



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 duty of the district attorney to provide victims of crime with certain written information, pursuant to Wis. Stat. §§ 950.08(2r) and 950.04(1v)(u).

Factual Background

A victim of domestic abuse filed a complaint alleging that the district attorney’s office failed to provide her with written information, as required by Wis. Stat. §§ 950.08(2r) and 950.04(1v)(u), informing her of her victim rights and how to exercise those rights. The district attorney’s office conceded that the victim was not provided with the required written information but explained that the victim did receive written information from law enforcement identical to what she would have received from the district attorney’s office. She also received verbal information from the prosecutor about her rights prior to a preliminary hearing at which she was to appear as a subpoenaed witness.

The lack of written notice of rights was attributed to a breakdown of protocol in the district attorney’s office. The victim was initially identified as a witness to domestic abuse disorderly conduct. Later, when the criminal complaint was amended to name her as a victim of domestic battery, the prosecutor did not follow the protocol that would alert victim witness staff of a victim entitled to services. It was the position of the district attorney’s office that this error did not impact the victim who still had every opportunity to exercise her rights, as evidenced by her attendance at all the court hearings. The victim was an acquaintance of a victim witness specialist and worked within the criminal justice system. These facts were presented by the district attorney’s office to support their position that their error was inconsequential to the victim’s ability to assert and understand her crime victim rights.

The victim reported that her primary source of information during the case was the offender’s defense attorney. She complained that the lack of written notice of rights impacted her ability to understand and exercise fully all the rights to which she was entitled as a crime victim—in particular, her right to confer with the prosecutor and to make a statement at sentencing.

Statutes Involved

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).”

Wisconsin Stat. § 950.08(2r) provides that as soon as practicable, but in no event later than 10 days after the initial appearance under s. 970.01 or 24 hours before a preliminary examination under s. 970.03, whichever is earlier, of a person charged with a crime in a court of criminal jurisdiction, 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.

Recommendations:

1. The right to written information from the district attorney, 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 may also 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.
2. Receipt of the written information provided to victims by law enforcement in compliance with Wis. Stat. § 950.04 (1v)(2g) does not relieve a district attorney from his or her obligation to provide the written information required by Wis. Stat. § 950.08(2g). The information law enforcement must provide is distinct from the information district attorneys must provide. Law enforcement must provide the address and telephone number of the agency which has (or had) custody of the suspect, so the victim can get information about the suspect’s release on bail. Law enforcement must also provide information about procedures to follow if the victim is subject to threats or intimidation. District attorneys are not required to provide this information.
3. Even if the information provided by law enforcement and the district attorney’s office were identical and contained every element to satisfy both agencies’ obligations, one notice cannot substitute for another. The legislature set forth a process in Wis. Chapter 950 to provide victims with information at different stages of the case and within specific timelines.

The purpose of those separate obligations is presumably to provide specific information in a timeframe and manner that will be most meaningful, relevant and useful to victims.

4. The victims' rights enumerated in Chapter 950 are constitutionally protected to be conferred without regard to whether the interests of the victim and prosecutor align. It is not uncommon that a victim feels a charging decision is either too lenient or too vigorous. The practical impact of such disagreement is often a lack of regular communication and/or awkward interaction. However, the prosecutor's obligations remain the same. Charging decisions and prosecutorial strategy remain under the sole discretion of the prosecutor. The fact that there is disagreement can not be allowed to impact the level of service provision or rights.
5. If a prosecutor knows a victim is getting his or her information about a case from the offender's attorney, the prosecutor should check with victim/witness staff to make sure the victim has indeed had the opportunity to request information and notification from the district attorney's office, as well. The victim has every right to align with the defense if he or she chooses; however, it is inherently problematic that a victim would be *reliant* upon those whose interests are to minimize or deny the harm done to the victim. Furthermore, not wanting the prosecution does not always equate to not wanting his or her rights. The prosecutor should confirm that the victim was made aware of the assistance available through the district attorney's office. Most victim witness offices provide a form to victims that also serves as a record of which services a victim has requested and/or declined.
6. In the case at hand, the victim's coordination with the defense was used to show that there was no harm done by the lack of communication from the district attorney's office. To the contrary, a victim deserves to have his or her rights explained by the prosecutorial team. It is not simply a matter of relaying the time and date of hearings—it is a recognition of the victim's independent status as one who has had an offense committed against him or her. When the victim does not acknowledge the harm done it can be frustrating for those prosecuting the crime. However, this dynamic is commonly associated with domestic violence and professionals work within this tension by focusing on and carrying out their statutory duties. The state has a role to play in affirming the status of the victim apart from that of the defendant even if the victim does not assert the same.
7. It should not be assumed that victims of crime who work within the criminal justice system are fully informed about their victims' rights. Even those who know their rights may not be as capable as one would assume of applying that knowledge to their own case. Being a victim of a crime can create trauma and stress that impacts a person's ability to function on many levels. Being part of the criminal justice system may even be a disadvantage for a victim who is reluctant to share personal information or seek help from work colleagues.

Dated this 18th day of November, 2011.



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