



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 courts, prosecutors, and victim witness professionals the best practice for ensuring that victims of crime who request it receive timely notification of proceedings.

Factual Background

An inmate was physically assaulted by another inmate while incarcerated. In the course of the assault he broke his leg and consequently was confined to a wheelchair and crutches for several months after the assault. The offender was charged with Battery by Prisoners and the victim was notified of those charges and his rights as a victim of crime.

The victim indicated to the district attorney's office that he wished to be notified of all court hearings and to receive notice of the disposition of the case. He returned a written victim impact statement. The victim received notification of the jury trial along with notice that he should expect to be transported to the trial if the matter continued on for trial. The victim called the district attorney's office the day before the trial was to commence and confirmed that he would be transported to the courthouse the following day. However, no one came to pick him up for transport that day.

The next morning, a hearing was held at which the offender pleaded guilty to a misdemeanor charge of battery and he was immediately sentenced to four months in state prison, to run consecutively to his current sentence. At the hearing, the judge did not make the inquiry required by Wis. Stat. 972.14(2m) ["Before 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."] In fact, the district attorney's office had not attempted to give notice to the victim of the plea and sentencing hearings.

Three days later, the victim called the district attorney's office and was informed by the victim witness coordinator that the case had been resolved.

The prosecutor has acknowledged that it was his responsibility to notify the victim of the hearings, and while not intentional, he was responsible for the violation. He relayed to the Board that when the case was on track to settle, he asked the secretaries to cancel the witnesses and transport order. He failed to note the victim's request to be notified of all hearings and consequently did not ask staff to provide notice to the victim for the upcoming plea and sentencing hearing. The prosecutor believes that he erred in bypassing the Victim Witness Coordinator who would have been more familiar with which rights were requested by the victim and who would have provided appropriate notice to the victim. As a result of this experience, the prosecutor more carefully reviews the forms returned to him by victims. He has also changed his practice in cases involving a settlement close to trial by sending all victim/witness cancellations directly to the Victim Witness Coordinator so she can keep victims informed and can immediately provide any requested notification and/or other rights requested by the victim.

Statutes Involved

Wisconsin Stat. § 950.04(1v)(g) provides that victims of crime 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 972.13(3)(b)."

Wisconsin Stat. § 971.095(3) provides:

At the request of a victim, a district attorney shall make a reasonable attempt to provide the victim with notice of the date, time and place of scheduled court proceedings in a case involving the prosecution of a crime of which he or she is a victim and any changes in the date, time or place of a scheduled court proceeding for which the victim has received notice. This subsection does not apply to a proceeding held before the initial appearance to set conditions of release under ch. 969.

Wisconsin Stat. § 972.14(2m) provides:

Before 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.

Wisconsin Stat. § 972.14(3)(b) provides:

After a conviction, if the district attorney knows of a victim of a crime to be considered at sentencing, the district attorney shall make a reasonable attempt to contact that person to inform him or her of the right to make or provide a statement under par. (a). Any failure to comply with this paragraph is not a ground for an appeal of a judgment of conviction or for any court to reverse or modify a judgment of conviction.

Report and Recommendation

1. The legitimate desire to dispose of cases efficiently poses challenges to the meaningful provision of victims' rights. Prosecutors, judges and victim witness professionals should be mindful of victims' rights when a settlement abruptly changes the direction of a case and a plea and sentencing hearing is quickly put on the calendar. The merits of expediency can not justify the violation of the victims' rights statute. In addition to those rights a victim has already requested, he or she might want to exercise additional rights, such as the right to confer or to make a statement to the court, when a plea is offered.
2. Circuit court judges are required to ask before pronouncing sentence, 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 [Wisconsin Stat. § 972.14(2m)]. This continues to be an important safeguard, to remind prosecutors of their duty and to ensure that the prosecutor is informed of the victim's wishes if the victim requested notice of proceedings.
3. Communication between prosecutors and victim witness coordinators will usually be of great benefit to prosecutors in meeting their victims' rights obligations. Prosecutors are ultimately responsible for the provision of certain rights, whether or not they choose to delegate those responsibilities. District attorneys should be proactive to establish policies and processes for how prosecutors and victim/witness staff can work together to ensure that the office is complying with victims' rights statutes.
4. When there is a significant or abrupt change in the status of a case (for example, a settlement is reached close to trial) prosecutors should inform their victim/witness staff so they can keep victims informed and able to exercise any applicable rights.
5. Incarcerated victims have the right to attend court proceedings [Wis. Stat. § 950.04(1v)((b))]. The court can require that this right be exercised using telephone or live audiovisual means, if available. When an incarcerated victim is being transported for a proceeding, it should be made clear to him or her the purpose for which transport is being arranged. For example, whether it is to facilitate the victim's

testimony or whether transport is to facilitate the victim's request to be present at a proceeding. A victim may not make a request to attend a proceeding (in person, by telephone or live audiovisual means) assuming that transport is being arranged for that purpose and not understanding that if his or her testimony is no longer needed, transport might be cancelled. When the transport of an incarcerated victim is cancelled, it would be good practice to explain why (for example, because the proceeding has been rescheduled or cancelled due to a settlement) so that the victim remains informed about the status of the case and able to exercise any applicable rights.

Dated this 29th day of NOV., 2006.



KENNETH R. KRATZ
Chairperson