



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

Factual Background

An alleged sexual assault of a child was reported to law enforcement in August 2011. The case was referred to the district attorney's office in December 2011. The district attorney met with the victim's mother in April 2012 to notify her that he had decided not to issue charges in the case. During that meeting, the district attorney was informed about additional information that could be gathered which he had not considered. He decided to keep the case open while law enforcement gathered more evidence. By September 2012, the investigating agency had completed the additional investigation and referred the matter back to the DA's office for a charging decision.

Ten months passed without a charging decision. During this time, the victim filed an informal complaint with the Department of Justice ("DOJ"), followed by a formal complaint with the Wisconsin Crime Victims Rights Board ("Board") alleging a violation of the victim's right to a speedy disposition of the case. Reasons given by the district attorney for the delay included staff turnover and reduced reimbursement from the state for victim witness program expenses. During informal mediation, the district attorney informed the DOJ that despite those difficulties, he was at last in a position to review the case and a charging decision would be made in a few weeks. However, a charging decision was not made. Later, during the formal complaint process, the district attorney pledged to the Board to make a charging decision within 30 days. Again, the self-imposed deadline passed without a charging decision. When the Board completed its review of the complaint, a charging decision was still pending.

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 identified a ten-month period of delay attributable to the district attorney. This period began when the investigation was completed and there were no additional requests for information pending from the district attorney. The period of delay included the nearly six months that followed the DA's promise to the Board that a decision would be made within 30 days. The Board found that the ten-month delay was unreasonable and constituted a violation of the victim's right to a speedy disposition of the case. A private reprimand was issued to the respondent.

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

Recommendations:

1. The victim and suspect in this case reside in the same community. The victim has encountered the suspect in public places several times during the pendency of the case. Not only did this result in fear and a sense of helplessness, it heightened the anxiety caused by not knowing when and whether the case was going to go forward.
2. A prosecutor's duty to protect a victim's right to a speedy disposition begins as soon as the case is referred to the district attorney's office. The Board is aware of and sympathetic about the workload burdens experienced in district attorney's offices throughout the state. District attorneys must prioritize case work and balance many demands while remaining responsive to victims of crime. The Board recognizes that the decision to charge or not charge a case solely belongs to the prosecutor. It is the lack of decision-making without reasonable justification that resulted in a private reprimand in this case.
3. Promises made, but not kept, that a decision would be made by a specified time added considerably to the victim's anxiety and frustration. The charging decision in this case (as in many) carried with it serious consequences. A decision not to charge would mean that the victim's mother had the burden of explaining to the child victim why the criminal justice system was not pursuing the child's allegation. A decision to issue charges would require heightened vigilance, because the suspect lived in the community. Victims prepare for both scenarios and it is painful to be kept in a state of prolonged uncertainty during which one must be ready for either outcome.
4. A charging decision allows the victim the courtesy of knowing whether he or she will have further responsibilities related to a criminal case. A decision gives a victim the dignity of knowing the case has received proper consideration and has not been forgotten. If there are legitimate reasons to delay a charging decision, those reasons should be communicated to the victim so that he or she is kept informed and can set realistic

expectations about the timing of a charging decision. It is very upsetting to victims to perceive that their case is only given attention when they call and ask for action to be taken.

5. Responsiveness to victims of sensitive crimes and child victims should be among the highest of priorities in the district attorney's office. There are special considerations to be made when children are victimized. The burdens on the child-victim's caregivers are great and go well beyond the criminal justice response to the crime. These dynamics should be considered when workload is prioritized to ensure that decisions are timely and sensitive to the needs of child victims and their representatives.

Dated this 11th day of July, 2013.

Trisha Anderson
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