



REPORT AND RECOMMENDATION OF THE WISCONSIN CRIME VICTIMS RIGHTS BOARD

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 become aware of a situation that provides the Board with an opportunity to make recommendations concerning the timely disposition of sensitive cases.

Factual Background

A young child who was receiving services from a county human services agency, told her social worker about sexual abuse perpetrated upon her by a family member. Soon thereafter, a forensic interview was conducted with the child, in coordination with local law enforcement. A report was referred to law enforcement in the county in which the alleged assaults occurred. Approximately five months after receiving the referral, an investigator and a deputy from that county interviewed the child’s mother. During the meeting, the mother reported that the same perpetrator had sexually assaulted her from the time she was a child into adulthood. She provided a detailed report of the crimes against her which had not been previously reported to law enforcement. At the conclusion of the interview, the child’s mother was given business cards and told the case would be discussed with the district attorney. It was also decided that the child would not be interviewed again, unless later requested by the district attorney, as a detailed forensic interview had already been conducted.

During the next 21 months, the investigator interviewed four friends of the alleged perpetrator regarding the assaults against the child’s mother. The investigator did not document these interviews. The case was referred to the district attorney for additional guidance. The district attorney asked the investigator to interview a person alleged to have both witnessed and participated in a sexual assault against her. This person was regarded as a witness who could not “corroborate” the assault. The primary suspect was never interviewed. Ultimately, the district attorney informed the investigator that the case involving the child’s mother would not be prosecuted.

The sexual assault of the child was not investigated at any time nor was it formally referred to the district attorney. The forensic interview of the child was in the investigator’s file but was not forwarded to any other authority. At the time of its review, the Wisconsin Crime Victims Rights Board found that the case of child sexual assault had languished for 38 months.

Statutes Involved

Wisconsin Stat. § 950.02(4)(a)2. “Victim” includes a “parent, guardian or legal custodian” of a child against whom a crime has been committed if the person specified in Wis. Stat. § 950.02(4)(a)1. is a child.

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.”

Discussion:

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. 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.

In the current case, delays occurred in part because of concerns about whether the prosecutor would move forward with the cases once they were referred. The law enforcement agency did not assign a record number to either case which created confusion about whether one or both cases were part of the referral to the district attorney. The two cases were related by perpetrator, creating the mindset that it was one case. However, the investigation only progressed with regard to the child’s mother. Administrative oversight was informal, allowing the lapse in investigation to go unnoticed or uncorrected. Investigators could not identify investigative strategies to pursue and did not want to refer the cases to the district attorney, for fear the cases would be dismissed. Extremely lengthy delays resulted during which very little (or no) action was taken by investigators.

Recommendations:

1. Law enforcement agencies and district attorneys are mandated by Wis. Stat. § 950.07 to cooperate with each other to ensure that victims and witnesses of crimes receive the rights and services to which they are entitled, including the right to the speedy disposition of their cases. Processes should be established for communication with the district attorney’s office so it is clear when a case has been referred for charges, when a case requires additional follow up and when a case has been acted upon by the district attorney’s office. The lack of a formal referral system created unnecessary delays and confusion about the status of the cases. Both agencies were confused about the official status of the cases when asked and gave the victim conflicting information, causing further distress and frustration.
2. Commanding officers must set the tone for their departments and insist that all investigations will be conducted conscientiously and referred for charges, as appropriate. Investigators must put their duty to investigate and refer cases above conjecture about how a prosecutor will act once the case is referred. In the case at hand, skepticism regarding whether the district attorney would issue charges dampened the investigator’s resolve to

follow through and devote time to what were very difficult cases. Agencies must guard against letting one arm of the criminal justice process diminish the relevance of their own function in the process.

3. Consider participation in a local Coordinated Community Response (CCR) Team or a Sexual Assault Response Team (SART). If there is not one in your community, you can find more information on the Wisconsin Coalition Against Sexual Assault website (www.wcasa.org), as well as a toolkit to aid communities in planning for their own SART and CCR teams. CCR teams provide a means for collaboration and communication among criminal justice professionals and community providers to reduce sexual violence and to improve the overall response to victims of sexual assault. SARTs help coordinate investigative and prosecutorial actions in sexual assault cases. The Wisconsin SART Protocol can be reviewed online at www.wcasa.org (search "SART").
4. The complexities of sexual assault investigations present myriad challenges for law enforcement and victims. It is not unusual that the very traits that make a person vulnerable to victimization also present challenges to investigators. In fact, it is common, because many perpetrators choose such victims, hoping the victim's personal history, standing in the community or other limitations will make him or her less believable in the eyes of the criminal justice system. Predators prey on vulnerable victims to reduce the likelihood that the victims will cooperate with the investigation and prosecution. Furthermore, manifestations of trauma common to victims of sexual assault might include behaviors that result in multiple contacts with law enforcement. The challenges inherent in such scenarios are not insurmountable if investigators recognize these dynamics as hallmarks of sexual exploitation, rather than label a victim as "bad" or less credible. Many survivors of sexual assault, even those with limitations, are capable of remarkable self-advocacy given the opportunity, especially with the support of professional victim service providers.
5. Command staff should seek out quality training about sex crimes investigation and the effect of sexual trauma on victims in order to support law enforcement agents in what can be the most difficult and emotional cases encountered. Sexual violence impacts public safety to a degree that puts demands upon law enforcement agencies which simply cannot be met unless law enforcement agents are properly trained and supported. There are many resources available to help agencies gain, improve and refine the skills required for thorough child and adult sexual assault investigations, many at low or no cost to agencies. In addition, sponsoring organizations often provide scholarships to defray costs. A list of several 2011 training opportunities is attached to this report. Each agency should make its own determination as to quality of the training and relevance to the agency's needs.

Dated this 13th day of April, 2011.



TRISHA ANDERSON
Chairperson, Wisconsin Crime Victims Rights Board

2011 Training Opportunities Related to Sexual Assault Investigation and Crimes Against Children

August 23-25: **Serving Victims of Crime Conference**
(Wisconsin Dells) www.fvtc.edu/WIVOCC

This training program was developed by state and federal law enforcement agencies, state criminal justice agencies and state victim service coalitions to enhance the strengths of service providers and administrators.

September 27-28: **Statewide Sexual Assault Response Team (SART) Conference**
(Wisconsin Dells) www.oja.wi.gov (click on “Training”)

Topics include: suspect interviews, victim interviews, initial and ongoing trauma, and the dynamics of sexual assault victimization.

October 24-27: **27th Annual Midwest Conference on Child Sexual Abuse**
(Madison) www.dcs.wisc.edu/pda/midwest

The University of Wisconsin–Madison brings together 35 institutes and workshops on the prevention, investigation, and treatment of child sexual abuse.

**Customized
Training** **Wisconsin Department of Justice Children’s Justice Act Program**

Basic and Advanced Child Forensic Interviewing workshops are offered throughout the year in different locations throughout the state. In addition, the Children’s Justice Act can work with a law enforcement agency to customize a multidisciplinary training session to improve the coordination of the investigation and prosecution of crimes against children in the county. This training is offered at no cost to the agency. Contact the DOJ Children’s Justice Act Program for more information at: ocvs@doj.state.wi.us or 608-264-9497.

Wisconsin Office of Justice Assistance (OJA)

OJA's Justice System Training (JST) Program provides specialized training on domestic violence and sexual assault to law enforcement, prosecutors and court personnel. Training is free of charge and can be customized to the needs of the agency. Contact OJA for more information: OJAJusticeSystemTraining@wisconsin.gov