



## 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 recommend to judges the best practice for protecting a victim's right to a speedy disposition of the case.

### **Factual Background**

"A." was sexually assaulted as a minor in July 2011. The crime was reported and a criminal complaint was promptly filed. The criminal complaint was subsequently amended to add additional allegations that the offender had also sexually assaulted "B." on the same day as the assault against A., as well as several years prior when B. was still a minor. Upon a defense motion, the judge ruled that the counts were improperly joined and would be tried separately. The state requested that A.'s case be tried first and the judge granted the state's request.

At the conclusion of a jury trial in January 2012, A.'s assailant was found guilty of a felony sex crime and a scheduling conference was set for the following week. At the scheduling conference, the judge set the calendar for trying the allegations involving the other victim, B., including a jury trial which would take place in approximately 7 months. The court then considered whether to delay the sentencing phase of A.'s case until the case involving B. was concluded. The state argued that would be an undue delay in light of the fact that A.'s case was not connected to the facts or the trial involving B.'s case. The state argued that such a delay would be a violation of A.'s victim rights. The court disagreed and declined to schedule the sentencing in A.'s case until the conclusion of B.'s case.

Nine months later, after the offender pleaded no contest to the charges involving B., the offender was sentenced for the assault against A.

A. filed a complaint with the Board alleging the judge violated A.'s statutory right under Wis. Stat. § 950.04(1v)(k) to a speedy disposition of the case, A.'s right under art. I, sec. 9m of the Wisconsin Constitution to timely disposition of the case and A.'s right to reasonable protection from the accused throughout the criminal justice process under art. I, sec. 9m of the Wisconsin Constitution.

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.

The Board reviewed the court transcript to evaluate the reasons given on the record for the decision to delay the sentencing in A.'s case. The court identified four reasons on the record: (1) A.'s right to speedy disposition was limited to the time during which A. had responsibilities in connection with the case and A. had no responsibilities in connection with sentencing; (2) The offender was not a flight risk and presented no danger to A., other witnesses, or the public if he remained in the community; (3) if the offender were incarcerated in prison prior to the next trial, the county and the court would bear the burdens of retrieving him for proceedings where his presence was required; and (4) the offender's attorney needed access to him to prepare for the second trial that would not be possible if he was incarcerated and returned to the county jail one or two weeks prior to the trial. The court concluded that the sentencing in A.'s case would be delayed until the conclusion of B.'s case, declaring that A. was "under no greater or no less stress having sentencing delayed."

The Board found the reasons given by the court for the delay lacked a factual basis, a legal basis, or both and determined that the court unreasonably delayed sentencing in A.'s case. The Board found that the court violated A.'s statutory right to a speedy disposition and constitutional right to a timely disposition. [The Board did not find probable cause to believe the judge violated A.'s right to reasonable protection from the accused and that aspect of the complaint was dismissed.]

### **Statutes Involved**

**Wisconsin Stat. § 950.04(1v)(k)** provides that victims of crimes have the right "[t]o 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."

**Wisconsin Stat. § 950.105**, created by 2011 Wis. Act 283 (first effective April 27, 2012), provides that a crime victim "has a right to assert, in a court in the county in which the alleged violation occurred, his or her rights as a crime victim under the statutes or under article I, section 9m, of the Wisconsin Constitution. This section does not preclude a district attorney from asserting a victim's statutory or constitutional crime victim's rights in a criminal case or in a proceeding or motion brought under this section."

**Wisconsin Constitution Art. I, Sec. 9m** provides that the state shall ensure crime victims receive "timely disposition of the case."

**Wis. Stat. § 971.105** provides, in part, that in all criminal cases 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 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."

## **Recommendations:**

1. Victims' rights were established by the voters in this state with the adoption of a constitutional amendment and those rights were further enumerated by the state legislature with the enactment of Wis. Stat. Ch. 950. That chapter begins with language that makes clear the duty of public officials to honor and protect these rights:

“...the legislature declares its intent, in this chapter, to ensure that ...the rights extended in this chapter to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants.” *Wis. Stat. 950.01*
2. Compliance with the victim's speedy disposition right is measured by the delay, if any, between when disposition should reasonably have occurred and actual disposition. It is not measured by predictions about the amount of stress such a delay will cause.
3. The right to a speedy disposition must not be construed as narrowly as it was in this case. The court erroneously found that A.'s involvement with the case and A.'s right to a speedy disposition, ended after providing testimony at the trial. When the decision to delay was made, there was every reason to believe A. would continue to provide information that would assist in the presentence investigation report and that A. would make a victim impact statement at sentencing. The right to a speedy disposition applies throughout the life of a case, well beyond the guilt phase of a prosecution.
4. Victims' statutory and constitutional rights do not cease to apply when the prosecution or the court or any other state actor decides the victim is no longer “needed.” Victims' rights are protections granted by law -- not indulgences granted by state actors. In fact, in 2012, [after the court's decision to delay sentencing in A.'s case], the state legislature gave victims explicit standing to assert their rights in court—a public policy decision that acknowledged the legitimate and independent interests held by victims during the criminal justice process.
5. The rights of victims must be considered *together* with the rights of defendants. Crime victims, and the public in general, have an “interest in prompt and certain punishment for criminal offenses, both to minimize the possibility of criminal activity by the accused while released on bail pending sentence, and to aid the deterrent effect of penal sanctions.” *State v. Allen*, 179 Wis. 2d 67, 74, 505 N.W.2d 801 (Ct. App. 1993), quoting *Gonzales v. State*, 582 P.2d 630, 633 (Alaska 1978). In the context of a sentencing delay, the courts must place much greater weight on the interests of the victim and society, because the defendant has been convicted. As stated in *Perez v. Sullivan*, 793 F.2d 249, 254 (10th Cir. 1986):

The alteration of defendant's status from accused and presumed innocent to guilty and awaiting sentence is a significant change which must be taken into account in the balancing process. Once guilt has been established in the first instance the balance between the interests of the individual [defendant] and those of society shift proportionately.

*See also Allen*, 179 Wis. 2d at 75.

6. A court's duty to promptly sentence a convicted defendant is even greater when the victim is a minor. The court is obligated under Wis. Stat. § 971.105 to consider and give weight to any adverse impact a delay may have on the well-being of a child victim or witness. The state's argument that the delay would adversely affect A. was improperly brushed aside with the court's proclamation that A. was "under no greater or no less stress having sentencing delayed." The truth of the matter was that A. suffered extreme anxiety from knowing the convicted sexual assailant of minors would live freely in the community for several months and be given the opportunity to re-offend, while awaiting another trial. In fact, A. sought (and received) an order of protection shortly after the decision to delay sentencing.

Dated this 26th day of July, 2013.



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TRISHA ANDERSON

Chairperson, Wisconsin Crime Victims Rights Board