



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 a victim’s right to receive specific written information from the district attorney.

Factual Background

A husband and wife were victims of a hit and run which left them with physical injuries and considerable damage to their vehicle. The license plate of the car that hit them was recovered at the scene of the crash and the perpetrator was soon thereafter identified. The victims were told by officers at the scene to contact the municipal court for information about the case.

The victims wrote to the municipal judge, to express their interest in participating in the case, to describe the impact of the hit and run upon them and to offer to appear to testify. Subsequently, the case was referred from municipal to circuit court. When the district attorney’s office received the referral, a packet of information was sent to the victims notifying them that a criminal charge had been filed against the defendant and notifying them of their victim rights. The mail was sent to the address on the face sheet of the police report. That address was incorrect, however, and the mail was returned to the district attorney’s office. It was the practice of the office at that time that returned mail was directed to the victim witness specialist assigned to the case. Whether the victim witness specialist made additional attempts to reach a victim for whom mail was returned varied according to the specialist’s caseload. In this case, no additional attempt was made to contact the victims by mail or by phone, despite the fact that the victims’ correct telephone number was readily available on the police report. After a few months, the victims contacted the municipal court to inquire as to the progress of the case. They were told the case had been transferred to circuit court and they should contact the district attorney’s office. Upon making contact with the district attorney’s office, the victims learned the case had in fact already concluded.

The victims were told that the Assistant District Attorney amended the misdemeanor hit and run charge and the defendant pleaded no contest to a Failure to Report an Accident and no contest to Reckless Driving – Endangering Safety. The court did not order restitution.

The victims learned they had lost the opportunity to attend hearings, to consult with the prosecutor about the potential dispositions of the case, to provide the court with information pertaining to the economic, physical and psychological effect of the crime upon them and to make a victim impact statement at sentencing. They were deprived of the opportunity to request restitution for the losses sustained. They were left to wonder whether their absence from proceedings resulted in a lesser punishment for the offender and whether the court was aware of the full impact of the crime.

The trauma felt by victims of hit and run or other traffic crashes can be significant. In the case at hand, the victims reported to the Crime Victims Rights Board that the physical and psychological effects of the crash remain with them still, years after the crash. They wanted to convey this to the court and to the perpetrator. They were concerned that a traffic case might be minimized. They wanted to be present and to be informed about the case. Information from the district attorney's office would have alerted the victims that the case had changed jurisdictions and they would have been able to fully participate. Instead, the information they received at the scene—that they should contact the municipal court for information about their case—was their only guidance which proved insufficient to guarantee that they could exercise their rights.

Statutes Involved

Wisconsin Stat. § 950.08(2r) provides, in relevant part:

[A] district attorney shall make a reasonable attempt to provide to each victim of the crime written information on all of the following:

- (a) A brief statement of the procedure for prosecuting a crime.
- (b) A list of the rights of victims under s. 950.04(1v) and information about how to exercise those rights.
- (c) The person or agency to notify if the victim changes his or her address and wants to continue to receive notices and services under s. 950.04 or 971.095(3).
- (d) The availability of compensation under subch. I of ch. 949, including information concerning eligibility for compensation and the procedure for applying for compensation.
- (e) The person to contact for further information about a case involving the prosecution of a crime of which he or she is a victim.

Wisconsin Stat. § 950.04(1v)(u) provides that victims of crime have the right “[t]o receive information from district attorneys, as provided under s. 950.08(2r).”

Recommendation:

The right to written information from district attorneys, as outlined above, is a gateway right. When victims are deprived of the right to receive the written information required by Wis. Stat. sec. 950.08(2r), they will almost certainly be deprived of their most valuable substantive victims rights, including the rights to be notified of court proceedings, to attend court proceedings, to confer with the prosecutor, to make statements at sentencing, and to receive restitution. As one victim described, “For most people the process is unknown. You don’t even know what questions to ask. If a person is a victim and you aren’t given information about anything, it’s like you are a victim twice. You lose the chance to go to hearings and to know what is happening. I would’ve been in court if I had gotten the information.”

To be sure, district attorney’s offices are busier and working with fewer resources than ever. In many offices, victim witness staff have less “desk time” during which they can attend to issues such as returned mail. However, such a seemingly small task, left undone, can have enormous consequences to those victims who lose the chance to exercise their rights. As a result of the current case, the victim witness office opted to institute a policy that staff will make at least one additional effort to reach a victim when mail is returned. If that policy had been in place before this event, staff would have been able to find both the correct address and a current phone number in the police report. It would have taken very little time in this case to rectify the situation.

The Board recommends that district attorneys reiterate with their staff the importance of victims receiving the written information required by Wisconsin Stat. § 950.08(2r). The Board recommends that district attorneys evaluate the systems in place for handling returned mail in their offices and direct that appropriate efforts are made to get victims the required information. Failure to provide the information to victims not only deprives victims of their rights; it deprives the prosecution of the benefits that result from the fully informed participation and cooperation of victims in a case.

Dated this 22nd day of November, 2010.



TRISHA ANDERSON
Chairperson, Wisconsin Crime Victims Rights Board