

Municipal Litigation Checklist

Compliance with Crime Victim's Rights Act

When does a municipality need to comply?

By virtue of article 1, section 24, the Michigan Constitution was amended to provide constitutional authority for the statutory rights of crime victims, legislative authority to enforce victims' rights, and legislative authority to assess convicted defendants to pay for crime victim's rights, effective December 24, 1988.

The Crime Victim's Rights Act, adopted in 1985, focuses on the rights of victims of crimes and serious misdemeanors. A crime is defined by the act as "a violation of a penal law of this state for which the offender, upon conviction, may be punished by imprisonment for more than 1 year, or an offense expressly designated by law to be a felony. MCL 780.752(1)(a). By virtue of the definition, all crimes are beyond the prosecutorial jurisdiction of a municipal prosecuting attorney. Article 3 of the act, however, outlines rights of a victim if the offender is charged with a *serious misdemeanor* as enumerated in MCL 780.811(a). Although all of the following statutes are indicated to be serious misdemeanors, some of the violations provide for imprisonment of not more than 93 days (**bold**) while others provide for a possible sentence of up to one year.

- (i) **Assault and battery (including domestic assault) (MCL 750.81)**
- (ii) Aggravated assault and battery (MCL 750.81a)
- (iii) **Illegal entry (MCL 750.115)**
- (iv) Child abuse in the fourth degree (MCL 750.136b)
- (v) Contributing to the neglect or delinquency of a minor (MCL 750.145)
- (vi) Enticing a minor (MCL 780.145a) amended as felony
- (vii) Using the internet or a computer to make a prohibited communication (MCL 750.145d)
- (viii) **Intentionally aiming a firearm without malice (MCL 750.233)**
- (ix) Discharge of a firearm intentionally aimed at a person (MCL 750.234)
- (x) Discharge of an intentionally aimed firearm resulting in injury (MCL 750.235)
- (xi) Indecent exposure (MCL 750.335a)
- (xii) Stalking (MCL 750.411h)
- (xiii) Injuring a worker in a work zone (MCL 257.601h)
- (xiv) Leaving the scene of a personal injury accident (MCL 257.617a)
- (xv) **OWI if the violation involves an accident resulting in damage to another individual's property or physical injury or death to another individual (MCL 257.625)**
- (xvi) **Selling or furnishing alcohol to a minor if the violation results in physical injury or death to any individual (MCL 780.811)**
- (xvii) **Operating a vessel while intoxicated if the violation involves an accident resulting in damage to another individual's property or physical injury or death to any individual (MCL 324.80176)**

The act includes in its definition of a serious misdemeanor “a violation of a local ordinance substantially corresponding to a violation” of one of the enumerated state statutes. Because of the inherent restriction of prosecution by a municipality of an ordinance which provides for a penalty of imprisonment of more than 93 days, the most likely state statutes that could be adopted as ordinance violations are the misdemeanors highlighted above in bold.

MCL 780.811 defines prosecuting attorney as including “in connection with the prosecution of an ordinance violation, an attorney for the political subdivision that enacted the ordinance upon which the violation is based. The victim is defined as “an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a serious misdemeanor. MCL 780.811(1)(g).

How does a municipality comply?

Statement of Damage or Injury

The act provides for a statement of damage or injury in certain instances:

A law enforcement officer or municipal prosecuting attorney who files with the court a complaint, appearance ticket, traffic citation, or other charging instrument regarding a local ordinance substantially corresponding to a serious misdemeanor described in section 61(1)(a)(xv), (xvi), or (xvii) shall place a statement on the complaint, appearance ticket, traffic citation, or other charging instrument that the offense resulted in damage to another individual’s property or physical injury or death to another individual. MCL 780.811a.

To comply with MCL 780.811a, a statement could be added to each charging instrument involving serious misdemeanor that “The offense may have resulted in damage to another individual’s property or physical injury or death to another individual.”

Separate Written Statement

The act also requires the following statement:

A law enforcement officer investigating a serious misdemeanor involving a victim shall include with the complaint, appearance ticket, or traffic citation filed with the court a separate written statement including the name, address, and phone number of each victim. This separate statement shall not be a matter of public record. MCL 780.812

Information to Victim

Within 24 hours after the initial contact between the victim and the law enforcement agency having responsibility for investigation the agency must notify the victim of a serious misdemeanor of the availability of emergency and medical services, the availability of victim’s compensation benefits and the address of the victim’s compensation board, the address and telephone number of the municipal prosecuting attorney whom the victim should contact about victim’s rights, and these statements: “If you would like to be notified of an arrest in your case or the release of a person arrested, or both, you should call [identify law enforcement agency and telephone number] and inform them. If you are not notified of an arrest in your case, you may call this law enforcement agency at [the law enforcement agency’s telephone number] for the status of the case.

In addition, if the case is brought under a local ordinance, the name and address of the municipal prosecuting attorney responsible for prosecuting the case should be provided and the following statement included: ““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 victims under the state constitution and the state crime victim’s rights act.” MCL 780.813.

Note: In cases of domestic violence, the officer must also provide a notice in compliance with MCL 764.15c.

Bond

Bond may be revoked on the motion of the prosecuting attorney based on credible evidence of acts or threats of physical violence or intimidation by the defendant or at the defendant's direction against the victim or the victim's immediate family. MCL 780.813a.

Notice to Victim of Availability of Pretrial Release

Within 72 hours of the arrest of the defendant in a serious misdemeanor case, the law enforcement agency shall give notice to the victim of the availability of pretrial release for the defendant, the phone number of the sheriff, and notice that the victim "may contact the sheriff to determine whether the defendant has been released from custody." MCL 780.815.

Notice of Plea

When "a plea of guilty or nolo contendere is accepted by the court at the time of arraignment . . . the court shall notify the [municipal] prosecuting attorney of the plea and the date of sentencing within 48 hours after the arraignment." MCL 780.816. This does not always happen, due to high case loads and the absence of clear indications on a ticket or complaint of what constitutes a serious misdemeanor. Within 48 hours after receiving the notice, the municipal prosecuting attorney must give to the victim

- (1) . . . a written notice in plain English of each of the following:
 - (a) A brief statement of the procedural steps in the processing of a misdemeanor case, including pretrial conferences.
 - (b) A specific list of the rights and procedures under this article.
 - (c) A convenient means for the victim to notify the prosecuting attorney that the victim chooses to exercise his or her rights under this article.
 - (d) Details and eligibility requirements for compensation from the Crime Victim Services Commission under 1976 PA 233, MCL 18.351 to 18.368.
 - (e) Suggested procedures if the victim is subjected to threats or intimidation.
 - (f) The person to contact for further information.
- (2) If requested by the victim, the prosecuting attorney shall give to the victim notice of any scheduled court proceedings and notice of any changes in that schedule.
- (3) If the defendant has not already entered a plea of guilty or nolo contendere at the arraignment, the municipal prosecuting attorney shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the serious misdemeanor, including the victim's views about dismissal, plea or sentence negotiations, and pretrial diversion programs before finalizing any negotiation that may result in a dismissal, plea or sentence bargain, or pretrial diversion.
- (4) If the case against the defendant is dismissed at any time, the municipal prosecuting attorney shall notify the victim of the dismissal within 48 hours.
- (5) A victim who receives a notice under subsection (1) or (2) and who chooses to receive any notice or exercise any right under this article shall keep the following persons informed of the victim's current address and telephone number:
 - (a) The municipal prosecuting attorney, until final disposition or completion of the appellate process, whichever occurs later.

(b) The sheriff, if the defendant is imprisoned for more than 92 days. MCL 780.816

A single form can be developed that covers each of the requirements.

Trial

The Crime Victim’s Rights Act allows for limiting proof of the victim’s address and place of employment, MCL 780.818, and for an expedited trial where the victim is a child. MCL 780.819.

“Upon request of the victim, the prosecuting attorney shall confer with the victim prior to the trial of the defendant.” MCL 780.820. This is mandatory. The victim also has a right to be present throughout the trial. MCL 780.821.

Sentencing

If requested, the prosecuting attorney shall give notice to the victim of the defendant’s conviction, the offense(s) of which convicted, the right to make an impact statement for use in the preparation of the presentence investigation report, the address and telephone number of the probation office, the time and place of the sentence proceeding, and other rights of the victim to participate in the case, including the right to make a “recommendation for an appropriate sentence.” MCL 780.823.

In the absence of a presentence report, there is supposed to be notice of sentencing to the municipal prosecuting attorney. This does not always occur, due to the difficulties in identifying and tracking serious misdemeanor cases, the tendency in some courts to accept pleas and impose sentences without a presentence report, and the absence of any court rules that give procedural form to the requirements of the Crime Victim Right’s Act. The statutory section is designed to give notice to victims of sentencing. MCL 780.825.

If no presentence report is prepared, the court shall notify the municipal prosecuting attorney of the date and time of sentencing at least 10 days prior to sentencing. The victim shall have the right to submit a written impact statement and shall have the right to appear and make an oral impact statement at the sentencing of the defendant. The court shall consider the victim’s statement in imposing sentence on the defendant.

For this section of the Crime Victim’s Rights Act to work, all serious misdemeanor cases should be set for a scheduled sentencing hearing, with 10 days’ notice to the prosecuting attorney who must provide notice to the victim.

Reimbursement of Costs

A municipality providing crime victim’s rights services may be an agency or department eligible to receive funding from the Crime Victim Services Commission. MCL 780.906. “The department shall compensate units of government for the actual and reasonable administrative costs incurred by those units of government under this act.” MCL 780.906(6). Authorized payments shall be made “to the treasurer of a unit of government, and the treasurer shall transmit that money to courts, departments, and local agencies within that unit of government as the department directs,” MCL 780.907(3). Cities, villages and townships involved in the administration of the Crime Victim’s Rights Act should apply for compensation or reimbursement.

Restitution

For purposes of ordering restitution on a serious misdemeanor, including a local ordinance, “the court shall order that the defendant make full restitution to any victim of the defendant’s course of conduct that gives rise to the conviction.” MCL 780.826.

The scope of allowable restitution expenses is very broad, including medical and psychological care, physical and occupational therapy, as well as homemaking and child care expenses incurred as a result of the misdemeanor. MCL 780.826. The court “shall order restitution to entities that have

compensated the victim . . . for a loss incurred by the victim to the extent of the compensation paid for that loss.” MCL 780.826(8).

If the defendant is placed on probation, the payment of court ordered restitution shall be a condition of probation. MCL 780.826(11). An order of restitution is a judgment and a lien against all property of the defendant for the amount specified in the order of restitution, and “may be recorded as provided by law.” MCL 780.826(13).

Final Disposition

Upon the request of the victim, the municipal prosecuting attorney shall, within 30 days after the final disposition of the case, notify the victim in writing of the final disposition of the case. MCL 780.827.

Post Conviction Notices

If a defendant seeks to have a conviction for a serious misdemeanor set aside, the municipal prosecuting attorney shall give notice to the victim and provide a copy of the application. The victim shall have the right to appear and make a written or oral statement. MCL 780.827a.

Upon request of the victim, the municipal prosecuting attorney shall notify the victim of an appeal of a conviction of the defendant, the release of the defendant pending disposition of an appeal, the time and place of appellate court proceedings, the result of the appeal, and a brief explanation of the appeal process. MCL 780.828.

Upon written request of the victim, the sheriff shall mail to the victim about a defendant sentenced to imprisonment for a serious misdemeanor the earliest release date, an escape, and a name change. MCL 780.828d.

“When a defendant is sentenced to a term of imprisonment the prosecuting attorney shall provide the victim with a form the victim may submit to receive the notices provided for under this section or section 78b.” MCL 780.828d(2). “The form shall include the address of the sheriff’s department to which the form shall be sent.” MCL 780.828a(2). How this is supposed to work on a sentence of three or five days in jail is unclear.

Every municipality engaged in enforcing ordinances through the prosecution of ordinance violations should comply with the Crime Victim’s Rights Act, and it is incumbent on the municipal prosecuting attorney to recommend and achieve compliance.

Reprinted, in part, from Municipal Prosecutions, *Local Government Law and Practice in Michigan*, Eric D. Williams, author. A publication of the Michigan Municipal League and the Michigan Association of Municipal Attorneys.

This document is not intended to be legal advice. It does not identify all the issues relative to the particular topic. Local units of government are encouraged to review procedures with the city or village attorney.

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