the crime is required to notify the victim promptly of the arrest and/or pretrial release of any/all defendant(s). It is the sheriff or juvenile facility's responsibility to notify the investigating agency when they release a defendant.

For those departments that have a lock-up or jail or those that transfer prisoners to other locations, the Act requires certain notifications and timetables that would normally be the responsibility of the Sheriff. In those municipalities that have adopted sections of the penal code as ordinances, the municipal prosecutor is then responsible to meet the Victim Rights notification responsibilities that the County Prosecutor would normally handle.

### Handling the Notification Requirements

An effective means of handling the notification requirements of the Crime Victim's Rights Act is to create a card or form containing the required information and to make it mandatory that officers deliver it to the victim at the time they take the original report. The form should contain the incident number, victim's name, date and time of delivery and the officer's name and badge number. Officers should ask the victim to sign the form. The form should be in duplicate and the officer should attach the copy to the report. The Agency should ask the prosecutor who handles the criminal cases in a municipality to provide information about his or her need to have documentation of compliance with the notice requirements in the Act.

### Privacy Issues

A very important provision of the Crime Victim's Rights Act is the prohibition from disclosure of certain information about the victim. The Act excludes release from requests made under the Freedom of Information Act of a victim's home or work addresses, unless either is the place of the crime, his or her home or work telephone numbers and any kind of picture or visual representation of the victim. Additionally, except for the actual court transcript, court documents may not contain the victim's work or home telephone numbers or addresses. Complying with this prohibition is very important to law enforcement agencies that regularly provide information and videotape to news outlets and/or other sources. Agencies must implement, and strictly enforce, a policy requiring review and administrative approval of documents, video, or other forms of information

before the Agency releases it. If the Agency has any question about whether it should release the information, the Agency should consult the municipal attorney. MCL 15.244 (1) and (2) require the separation of exempt material from non-exempt information requested under FOIA. The department must redact the protected information and should be prepared to define the reason for its removal. In the case of pictures or videotape images, the department must not release the visual representation of the victim even to be redacted.

The new language in the Crime Victim's Rights Act provides an opportunity for law enforcement agencies to evaluate other information in their files that they can or should protect from FOIA disclosure. FOIA is a good law, designed to require government to disclose information concerning its inner workings in the process of fulfilling its statutory functions. Nothing in FOIA prevents a government from providing any information it is willing to disclose. However, agencies should consider whether they should release everything. The Crime Victim's Rights Act and the pending Medical Privacy laws do restrict the information that agencies may release. FOIA in MCLA 15.243 (13) (1) lists a variety of allowable exemptions from disclosure, and it is the municipality and its administration that decides just what is legitimate to release and what information is personal or private and does not need to be public.

Some of the exemptions in Section 13 serve to protect law enforcement from releasing information that put their own people or the public safety at risk. Section 13 also contains exemptions such as (a), information of a personal nature where the public disclosure would constitute a clearly unwarranted invasion of personal privacy. Subsection (b)(iii) includes investigation records compiled for law enforcement purposes that constitute an unwarranted invasion of personal privacy. Subsection (h), exempts information or records subject to the physician-patient privilege or other privilege recognized by statute or court rule. Section (m) exempts medical, counseling, or psychological facts or evaluations concerning an individual if the disclosure of those facts or evaluations would reveal the individual's identity. Section (x), exempts information or records that would disclose the social security number of any individual. Clearly, the language in the statute exempts information that law enforcement may compile on individuals that is personal in nature and serves no legitimate purpose if disclosed. If departments would not release personal information about its employees, why should it release information about people who need their services?

The issue of privacy is the thrust of two recent court cases that have spoken directly to this issue. In Mager v Department of State Police, 460 Mich, 595 NW2d 142, 1999, Mr. Mager wanted the release of the names and addresses of any person who owned a registered handgun. The Michigan

State Police refused to grant his FOIA request and he sued. The Michigan Supreme Court ruled, "A request for information on private citizens-unrelated to any inquiry regarding the inner workings of government- would be an unwarranted invasion of the privacy of those citizens." On June 23, 2000 the Michigan Court of Appeals in Midwestern Audit Services, Inc. v Department of State Police, No.218066, Unpublished agreed with Mager. In this case, the plaintiff FOIA requested non-redacted copies of all UD-10 traffic crash reports for a period of three years. The Michigan State Police refused to provide the personal information listed on the forms. The Court said, "The core purpose of the FOIA is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct."

Does this differ from the requirements of FOIA for disclosure of information? No! Have the courts helped? Yes! The public has a right to have access to records that reveal what the government is doing and how the government is doing it. However, the court has ruled that the public does not have a right to personal information that is contained in government files when a person is fulfilling their statutory or moral obligation to report information or when the police are conducting legitimate investigations.

During investigations, police obtain information and documents from a variety of sources. The information may include medical and legal records that are of a personal or confidential nature or that privilege may protect. This is very important when obtaining confidential information that school districts maintain. School districts must comply with the Family Educational Rights and Privacy Act of 1974, (Title IV, Public Law 90-247, 20 U.S.C. 1232g). This Act restricts the release of student record information. Departments must be very careful with any information contained in documents that the department has not created. These documents are not the records or files of the department and should not be released.

The goal of this discussion of FOIA is not only to report the change in the Crime Victim's Rights Act, but also to stimulate reflection and conversation as well as a review of the law and your municipal policy and philosophy on the release of information. The public has a right to know how government does its business. The Mager ruling reinforced the discretion to not release personal or private information that does not "serve the core purpose of the FOIA." The public does not have the right to private, personal, or embarrassing information that the government may obtain in the process of doing its business. The use of the exemption discretion in maintaining privacy is very important when releasing information contained in police, fire and EMS reports. We strongly recommend that the municipal legal advisor review all FOIA requests before the department

releases any information. It is equally important for an administrative review of all information to take place before the department releases it to the new media.

Section 24, of Article I of the State of Michigan Constitution of 1963 guarantees crime victims the right to receive respectful treatment and to retain their dignity and privacy. The change in the Crime Victim's Rights Act gives Law Enforcement executives the opportunity to review the department's practices when releasing information. Knowing the restrictions applied in the Crime Victim's Rights Act and understanding the exemptions allowed in FOIA, 15.243, Section 13, and applying them appropriately can create controversy. Those seeking information from the department may not appreciate the use of the discretion to exempt information. However exempting information could ultimately be the right thing to do for the dignity and privacy of the people that the department serves and protects.

### What to Do:

- ✓ Review FOIA and ensure that the municipality and its departments have a policy for handling the release of information and requests initiated under the FOIA.
- ✓ Ask the municipality's legal counsel to review the FOIA policy in light of the Mager case and the Crime Victim's Rights Act.
- ✓ Provide training to employees who are responsible for receiving, processing, and then releasing information to ensure they understand the policy and philosophy of the municipality and the discretion to exercise the exemptions allowed by the act when providing information.
- ✓ Train all employees in the municipality's policy for releasing information and identify to whom they should direct requests for information. This is very important for police, fire and EMS operations where a news release on an active incident is common.
- ✓ Develop a policy that addresses the notification requirements in the Crime Victim's Rights Act and train employees of their related duty and responsibility.

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*While compliance with the loss prevention techniques suggested herein might reduce the likelihood of a claim, it will not eliminate all exposure to such claims. Further, as always, our readers are encouraged to consult with their attorneys for specific legal advice.*

The LEAF Committee of the Michigan Municipal League Liability and Property Pool and Workers' Compensation Fund continues to develop policies and resource documents designed to help Law Enforcement Executives manage their risk exposure. Do not hesitate to contact the Michigan Municipal League's Risk Management Services at 734-669-6344 or MML Loss Control Services at 800-482-2726, for your risk reduction needs and suggestions.

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*Inside This Issue:* The New Crime Victim's Rights Act Requires **ACTION** by All Departments.

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