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

The Right to Written Information from Law Enforcement

“No later than 24 hours after a law enforcement agency has initial contact with a victim of a crime that the law enforcement agency is responsible for investigating, the law enforcement agency shall make a reasonable attempt to provide to the victim written information on all of the following... .”

Wisconsin Statutes § 950.08(2g)

Introduction

In 2010, the Wisconsin Crime Victims Rights Board issued a special report with recommendations concerning the duty of law enforcement agencies to provide victims of crime with written information about their rights, pursuant to Wis. Stat. §950.08 (2g).¹ The Board hereby updates and reissues the special report on this issue after reviewing several cases in which crime victims did not receive the written information, as required, within 24 hours of contact with a law enforcement agency. It is the Board’s intention that this report will assist law enforcement agencies in assessing whether this important statutory duty to victims is adequately enabled through agency policy and protocol. The Board respects and acknowledges the vital function of law enforcement and the special role held by officers who are often a crime victim’s first contact with the justice system after victimization.

¹ The Board issues reports and recommendations under the authority of Wis. Stat. 950.09(3): “In addition to its powers under sub. (2), the board may issue reports and recommendations concerning the securing and provision of crime victims rights and services.”

The duty of law enforcement to provide written information within 24 hours of initial contact ensures that victims receive critical information as soon as possible. The required information includes victim

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service contacts that victims may need to access immediately. It includes custodial information and contact numbers so a victim can find out whether an offender is in custody or has been released. It includes information to help victims anticipate services and programs they should prepare for, such as the Crime Victim Compensation Program—a time-sensitive state program that reimburses victims for some expenses that are a direct result of victimization. Victims may need to contact this program right away for assistance with funeral or medical expenses. The duty to provide the

required written information is much more than mere passage of paperwork; it helps victims access services, stay safe, and know about their rights, long after initial contact with law enforcement.

To assist agencies in complying with this crucial duty, the Wisconsin Department of Justice created a model Victim Rights Notification Form² which can be downloaded and customized to include agency logos. The form is available in English and Spanish at <https://www.doj.state.wi.us/ocvs/law-enforcement> and on WILENET (www.wilenet.org, click on “Victims’ Rights & Services” then “Law Enforcement”). The form is maintained and updated by DOJ to reflect statutory changes.

CVRB Analysis of Complaints Alleging a Violation

The primary function of the Crime Victims Rights Board is to review complaints filed against public officials, agencies and employees, alleging the violation of a constitutional or statutory victim right. When the Board receives a complaint against a law enforcement agency alleging that the right to receive information pursuant to § 950.08 (2g) has been violated, the Board considers the following:

1. Whether the law enforcement agency with jurisdiction over the case had contact with a victim.
2. Whether the agency made a reasonable attempt to provide that victim with the required information within 24 hours of contact.
3. Whether the information provided included all information required by Wis. Stat. 950.08 (2g).

A violation occurs when law enforcement does not provide the required information in writing within 24 hours of initial contact with a person who is a victim of crime.

² A copy of the current form, accessed 9/18/17, follows the appendix.

Determination of “Victim”

For the purpose of eligibility for Wis. Stat. Ch. 950 rights and services, victim is defined by statute.³ The definition is based on the act(s) and conduct that occurred. If the alleged conduct being investigated is prohibited by a state law and is punishable by a fine or imprisonment (or both) then the subject of that alleged conduct is a victim for the purpose of Chapter 950 rights and services. The determination should be based on the information and allegations at the time of contact, broadly construed to include anyone who could conceivably be a victim. The determination should not be delayed pending a charging decision or the ultimate conclusion of the investigation.

A reality of the justice system is that the status of offenders and victims may change over the life of the case. Determinations made early in a case may be adjusted as more information is collected. Charging decisions change and/or charges may be entirely dropped. Each agency must carry out its statutory duties based on the information that exists at the time the duty is required. An agency cannot know for certain whether eligibility for rights and services might change as the case develops. Consequently, the duty to provide information to a victim as quickly as is required by statute inherently requires a broad initial determination of whether any act has occurred that could potentially be a crime, rather than an exact determination of an eventual referral and charging decision.

Frequently Asked Questions & Recommendations

- **Do I have to try to find every person who might be a victim of the crime to give them the written information?**

No. The duty does not require that you provide the information to victims with whom your agency has not had contact. However, there may be situations when doing so is an important best practice and best for your case.

- **Do I have to provide the information in writing or can I review everything verbally?**

The required information must be provided in writing, whether or not you review it verbally.

- **Do agencies have discretion concerning this duty?**

The statute does not provide any exceptions or discretion to this duty.

- **What if the victim has a victim advocate already and says he or she already knows about the rights?**

Even if the victim says he or she already knows about the rights, the information must be provided by the agency.

³ See Appendix: Related Statutes for the statutory definition of victim.

- **Does my giving the required information to someone make them a victim for the purpose of future rights and services?**

No. Providing the required information is not an official designation of any kind. The model form recommended by DOJ contains the following notice to victims, to set realistic expectations:

“Please note that it is not always clear to whom victims’ rights apply at different stages of a case. Use the information on this form to discuss and clarify your rights with the agencies you are in contact with about the case and to make your interests known.”

- **Who do I give the information to if the case is a homicide or if the victim is a child?**

The definition of victim⁴ includes persons other than the primary victim. In a homicide, a family member of the deceased and a person who resided with the deceased victim are considered victims for the purpose of rights and services. If the victim is a child, a child’s parent, guardian or legal custodian is also a victim.

- **Won’t victims get the same information from the district attorney’s office?**

A district attorney has a separate duty to provide information to victims. The written information law enforcement must give victims is distinct from the written information district attorneys are obligated to provide victims. One notice cannot substitute for another. For example, 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. This information is not included in the information statutorily required to be given to victims by district attorneys.

- **The statute requires a list of all rights be included in the information. Is it okay to leave some out, to avoid overwhelming a victim?**

The list of rights is long but the statute requires notice of them all. Agency forms that do not contain all the elements required pursuant to Wis. Stat. 950.08 (2g) do not satisfy the requirement of the law. The DOJ model form arranges the rights according to when they apply during a case, (rather than the order they appear in statute) in order to make it easier for victims to navigate such a long list.

- **Are investigators required to provide the information?**

Yes. Investigators should not assume that someone else from the agency has already provided the victim with the required information. An investigator’s contact with a victim may be the agency’s first contact with the victim.

⁴ See Appendix: Related Statutes for the statutory definition of victim

- **Can I give the form to one victim to give to another victim with whom the agency has contact?**

Each victim of a crime who is contacted is entitled to receive the written information from law enforcement. Even if someone else plans to share the information with the victim, or the victim has an advocate helping him or her, the duty to provide the information rests with the law enforcement agency alone and cannot be delegated.

- **Is there anything my agency can do to protect against having a complaint filed related to this right?**

Institute policies and procedures that ensure the required information is provided to all victims (see Determination of “Victim” section, above) and document when a victim is provided the required information to create a record of compliance.

Conclusion

When a law enforcement agency provides crime victims with the required written information, they open the door to assistance and information that might otherwise have been closed during the victim’s experience within the justice system. The required information gives victims the opportunity to seek help and exercise fundamental constitutional and statutory victims’ rights. The Board has witnessed the harm done to victims when such opportunities are lost and the benefit to victims when the information is provided. We commend each agency that makes it a priority that the duty is carried out diligently and without exception.

Signed on this 25th day of September, 2017.



Trisha Anderson, CVRB Chair

APPENDIX: RELATED STATUTES

A. Definition of Law Enforcement Agency

950.02 (3m) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

B. Definition of Victim

950.02 (4) (a) "Victim" means any of the following:

1. A person against whom a crime has been committed.
2. If the person specified in subd. 1. is a child, a parent, guardian or legal custodian of the child.
3. If a person specified in subd. 1. is physically or emotionally unable to exercise the rights granted under s. 950.04 or article I, section 9m, of the Wisconsin constitution, a person designated by the person specified in subd. 1. or a family member of the person specified in subd. 1.
4. If a person specified in subd. 1. is deceased, any of the following:
 - a. A family member of the person who is deceased.
 - b. A person who resided with the person who is deceased.
5. If a person specified in subd. 1. has been adjudicated incompetent in this state, the guardian of the person appointed for him or her.

950.02 (4) (b) "Victim" does not include the person charged with or alleged to have committed the crime.

C. Definition of Crime

950.02 (1m) "Crime" means an act committed in this state which, if committed by a competent adult, would constitute a crime, as defined in s. 939.12.

939.12 Crime defined. A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both. Conduct punishable only by a forfeiture is not a crime.

APPENDIX 1: RELATED STATUTES

D. Duty of Law Enforcement to Provide Information

950.08 (2g) INFORMATION TO BE PROVIDED BY LAW ENFORCEMENT AGENCIES.

No later than 24 hours after a law enforcement agency has initial contact with the victim of a crime that the law enforcement agency is responsible for investigating, the law enforcement agency shall make a reasonable attempt to provide to the victim written information on all of the following:

- (a) A list of the rights of victims under s. 950.04 (1v).
- (b) The availability of compensation under subch. I of ch. 949 and the address and telephone number at which to contact the department for information concerning compensation under subch. I of ch. 949.
- (c) The address and telephone number of the intake worker, corporation counsel or district attorney whom the victim may contact to obtain information concerning the rights of victims and to request notice of court proceedings under ss. 938.27 (4m) and (6), 938.273 (2), 938.299 (1) (am) and 938.335 (3m) (b) or ss. 971.095 (3) and 972.14 (3) (b), whichever is applicable, and to request the opportunity to confer under ss. 938.245 (1m), 938.265 or 938.32 (1) (am) or s. 971.095 (2), whichever is applicable.
- (d) The address and telephone number of the custodial agency that the victim may contact to obtain information concerning the taking into custody or arrest of a suspect in connection with the crime of which he or she is a victim.
- (e) The address and telephone number of the custodial agency that the victim may contact for information concerning release under s. 938.20 or 938.21 or ch. 969, whichever is appropriate, of a person arrested or taken into custody for the crime of which he or she is a victim.
- (f) Suggested procedures for the victim to follow if he or she is subject to threats or intimidation arising out of his or her cooperation with law enforcement and prosecution efforts relating to a crime of which he or she is a victim.
- (g) The address and telephone number at which the victim may contact the department or any local agency that provides victim assistance in order to obtain further information about services available for victims, including medical services.
- (h) If the victim is a victim of an officer-involved death, as defined in s. 175.47 (1) (c), information about the process by which he or she may file a complaint under s. 968.02 or 968.26 (2) and about the process of an inquest under s. 979.05.

Information For Victims of Crime in Wisconsin

CONTACT INFORMATION

Arrest, custody, or release information:

Adult offenders

Your County Jail:
Address
City, State, Zip
Phone number

Juvenile Offenders

Your County Juvenile Detention:
Address
City, State, Zip
Phone number

To request notice of legal proceedings and information about victims' rights or to speak with the prosecutor of the case:

Adult Offenders

Your County District Attorney's Office:
Address
City, State, Zip
Phone number

Juvenile Offenders

Your County Juvenile Intake:
Address
City, State, Zip
Phone number

VICTIM SERVICES:

[Insert local victim service and shelter information here.]

INVESTIGATING AGENCY

Address
City, State, Zip
Phone number

Agency
Logo

Contact Officer: _____ Phone: _____

Date: _____ Case #: _____

Wisconsin law provides victims of crime with specific rights.

The Wisconsin Constitution (Article I, Section 9m) and Wis. Stat. Chapter 950 give special rights to victims of crime. Some rights are automatic while others must be requested. The rights are listed on the reverse side of this form.

Please note that it is not always clear to whom victims' rights apply at different stages of a case. Use the information on this form to discuss and clarify your rights with the agencies you are in contact with about the case and to make your interests known.

Important Reminders for Victims of Crime:

- The Wisconsin Department of Justice Victim Resource Center can provide you with information about victims' rights as well as victim services in your area call 1-800-446-6564 or access a directory online www.doj.state.wi.us/ocvs.
- If you are threatened or intimidated by anyone because of your cooperation with law enforcement and prosecution in connection with this crime, you should report that to the investigating agency. If you feel you are in immediate danger, call 9-1-1.
- It is very important that you keep agencies informed of any changes to your address, phone number, or email.
- You may be eligible to receive reimbursement for certain expenses related to the crime. It may be helpful to you to keep records of the crime-related expenses such as lost wages, repairs or medical bills because you may be required to provide this information to support your claim. Restitution may be ordered if someone is convicted of the crime against you, or you may be eligible for crime victim compensation even if no one is arrested or convicted. For more information contact the Wisconsin Department of Justice at 1-800-446-6564 or P.O. Box 7951, Madison, WI 53707-7951 or online at: www.doj.state.wi.us/ocvs.
- WI-VINE services allow you to register for notification about changes in custody status for offenders who are in a county jail. Find more information at www.vinelink.com or call 1-888-944-8463.

If you are the victim of domestic abuse, you may contact a domestic violence victim service provider to plan for your safety and take steps to protect yourself, including filing a petition under s. 813.12 of the Wisconsin statutes for a domestic abuse injunction or under s. 813.125 of the Wisconsin statutes for a harassment injunction.

Crime Victims' Rights in Wisconsin

* An asterisk (*) marks those rights which a victim must specifically request.

VICTIMS' RIGHTS THAT MIGHT APPLY ANY TIME:

- To be treated with fairness, dignity and respect for his or her privacy.
- To reasonable protection from the accused throughout the criminal justice process.
- To receive written information from law enforcement, within 24 hours of contact about rights, who to call for custody information regarding the offender and how to get more information about the case.
- To not have personal identifiers including email disclosed/used for a purpose unrelated to the official duties of an agency, employee or official.
- To contact the Department of Justice concerning a victim's treatment (1-800-446-6564) and to seek a review of a complaint by the Crime Victims Rights Board, as provided by law.
- To notice of a decision not to prosecute, if an arrest has been made.
- If a victim of an officer involved death, to receive information about the process by which he or she may do the following: file a complaint charging a person with a crime, if permitted by a judge; file a complaint under the John Doe investigation proceedings; and the process of an inquest.
- To a speedy disposition of the case.
- To not be compelled to submit to a pretrial interview or deposition by a defendant or his or her attorney.
- To information about the disposition of the case.*
- To attend court proceedings and to be accompanied by a service representative, as permitted by law.
- To not be the subject of an officer's or district attorney's order, request, or suggestion that the victim submit to a test using a lie detector if the victim reports having been the victim of a sexual assault.
- To the expeditious return of property when it is no longer needed as evidence.
- To file for Crime Victims Compensation, as provided by law.
- To request an order for an offender to submit to a test for sexually transmitted diseases, communicable disease, or HIV test (for certain offenses).
- To notice of a decision to close or dismiss a case or defer prosecution, if the offender is a juvenile.

VICTIMS' RIGHTS THAT APPLY AFTER AN OFFENDER HAS BEEN CHARGED:

- To receive written information from the district attorney regarding the victim's rights and how to exercise them.
- Upon request, the opportunity to communicate with the prosecutor (or intake worker) about the possible outcome of the case, potential plea agreements and sentencing options.*
- To be notified of the time, date and place of court proceedings, if requested.*
- To be provided a waiting area separate from defense witnesses.
- To have the victim's interests considered when the court is deciding whether to grant a continuance or deciding whether to exclude persons from a preliminary hearing.
- To be contacted about the right to make a statement at disposition or sentencing.
- To assistance with an employer about the need to attend court appearances.
- To be notified if charges are dismissed.

VICTIMS' RIGHTS RELATED TO THE SENTENCING OF THE OFFENDER BY THE COURT:

- To provide a statement to the court, in person or in writing, about the economic, physical and psychological effects of the crime and to have that information considered by the court.
- To be contacted by the person preparing the pre-sentence report (or *court report*, if the offender is a juvenile) to have the impact on the victim included in the report.
- To restitution from a juvenile offender, as permitted by law.
- To recompense from forfeited bail, as determined by the court.
- To view certain portions of a pre-sentence investigation report.
- To restitution from an adult offender for any crime considered at sentencing.

VICTIMS' RIGHTS THAT APPLY AFTER SENTENCING:

- To be provided sentencing or dispositional information.*
- To attend parole interviews or hearings and make statements.
- To be notified of a conditional release.
- To be provided with notice of a petition for a sentence adjustment or reduction and applications for early release.
- To be notified by the Department of Corrections of certain releases, escapes, confinements, leave, release to extended supervision and participation in the intensive sanctions program. If you have questions about receiving notices from the Department of Corrections, call 1-800-947-5777.
- To attend a hearing on a petition for a modification of a sentence and to provide a statement.
- To notification from the Department of Health Services concerning discharge, home visits and supervised release of certain offenders.
- To be notified of applications for parole or release to extended supervision; to provide statements concerning parole.
- To have the clerk of court send: a copy of an inmate's petition for extended supervision and notice of the hearing on that petition; a copy of a motion for post-conviction DNA testing and notice of any related hearing.*
- To be notified by the governor of a pardon application and to make a written statement about that application.
- To a civil judgment for unpaid restitution.
- To be notified when an offender's release to parole or extended supervision is revoked for violating a condition of release.

Please note: It is not always clear to whom victims' rights apply at different stages of a case. Use the information on this form to discuss and clarify your rights with the agencies you are in contact with regarding the case.