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REPORT AND RECOMMENDATION OF THE WISCONSIN CRIME VICTIMS RIGHTS BOARD

The Right to Speedy Disposition

“We just felt real isolated and that was hard...They never told us what was happening and an interesting thought that continued to go through our minds at this time was that [the defendant] was surely being well informed by his attorney about how things were going. He knew what was happening and we were in the dark.”

--Parent of a child sexual assault victim describing the anxiety associated with a delayed prosecution.

“It was very hurtful that in five years the only time there was action was when it was initiated by us.”

--Victim commenting on a delayed investigation by local law enforcement.

Introduction

The Wisconsin Crime Victims Rights Board (“Board”) has reviewed numerous complaints against public officials alleging violations of a victim’s right to a speedy disposition. 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 following report and recommendation offers observations and recommendations related to the statutory right to a speedy disposition. It is the intent of the Board that this report will serve to share the experiences and lessons learned during the formal complaint process with public officials responsible for protecting and enabling the statutory rights of victims of crime in Wisconsin.

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.”

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.”

CVRB Analysis of Speedy Disposition Allegations

Wisconsin law provides that a victim has a right to speedy disposition of the case in which he or she is involved. The Board has interpreted “case” as including all phases of the criminal justice process beginning with the initial report of a crime:

Speedy disposition is required in order to minimize the stress endured by victims and witnesses. The Legislature recognizes that victims of crime endure stress from the moment they have knowledge of the crime until the conclusion of the criminal justice process. Their stress continues during the investigation of the crime by law enforcement, continues while the matter remains under consideration by the district attorney's office and continues throughout the prosecution of the matter after the filing of a criminal complaint. A victim becomes eligible for the rights and services of Wis. Stat. ch. 950, Rights of Victims and Witnesses of Crime, when a crime has been reported to law enforcement authorities. (Final Decision and Order, CVRB Case #05-52)

The standard of review used by the Board in speedy disposition complaints is based on the reasonableness of identified delays, rather than on how long it takes for something to happen. The Board recognizes that there are many legitimate causes of delay. There are strains on resources and court calendars. There must be a prioritization of cases which sometimes means cases are delayed simply because other cases require attention. The law does not provide for exemptions, however; the right to a speedy disposition exists despite the challenges facing public officials. Therefore, the standard of review used by the Board evaluates the reasonableness of an identified delay and to whom a delay is ultimately attributable.

In analyzing allegations of violations of the right to a speedy disposition, the Board employs the following methodology. First, each delay is identified. Second, the Board determines the reason given for the delay. Third, the Board determines whether the delay is reasonable.

Fourth, if the Board determines that the delay is unreasonable, it determines whether the delay is attributable to the respondent. Violation of the right to a speedy disposition occurs only if each of the four elements is present.

It is unfortunate and counterproductive when—despite the shared goal of holding offenders accountable—victims and public officials enter into an adversarial relationship. A hallmark of speedy disposition complaints is that victims take on the burden of making repeated appeals to an agency in order to prompt movement on a case or to simply get information about the status of a case. In some cases, victims have felt it necessary to hire private attorneys because of the lack of responsiveness of a public agency.

Victims' rights were enacted in acknowledgement of the duty of victims to cooperate with law enforcement and prosecutorial agencies. Wisconsin's victims' rights laws recognize that the justice system is most effective when victims participate and public officials protect the rights of victims "in a manner no less vigorous than the protections afforded criminal defendants." (*Wis. Stat. §950.01*)

The following recommendations arise from formal complaints reviewed by the Board related to the right to speedy disposition.

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.
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.
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.

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.

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)*.
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.

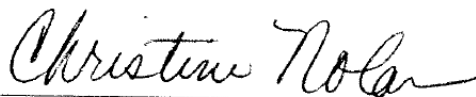
4. In order to effect this cooperation, the responsibility is with the prosecutor to obtain accurate information about the branch of service to which the defendant belongs and to contact the defendant's unit commander. Each branch of the military has staff to assist in locating a soldier and the commanding 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.

Conclusion

The meaningful provision of the right to speedy disposition, as with each victim right, requires effective coordination between government agencies, as recognized in the following legislative mandate:

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.

Signed on the 15th day of January, 2010



CHRISTINE NOLAN
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