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**REPORT OF THE
WISCONSIN CRIME VICTIMS RIGHTS BOARD**

**The Right to Reasonable Protection from the Accused
Throughout the Criminal Justice Process**

This state shall ensure that crime victims have all of the following privileges and protections as provided by law: ... **reasonable protection from the accused throughout the criminal justice process...**

Wisconsin Constitution Article 1, Section 9m

Introduction

Wisconsin Statutes § 950.09(3) authorizes the Crime Victims Rights Board (“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 Board¹ alleging a violation of the victim’s constitutional right to reasonable protection from the accused throughout the criminal justice process. The allegations were filed against the sheriff’s department concerning incidents that occurred in the county jail.

Factual Background

The complainant was an inmate at a county jail when the perpetrator of a violent sexual assault against her was arrested and housed in the same facility.² The complainant informed jail officers and other jail staff of her fear and anxiety about being in the same facility with

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 The assailant is referred to as “perpetrator” or “offender” in this report because he was found guilty by a jury of second-degree sexual assault with the use of force and sentenced to a 30-year sentence for his crime against the complainant.

the perpetrator. She asked them for assistance to ensure that she would not have any contact with her perpetrator. Additionally, the victim sought and received a no-contact order from the court shortly after the offender's arrest. Nonetheless, there were two incidents at the jail during which the victim was put in close proximity to the perpetrator. The first incident resulted in the victim being placed in an elevator with her assailant. The second incident occurred on the day the victim was being transported to testify against the offender when she was brought into an intake area in which the perpetrator was waiting.

The record shows that jail staff transporting the victim responded earnestly each time the victim was accidentally put in contact with her perpetrator; however, at no time were arrangements made and implemented to prevent the contact from occurring in the first place. The complainant made numerous attempts to get help. Her fear of encountering the offender is well-documented—as is the resulting escalation of anxiety she experienced after each encounter.

Based on information provided by parties to the complaint and further investigation by the Board, the Board found that the jail did not have any policies or procedures for complying with a court's no-contact order involving two inmates. Nor did it have policies or procedures to prevent contact between inmates when one inmate is (or has been) a crime victim of another current inmate. Therefore, the complainant's requests didn't set in motion any actions or procedures that might have prevented the type of contact she feared. Further, the Board found the jail did not provide a separate waiting area during the court proceedings or employ other means to minimize the contact between the victim and the defendant, as required.³

Involved Law

Wisconsin Constitution. Victims of crime. Section 9m. [As created April 1993]:

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

³ Wis. Stat. § 950.04 (lv) (e) provides that if a separate waiting area isn't available or practical, the county shall provide other means to minimize the contact between the victim or witness during court proceedings.

this section, shall limit any right of the accused which may be provided by law.
[Emphasis added.]

Wis. Stat. § 950.04 (lv) (e): To be provided a waiting area under ss. [938.2965](#) and [967.10](#).

Wis. Stat. § 967.10 Waiting area for victims and witnesses:

(2) If an area is available and use of the area is practical, a county shall provide a waiting area for a victim or witness to use during court proceedings that is separate from any area used by the defendant, the defendant's relatives and defense witnesses. If a separate waiting area is not available or its use is not practical, a county shall provide other means to minimize the contact between the victim or witness and the defendant, the defendant's relatives and defense witnesses during court proceedings.

The State's Constitutional Duty to Victims

Wisconsin's state constitution provides victims of crime certain protections, including the right to reasonable protection from the accused throughout the criminal justice process.⁴ When reviewing claims involving this right, the Board considers in its analysis that the standard is *reasonable* protection. The Board acknowledges that there are unique challenges that exist in correctional settings and ensuring reasonable protection might be accomplished in many ways, depending on the setting, type of facility and circumstances.

Confined Victims

It is imperative that confined victims, and especially victims of sexual violence, be given special consideration if there is the possibility of being put in contact with their perpetrator while confined. Minimizing (and ideally, eliminating) contact under such circumstances should be the subject of policy, procedure and training in correctional settings. Trauma experienced by sexual assault victims appears in different ways for each victim. Trauma for sexual assault victims can be exacerbated in a correctional setting:

Trauma experienced as a result of rape may be compounded for victims in correctional settings due to factors such as: (1) their lack of privacy and control over their environment (e.g., they may face continuous contact with their perpetrators, and repeated or ongoing sexual assault or threats of sexual assault); (2) disorientation after an assault, making it difficult to follow rules; (3) frequent triggers that bring back the feelings of the assault and may cause them to act out violently and/or with anger or fear; (4) a general distrust and perception that seeking help is a safety risk; (5) physical trauma connected with the assault and systemic infliction of psychological trauma (e.g., by perpetrators and others who seek to use their knowledge of the assault against them); and (6) emotional reactions to being placed in isolation for protection.⁵

Knowing that trauma may be exacerbated in a correctional setting should be a significant factor in determining appropriate procedures when an inmate reports being a victim of sexual

⁴ Article I, Section 9m of the Wisconsin Constitution

⁵ National Prison Rape Elimination Commission, *Report* (2009), p.45.

violence by another inmate. Seen in this context, administrators and staff can better understand how even a momentary, accidental, and supervised encounter with the perpetrator can harm the victim. It may not be possible to eliminate all possibility of contact but facility administrators should have and enforce specific procedures that ensure reasonable protection from this harm to the greatest extent possible.

Recommendations

1. Administrators should ensure a mechanism for maintaining separation between victims and perpetrators who are confined in the same facility. Special attention should be given to maintaining separation of a victim of a sensitive crime and his or her perpetrator.
2. Administrators should develop a procedure to flag and comply with no-contact orders issued by the court that involve inmates confined at the same facility.
3. Administrators should develop clear, private and effective procedures for inmates to request separation from another inmate on the basis of being or having been a victim of a crime perpetrated by the other inmate. Administrators should develop a procedure for evaluating and responding timely to such requests.
4. Protection of victims within a facility should not be accomplished through isolating victims or removing them from local services, activities or programming.
5. Protection policies must include procedures for transport to, from and within the facility.
6. Care must be taken to ensure that an inmate-victim receives a separate waiting area from an inmate-defendant when awaiting court proceedings. If a separate waiting area is not available or practical, then other means must be planned and implemented to minimize the contact between the victim or witness and the defendant, the defendant's relatives and defense witnesses during court proceedings. Putting both parties in the same cell block if the defendant can hear or see the victim does not comply with this requirement.
7. Although facility administrators bear the burden of ensuring the protection from the accused in their facilities, Wisconsin law compels the cooperation of the county board, district attorney, local law enforcement agencies, local social service agencies, victim and witness offices and courts in order to ensure that victims receive the rights and services to which they are entitled. *See Wis. Stat. § 950.07*. Protecting victims from the accused throughout the criminal justice process is a shared constitutional duty that should be prioritized and coordinated within each jurisdiction amongst all justice system stakeholders.

This Report and Recommendation is hereby issued on January 17, 2020, in accordance with an order of the Wisconsin Crime Victims Rights Board.