

Legislative Analysis



VICTIMS OF ABUSE OR SEX CRIMES: PROTECT IDENTITY OF MINORS

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House Bill 6101 as introduced
Sponsor: Rep. Tom McMillin
Committee: Judiciary

First Analysis (11-9-10)

BRIEF SUMMARY: The bill would protect from disclosure under the Freedom of Information Act information in police reports that identify victims of child abuse and sexual assaults who are less than 18 years of age.

FISCAL IMPACT: The bill would have an indeterminate, but likely negligible, fiscal impact on state and local government. There may be minor savings associated with not having to provide copies of certain documents under the provision of the bill.

THE APPARENT PROBLEM:

According to committee testimony, the parents of a minor child who had been the victim of a sex crime were told that even if the perpetrator confessed to the crime, thus sparing the victim from appearing in court, that there was no guarantee that the child's identity would be able to be kept from public disclosure. Reportedly, the prosecutor told the family that once the case was resolved, anyone could request a copy of the police report by submitting a FOIA request (a request for public documents under the Freedom of Information Act). The police report would, of course, contain personal information about the victim, including the victim's name and address. Fearing exposure and the emotional impact that would bring, the victim decided not to press charges and the perpetrator was not prosecuted for the crime.

Provisions of the William Van Regenmorter Crime Victim's Rights Act (CVRA) do prohibit the disclosure under a FOIA request of a victim's home address, home telephone number, work address, and work telephone (unless the address identified the location of the crime) as well as any pictures, photographs, drawings, or other visual representations of the victim, which includes film, videotape, or digitally stored images. However, the CVRA does not protect the name of the victim, though most newspapers and broadcast media outlets voluntarily withhold the names of victims who are under 18 years of age.

Section 13 (1)(b)(iii) of the FOIA allows disclosure of investigating records compiled for law enforcement purposes, but only to the extent that disclosure of a public record would not, among other things, constitute an unwarranted invasion of personal privacy, which would seem to allow the name of a minor victim of a sex crime to be stricken from a document before release. However, there appears to be a lack of uniformity as to how prosecutors and police agencies respond to FOIA requests. Where some only release documents after a case is closed, others do so while cases are still open but only after

redacting the document to obscure personally-identifying information in conformity with Section 13 (1)(b)(iii).

It has been suggested that the FOIA be further amended to ensure that the names of victims of sex crimes and child abuse who are minors are not released.

THE CONTENT OF THE BILL:

The Freedom of Information Act allows a public body to exempt from disclosure certain information and documents from disclosure; for example, information of a personal nature if public disclosure of that information would constitute a clearly unwarranted invasion of an individual's privacy.

House Bill 6101 would amend the act (MCL 15.243) to also allow a public body to exempt from disclosure certain information contained in a record pertaining to a crime of child abuse, criminal sexual conduct, sexual assault or molestation, or a similar crime if one or more victims are under 18 years of age. The protected information would include the name and address of any victim; the names and addresses of a victim's immediate family members or a victim's relatives who have the same surname as that victim (other than the name and address of the accused); and any other information that would tend to reveal the identity of any victim, including any reference to a victim's familial or other relationship to the accused.

ARGUMENTS:

For:

Child victims of sex crimes or abuse should not have to choose between keeping their identity secret or letting their abuser go unpunished. But, in at least one case, that is the hard decision that one young sex crime victim had to make. Even though the perpetrator was willing to confess to avoid the publicity of a trial, the victim was told her name could be learned by anyone requesting the police files under a FOIA request. Being the victim of a crime is difficult enough, but navigating the looks, questions, or even derision that often are directed at sex crime or abuse victims while still a child can be overwhelming and detrimental to a child's emotional and social development.

The bill would address this concern by authorizing a public body (which would include courts, police agencies, and prosecutors' offices) to redact, or make unreadable, certain information in reports compiled for crime investigations that would reveal the identity of a victim of a sex-related crime or child abuse if the victim was under 18 years of age. The bill should also clarify to prosecutors that information relating to the identification of a minor could be deleted. Thus, the bill could facilitate prosecution of perpetrators and give the young victims a sense that justice had been served.

Against:

The bill as written has a few flaws that could be problematic. For instance, in the case of a record relating to child abuse or sex crimes in which more than one victim was

identified, the bill would exempt from disclosure the names of all the victims, not just the one or ones who are minors. A similar law from the state of Washington is much clearer that the exemption from disclosure as a public record applies only to the information pertaining to a minor victim, and also is clear that the entire record is not subject to the exemption, but only identifying information relating to the minor victim. Another inadvertent consequence may be that public and private agencies that provide services to child abuse victims and victims of sexual assaults would likely be prohibited from accessing the police records. Again, the Washington law addresses this by specifically allowing release of the documents to law enforcement, prosecutors, judges, defense attorneys, or private or governmental agencies that provide services to the child victim of sexual assault. If the bill were amended similarly, it could avoid potential conflicts with the Crime Victim's Rights Act, which allows release of information under the FOIA to a victim advocacy organization or agency for the purpose of providing victim services.

POSITIONS:

There were no positions offered on the bill.

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