

## REPORT AND RECOMMENDATION OF THE WISCONSIN CRIME VICTIMS RIGHTS BOARD

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Wisconsin Statutes section 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.” The Board has had before it several vehicular fatality cases that have been illustrative of the difficulties surviving family members face in such cases. These cases provide the Board with an opportunity to recommend to prosecutors best practices for interacting with victims and family members, especially when there is disagreement about the charges issued or a decision not to prosecute.

### **Factual Background**

The Board received a complaint against a district attorney by the parents of an 18 year old automobile passenger who died after the car was struck by a driver who failed to stop for a stop sign. The driver who caused the collision reported being distracted by the rain and a conversation with a child passenger. When the driver saw the stop sign the driver attempted to slow down but was not able to stop. The driver was not cited by law enforcement at the scene.

Approximately one year after the crash, the district attorney met with the driver and a parent of the struck car to explain the decision not to file charges. The complainants were not present. The district attorney expected the driver’s parent to communicate the information provided in that meeting to the complainants. However, two years after the crash, the victim witness staff reported that the state patrol was still waiting for a charging decision and the county case management system showed the case to be open. During those two years, the district attorney disregarded several inquires made by phone and in writing by the complainants’ attorneys regarding charges. Nor did the district attorney communicate with the complainants. At the urging of the Department of Justice Victim Resource Center, the district attorney wrote an opinion letter approximately two and one-half years after the crash, outlining the decision not to charge and agreeing to meet with the complainants, if they requested.

The decision not to charge was based on the prosecutor’s opinion that the driver who caused the crash was not *criminally negligent* but was instead ordinarily negligent. This report does not comment upon this conclusion except to say that the district attorney reasonably came to that conclusion using the full discretion given to prosecutors under Wisconsin law.

It is the district attorney's lack of communication with the complainants, who suffered the tragic loss of their child, that prompts this report.

### **Statutes Involved**

**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.”

**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.

**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.”

### **Report and Recommendation**

Vehicular fatality cases are among the most contentious cases that prosecutors handle. Fatalities caused by drivers who were not impaired or criminally negligent in their conduct pose an additional challenge for prosecutors in terms of notifying loved ones of a decision not to charge. Understandably, when a driver's actions result in the death of another, the public expectation may be that the responsible driver would automatically face criminal consequences. The legal and ethical obligations that prosecutors must balance in these cases may result in a charging decision that is difficult for victims to accept. The burden of explaining this decision and the legal nuances associated with it sits with the prosecutor, who has been given unfettered discretion to charge or dismiss the case.

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.

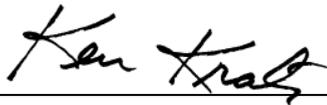
Family members of those who have died because of the actions of another are entitled to receive information about the criminal justice system response to the incident. They should not have to pay attorneys in order to get information from the public officials who represent the criminal justice system.

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 who concludes conduct was ordinarily negligent versus criminally negligent should be willing to communicate and explain that decision, particularly when the act resulted in the loss of life. This should be communicated directly to all involved parties at the earliest possible opportunity.

The complex nature of vehicular fatality cases was the subject of recent training by the Wisconsin Department of Justice State Prosecutors Education and Training program. Prosecutors and law enforcement may find it helpful to access materials from the training which have been made available on the state WILENET internet site.

The CVRB recognizes that there are high caseloads and staff shortages in district attorneys' offices throughout the state. Each district attorney must prioritize case work and contacts with the public. 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. They cannot simply be put on the back burner. 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.

Dated this 10<sup>th</sup> day of July, 2009

A handwritten signature in black ink that reads "Ken Kratz". The signature is written in a cursive style with a horizontal line underneath it.

KENNETH R. KRATZ

Chairperson, Crime Victims Rights Board