

Data basics for victim advocates

An overview of victim- and advocate-related data issues.

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Minnesota Alliance on Crime webinar
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Agenda

- Introduction
 - What do we mean by “data”
 - Why a data presentation?
 - Goals
- Statutory provisions
 - Application to programs
 - Access to data
- Summary crime data

What do you mean by “data”?

Information about a victim:

- That you have
- That someone else wants.

Information generated in a criminal case

- Investigation, charging decisions, outcome, post-conviction.

Information about the incidence of victimization:

- Law enforcement response
- Crime rates
- Criminal charges and outcomes

Why a data presentation?

- Because the Minnesota Government Data Practices Act mostly likely applies to your organization.
- Because advocates frequently seek to obtain data
- Because crime victim serving organizations frequently seek to prevent data from being revealed.
- Data questions are an everyday occurrence.

Goals

- Gain a basic understanding of:
 - The Minnesota Government Data Practices Act and how it applies to victims and victim advocates.
 - Statutory protections and privileges.
 - The provisions that allow victims and advocates to get data (like police reports).
 - Available summary data about crime victimization (incidence, arrest, case filings).

Before we begin . . .

Data and confidentiality

- This is not a presentation on how you keep confidentiality but why.
- The source of your confidentiality requirements is statutory, contractual, and ethical.

STATUTORY PROVISIONS RELATED TO VICTIMS

Start with the basics

Minnesota Statutes Chapter 13
Minnesota Government Data Practices Act (MGDPA)

The MGDPA sets out the rules:

- o What classifications apply to the data
- o How classifications impact who has access to the data
- o How to request data.
- o What happens if a government entity won't give you the data requested.

MGDPA Basic Presumption

Under the MGDPA, all data is presumed public, unless specifically classified otherwise by state or federal law.

MGDPA data classifications

Data classification	Description	Minn. Statutes section
Public	Presumption: Data on individual, business or other entity presumed public unless specified by statute otherwise and is available to anyone.	13.03, subd. 1
Private	Data identifying an individual that are only available to the individual or with the individual's consent	13.02, subd. 12
Confidential	Data identifying an individual that are not available to anyone outside the entity holding the data, including the individual	13.02, subd. 3
Nonpublic	Data on a business or other entity that are only available to the subject of the data or with the subject's consent	13.02, subd. 9
Protected nonpublic	Data on a business or other entity that are not available to the subject of the data or anyone else outside the entity holding the data	13.02, subd. 13

You will encounter these the most

Data classification	Subject of the data	Access
Public	Individual, business, or other entity	Public (anyone)
Private	Individual	Subject of the data, or others with subject's consent.
Confidential	Individual	No one except government entity holding the data

Application of MGDPA to programs

The Law

Minn. Stat. 13.05, subd. 11: (a) If a government entity enters into a **contract** with a private person to perform any of its functions, all of the data created, collected, received, stored, used, maintained, or disseminated by the private person in performing those functions is subject to the requirements of this chapter and the private person must comply with those requirements as if it were a government entity.

“Contract”

A contract includes a grant agreement between OJP and a grantee providing services to crime victims.

Application of MGDPA to programs

2009 Case

Minnesota Department of Administration Advisory Opinion [09-022](#) related to DV program funded by a city.

Opinion made clear: DV program comes under MGDPA.

2010 Law

Minn. Stat. § 13.823: Exempts community-based DV and SA programs from chapter 13 except programs must comply with sections 13.822; 611A.32, subd. 5; 611A.371, subd. 3; and 611A.46.

This means, there are still some statutory data provisions that apply to OJP-funded DV and SA community based programs.

Chapter 611A protections

All crime victims

Minn. Stat. 611A.46: Personal history data and other information collected, used, and maintained OJP grantees from which the identity and location of any crime victim may be determined are private data. The grantee shall maintain the data in accordance with chapter 13.

OJP grantees only.

Also—OJP has similar provision for victim data from grantees

Chapter 611A protections

Domestic abuse victims

Minn. Stat. 611A.32, subd. 5: Personal history information and other information collected, used, or maintained by a grantee from which the identity or location of any victim of domestic abuse may be determined is private data on individuals. The grantee shall maintain the data in accordance with the provisions of chapter 13.

OJP grantees only.

Chapter 611A protections

Domestic abuse victims in shelter

Minn. Stat. 611A.371: Personal history information collected, used, or maintained by designated shelter facility from which the identity or location of any battered woman may be determined is private data on individuals.

OJP grantees only.

Other protections – sexual assault

Statutory exception to MGDPA

Minn. Stat. § 13.823: Exempts community-based DV and SA programs from chapter 13 except programs must comply with sections **13.822**; 611A.32, subd. 5; 611A.371, subd. 3; and **611A.46**.

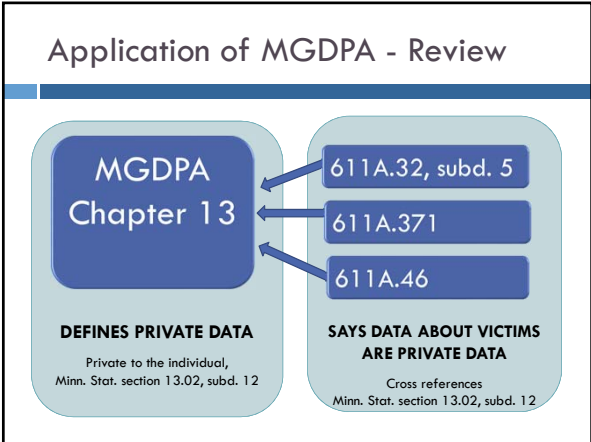
Other protections – sexual assault

Minn. Stat. § 13.822, subd. 2: All sexual assault communication data are classified as private data on individuals.

"Sexual assault communication data" means all information transmitted in confidence between a victim of sexual assault and a sexual assault counselor and all other information received by the sexual assault counselor in the course of providing assistance to the victim. The victim shall be deemed the subject of sexual assault communication data.

Applies only to those working community-based sexual assault "crisis centers."

Minn. Stat. 611A.46: Applies to all grantees providing services to crime victims, including sexual assault service providers.



Importance of data classification

Classification as **private data** means that program or advocate cannot release data to anyone without consent of the “subject of the data” (victim) or by court order.

VAWA and VOCA requirements

CONFIDENTIALITY REQUIREMENTS

Federal: If you receive VAWA or VOCA grant funding, you must adhere to confidentiality requirements. VAWA and VOCA funding to Minnesota programs flows through OJP.

State: Minnesota OJP grant agreements require grantees to adhere to VAWA and VOCA confidentiality requirements.
It's part of your contract!

Government-based advocates

Multiple obligations

- Chapter 13 applies to government entities.
- Section 611A.46 applies to grantees.
- OJP grantees must comply with contractual requirements.
- No walls between advocate and employer. Everything the employee (advocate) knows, the employer (prosecutor, sheriff, chief) knows.
- The advocate must abide by the prosecutor's ethical obligations (including disclosure) and confidentiality requirements.

LAW ENFORCEMENT DATA

Law enforcement data – § 13.82

Type	Classification	Statute
Request for services	Public	13.82, Subd. 3
911 call	Transcript public. Audio recording not public.	13.82, subd. 4
Response/incident data (basic info)	Public	13.82, subd. 6
Arrests	Public	13.82, subd. 2

Law enforcement data – § 13.82

Type	Classification	Statute
Incarceration status	Public	13.82, subd. 2
Booking photos	Public	13.82, subd. 26
Investigative data (criminal)	It depends. <ul style="list-style-type: none"> Active investigation: Confidential Inactive investigation: Public 	13.82, subd. 7
Photos which are part of investigative file	After investigation inactive: Photographs clearly offensive to common sensibilities are classified as private or nonpublic.	13.82, subd. 7

Law enforcement data - protections

Type	Law enforcement discretion?
Victims and witnesses can request that their identifying information be withheld from the public in a law enforcement report. Minn. Stat. 13.82, subd. 17(d)	YES. Data withheld unless the agency reasonably determines that revealing the identity of the victim or witness would not threaten the person safety or property of the individual.
Identity of juvenile witness . Minn. Stat. 13.82, subd. 17(g)	YES. Data withheld if agency reasonably determines that the subject matter of the investigation justifies protecting the identity of the witness.

Law enforcement data - protections

Type	Law enforcement discretion?
Identity of victim or alleged victim of CSC or child porn/use in sexual performance. Minn. Stat. 13.82, subd. 17(b)	NO. Automatically withheld.
Identity of victims of vulnerable adult maltreatment and child abuse or neglect . Minn. Stat. 13.82, subs. 8 and 9 (child) 10 and 11 (vulnerable adult)	NO. Automatically withheld.

Getting a police report

WHAT WE HEAR

- How do I get a copy of my police report?
- Why won't they give me a copy of my police report?
- I asked the investigator to give me a copy of the police report and he never did.

It's a **process** issue and a **timing** issue.

Requesting process – advice for victims

Don't ask the officer, sergeant, detective, investigator, or chief:

- Use the established process for the agency to request a copy.

Do your research first:

- Look on the agency's website for any information about how to request a copy of the incident report.
- Call ahead and ask how many pages the report is so person can bring enough money. Ask what form of payment is acceptable.
- Ask if there are electronic files (e.g. photographs and audio recordings) and the expected additional fees.
- Find out what window or office to go to at the police station.
- Call ahead to find out if the investigation is still active.

(The timing issue.)

Requesting "police report"

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When you can get **law enforcement criminal investigative data** depends on where you are in the process.

Minnesota Statutes §13.82, subd. 7, criminal investigative data

Requesting “police report”

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ACTIVE INVESTIGATION
Confidential data

Requesting “police report”

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ACTIVE INVESTIGATION
Confidential data

CASE DECLINED – INACTIVE INVESTIGATION
Public data

Law enforcement investigative data

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ACTIVE INVESTIGATION
Confidential data

CASE DECLINED – INACTIVE INVESTIGATION
Public data

CASE PROSECUTED - ACTIVE INVESTIGATION
Confidential data

Victim request while data confidential

Access to data for crime victims

On receipt of a written request, the prosecuting authority shall release investigative data collected by a law enforcement agency to the victim of a criminal act or alleged criminal act or to the victim's legal representative unless the release to the individual subject of the data would be prohibited under section 13.821 or the prosecuting authority reasonably believes:

- (a) that the release of that data will interfere with the investigation; or
- (b) that the request is prompted by a desire on the part of the requester to engage in unlawful activities.

Minnesota Statutes § 13.82, subd. 13

Victim/advocate access to “report”

Two statutory provisions that allow a victim of domestic abuse or their advocate to get a copy of “the report” for free.

Victim/advocate access to “report”

Minnesota Statutes § 629.341, subd. 4

Whenever a peace officer investigates an allegation that an incident described in subdivision 1 has occurred, whether or not an arrest is made, the officer shall make a written police report of the alleged incident. . . . A copy of this report must be provided upon request, at no cost, **to the victim of domestic abuse, the victim's attorney, or organizations designated by the Office of Justice Programs** in the Department of Public Safety or the commissioner of corrections that are providing services to victims of domestic abuse.

Victim/advocate access to “report”

Minnesota Statutes § 13.82, subd. 5

The written police report required by section 629.341, subdivision 4, of an alleged incident described in section 629.341, subdivision 1, and arrest data, request for service data, and response or incident data described in subdivision 2, 3, or 6 that arise out of this type of incident or out of an alleged violation of an order for protection must be released upon request at no cost **to the victim** of domestic abuse, the victim's attorney, **or an organization designated by the Office of Justice Programs** in the Department of Public Safety as providing services to victims of domestic abuse. The executive director or the commissioner of the appropriate state agency shall develop written criteria for this designation.

Victim/advocate access to report

- **Designation**
 - Request forms on the OJP website (grants unit designates)
 - List of designated programs on OJP website
- **Practices vary across the state**
 - Different arrangements between programs and LEAs
 - Different methods of requesting report
 - Differ methods of receiving report
 - Different interpretations of what constitutes “the report” under Minn. Stat. 629.341.
- **A bigger conversation for another day . . .**

OTHER DATA ISSUES

Juvenile offenders

Victim request for information in juvenile case

The victim of any alleged delinquent act may, upon the victim's request, obtain the following information, unless it reasonably appears that the request is prompted by a desire on the part of the requester to engage in unlawful activities:

- (1) the name and age of the juvenile;
- (2) the act for which the juvenile was petitioned and date of the offense; and
- (3) the disposition, including, but not limited to, dismissal of the petition, diversion, probation and conditions of probation, detention, fines, or restitution.

Minn. Stat. § 260B.171, subd 4(c)

Juvenile offenders

Victim request for law enforcement data in juvenile cases

Upon written request, the prosecuting authority shall release investigative data collected by a law enforcement agency to the victim of a criminal act or alleged criminal act or to the victim's legal representative, except as otherwise provided by this paragraph. Data shall not be released if:

- (1) the release to the individual subject of the data would be prohibited under section [13.821](#); or
- (2) the prosecuting authority reasonably believes:
 - (i) that the release of that data will interfere with the investigation; or
 - (ii) that the request is prompted by a desire on the part of the requester to engage in unlawful activities.

Minn. Stat. § 260B.171, subd. 5(h)

During prosecution

Nondisclosure of victim information

- Victim home and employment address and date of birth may be withheld from defendant and/or defense attorney. Minn. Stat. § 611A.035, subd. 1.

Requires prosecutor to file motion prior to sharing police report.

- Witness and victim may not be compelled to disclose home/work address, telephone number, or DOB on the record in open court unless court finds it relevant evidence. Minn. Stat. § 611A.035, subd. 2.

Requires prosecutor to prepare in advance.

During prosecution

Subpoena of victim records

Types: Medical, psychological, educational, employment, and records from victim serving organization.

Invoke: MGDPA, Minn. Stat. 611A provisions, privacy and relevancy arguments, etc.

Subpoena of person to testify

Types: Medical, therapist, advocate

Invoke: Privileges (e.g. doctor/client, sexual assault victim/counselor, domestic abuse victim/counselor).

During prosecution

Sexual assault victim/counselor privilege

- **Minn. Stat. 595.02, subd. 1(k):** Sexual assault counselors may not be allowed to disclose any opinion or information received from or about the victim without the consent of the victim.
 - Absolute privilege.
 - Applies if called to testify.
 - Applies to counselors working in "crisis center."

Compare:

- **Minn. Stat. § 13.822, subd. 2:** All sexual assault communication data are classified as private data on individuals.

During prosecution

Domestic abuse victim/advocate privilege

Minn. Stat. 595.02, subd. 1(l): A domestic abuse advocate may not be compelled to disclose any opinion or information received from or about the victim without the consent of the victim unless ordered by the court.

- Qualified privilege (court will balance)
- Applies if called to testify.
- Applies to advocates working in shelter or program eligible to receive grants under 611A.32.

Post conviction

Data on offenders

- On probation or supervision
 - Conditions of supervision or probation
 - Supervising agent
 - Extent to which offender is complying with conditions
- Incarcerated
 - Location of offender
 - DOC: Offender's zip code upon release (Minn. Stat. §13.84, subd. 6(d)).

STATISTICAL DATA

Summary, prevalence, crime rates,
court filings, location specific

Advocates want data

Response by law enforcement agencies

- Calls for service.
 - Reports written
 - Arrests
 - Referrals to prosecutor for charging review
- (Some law enforcement agencies have records managements systems that can track this.)

Response by prosecutors

- Cases sent by LEAs for charging review
 - Charging decisions (including declinations)
- (Some prosecutors have records managements systems that can track this.)

Criminal and civil case filed

- Crime-specific charging, conviction, sentencing data, civil protective orders.
- (The court tracks criminal cases that are filed, but cannot report on all DV crimes.)

Why can't I get the data I want?

- Only some of the DV-related criminal charges can be clearly identified as such. Many common DV-related charges are also charged in cases when partners don't meet definition under 518B.
- There is no one system that tracks incidents from initial contact with law enforcement, through the charging decision process, and through the court system.
- Each LEA has their own records management systems and they do not all track DV-related calls in the same manner.
- Not all prosecutors track their case review process.

Why can't I get summary data on DV?

STATEWIDE DOMESTIC ABUSE DATA
A Report to the Legislature on the Collection of Domestic Abuse Data
Minnesota Department of Public Safety
March 2016

INTRODUCTION

Minnesota has a long history of responding to the issue of domestic abuse through a variety of laws, including the civil protection orders, an arrest and conviction, and a permanent protective order. The purpose of this report is to provide a summary of the current data on domestic abuse in Minnesota, including the number of cases, the types of charges, and the outcomes of the cases. This report is intended to provide a summary of the current data on domestic abuse in Minnesota, including the number of cases, the types of charges, and the outcomes of the cases. This report is intended to provide a summary of the current data on domestic abuse in Minnesota, including the number of cases, the types of charges, and the outcomes of the cases.

The Long Answer . . .

Statewide Domestic Abuse Data: A report to the legislature on the collection of domestic abuse data

Minnesota Department of Public Safety
March 2016

Where can I find statistical data?

POLICE RESPONSE TO DOMESTIC VIOLENCE, 2006-2015
U.S. Department of Justice, Office of Justice Statistics, Bureau of Justice Statistics
May 2017

KEY FINDINGS

- The number of police-reported domestic violence incidents increased from 2006 to 2015.
- The number of police-reported domestic violence incidents increased from 2006 to 2015.
- The number of police-reported domestic violence incidents increased from 2006 to 2015.

Police Response to Domestic Violence, 2006-2015

U.S. Department of Justice, Office of Justice Statistics, Bureau of Justice Statistics
May 2017.

Where can I find statistical data?

Minnesota Criminal Justice Dashboards

OJP website under Statistical Analysis Center tab.



Statistical Analysis Center

MINNESOTA CRIMINAL JUSTICE DASHBOARDS

Arrest Dashboards
Court Charges Dashboards
Probation Supervision Dashboards
State Prison Dashboards

Where can I find statistical data?



MINNESOTA JUDICIAL BRANCH

Minnesota Judicial Branch Dashboards

Summary information on court filings by judicial district. April 2017.

Minnesota Judicial Branch Dashboards

Summary information on court filings by judicial district. April 2017.

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