



OLR RESEARCH REPORT

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COMPARISON OF PROPOSALS SUBMITTED TO TASK FORCE ON VICTIM PRIVACY AND THE PUBLIC'S RIGHT TO KNOW

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You asked for a comparison of the proposed recommendations submitted by members of the Task Force on Victim Privacy and the Public's Right to Know at its November 27 meeting.

Four task force members submitted proposed recommendations at the November 27 meeting: Representative Angle Arce (the task force co-chair), Chief State's Attorney Kevin Kane, Klarn DePalma (WFSB's general manager), and Senator Leonard Fasano. Collectively, the proposals address disclosure under the Freedom of Information Act (FOIA) of (1) the identities of witnesses who are minors, (2) law enforcement records generally, (3) images of homicide victims, (4) 911 audio recordings, and (5) death certificates. Complete versions of the members' proposals are available on the task force's website: <http://cga.ct.gov/gae/VPTF/taskforce.asp>

Tables 1-4 compare the members' proposals for each category of records except death certificates. Rep. Arce recommended leaving current law unchanged with respect to disclosing death certificates; none of the other members' proposals addressed this issue. (For more information about disclosure of death certificates, please see OLR Report [2013-R-0389](#).)

Some parts of the table refer to provisions in PA [13-311](#), which amended FOIA by adding exemptions from disclosure for identities of witnesses who are minors, images of a homicide victim, and certain audio recordings. Please see EXEMPTIONS FROM DISCLOSURE UNDER FOIA for a description of these provisions.

Table 1: Witnesses who are Minors

Rep. Angel Arce, Task Force Co-Chair	Chief State's Attorney Kevin Kane	Klarn DePalma, WFSB General Manager	Sen. Leonard Fasano
<p>Maintain PA 13-311's FOIA exemption for the identities of witnesses who are minors</p> <p>Specify that (1) a minor is someone who is age 18 or younger and (2) the exemption applies to someone who was a minor at the time he or she made a statement or provided information</p> <p>If the minor is age 16 or older, the law enforcement agency must make a reasonable attempt to ask the minor or his or her parent or guardian for permission to disclose the identity</p> <p>Allow a criminal defendant or his or her attorney to obtain the minor's identity when needed for a criminal defense, but not if the minor would be endangered or subject to threat or intimidation</p>	<p>Maintain PA 13-311's FOIA exemption for the identities of witnesses who are minors</p> <p>Specify that a minor is someone who is younger than age 18</p>	<p>Not addressed</p>	<p>Maintain PA 13-311's FOIA exemption for the identities of witnesses who are minors</p> <p>Specify that a minor is someone who is younger than age 18</p>

Table 2: Law Enforcement Records Generally

<i>Rep. Angel Arce, Task Force Co-Chair</i>	<i>Chief State's Attorney Kevin Kane</i>	<i>Klarn DePalma, WFSB General Manager</i>	<i>Sen. Leonard Fasano</i>
Not addressed	Exempt a law enforcement record from disclosure under FOIA if (1) it does not pertain to legitimate matters of public concern or (2) disclosure would be highly offensive to a reasonable person	Not addressed	<p>Exempt a law enforcement record from disclosure under FOIA if disclosure would constitute an unwarranted invasion of personal privacy</p> <p>Specify that an invasion of privacy is warranted if a requestor produces sufficient evidence to warrant a belief by a reasonable person that (1) a government official acted negligently or otherwise inappropriately in performing his or her duties and (2) the requested record is likely to be probative of such negligence or impropriety.</p> <p>The exemption does not prevent a criminal defendant or his or her legal representative from obtaining access to law enforcement records to which they are otherwise entitled by law.</p>

Table 3: Images of a Homicide Victim

Rep. Angel Arce, Task Force Co-Chair	Chief State's Attorney Kevin Kane	Klarn DePalma, WFSB General Manager	Sen. Leonard Fasano
<p>Maintain PA 13-311's exemption from disclosure under FOIA for images of a homicide victim (see BACKGROUND), but allow members of the public to view (not copy) an image to which access is denied</p> <p>Specify that an invasion of privacy is warranted if a requestor produces sufficient evidence to warrant a belief by a reasonable person that (1) a government official acted negligently or otherwise inappropriately in performing his or her duties and (2) the requested record is likely to be probative of such negligence or impropriety</p> <p>If the invasion of privacy is found to be warranted, the image must be released</p> <p>Provide the victim's family with 24 hours' notice before releasing the image</p>	<p>Not specifically addressed, but covered by proposed law enforcement records exemption</p>	<p>Limit PA 13-311's exemption from disclosure under FOIA for images of a homicide victim so that it applies only to images of a homicide victim who is a minor</p> <p>Establish a process by which a person could view, but not copy, an image of a victim who is a minor. Upon request for such an image, the custodial agency would deliver it to the Freedom of Information Commission (FOIC) within 30 days. The commission would (1) copy the image and store it in an offline, electronic format and (2) provide a private room for viewing the image.</p> <p>Allow a requestor to appeal to FOIC for disclosure of the image. FOIC must consider whether (1) the requestor has shown good cause for disclosure, (2) disclosure is in the public interest, and (3) the minor's parent or other next-of-kin consents or objects to disclosure.</p> <p>Designate any unauthorized copying or removal of such a record as a computer crime as defined in CGS § 53a-251. (The penalty depends on the damage to or value of the property or computer services.)</p>	<p>Not specifically addressed, but covered by proposed law enforcement records exemption</p>

Table 4: 911 Audio Recordings

Rep. Angel Arce, Task Force Co-Chair	Chief State's Attorney Kevin Kane	Klarn DePalma, WFSB General Manager	Sen. Leonard Fasano
<p>Exempt 911 audio recordings from disclosure under FOIA</p> <p>Allow members of the public to listen to 911 audio recordings and obtain transcripts</p> <p>Allow the person who made the call to obtain an audio copy</p> <p>Require a 911 audio recording to be released if the requestor produces sufficient evidence to warrant a belief by a reasonable person that (1) a government official acted negligently or otherwise inappropriately in performing his or her duties and (2) the requested record is likely to be probative of such negligence or impropriety</p> <p>Provide the caller with 24 hours' notice before releasing the audio</p> <p>Repeal PA 13-311's exemption for audio communications (e.g., between first responders) that describe a homicide victim's condition (or allow it to expire as scheduled on May 7, 2014)</p>	<p>Exempt from disclosure under FOIA the portion of an audio tape or other recording (including a 911 or other call for assistance made by a member of the public to a law enforcement agency) that contains information (1) depicting or describing the condition or suffering of a homicide victim or (2) that would reveal the name, address, or phone number of a (a) person placing the 911 or other call for assistance or (b) witness to a crime</p>	<p>Not addressed</p>	<p>Not specifically addressed, but covered by proposed law enforcement records exemption</p>

PA 13-311 — EXEMPTIONS FROM DISCLOSURE UNDER FOIA

PA [13-311](#) exempts from disclosure under FOIA a photograph, film, video, digital, or other visual image depicting a homicide victim, to the extent that the record could reasonably be expected to constitute an unwarranted invasion of the victim's or surviving family members' personal privacy. The record must have been created by a law enforcement or other government agency.

The act also exempts from disclosure under FOIA (1) the portion of a recording or audio tape that describes a homicide victim's condition and (2) law enforcement records, compiled in detecting or investigating a crime, that would disclose the identity of witnesses who are minors. The audio recording exemption (1) applies only to law enforcement agencies, (2) does not extend to 9-1-1 or other calls for assistance made by a member of the public to a law enforcement agency, and (3) expires on May 7, 2014. The exemption for a witness who is a minor applies only if disclosure would not be in the public interest. (Minors were previously covered by a similar provision in existing law applicable to all witnesses regardless of age, but that provision limits the withholding to witnesses not otherwise known and to disclosures that would endanger the witness's safety or subject him or her to threat or intimidation.)

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