



## REPORT AND RECOMMENDATION OF THE WISCONSIN CRIME VICTIMS RIGHTS BOARD

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### **Introduction**

The Wisconsin Crime Victims Rights Board (“Board”) reviewed a formal victims’ rights complaint concerning the statutory right to have reasonable attempts made to notify the victim of hearings or court proceedings, pursuant to Wis. Stat. § 950.04(1v)(g). The issues raised in the complaint are of statewide importance and the following Report and Recommendation is hereby issued as a remedy in that case and as a report for statewide distribution.

### **Factual Background**

A victim of a home invasion requested notice of hearings and proceedings related to the crime. Two defendants were charged in the case. The victim communicated with the victim witness specialist throughout the case and was very engaged in the process. The victim intended to provide a victim impact statement at the sentencing hearing of both defendants, a fact communicated to the victim witness specialist and the prosecuting attorney. The victim was provided with notice of the sentencing hearing for the first defendant and did indeed attend and deliver a victim impact statement. The following week, the victim witness specialist discovered the victim had been given an incorrect date for the second defendant’s hearing and that the sentencing had already taken place without the victim present. The victim was notified of the error. According to the hearing transcript, the absence of the victim was noted and even lamented by the judge; however, at no time did the judge ask the prosecutor whether the victim had received notice of the hearing, a requirement under Wisconsin Stat. § 972.14(2)(m). At no time did the prosecutor question the absence of the victim or ask the court for the opportunity to ensure the victim had received notice.

After evaluating what had happened and meeting with the victim, the district attorney’s office sought to remedy the errors by filing a Motion for Resentencing, to allow the victim to make a victim impact statement. The judge denied the state’s motion.

### **Complaint History**

Victims of crime have the right to complain to the Wisconsin Department of Justice (DOJ) concerning the treatment of crime victims. At the conclusion of the informal DOJ complaint, victims of crime may seek a review by the Crime Victims Rights Board. *See Wis. Stat. § 950.04(1v)(zx)*. The victim filed an informal complaint and brought the case to the Board at the conclusion of the informal process. The complaint alleged the prosecutor violated the victim’s

right to have reasonable attempts made to notify the victim of the sentencing hearing, resulting in the violation of the right to attend and to provide information to the court.

The prosecutor informed the Board that the duty to provide notice was delegated in this case to a victim witness specialist, pursuant to office policy and the delegation allowed by Wis. Stat. § 950.02(2)(b). It was the victim witness specialist who failed to provide proper notice to the victim, the prosecutor argued; and, therefore, the prosecutor should not be assigned any culpability related to the lack of notice. The respondent requested that the Board conduct a hearing under Wis. Admin. CVRB 1.07.

### **CVRB Hearing & Final Decision**

An evidentiary hearing was held. Evidence showed the prosecutor was aware that the victim had been actively involved in the case and intended to be present at the hearing. Testimony confirmed that the victim received the wrong date for the sentencing hearing from the victim witness specialist. Evidence and testimony showed that the prosecutor knew the victim wanted to give an impact statement at sentencing and that this was noted in the file. Testimony informed the Board that it might be expected that a prosecutor in this county would halt a proceeding in order to confer with victim witness staff if an expected victim was not present. Testimony and the court transcript showed that when the hearing started, the prosecutor was aware that the victim was not present and did not make any attempt to verify or ensure the victim had received proper notice of the hearing.

The Board concluded that the obligations of the judge and the victim witness specialist did not negate the prosecutor's obligations. The Board found that the prosecutor failed to make a reasonable attempt to notify the victim of the sentencing hearing and that this failure resulted in the deprivation of the right to attend and make a victim impact statement.

The Board declined to sanction the prosecutor but strongly agreed with the complainant that prosecutors have an obligation to ensure that rights exercised in a courtroom are protected. The duty to provide notice may have been delegated to the victim witness specialist in this case, but once the hearing began, only the prosecutor and judge were in the position to ensure the state complied with its duty to provide notice.

This is an issue with serious consequences for victims. The Report and Recommendation is issued as a remedy to the victim but also to inform prosecutors of their duty and to urge prosecutors to fulfill this duty, to prevent similar rights' violations from occurring in the future.

### **Related Law**

**Wisconsin Constitution Art. I, Sec. 9m** provides that "this state shall ensure that crime victims have all of the following privileges and protections as provided by law: ... the opportunity to attend court proceedings unless the trial court finds sequestration is necessary to a fair trial for the defendant... notification of court proceedings... the opportunity to make a statement to the court at disposition..."

**Wisconsin Stat. § 950.04(1v)(b)** provides that victims of crimes have the right “[t]o attend court proceedings in the case...”

**Wisconsin Stat. § 950.04(1v)(g)** provides that victims of crimes have the right “[t]o have reasonable attempts made to notify the victim of hearings or court proceedings, as provided under ss. 302.113 (9g) (g) 2., 302.114 (6), 938.27 (4m) and (6), 938.273 (2), 971.095 (3) and 972.14 (3) (b).

**Wisconsin Stat. § 950.04(1v)(m)** provides that victims of crime have the right to “provide statements concerning sentencing, disposition or parole, as provided under ss. 304.06(1)(e), 938.32(1)(b)1., 938.335(3m)(a) and 972.14(3)(a).”

**Wisconsin Stat. § 972.14(2)(m)** provides that “[b]efore pronouncing sentence, the court shall inquire of the district attorney whether he or she has complied with s. 971.095 (2) and with sub. (3) (b), whether any of the victims of a crime considered at sentencing requested notice of the date, time and place of the sentencing hearing and, if so, whether the district attorney provided to the victim notice of the date, time and place of the sentencing hearing.

### **Report:**

1. Providing crime victims with notice of hearings and court proceedings is the foundation for the protection of every courtroom-based constitutional and statutory right to which victims are entitled.
2. The elevated importance of giving a victim notice of a sentencing hearing is demonstrated by the legislative enactment of redundancies in the system to thoroughly protect that right. Not only must the state *provide* notification according to Wisconsin Stat. § 950.04(1v)(g) but the court must then *confirm* that proper notification occurred, pursuant to Wisconsin Stat. § 972.14(2)(m). A prosecutor must be sure that notice was provided, even if the duty was delegated to someone else, because it is the prosecutor alone who is asked to affirm in court that the state complied with the requirement. The court’s inquiry and the state’s reply to the inquiry should be executed thoroughly and thoughtfully.
3. When analyzing whether a prosecutor made reasonable attempts to notify a victim of a hearing or court proceeding, the Board considers the following:
  - 1) Whether the victim made an express withdrawal of a request for notice.
  - 2) Whether the prosecutor received information that the victim would not appear.
  - 3) Whether the victim failed to respond to communication from the district attorney’s office.
  - 4) Any action(s) taken by the prosecutor to ensure the victim received notice.

Under this analysis, a violation may occur, for example, when a victim who requested notice is expected to appear but does not and the prosecutor does not make any attempt to provide or verify notice of the hearing. A prosecutor may not make inferences about why a victim who requested notice and communicated the intent to attend does not appear. Unless the victim has expressly withdrawn the request for notice or has become non-responsive to

communication, the prosecutor must confirm that reasonable attempts were made to provide the victim with proper and timely notice or must make reasonable attempts to provide such notice.

Dated this 14<sup>th</sup> day of December, 2016.

A handwritten signature in cursive script that reads "Trisha Anderson". The signature is written in black ink and is positioned above a solid horizontal line.

TRISHA ANDERSON  
Chairperson, Wisconsin Crime Victims Rights Board