



Board Members:

Tim Gruenke, Chair
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**REPORT OF THE
WISCONSIN CRIME VICTIMS RIGHTS BOARD**

**The Right to Notice of Hearings
The Duty to Contact a Victim about the Right to Make a Statement**

Wis. Stat. § 950.04 (1v) RIGHTS OF VICTIMS.

Victims of crime have the following rights:

(g): To have reasonable attempts made to notify the victim of hearings or court proceedings as provided under ss. 302.113 (9g) (g) 2., 302.114 (6), 938.27 (4m) and (6), 938.273 (2), 971.095 (3) and 972.14 (3) (b).

(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).

Introduction

Wisconsin Statutes § 950.09 (3) authorizes the Crime Victims Rights Board to “issue reports and recommendations concerning the securing and provision of crime victims’ rights and services.” This report is issued as a result of issues raised in the course of a review of a complaint before the Board.¹ The complaint included allegations concerning the statutory right that reasonable attempts be made to notify a victim of hearings and court proceedings² and to contact the victim concerning the right to make or provide a statement at sentencing.³ The allegation was against an assistant district attorney.

Factual Background

The complainant was a victim of attempted homicide. Two offenders were convicted and ordered to pay restitution for expenses related to the crime. Twenty-two years later, the victim received less than \$50.00 as the first restitution payment from the offenders. Seven

¹ The Board has statutory authority to review complaints filed against public agencies, officials and employees by crime victims alleging violations of crime victims’ rights. See Wis. Stat. § 950.09.

² Wis. Stat. § 950.04(1v)(g).

³ Wis. Stat. § 950.04(1v)(L).

months later, the assistant district attorney (“ADA”) sent a letter to the victim asking him to make contact in order to discuss an issue (unspecified in the letter) related to the case. After multiple failed attempts to reach the ADA, the victim made contact and was told that there had been a proceeding in which the court vacated one of the restitution orders in his case.

It is undisputed by the parties that the ADA did not provide the victim with information that would have alerted the victim to the fact that a hearing was going to be held on a motion to vacate the restitution order. Although there were reportedly several unsuccessful attempts to connect, the ADA never provided specific information about the nature of the upcoming hearing or the time and date of the hearing. The Board considered whether these circumstances violated the complainant’s right to have reasonable attempts made to notify the victim of the hearing under § 950.04(1v)(g).⁴

Restitution is a part of sentencing. Accordingly, the Board considered whether the respondent violated the complainant’s right to have reasonable attempts made to inform him of the right to provide or make a statement at sentencing pursuant to § 950.04(1v)(L).⁵

In his response to the Board, the respondent argued that he made a reasonable attempt to notify the victim of the hearing when he sent the letter asking the victim to contact him and through attempts to call the victim. Additionally, he argued that because the hearing was about the legality of the procedures used to enter the original restitution order, the victim would likely not have been allowed to speak at the hearing. Thus, he claimed, he had no duty to contact the victim under § 950.04(1v)(L).

The Board found the ADA did not make reasonable attempts to provide notice of the hearing and could not with certainty know the victim would not have been allowed to speak at the proceeding — a decision ultimately under the authority of the court.

The Special Nature of Restitution Hearings

By statute, a district attorney must attempt to obtain information from a victim about the amount of loss suffered as a result of a crime.⁶ That information is provided to the court before the court imposes the sentence. If the defendant stipulates to the restitution claimed or if any restitution dispute can be fairly heard at the sentencing proceeding, the court determines the amount of restitution before imposing sentence or ordering probation. The court may hold a hearing on disputed restitution issues.

Restitution hearings are unique with regard to the role of the victim in the court’s determination. While restitution information is presented to the court with the assistance of the prosecutor, it is the victim who bears the burden to prove the loss claimed. The district attorney is explicitly *not required* to represent any victim in such hearings unless the hearing

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⁵ Wis. Stat. § 950.04(1v)(L) provides victims the right: “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).”

⁶ Wis. Stat. § 973.20 (13) (a) 1., (b).

is held at, or prior to, the sentencing proceeding or the court so orders.⁷ Restitution decisions are reached and argued in a way that demands victim participation at a level unlike other decisions. In fact, the statutes provide that the court may decide that a victim must demonstrate by the preponderance of the evidence *any matter* deemed appropriate, as justice requires, during a restitution hearing.⁸

Restitution is clearly a financial issue in that it is ordered for actual losses directly related to the crime. Restitution is also about justice, however, and can be intensely personal to victims because it involves specific financial burdens caused by the offender. A court's restitution order is a concrete and specific determination by which an offender becomes accountable to the *victim*.

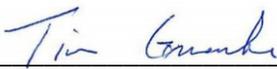
This does not change even if the restitution hearing is focused on a purely legal argument, as was the circumstance in the present case. A victim's interest in the outcome of any restitution proceeding—and right to see it unfold—exists regardless of the predicted nature of the argument. Moreover, one ADA's prediction of what will transpire at a particular hearing is not grounds on which to disregard duties related to a victim's rights.

For all of these reasons, any matter concerning a restitution order could be very significant to the victim for whom restitution is being considered or ordered. Whatever the nature or timing of proceedings related to restitution, the state should seriously consider the impact on the victim. A victim who has requested notification of hearings and proceedings should have the opportunity to see and hear for him or herself any proceeding involving restitution.

Independent Standing & Interest in Proceedings

Victims have the right to notice of certain proceedings and to participate in the justice process, as prescribed in Wis. Stat. Chapter 950. In addition, a crime victim has explicit independent standing to assert rights in court as a crime victim.⁹ Public policy acknowledges victims' interests as independent interests; a victim's involvement is not codified solely as a benefit to the state. In fact, the legislative intent that guides the application of Wisconsin's victims' rights statute declares that the rights extended in that chapter are to be "honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants."¹⁰ These tenets are the backdrop for the Board's deliberations concerning what constitutes a reasonable attempt to provide victims with the notice and information to which they are entitled. Likewise, it is with these principles in mind that the state should perform its duty to comply with victims' rights requirements.

Signed on this 3rd day of April 2019,



Tim Gruenke, CVRB Chair

⁷ Wis. Stat. § 973.20 (14) (a).

⁸ Wis. Stat. § 973.20 (14) (c).

⁹ Wis. Stat. § 950.105: "Standing. A crime victim has a right to assert, in a court in the county in which the alleged violation occurred, his or her rights as a crime victim under the statutes or under article I, section 9m, of the Wisconsin Constitution.

¹⁰ Wis. Stat. § 950.01.