

Legislative Analysis



REQUIRE PERSONAL INFORMATION OF VICTIMS AND WITNESSES TO BE CONFIDENTIAL

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House Bill 4738 as introduced
Sponsor: Rep. Kelly Breen

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4739 as introduced
Sponsor: Rep. Denise Mentzer

Committee: Judiciary
Complete to 6-14-23

SUMMARY:

House Bill 4738 would amend the Code of Criminal Procedure, and House Bill 4739 would amend the William Van Regenmorter Crime Victim's Rights Act, to require the prosecuting attorney to redact the personal information of witnesses and victims of crimes from certain court documents and to allow disclosure of the personal information to the defense counsel or the defendant (if not represented by counsel) only upon an order of the court. An unauthorized disclosure would be a misdemeanor offense.

The William Van Regenmorter Crime Victim's Rights Act identifies various rights afforded to **victims** of a crime, including not having certain information in the court file or ordinary court documents, with some exceptions, and exempting certain information from disclosure under the Freedom of Information Act (FOIA). The Code of Criminal Procedure, among other things, provides for proceedings before trial and the filing of informations, including the required prosecutorial disclosure of the names of certain **witnesses**.

The bills would each add a new section to their respective acts to require the prosecuting attorney to keep the **personal information** of any victim or witness confidential unless the personal information is a part of the *res gestae* of the charged crime.¹ Personal information would have to be redacted by the prosecuting attorney from a document provided to the defendant or the defendant's counsel, as well as from a document submitted by the prosecutor as an ordinary court document or that will be entered into the court file.

Personal information would mean the following information of an individual, but would not include the location of a charged crime:

- Home address.
- Telephone number and cell phone number.
- Driver's license number or official state personal identification card number.
- Social Security number.
- Date of birth.
- Place and address of employment and employee identification number.
- Mother's maiden name.

¹ *Res gestae* is a common law doctrine pertaining to the facts and events of a crime and that allows certain testimony to be admitted as evidence that otherwise would be inadmissible under the hearsay rule.

- Demand deposit account, savings account, or checking account number or other financial identification information.
- Credit card number.
- Email address.
- Internet identifier, defined to mean a designation used for self-identification or routing used in posting on the internet or in other internet communications.
- Home address, telephone number, and cell phone number of a family member.

The bills would not alleviate the obligation otherwise required under law to make a victim or witness available for interview by the other party.

In addition, the bills would not authorize the disclosure of the confidential address of a program participant under the Address Confidentiality Program Act or preclude the release of information to a victim advocacy organization or agency for the purpose of providing victim services. (Among other things, the Address Confidentiality Program Act provides a participant with a designated address to use for various legal purposes instead of the participant's actual home address, which is kept confidential.)

On motion by the defendant, and subject to the above provision, the court could order the prosecuting attorney to provide personal information of a witness or a victim to the defendant or the defendant's counsel. The motion would have to meet the following requirements:

- Explain the limited purpose for which the personal information is sought.
- Demonstrate that the personal information requested is reasonably necessary to provide an adequate defense.

If the motion were granted, the order would have to do all of the following:

- Limit the disclosure of the personal information to the extent the disclosure is reasonably necessary to provide an adequate defense.
- Specify the limited purpose for which the personal information may be used.
- Prohibit the reproduction, copying, or dissemination of the personal information not authorized in the order.
- Except as provided below, require the personal information to remain in the exclusive custody of the defendant (if not represented by counsel) or the defendant's counsel.
- Include conditions and terms for the defendant (if not represented by counsel) or the defendant's counsel to provide the personal information to the counsel's or defendant's agent, employee, or expert witness if necessary for a limited purpose approved by the court.

A person who is required to keep confidential or redact personal information under the bills and who intentionally and willfully disclosed that personal information in violation of the bills would be guilty of a misdemeanor punishable by imprisonment for up to 93 days or a fine of up to \$500, or both.

House Bill 4738 (Code of Criminal Procedure): Proposed MCL 767.40b

House Bill 4739 (Crime Victim's Rights Act): Proposed MCL 780.758a

BACKGROUND:

Section 2(1)(m) of the William Van Regenmorter Crime Victim's Rights Act defines the term *victim*, for purposes of that act, to mean any of the following:

- Except as provided below, an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime.
- Except for the purpose only of submitting or making an impact statement as provided below, the following individuals other than the defendant if the victim is deceased:
 - The spouse of the deceased victim.
 - A child of the deceased victim if the above does not apply and the child is 18 years of age or older.
 - A parent of the deceased victim if the above do not apply.
 - The guardian or custodian of a child of the deceased victim if the above do not apply and the child is less than 18 years of age.
 - A sibling of the deceased victim if the above do not apply.
 - A grandparent of the deceased victim if the above do not apply.
- A parent, guardian, or custodian of a victim who is less than 18 years of age if the parent, guardian, or custodian so chooses and is neither the defendant nor incarcerated.
- A parent, guardian, or custodian of a victim who is mentally or emotionally unable to participate in the legal process if the parent, guardian, or custodian is neither the defendant nor incarcerated.
- For the purpose only of submitting or making an impact statement, if the individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime is deceased, is so mentally incapacitated that he or she cannot meaningfully understand or participate in the legal process, or consents to the individual's designation as a victim, the following individuals other than the defendant:
 - The spouse of the victim.
 - A child of the victim if the child is 18 years of age or older.
 - A parent of the victim.
 - The guardian or custodian of a child of the victim if the child is less than 18 years of age.
 - A sibling of the victim.
 - A grandparent of the victim.
 - A guardian or custodian of the victim if the victim is less than 18 years of age at the time of the commission of the crime and the guardian or custodian is not incarcerated.

FISCAL IMPACT:

The bills would have an indeterminate fiscal impact on local units of government. Information is not available on the number of persons that would be convicted under provisions of the bills. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on if additional court-imposed fee revenue is generated. Any increase in penal fine revenue would increase

funding for local libraries, which are the constitutionally designated recipients of those revenues.

There would be no fiscal impact on local prosecutors' offices or the Prosecuting Attorneys Coordinating Council (PACC).

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.