



**A Compilation of Best Practice Recommendations
Issued by the Wisconsin Crime Victims Rights Board**

1999- March 2011

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CVRB Best Practice Recommendations

Introduction

Since its inception, the Wisconsin Crime Victims Rights Board (CVRB) has received 39 cases for review concerning a variety of victims' rights issues. While each case presents a unique set of circumstances, there are recurring issues that have been the subject of multiple CVRB decisions and reports. The following pages contain general principles articulated in reports issued by the CVRB. The list is not all-inclusive. Recommendations are grouped in broad categories and listed more than once if relevant to more than one category. The categories reflect the issues that have been present in cases before the CVRB. This document was prepared to increase the transparency of CVRB operations and to share best practices and recommendations concerning the provision of victims' rights in Wisconsin.

Charging Decisions

Statutes

Wis. Stat. § 971.095(4) If a person is arrested for a crime but the district attorney decides not to charge the person with a crime, the district attorney shall make a reasonable attempt to inform all of the victims of the act for which the person was arrested that the person will not be charged with a crime at that time.

Wis. Stat. § 971.095(5)) If a person is charged with committing a crime and the charge against the person is subsequently dismissed, the district attorney shall make a reasonable attempt to inform all of the victims of the crime with which the person was charged that the charge has been dismissed.

Related Recommendations

- The CVRB encourages the district attorney's office to more clearly explain to victims the difference between a law enforcement referral or recommended charge and the district attorney's charge.
- Members of the public very appropriately look to the district attorney to provide complete information regarding the prosecution or non-prosecution of an act. When an act has caused such harm as to have resulted in the death of a person, a prosecutor should expect that his or her charging decision will greatly impact surviving family members and perhaps even the community at large. Therefore, the conveyance of the charging decision should occur as soon as practicable and with sensitivity.
- The absence of criminal conduct may lessen a district attorney's statutory obligations to victims of non-criminal acts but it does not free them entirely from responsibility to those directly affected by the conduct. A district attorney should be willing to communicate

*Charging
Decisions*

and explain a decision not to charge, particularly when the conduct resulted in the loss of life. This should be communicated directly to all involved parties at the earliest possible opportunity.

*Related
Recommendations*

- The Board acknowledges that district attorneys must prioritize cases according to their workload and that a backlog of cases may make it necessary to delay filing some cases in order to file other cases. No matter what theory of prioritization a district attorney adopts for his or her office, cases that involve the loss of a life must be given priority. Survivors and loved ones rely on prosecutors to keep them informed. If a case will not be charged, prolonging notification of that decision unreasonably and unnecessarily exacerbates their suffering.

Child Victims: Expedited Proceedings

Statutes

Wis. Stat. § 971.105 Child victims and witnesses; duty to expedite proceedings. In all criminal and delinquency cases, juvenile fact-finding hearings under s. 48.31 and juvenile dispositional hearings involving a child victim or witness, as defined in s. 950.02, the court and the district attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of the child's involvement in the proceeding. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

*Related
Recommendations*

- Any written procedure that prioritizes cases for scheduling should also note the duty of the court to expedite proceedings that involve child victims.

Citizen Complaint Policy for Law Enforcement Agencies

Statutes

Wis. Stat. § 66.0511(3) Citizen complaint procedure. Each person in charge of a law enforcement agency shall prepare in writing and make available for public scrutiny a specific procedure for processing and resolving a complaint by any person regarding the conduct of a law enforcement officer employed by the agency. The writing prepared under this subsection shall include a conspicuous notification of the prohibition and penalty under s. 946.66.

Related Recommendations Compliance with the citizen complaint procedure mandated in state law provides an agency with the opportunity to resolve conflicts at the local level before complaints escalate to the state level.

Conferring with the Prosecution

Statutes **Wis. Stat. 950.04(1v) Rights of victims.** Victims of crimes have the following rights:

Wis. Stat. § 950.04(1v)(i) To have, at his or her request, the opportunity to consult with intake workers, district attorneys and corporation counsel in cases under ch. 938 , as provided under ss. 938.245 (1m) , 938.265 and 938.32 (1) (am)

Wis. Stat. § 950.04(1v)(j) To have, at his or her request, the opportunity to consult with the prosecution in a case brought in a court of criminal jurisdiction, as provided under s. 971.095 (2) .

950.08(2r) Information to be provided by a district attorney in criminal cases. As soon as practicable, but in no event later than 10 days after the initial appearance under s. 970.01 or 24 hours before a preliminary examination under s. 970.03 , whichever is earlier, of a person charged with a crime in a court of criminal jurisdiction, a district attorney shall make a reasonable attempt to provide to each victim of the crime written information on all of the following:

Wis. Stat. § 950.08(2r)(b) A list of the rights of victims under s. 950.04 (1v) and information about how to exercise those rights.

Related Recommendations

- Prosecutors have an obligation to confer with victims upon request. The right to confer can be triggered by an oral request. In this case, victim witness staff understood that the victim wanted to speak with the prosecution and instructed the victim to make that indication on the victims' rights form. Instead of waiting for the paper form to be returned, an appointment to confer could have been scheduled when the desire to confer was communicated. The result of relying on the form was that the victim was not given the opportunity to confer.
- If it is likely that a plea offer will be made at a pre-trial conference, the district attorney's office should be sure that a victim, who has requested it, has been given their opportunity to confer before the pre-trial.

*The Right
To Confer*

*Related
Recommendations*

- When there is a significant or abrupt change in the status of a case (for example, a settlement is reached close to trial) prosecutors should inform their victim/witness staff so they can keep victims informed and able to exercise any applicable rights.
- The legitimate desire to dispose of cases efficiently poses challenges to the meaningful provision of victims' rights. Prosecutors, judges and victim witness professionals should be mindful of victims' rights when a settlement abruptly changes the direction of a case and a plea and sentencing hearing is quickly put on the calendar. The merits of expediency can not justify the violation of the victims' rights statute. In addition to those rights a victim has already requested, he or she might want to exercise additional rights, such as the right to confer or to make a statement to the court, when a plea is offered.

Confined Victims

Statutes

Wis. Stat § 950.07 Intergovernmental cooperation. The county board, district attorney, local law enforcement agencies, local social service agencies, victim and witness offices and courts shall all cooperate with each other to ensure that victims and witnesses of crimes receive the rights and services to which they are entitled under this chapter.

Wis. Stat § 950.04(1v) Rights of victims. Victims of crimes have the following rights:

Wis. Stat § 950.04(1v) (b) To attend court proceedings in the case, subject to ss. 906.15 and 938.299 (1). The court may require the victim to exercise his or her right under this paragraph using telephone or live audiovisual means, if available, if the victim is under arrest, incarcerated, imprisoned or otherwise detained by any law enforcement agency or is admitted or committed on an inpatient basis to a treatment facility under ch. 51, 971 or 980, and the victim does not have a person specified in s. 950.02 (4) (a) 3. to exercise the victim's right under this paragraph.

*Related
Recommendations*

- Procedures should be developed to ensure communication between institutions of confinement and any offices providing victims' rights and services to a confined victim of crime. The protocol should contain the following guidelines:
 - a. The persons with authority over the confined victim should be notified that the victim has the right to attend court

*Confined
Victims*

proceedings, in accordance with Chapter 950.04(1v)(b), which provides for telephone or audiovisual options if transporting the victim is problematic.

*Related
Recommendations*

- b. If a person in confinement asserts a victims' right, the persons with authority over the confined victim should contact the victim witness office and/or prosecutor to ascertain whether the person has victim status; whether he or she is entitled to exercise the specific right requested; and if entitled to attend a hearing, to make arrangements for the method of attendance.
- A victim's right to attend a hearing is independent of a prosecutor's need for the victim to be present.
 - Incarcerated victims have the right to attend court proceedings [Wis. Stat. § 950.04(1v)(b)]. If a victim is under arrest, incarcerated, imprisoned or otherwise detained by any law enforcement agency or is admitted or committed on an inpatient basis to a treatment facility [under ch. 51, 971 or 980], he or she is not automatically entitled to attend a hearing *in person*. The court can be asked to require that this right be exercised in a manner other than physical attendance, using telephone or live audiovisual means, if available.
 - When an incarcerated victim is being transported for a proceeding, it should be made clear to him or her the purpose for which transport is being arranged. For example, whether it is to facilitate the victim's testimony or whether transport is to facilitate the victim's request to be present at a proceeding. A victim may decide not to make a request to attend a proceeding (in person, by telephone or live audiovisual means) assuming that transport is being arranged for that purpose and not understanding that if his or her testimony is no longer needed, transport might be cancelled. When the transport of an incarcerated victim is cancelled, it would be good practice to explain why (for example, because the proceeding has been rescheduled or cancelled due to a settlement) so that the victim remains informed about the status of the case and able to exercise any applicable rights.
 - Ensuring the provision of rights to persons under the authority of the state requires communication and cooperation across governmental systems and such cooperation is mandated by Wisconsin Stat. § 950.07.

Court Calendars: Scheduling Delays

Statutes

Wis. Stat. § 950.04(1v) Rights of victims. Victims of crimes have the following rights:

Wis. Stat. § 950.04(1v)(k) To a speedy disposition of the case in which they are involved as a victim in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.

Wis. Stat. § 971.105 Child victims and witnesses; duty to expedite proceedings. In all criminal and delinquency cases, juvenile fact-finding hearings under s. 48.31 and juvenile dispositional hearings involving a child victim or witness, as defined in s. 950.02, the court and the district attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of the child's involvement in the proceeding. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

See 971.10(3)(b)3. The court must consider the interests of the victim before granting a continuance.

See 971.10(3)(c). No continuance under this section may be granted because of general congestion of the court's calendar or the lack of diligent preparation or the failure to obtain available witnesses on the part of the state.

See 971.10(3)(a). A continuance shall not be granted unless the court sets forth in the record its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and defendant.

Related Recommendations

- The administratively condoned judicial practice of unreasonably stacking cases under the guise of judicial economy should be replaced with the court's recognition of the legislative mandate to consider the emotional and practical effect of continuances on victims of crime. *See Wis. Stat. § 971.10 (3)(b)3.*
- Delays and cancellations and even some level of over scheduling are unavoidable in a busy court system. However, when the county practice is to over schedule trials to the extent that seven to eleven trials will be rescheduled every trial day, the result is that victims are repeatedly subjected to the anxiety of cancelled and delayed

*Court
Calendars
Scheduling
Delays*

*Related
Recommendations*

proceedings. There is an added burden when the cancellations come only one or two days prior to the trial. Such a system is prone to produce unnecessary hardship on victims, many of whom have rearranged their lives around a trial date. Victim witness staff will find themselves repeatedly trying to explain cancellations to victims, which may erode trust and even possibly reduce the cooperation of victims and/or witnesses who are experiencing anxiety because of cancellations and delays.

- Any written procedure that prioritizes cases for scheduling should also note the duty of the court to expedite proceedings that involve child victims.

Deferred Prosecution Agreements

*Related
Recommendations*

- Wis. Stat. § 950.04(1v)(pm) gives victims the right to have the court consider the economic, physical, and psychological effect of the crime on the victim. Whether an involved victim has been informed about an agreement that could result in dismissal of the case, and the effects of the crime upon the victim are relevant considerations for a court trying to decide whether the dismissal of a prosecution is in the public interest.
- Victims must be afforded a reasonable opportunity to exercise their rights if those rights are to be meaningful. A circuit court must give crime victims the opportunity to provide information about the economic, physical, and psychological effect of the crime before it acts to approve the terms of a settlement agreement that will result in the dismissal of charges against the defendant if the terms of the agreement are satisfied.
- Where a prosecutor and defendant's counsel have reached an agreement to resolve a filed criminal case through the use of a deferred prosecution agreement or an agreement simply to hold the case open while the defendant satisfies conditions that would result in dismissal of the case, the best practice is for the court to (a) set a hearing for its consideration of the proposed settlement agreement, (b) to provide all victims with notice of the hearing, (c) to allow all victims to provide the court with information about the effects of the crime upon them, and (d) to allow the victims to make statements to the court regarding the alternative dispositions of the case contemplated by the proposed agreement, before (e) determining on the record and in light of the relevant factors whether to approve the proposed settlement.

*Deferred
Prosecution
Agreements*

*Related
Recommendations*

- Where a prosecutor and defendant's counsel have reached an agreement to resolve a filed criminal case in a manner that could result in a dismissal or another disposition without trial, and the proposed agreement contains a term to keep secret the conditions that must be satisfied in order to result in the dismissal or other disposition without trial, the best practice is for the court to set a hearing for the consideration of the proposed settlement agreement, to provide notice to all victims, and for the court to take up as its first order of public business whether it is in the public interest to maintain the secrecy of the proposed agreement.
- Only in those rarest of circumstances where the public interest clearly favors confidentiality should the court exclude the public and the victim from the portion of the hearing which determines whether the proposed settlement is in the public interest. In all other circumstances, the best practice is for the court to follow the procedure outlined in the preceding paragraph.

Eligibility for Chapter 950 Rights

Statutes

Wis. Stat § 950.02(4) (a) "Victim" means any of the following:

1. A person against whom a crime has been committed.
2. If the person specified in subd. 1. is a child, a parent, guardian or legal custodian of the child.
3. If a person specified in subd. 1. is physically or emotionally unable to exercise the rights granted under s. 950.04 or article I, section 9m, of the Wisconsin constitution, a person designated by the person specified in subd. 1. or a family member of the person specified in subd. 1.
4. If a person specified in subd. 1. is deceased, any of the following:
 - a. family member of the person who is deceased.
 - b. A person who resided with the person who is deceased.
5. If a person specified in subd. 1. has been adjudicated incompetent in this state, the guardian of the person appointed for him or her.

Statutes

(b) "Victim" does not include the person charged with or alleged to have committed the crime.

*Eligibility for
Chapter 950
Rights*

Wis. Stat. § 950.02(3) "Family member" means spouse, minor child, adult child, sibling, parent, or legal guardian.

Wis. Admin. Code CVRB 1.04 (5) The board may consider complaints alleging violations of victims' rights that occurred on or after December 1, 1998. The board may not consider alleged conduct that occurred more than 3 years from the date the complainant knew or should have known of a violation of the rights of a victim. The board may consider issuing reports or recommendations as provided by s. 950.09 (3), Stats., relating to conduct that occurred prior to December 1, 1998 or more than 3 years before a complaint was filed with the board or the board was otherwise notified of the conduct.

*Related
Recommendations*

- An agency or official's decision to deny victim status during one stage of a case does not preclude a different agency or official from making a different assessment as more information becomes available in a later stage of a case. Agencies and officials should not blindly adhere to a previous determination about victim status. Each official and agency must make a decision about victims' rights entitlement based on the applicable statutory obligations and the facts of the case.
- Decision-makers should seek as much information about a case as possible before making a determination about victim status.
- While every case must be evaluated based on the information available at the time, an agency or public official would benefit from developing a policy or methodology to be applied uniformly to all potential victims with whom the agency or official has contact. Agencies and officials should document decisions that deny persons of services and maintain a complete record of those decisions.
- It is a good practice for district attorneys' offices to make an attempt in homicide cases and sensitive crimes to identify victims such as non-custodial parents, to ensure they are able to exercise their victims' rights.
- To most effectively serve the Legislature's intent that "victims and witnesses of crime are treated with dignity, respect, courtesy and sensitivity," Wis. Stat. § 950.01, law enforcement agencies, district attorneys offices, judges and the Department of Justice would be well served to:
 - a. Determine at the appropriate stages of their respective

*Eligibility for
Chapter 950
Rights*

involvement in a case whether particular individuals affected by events in the case are statutory victims entitled to exercise the full set of crime victims rights;

*Related
Recommendations*

- b. Determine whether some individuals who are not statutory victims will be afforded some or all of the rights and services available to crime victims;
 - c. Identify what limitations will be placed on the rights and services that are to be made available to individuals who are not statutory victims; and
 - d. Clearly communicate to those individuals who are not statutory victims the extent of information, services and participation, if any, that will be provided.
- A decision by the Department of Justice to deny victim status need not sever that person's access to the Crime Victims Rights Board. In the case at hand, a decision was made to withhold a formal complaint form, based on the fact that the Board's jurisdiction is limited to complaints brought by persons who are victims of crime. This approach can be problematic given the Department's role as both an agency with statutory obligations to victims and as gatekeeper to the formal complaint process in which the Department could be a respondent. The Board recommends that the Department do the following to create a record when there is a disagreement regarding victim status:
 - a. Explain to the person to whom victim status was denied the standard used by the Department based on the definition of victim in Wis. Stat. 950.02(4) and;
 - b. Ask the person to whom victim status was denied how he or she fits into the statutory definition and why he or she avoids the exception in Wis. Stat. 950.02(4)(b).
 - c. The Department can demonstrate the reasoning process it used to deny victim status under the appropriate standards. If the disagreement about victim status remains, the Department can inform him or her that a request can be made of the Board to review the Department's decision by sending a letter to the Board.

A decision made by the Department of Justice regarding eligibility for reimbursement through the Crime Victims Compensation Program is not relevant when determining whether a person is entitled to victim status under Wis. Stat. Chapter 950 for the purpose of the rights and services.

Informal Complaint Process Conducted at DOJ

Statutes

Wis. Stat. 950.04(1v) Rights of victims. Victims of crimes have the following rights:

Wis. Stat. § 950.04(1v) (zx) To complain to the department of justice concerning the treatment of crime victims, as provided under s. 950.08 (3), and to request review by the crime victims rights board of the complaint, as provided under s. 950.09 (2).

Wis. Stat. § 950.08 (3) Duties of the Department; Mediation: The department may receive complaints, seek to mediate complaints and, with the consent of the involved parties, actually mediate complaints regarding the treatment of crime victims and witnesses by public officials, employees or agencies or under crime victim and witness assistance programs. The department may act as a liaison between crime victims or witnesses and others when seeking to mediate these complaints and may request a written response regarding the complaint from the subject of a complaint. If asked by the department to provide a written response regarding a complaint, the subject of a complaint shall respond to the department's request within a reasonable time.

Related Recommendations

- When contacted by the Department of Justice mediator to informally resolve a complaint, parties should respond to inquiries and try to resolve the conflict through informal mediation. By ignoring requests for information from the mediator, a respondent to a complaint deprives victims of the chance to find an early remedy to their complaint and deprives his or her own agency of the opportunity to resolve the complaint informally and confidentially.
- While all parties have the right to refuse to cooperate with the informal process, it should be noted that such refusal is likely to elevate the issue to a formal review by the Board.

Information About Case Disposition

Statutes

Wisconsin Stat. § 950.04(1v)(zm) provides that crime victims have the right “[t]o request information from a district attorney concerning the disposition of a case involving a crime of which he or she was a victim, as provided under s. 971.095(6).”

Wisconsin Stat. § 971.095(6) provides that “[a] district attorney shall make a reasonable attempt to provide information concerning the disposition of a case involving a crime to any victim of the crime who requests the information.”

Wisconsin Stat. § 971.315 provides that “[b]efore a court dismisses a criminal charge against a person, the court shall inquire of the district attorney whether he or she has complied with [Wis. Stat. §] 971.095(2).”

Wisconsin Stat. § 757.14 provides, in relevant part, that “[t]he sittings of every court shall be public and every citizen may freely attend the same, except if otherwise expressly provided by law on the examination of persons charged with crime[.]”

Related Recommendations

- Wisconsin law strongly disfavors attempts by public agencies to shield settlements from public scrutiny by pledges of confidentiality. The courts have usually determined that the public interest in the disclosure of settlements outweighs the public interest in maintaining the confidentiality of settlement agreements, regardless whether the settlement is formally approved by the court or not submitted for the court’s approval. *In Matter of Estates of Zimmer*, 151 Wis. 2d 122, 131-37, 442 N.W.2d 578 (Ct. App. 1989); *Journal/Sentinel v. Shorewood School Bd.*, 186 Wis. 2d 443, 451-55, 521 N.W.2d 165 (Ct. App. 1994).
- The victim of a crime that is being prosecuted by a district attorney has a legislatively-recognized interest in the outcome of that case. For that reason, Wis. Stat. § 971.315 requires the circuit court to inquire of the district attorney whether he or she has complied with Wis. Stat. § 971.095(2); that is, whether he or she has conferred with a victim who has requested an opportunity to confer about the prosecution of the case and the possible outcomes of the prosecution, including potential plea agreements and sentencing recommendations.

*Information
About Case
Disposition*

*Related
Recommendations*

- Wis. Stat. § 950.04(1v)(pm) gives victims the right to have the court consider the economic, physical, and psychological effect of the crime on the victim. Whether an involved victim has been informed about an agreement that could result in dismissal of the case, and the effects of the crime upon the victim are relevant considerations for a court trying to decide whether the dismissal of a prosecution is in the public interest.

Information From District Attorneys

Statutes

Wisconsin Stat. § 950.08(2r) provides, in relevant part:[A] district attorney shall make a reasonable attempt to provide to each victim of the crime written information on all of the following:

- (a) A brief statement of the procedure for prosecuting a crime.
- (b) A list of the rights of victims under s. 950.04(1v) and information about how to exercise those rights.
- (c) The person or agency to notify if the victim changes his or her address and wants to continue to receive notices and services under s. 950.04 or 971.095(3).
- (d) The availability of compensation under subch. I of ch. 949, including information concerning eligibility for compensation and the procedure for applying for compensation.
- (e) The person to contact for further information about a case involving the prosecution of a crime of which he or she is a victim.

Wisconsin Stat. § 950.04(1v)(u) provides that victims of crime have the right “[t]o receive information from district attorneys, as provided under s. 950.08(2r).”

*Related
Recommendations*

- The right to written information from district attorneys is a gateway right. When victims are deprived of the right to receive the written information required by Wis. Stat. sec. 950.08(2r), they will almost certainly be deprived of their most valuable substantive victims rights, including the rights to be notified of court proceedings, to attend court proceedings, to confer with the prosecutor, to make statements at sentencing, and to receive restitution.

*Information
From
District
Attorneys*

*Related
Recommendations*

- The Board recommends that district attorneys reiterate with their staff the importance of victims receiving the written information required by Wisconsin Stat. § 950.08(2r).
- The Board recommends that district attorneys evaluate the systems in place for handling returned mail in their offices and direct that appropriate efforts are made to get victims the required information. Failure to provide the information to victims not only deprives victims of their rights; it deprives the prosecution of the benefits that result from the fully informed participation and cooperation of victims in a case.

Information From Law Enforcement

Statutes

Wis. Stat. 950.08(2g) Information to be provided by law enforcement agencies. No later than 24 hours after a law enforcement agency has initial contact with a victim of a crime that the law enforcement agency is responsible for investigating, the law enforcement agency shall make a reasonable attempt to provide to the victim written information on all of the following:

- (a) A list of the rights of victims under s. 950.04 (1v).
- (b) The availability of compensation under ch. 949 and the address and telephone number at which to contact the department for information concerning compensation under ch. 949.
- (c) The address and telephone number of the intake worker, corporation counsel or district attorney whom the victim may contact to obtain information concerning the rights of victims and to request notice of court proceedings under ss. 938.27 (4m) and (6), 938.273 (2), 938.299 (1) (am) and 938.335 (3m) (b) or ss. 971.095 (3) and 972.14 (3) (b), whichever is applicable, and to request the opportunity to confer under ss. 938.245 (1m), 938.265 or 938.32 (1) (am) or s. 971.095 (2), whichever is applicable.
- (d) The address and telephone number of the custodial agency that the victim may contact to obtain information concerning the taking into custody or arrest of a suspect in connection with the crime of which he or she is a victim.
- (e) The address and telephone number of the custodial agency that the victim may contact for information concerning release under s.

Statutes

938.20 or 938.21 or ch. 969, whichever is appropriate, of a person arrested or taken into custody for the crime of which he or she is a victim.

Information

From

Law

Enforcement

(f) Suggested procedures for the victim to follow if he or she is subject to threats or intimidation arising out of his or her cooperation with law enforcement and prosecution efforts relating to a crime of which he or she is a victim.

(g) The address and telephone number at which the victim may contact the department or any local agency that provides victim assistance in order to obtain further information about services available for victims, including medical services.

Wis. Stat. 950.02(4) (a) "Victim" means any of the following:

950.02(4)(a)1. A person against whom a crime has been committed.

950.02(4)(a)2. If the person specified in subd. 1. is a child, a parent, guardian or legal custodian of the child.

950.02(4)(a)3. If a person specified in subd. 1. is physically or emotionally unable to exercise the rights granted under s. 950.04 or article I, section 9m, of the Wisconsin constitution, a person designated by the person specified in subd. 1. or a family member of the person specified in subd. 1.

950.02(4)(a)4. If a person specified in subd. 1. is deceased, any of the following:

- a. family member of the person who is deceased.
- b. A person who resided with the person who is deceased.

950.02(4)(a)5. If a person specified in subd. 1. has been adjudicated incompetent in this state, the guardian of the person appointed for him or her.

950.02(4)(b) "Victim" does not include the person charged with or alleged to have committed the crime.

Wis. Stat. 950.02(3) "Family member" means spouse, minor child, adult child, sibling, parent, or legal guardian.

*Information
From
Law
Enforcement*

*Related
Recommendations*

- Any time that a law enforcement agent has contact with any victim, as defined by Wis. Stat. 950.02(4), of a crime over which his or her agency has jurisdiction, that victim is entitled to receive the written information outlined by Wis. Stat. 950.08(2g). The law enforcement agent must attempt to provide the required information no later than 24 hours after having contact. The law does not require law enforcement agents to proactively seek out every victim of a crime for the purpose of providing the written information.
- In homicide cases and sensitive crimes, the best practice is to make a reasonable attempt to ascertain the identity of family members and others who are considered victims by statute, including non-custodial parents of child victims, to contact them directly to provide the written information.
- The written information law enforcement must give victims is distinct from the written information district attorneys are obligated to provide victims. One notice cannot substitute for another. For example, law enforcement must provide the address and telephone number of the agency which has (or had) custody of the suspect, so the victim can get information about the suspect's release on bail. Law enforcement must also provide information about procedures to follow if the victim is subject to threats or intimidation. This information is not included in the information statutorily required to be given to victims by District Attorneys.
- The duty to provide written information applies to investigators. It is important for investigators to consider that the report of the crime may have been brought by someone other than the victim. An investigator's contact with a victim may be the first contact with the victim by law enforcement to occur. It should not be assumed that the obligation to give the victim written information has been carried out by someone else.
- Contact with a victim might occur in different forms, throughout the life of a case. For example, a victim's initial telephone call reporting a crime constitutes contact. Alternatively, contact with a victim could occur weeks, months or even years after a crime when an investigator interviews someone who is by statute a victim of the crime. In both cases, the agency must make an attempt to provide the written information no later than 24 hours after having contact with the victim.
- Law enforcement's obligation to provide a victim with written information cannot be delegated to another victim. Each victim of a

*Information
From
Law
Enforcement*

crime who is contacted is entitled to receive the written information from law enforcement, without regard to whether he or she may have received information previously from another victim connected to the case.

*Related
Recommendations*

- Law enforcement agencies should document when a victim is provided written information per Wis. Stat. 950.04 (1v)(2g) so the agency has a record of its compliance with the requirement.
- Agency forms that do not contain all the elements listed in Wis. Stat. 950.04 (1v)(2g) do not satisfy the requirement of that section. A sample form that is compliant with the Wis. Stat. 950.04 (1v)(2g) obligation is available online at www.doj.state.wi.us/cvs. Agencies can download the form and insert their local information to use the form for their agency.

Intergovernmental Cooperation

Statutes

Wis. Stat § 950.07 Intergovernmental cooperation. The county board, district attorney, local law enforcement agencies, local social service agencies, victim and witness offices and courts shall all cooperate with each other to ensure that victims and witnesses of crimes receive the rights and services to which they are entitled under this chapter.

*Related
Recommendations*

- Communication between prosecutors and victim witness coordinators will usually be of great benefit to prosecutors in meeting their victims' rights obligations. Prosecutors are ultimately responsible for the provision of certain rights, whether or not they choose to delegate those responsibilities. District attorneys should be proactive to establish policies and processes for how prosecutors and victim/witness staff can work together to ensure that the office is complying with victims' rights statutes.
- When there is a significant or abrupt change in the status of a case (for example, a settlement is reached close to trial) prosecutors should inform their victim/witness staff so they can keep victims informed and able to exercise any applicable rights
- The district attorney should convey to his or her prosecutors that compliance with the spirit and letter of Wis. Stat. Chapter 950 is dependent upon good communication with victim witness staff. Prosecutors have obligations under Chapter 950 which they are more likely to meet if they engage in conversation with the victim witness staff members who may have had contact with the victim.

*Intergovernmental
Cooperation*

*Related
Recommendations*

- The district attorney should carefully examine the procedures used in the office to communicate victims' rights information from victim/witness staff to prosecutors. The case at hand illustrates that forms and documentation can not take the place of meaningful conversation among those who would have a role in helping crime victims understand, secure and exercise their rights. Equally important is personal contact and conversation between the victim and victim witness staff, to best ensure the provision of victims' rights.
- Victim witness staff should effectively convey relevant information and messages they receive from a victim to the prosecutor(s) handling that victim's case. The Board saw evidence and heard testimony that showed victim witness has little, if any, expectation that prosecutors will review PROTECT entries before proceeding with a case. Yet, victim witness staff continues to put key information into PROTECT which may not be available elsewhere. In the case before the Board, the information in the PROTECT notes should have been considered by the prosecutor prior to the plea hearing. The prosecutor testified that the information would have influenced her charging decision. The District Attorney should either instruct prosecutors to look for information in PROTECT or instruct victim witness to find additional methods for informing prosecutors about victims' wishes.
- The Board has received evidence of confined victims not receiving the victims' rights to which they are entitled. Cases have included incarcerated persons who had victim status because a crime was committed against them, as well as persons who had victim status because their minor children were victims of crimes. Obviously, a confined victim lacks the practical resources and freedom of movement necessary to carry forth a vigorous and effective defense against violations of his or her victims' rights. This is especially true concerning the right to attend a proceeding. Ensuring the provision of rights to persons under the authority of the state requires communication and cooperation across governmental systems and such cooperation is mandated by Wisconsin Stat. § 950.07.

Military Deployment of Defendants

Statutes

Wis. Stat. § 950.04(1v) Rights of victims. Victims of crimes have the following rights:

Wis. Stat. § 950.04(1v)(k) To a speedy disposition of the case in which they are involved as a victim in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.

Related Recommendations

- When a defendant is called to duty or deployment by the military, the prosecutor should at minimum ask for verification and contact information in order to perform status checks if such involvement with the military will cause a delay in the prosecution. A prosecutor may additionally wish to ask that deployment be delayed (or that a deployed person be returned) in order to commence a criminal prosecution. As a matter of standard operating procedure, the military will cooperate with civilian authorities concerning a pending criminal matter against a member of the military.
- Prosecutors should not rely on defense attorneys to provide information about a deployed defendant. A prosecutor can make contact with the defendant's military commander in order to know with certainty when the defendant has returned to the state.
- If requested by a prosecutor, a commander may choose not to deploy a person who is the subject of a criminal prosecution. Likewise, National Guard reservists are held back from deployment and even pulled back from deployment if they are involved in a criminal prosecution, unless the prosecutor approves of deployment.
- In order to effect this cooperation, the responsibility is with the prosecutor to obtain accurate information about the branch of service to which the defendant belongs and to contact the defendant's unit commander. Each branch of the military has staff to assist in locating a soldier and the commanding officer and also to provide information regarding deployment status. The Adjutant General serves as Wisconsin's senior military officer and commander of the Wisconsin Air and Army National Guard. The Office of the Adjutant General may be of similar assistance concerning defendants that belong to the Guard.

Notice of Proceedings

Statutes

Wis. Stat. § 971.095(3): At the request of a victim, a district attorney shall make a reasonable attempt to provide the victim with notice of the date, time and place of scheduled court proceedings in a case involving the prosecution of a crime of which he or she is a victim and any changes in the date, time or place of a scheduled court proceeding for which the victim has received notice. This subsection does not apply to a proceeding held before the initial appearance to set conditions of release under ch. 969.

Related Recommendations

- The Board recommends to prosecutors that as a matter of policy, there be no disposition on the same day as a pre-trial conference. The office ought to allow enough time for proper review of the case and proper notice to victims.
- The legitimate desire to dispose of cases efficiently poses challenges to the meaningful provision of victims' rights. Prosecutors, judges and victim witness professionals should be mindful of victims' rights when a settlement abruptly changes the direction of a case and a plea and sentencing hearing is quickly put on the calendar. The merits of expediency can not justify the violation of the victims' rights statute. In addition to those rights a victim has already requested, he or she might want to exercise additional rights, such as the right to confer or to make a statement to the court, when a plea is offered.

Providing Information to the Court

Statutes

Wis. Stat. 950.04(1v) Rights of victims. Victims of crimes have the following rights:

Wis. Stat. § 950.04 (L): To have the district attorney or corporation counsel, whichever is applicable, make a reasonable attempt to contact the victim concerning the victim's right to make a statement, as provided under ss. 938.32 (1) (b) 2., 938.335 (3m) (b) and 972.14 (3) (b).

Wis. Stat. § 950.04 (1v)(m): To provide statements concerning sentencing, disposition or parole, as provided under ss. 304.06 (1) (e), 938.32 (1) (b) 1. [s. 938.32 (1) (b) 1g.], 938.335 (3m) (a) [938.335 (3m) (ag)] and 972.14 (3) (a).

Statutes

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Wis. Stat. § 950.04(1v)(pm): To have the court provided with information pertaining to the economic, physical and psychological effect of the crime upon the victim and have the information considered by the court.

Wis. Stat. § 972.14(2m): Before pronouncing sentence, the court shall inquire of the district attorney whether he or she has complied with s. 971.095 (2) and with sub. (3) (b), whether any of the victims of a crime considered at sentencing requested notice of the date, time and place of the sentencing hearing and, if so, whether the district attorney provided to the victim notice of the date, time and place of the sentencing hearing.

Wis. Stat. § 972.14(3)(a) Before pronouncing sentence, the court shall determine whether a victim of a crime considered at sentencing wants to make a statement to the court. If a victim wants to make a statement, the court shall allow the victim to make a statement in court or to submit a written statement to be read in court. The court may allow any other person to make or submit a statement under this paragraph. Any statement under this paragraph must be relevant to the sentence.

Wis. Stat. § 972.14(3)(b) After a conviction, if the district attorney knows of a victim of a crime to be considered at sentencing, the district attorney shall make a reasonable attempt to contact that person to inform him or her of the right to make or provide a statement under par. (a). Any failure to comply with this paragraph is not a ground for an appeal of a judgment of conviction or for any court to reverse or modify a judgment of conviction.

*Related
Recommendations*

- A circuit court's duties under Wis. Stat. § 972.14(3)(a) are twofold: first, to "determine whether a victim of a crime considered at sentencing wants to make a statement to the court;" and second, to "allow the victim to make a statement" to the court, orally or in writing according to the victim's choice. The circuit court made the first determination, though it did so erroneously. The circuit court's duty to "determine" whether a victim wants to make a statement is not satisfied simply by making a "decision" one way or another. If a circuit court's erroneous decision is unreasonable, the mere fact that the decision was made will not be adequate to insulate the court from liability for violating a victim's right to make an oral statement at sentencing.
- Circuit court judges are required to ask before pronouncing sentence, whether any of the victims of a crime considered at sentencing requested notice of the date, time and place of the sentencing hearing, and if so, whether the district attorney provided to the victim notice of the date, time and place of the sentencing hearing [Wisconsin Stat. §

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972.14(2m)]. This continues to be an important safeguard, to remind prosecutors of their duty and to ensure that the prosecutor is informed of the victim's wishes if the victim requested notice of proceedings.

*Related
Recommendations*

- A crime victim's right to make statements pursuant to Wis. Stat. § 950.04(1v)(m) and to provide information to the court pursuant to Wis. Stat. § 950.04(1v)(pm) are to be vigorously defended by the prosecution and the court, not favors or indulgences to be granted.
- The reasonableness of the circuit court's erroneous determination that the child's father no longer wanted to make an oral statement at sentencing is not free from doubt. The judge knew that the father's written statement specifically requested the opportunity to speak as the child's father, in the event that the defendant was sentenced. The judge was aware that a victim's right to make an oral victim impact statement at sentencing was not dependent upon the consent of the prosecution, the defendant, or the defendant's counsel. Up to the point of the meeting in chambers with the parties' attorneys, the judge expected that the child's father would make an oral victim impact statement at the sentencing hearing. The only contrary information presented to the judge was the prosecutor's expressed understanding that the child's father would not be saying anything. Faced with such inconsistent information, the most reasonable course of action, and the best practice, would have been for the court to simply ask the child's father in open court whether he wanted to give an oral impact statement.
- Neither the prosecution nor the defense has the right to act as gatekeeper in determining whether a victim makes an oral statement to the court at sentencing. The prosecutor represents the state's interests in the prosecution, and those interests are not always fully consistent with the victim's interests. Courts should not rely on the representations of prosecutors in determining whether victims want to make statements at sentencing. Similarly, courts and prosecutors should not rely on the representations of defense counsel in determining whether victims they perceive to be favorable to the defendant want to make statements at sentencing. In sentencing hearings, victims have a status independent of any of the parties in the case, and the only reliable way for a court to determine whether a victim wants to make an oral statement is to ask the victim that question during the course of the sentencing hearing, prior to imposing sentence.
- Victim impact statements provide victims with the opportunity to share information about how the crime has impacted their lives. It is a perspective that is uniquely theirs. It is the only time in the entire

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process that victims are able to relay their thoughts and feelings directly to the court. The purpose of the victim impact statement is not solely to inform the court about sentencing. It is a right that belongs to a victim without regard to whether or not the judge has a desire or need to hear from the victim. As the victim in this case explained, after sitting through a trial at which his son's name was hardly mentioned and at which the focus was often on the defendant's interests, the opportunity to speak in court was much anticipated. "It was our day," he recounted, "you are waiting through the hard parts for the chance because you're not really heard until you're heard in court."

- The use of multimedia statements should not be discouraged. Presenting a statement in writing or orally may not be an alternative that is possible for all victims. If a victim wants to use an alternative format in order to better exercise his or her right, early submission of and discussion about the statement may be helpful. If the court has concerns about the format of a statement it can schedule a conference prior to the hearing. At such a conference, parties would have the opportunity to discuss nature and content of the statement and make arguments to the court regarding its use at sentencing. The issue can be fully developed prior to the sentencing hearing to ensure that victims are fully informed about their options for making a statement at the hearing. Victims should be provided with notice to any such conference and afforded the right to be present.
- ... [T]he court has changed its practice, and now asks in every sentencing hearing whether there is a victim present in the courtroom who wants to make an oral victim impact statement. If the court determines from the response that the person is a victim and wants to make a victim impact statement, the court allows the victim to make that statement either from the witness stand or the gallery, in whichever place the victim feels most comfortable, so long as the victim is audible. This circuit court's current approach in determining whether a victim wants to make a statement to the court, and in assisting the victim to exercise his or her right to make a statement at sentencing represents the best practice in this area. The Board recommends this practice to all circuit courts in the state.
- Victims must be afforded a reasonable opportunity to exercise their rights if those rights are to be meaningful. A circuit court must give crime victims the opportunity to provide information about the economic, physical, and psychological effect of the crime before it acts to approve the terms of a settlement agreement between the prosecution and the defense that will necessarily result in the dismissal of charges against the defendant if the terms of the agreement are satisfied.

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- An in-chambers and off-the-record status conference procedure for considering whether the proposed settlement of a criminal case is in the public interest deprives the victim of a meaningful opportunity to provide the court with information about the effects of the crime upon him or her.

*Related
Recommendations*

- Where a prosecutor and defendant's counsel have reached an agreement to resolve a filed criminal case through the use of a deferred prosecution agreement or an agreement simply to hold the case open while the defendant satisfies conditions that would result in dismissal of the case, the best practice is for the court to (a) set a hearing for its consideration of the proposed settlement agreement, (b) to provide all victims with notice of the hearing, (c) to allow all victims to provide the court with information about the effects of the crime upon them, and (d) to allow the victims to make statements to the court regarding the alternative dispositions of the case contemplated by the proposed agreement, before (e) determining on the record and in light of the relevant factors whether to approve the proposed settlement.
- The Board would discourage victim witness programs from sending victim impact statements to the court at the early stages of a pending case, since those statements are not relevant to the decisions that must be made by the court at the early stages of the case, and become relevant to the court only after conviction.
- Giving victims an opportunity at the outset of the case to provide a written statement about the impact of the crime on their lives is not necessarily problematic as long as doing so does not foreclose victims from making new victim impact statements closer to the time of sentencing, that perhaps reflect the longer-term impact that a crime has had on their lives.
- Best practice is for victim witness programs to retain early-filed victim impact statements until the prosecution has obtained a conviction, and to send the statements or any updated statement submitted by the victim(s) to the court at that time. The best practice for judges who receive victim impact statements prior to conviction is leave the victim impact statements in the file, unread, until they become relevant at the time of sentencing.

Speedy Disposition of the Case

Statutes

Wisconsin Stat. § 950.02(1m) “Crime” means an act committed in this state which, if committed by a competent adult, would constitute a crime, as defined in s. 939.12.

Wisconsin Stat. § 950.02(4)(a) defines “victim” as a person against whom a crime has been committed.

Wisconsin Stat. § 950.02(4)(a). defines “victim” to include “[a] family member of the person who is deceased.”

Wisconsin Stat. § 950.02(3) defines “family member” to include a “spouse, minor child, adult child, sibling, parent, or legal guardian.”

Wisconsin Stat. § 950.04 (1v)(k) provides that victims of crime have the right to “a speedy disposition of the case in which they are involved as a victim in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.”

Wis. Stat. § 971.105 Child victims and witnesses; duty to expedite proceedings. In all criminal and delinquency cases, juvenile fact-finding hearings under s. 48.31 and juvenile dispositional hearings involving a child victim or witness, as defined in s. 950.02, the court and the district attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of the child's involvement in the proceeding. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

Related Recommendations

Law Enforcement

1. The intent of the right to a speedy disposition is to minimize the amount of time a victim is subjected to the stress of their responsibilities connected to the case. Agency workload and case prioritization may impact the length of time it takes to conclude an investigation but law enforcement can do much to minimize the associated stress by simply communicating with victims about delays. Regular communication with the victim will help set realistic expectations, create relationships of trust, avoid conflict, and lessen the negative impact caused by the delay.

*Speedy
Disposition of the
Case*

*Related
Recommendations*

2. Administrative oversight and case follow up should be standard operating procedure for a law enforcement agency, not something that victims of crime initiate. It is demoralizing to victims and erodes confidence in the criminal justice system when victims bear the burden of moving a case along through repeated appeals for action.
3. Agencies should enact an official procedure for the periodic review and oversight of pending cases to ensure that investigations are not unnecessarily or unreasonably delayed.
4. Agencies should develop an official procedure for the transfer of cases and periodic case review to ensure that cases are not inadvertently dropped because of personnel changes.

District Attorneys Offices

1. The victims' right amendment and legislation represent a constitutional and legislative constraint on what would otherwise be a prosecutor's discretion to file a case at any time before the expiration of the statute of limitations.
2. Victims should never have to hire private attorneys in order to get information about their case from the public officials who represent the criminal justice system.
3. A prosecutor should be mindful that a prosecutor's responsibility to protect a victim's right to speedy disposition begins as soon as a case is referred to the district attorney's office. The right to speedy disposition attaches throughout the life of a case, not only after a charge is filed by the prosecutor.
4. Prosecutors and victim witness staff should explain the source of delays clearly and accurately. They should take care to use terminology that is not misleading. They should explain delays promptly rather than allowing the frustration and possible misunderstanding of the delay(s) to erode trust and confidence in the district attorney's office.
5. Lack of responsiveness of prosecutors and/or victim witness can exacerbate a victim's stress and trauma. When a prosecutor becomes aware that a victim is frustrated with delays and/or inadequate victim services, best practice is for the prosecutor to speak directly with the victim(s) to ensure that their concerns are evaluated and appropriately addressed.

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Recommendations*

6. District attorneys must prioritize case work and contacts with the public according to their workload. A backlog of cases may make it necessary to delay filing some cases in order to file other cases. No matter what theory of prioritization a district attorney adopts for his or her office, cases that involve the loss of a life must be given priority. Survivors and loved ones rely on prosecutors to keep them informed. If a case will not be charged, prolonging notification of that decision unreasonably and unnecessarily exacerbates their suffering.
7. Prosecutors with knowledge of a case in their county that is also under the jurisdiction of another county should communicate directly with the other jurisdiction(s). Especially in crimes against children, or any other sensitive crime, a prosecutor should make an effort to be certain the case is receiving timely and proper attention. To fail to do so invites a scenario in which victims are unnecessarily distressed and justice delayed because of a faulty assumption that someone else is attending to the case. In such a situation, a case could be neglected entirely, if a victim does not follow up with the agencies involved.

The Courts

1. Any written procedure that prioritizes cases for scheduling should also note the duty of the court to expedite proceedings that involve child victims.
2. Delays and cancellations and even some level of over scheduling are unavoidable in a busy court system. The administratively condoned judicial practice of unreasonably setting the same trial date for many separate cases under the guise of judicial economy should be replaced with the court's recognition of the **legislative mandate** to consider the emotional and practical effect of continuances on victims of crime. Victims must not be repeatedly subjected to the anxiety of cancelled or delayed proceedings.
3. The court must consider the interests of the victim before granting a continuance. *See 971.10(3)(b)*3. No continuance under this section may be granted because of general congestion of the court's calendar or the lack of diligent preparation or the failure to obtain available witnesses on the part of the state. *See 971.10(3)(c)*.
4. A continuance shall not be granted unless the court sets forth in the record its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and defendant. *See 971.10(3)(a)*.

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Disposition of the
Case*

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Recommendations*

5. There is an added burden when court cancellations come only one or two days prior to the trial. Such a system is prone to produce unnecessary hardship on victims, most of whom have rearranged their schedules around a trial date. Victim witness program staff should not be required to repeatedly explain cancellations to victims. Such practices erode trust and possibly reduce the cooperation of victims and/or witnesses who are experiencing anxiety because of cancellations and delays.

Delays Due to Military Deployment

1. When a defendant is called to duty or deployment by the military, the prosecutor should at a minimum ask for verification and contact information in order to perform status checks if such involvement with the military will cause a delay in the prosecution. A prosecutor may additionally wish to ask that deployment be delayed (or that a deployed person be returned) in order to commence a criminal prosecution. As a matter of standard operating procedure, the military will cooperate with civilian authorities concerning a pending criminal matter against a member of the military.
2. Prosecutors should not rely on defense attorneys to provide information about a deployed defendant. A prosecutor can make contact with the defendant's military commander in order to know with certainty when the defendant has returned to the state.
3. If requested by a prosecutor, a commander may choose not to deploy a person who is the subject of a criminal prosecution. Likewise, National Guard reservists are held back from deployment and even pulled back from deployment if they are involved in a criminal prosecution, unless the prosecutor approves of deployment.
4. In order to effect this cooperation, the responsibility is with the prosecutor to obtain accurate information about the branch of service to which the defendant belongs and to contact the defendant's unit commander. Each branch of the military has staff to assist in locating a soldier and the commanding officer and also to provide information regarding deployment status. The Adjutant General serves as Wisconsin's senior military officer and commander of the Wisconsin Air and Army National Guard. The Office of the Adjutant General may be of similar assistance concerning defendants that belong to the Guard.

Treatment Issues (Fairness, Dignity and Respect for Privacy)

Statutes

Wis. Stat. § 950.09 Crime victims rights board. (1) In this section, "board" means the crime victims rights board. (2) At the request of one of the involved parties, the board may review a complaint made to the department under s. 950.08 (3) regarding a violation of the rights of a crime victim.

Wisconsin State Constitution Article I, Section 9m. This state shall treat crime victims, as defined by law, with fairness, dignity and respect for their privacy. This state shall ensure that crime victims have all of the following privileges and protections as provided by law:

- Timely disposition of the case;
- The opportunity to attend court proceedings unless the trial court finds sequestration is necessary to a fair trial for the defendant;
- Reasonable protection from the accused throughout the criminal justice process;
- Notification of court proceedings;
- The opportunity to confer with the prosecution;
- The opportunity to make a statement to the court at disposition;
- Restitution;
- Compensation; and
- Information about the outcome of the case and the release of the accused.

The legislature shall provide remedies for the violation of this section. Nothing in this section, or in any statute enacted pursuant to this section, shall limit any right of the accused which may be provided by law.

Related Information

The CVRB issued a private reprimand after a finding that the respondent had violated the complainants' right to be treated with fairness, dignity and respect for their privacy (as provided in the state constitution, see citation above). The respondent appealed the decision and the Board's decision was ultimately reversed by the Wisconsin Supreme Court in 2005. *See Patrick G. Schilling, Petitioner-Respondent, v. State of Wisconsin Crime Victims Rights Board, Respondent-Appellant.*

In its decision, the Court, noted the structure and legislative history of the constitutional language in question ("This state shall treat crime victims, as defined by law, with fairness, dignity and respect for their privacy.") and ruled that crime victims do not enjoy an enforceable, self-executing constitutional "right" to fairness, dignity and respect for privacy.

*Treatment of
Victims*

*Related
Information*

The decision states: “We infer... that the broad language of fairness, dignity and respect in the amendment's first sentence was intended to have a different significance than the language specifically articulating rights in the second sentence.” According to the Court, the language “articulates this State's policy regarding the treatment of crime victims” and “functions to guide Wisconsin courts' interpretations of the state's constitutional and statutory provisions concerning the rights of crime victims.”

The statutes limit the Board’s review of cases to those involving crime victim rights. Likewise, the Board’s authority to issue remedies is limited to those cases in which it finds a respondent violated a victim’s right. The Supreme Court decision therefore prohibits the Board from issuing remedies or reviewing complaints based solely upon a complainant’s allegation that he or she was treated without fairness, dignity, respect or sensitivity.

About the Wisconsin Crime Victims Rights Board

Structure and Authority

The Crime Victims Rights Board (CVRB) is a five-member body created by the Wisconsin Legislature in 1998. It operates by statutory authority¹ to review and investigate complaints filed by victims of crime regarding their crime victim rights. The CVRB is a quasi-judicial fact-finding body. It is not a victim advocacy body. As such, operations of the CVRB seek to protect the rights of all involved parties.

The CVRB is attached to the Department of Justice for administrative purposes. The Department assigns resources, including staff, to support operations and provide case management, investigative assistance and legal counsel. However, the CVRB operates as an independent body and CVRB actions are not subject to review or approval of the attorney general.

The CVRB has authority to order sanctions upon finding a violation of victims' rights. It may issue private or public reprimands of public officials, employees or agencies; refer cases involving an alleged violation by a judge to the Judicial Commission; seek appropriate equitable relief on behalf of a victim in order to protect his or her rights; or bring civil actions to assess a forfeiture of up to \$1000 for intentional violations. The CVRB may not seek to reverse, appeal or modify a judgment of conviction. The CVRB has an additional authority to issue reports and recommendations concerning the provision of victim rights and services, whether or not a violation occurred.

Crime Victims Rights Board Case Statistics

Updated March 2011

- **Caseload:** The Board has received 39 cases since becoming operational in 1999. More than half (56%) of all cases filed since 1999 were filed within the last 5 years.
- **Respondents:** The average complaint includes allegations against more than one respondent. In the cases filed since 1999, prosecutors comprise 44% of all named respondents; law enforcement agents or agencies comprise approximately 24%; judges comprise 16%; county victim witness staff or offices comprise 8%; and local county or village officials comprise 5%.
- **Hearings:** The CVRB holds evidentiary hearings if necessary to resolve disputed issues of material fact. Such hearings have been held in twelve cases reviewed by the CVRB.
- **Actions of the CVRB:** The Board has issued 8 private reprimands and 21 Reports and Recommendations. It has issued two Special Reports in accordance with its authority to issue reports concerning the securing and provision of victim rights and services.

This document and additional information about the CVRB can be found online:

<http://www.doj.state.wi.us/cvs/CVRB.asp>

CVRB Mailing Address: 819 N. 6th Street Room 180, Milwaukee, WI 53203

¹ See Wis. Stat 15.255(2), Wis. Stat. Chapter 950.09, and Wisconsin Administrative Code CVRB 1

