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Chapter CVRB 1

COMPLAINT PROCEDURE

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Note: Chapter CVRB 1 was created as an emergency rule effective September 17, 1999.

CVRB 1.01 Purpose. The purpose of this chapter is to establish procedures for the review of complaints made to the crime victims rights board. This chapter interprets the provisions of ss. 950.09 and 950.095, Stats., and also interprets the provisions of ch. 227, Stats., concerning the conduct of proceedings under this chapter.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

CVRB 1.02 Definitions. In this chapter:

- (1) "Board" means the crime victims rights board.
- (2) "Chairperson" means the chairperson of the board.
- (3) "Complainant" means the individual filing a complaint with the board.
- (4) "Complaint" means a written, sworn complaint made to the board regarding a violation of the rights of a crime victim.
- (5) "Department" means the department of justice.
- (6) "Involved party" means an individual who participated in the mediation process as provided in s. 950.08 (3), Stats.
- (7) "Mediator" means an employe of the department who has sought to mediate or has actually mediated a complaint made to the department as provided in s. 950.08 (3), Stats.
- (8) "Party" means the complainant, the respondent, or both.
- (9) "Probable cause" means a reasonable basis for belief, supported by facts, circumstances, and reasonable inferences strong enough to warrant a prudent person to believe that a violation probably has been or is being committed as alleged in the complaint.
- (10) "Respondent" means the individual identified in the complaint as the subject of the complaint.
- (11) "Victim" has the meaning given in s. 950.02 (4), Stats.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

CVRB 1.03 Delegation of responsibilities. The board may delegate its responsibilities in ss. CVRB 1.05 to 1.07 to an appropriate designee.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

CVRB 1.04 Filing. (1) All written statements of a party's position submitted to the board, including the complaint and the answer, shall be signed by the person preparing the statement. A party shall verify that the contents of each filing submitted by that party or on that party's behalf are true and correct to the best of the party's knowledge and shall sign the filing.

(2) All complaints shall be prepared on a complaint form obtained from the mediator. The completed complaint shall be returned to the board at the address provided on the form.

Note: CVRB 1.04 (2) refers to the complaint form that must be completed in order to file a complaint with the board. That complaint form must be obtained from the department after the department has completed its action on the complaint as provided in ss. 950.08 (3) and 950.09 (2), Stats. To obtain a sample complaint form, contact the Office of Crime Victim Services, Victim Resource Center, Post Office Box 7951, Madison, Wisconsin, 53707-7951, (800) 446-6564.

(3) A complaint may be filed by any involved party. The board may not take any action provided by s. 950.09 (2), Stats., other than seeking equitable relief as provided by s. 950.09 (2) (c), Stats., unless the complaint is filed by a victim or a victim has signed the complaint indicating that he or she consents to the filing of the complaint by the involved party.

(4) The board may consider issuing a report or recommendation as provided by s. 950.09 (3), Stats., in response to a complaint filed by an involved party without endorsement by a victim. The board may consider a complaint filed under this subsection, and may issue a report or recommendation as provided by s. 950.09 (3), Stats., without making a probable cause determination.

(5) The board may consider complaints alleging violations of victims' rights that occurred on or after December 1, 1998. The board may not consider alleged conduct that occurred more than 3 years from the date the complainant knew or should have known of a violation of the rights of a victim. The board may consider issuing reports or recommendations as provided by s. 950.09 (3), Stats., relating to conduct that occurred prior to December 1, 1998 or more than 3 years before a complaint was filed with the board or the board was otherwise notified of the conduct.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

CVRB 1.05 Probable cause determination. (1) Upon receipt of the complaint, the board shall contact the mediator and request verification that the substance of the complaint has been presented to the department and that the department has completed its action as required by ss. 950.08 (3) and 950.09 (2), Stats.

(2) If the substance of the complaint has not been presented to the department, the board shall advise the complainant of the complainant's obligation to present the substance of the complaint to the department before filing a complaint with the board.

(3) If the department has not completed its action as provided in s. 950.08 (3), Stats., the board shall return the complaint form to the complainant and shall advise the complainant that the board cannot review the complaint until the department has completed its action.

(4) If the department has completed its action as provided in s. 950.08 (3), Stats., the mediator shall provide the board with information on the mediation process and its outcome. This information may take the form of a memorandum, other written documentation, or both.

(5) The board shall provide a copy of the complaint, with a cover letter, to the respondent and invite the respondent to submit an answer to the complaint. The board shall provide a copy of this letter to the complainant. If the respondent submits an answer, the board shall provide a copy of the answer to the complainant.

(6) The board shall determine probable cause at its next regularly scheduled meeting or at a meeting called by the chairperson. Upon a vote of the board, the board may deliberate and vote on the probable cause determination in closed session pursuant to s. 19.85 (1) (f), Stats.

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(7) In making the probable cause determination, the board may consider all relevant information, including all of the following:

- (a) The complaint.
- (b) The answer.
- (c) The information provided by the mediator pursuant to sub. (4).

(8) The board shall notify the parties and the mediator of its probable cause determination. If the board finds probable cause, the board shall advise the parties of their right to request a hearing on the complaint under s. CVRB 1.07. A finding of no probable cause is a final decision of the board. If the board finds no probable cause, the board shall provide notice to the parties of the right to seek judicial review pursuant to ch. 227, Stats.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

CVRB 1.06 Investigations. (1) The board may conduct an investigation of any complaint which meets the probable cause standards under this chapter. The board may request responses to written questions, participation in a personal or telephonic interview with the board, and written documentation. The board may consider a party's refusal to cooperate with the board's investigation in making its determination on the complaint.

(2) The board may request a party to sign a statement authorizing the limited release of specified records to the board. A party who is asked to sign a release may request a protective order from the board limiting the disclosure of any such records outside the board's process.

(3) Following its investigation and prior to the hearing under s. CVRB 1.07, the board shall provide copies to the parties of any documentation obtained during its investigation.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

CVRB 1.07 Hearings. (1) A hearing may be requested by any party or by the board. A party may appear in person or by telephone at the hearing, or may submit a written statement of position on the complaint in place of a personal appearance.

(2) A party who chooses not to appear at the hearing shall notify the board not later than two weeks prior to the hearing of this intent. A party who chooses to submit a written statement shall submit that statement to the board not later than one week prior to the scheduled hearing date.

(3) One month prior to the hearing, or at another date determined by the board, the parties may provide the board with all of the following:

(a) A list of witnesses whom the party wishes to have the board subpoena for the hearing. Subpoenas may also be issued in accordance with s. 227.45 (6m), Stats.

(b) A list of questions for the board to ask another party or witness at the hearing.

(4) The board, or its designee, or a hearing examiner proceeding under ch. 227, Stats., may preside over the hearing.

(5) The parties appearing at the hearing shall be afforded reasonable opportunity to be represented by counsel, to call witnesses, and to present evidence. Questioning of a party by another party is not favored and may be limited by the board consistent with s. 227.45 (6), Stats.

(6) The board may set reasonable time limits for testimony and may limit the number of witnesses called by a party. No party may require the mediator to testify as a witness at the hearing.

(7) Proof of a violation of the rights of a crime victim shall be made by clear and convincing evidence. "Clear and convincing evidence" means evidence which satisfies and convinces the board, because of its greater weight, that a violation occurred.

(8) A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evi-

dence. Testimony will not be transcribed unless a party requests a transcript and pays any costs required to prepare the transcript. The board shall prepare a transcript, at its own expense, in the event a party seeks judicial review of the board's decision.

(9) The board may vote to hold the hearing in closed session pursuant to s. 19.85 (1) (f), Stats. Parties and their counsel or another advocate, including a family member, shall be permitted to be present during the entire hearing.

(10) Witnesses subpoenaed at the request of a party or the board shall be entitled to compensation from the board for attendance and travel as provided in ch. 885, Stats.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

CVRB 1.08 Decisions. (1) At the close of the hearing, the board shall meet for purposes of deliberating on the complaint. Upon a vote of the board, the board may deliberate in closed session as provided by s. 19.85 (1) (a), Stats.

(2) Within 30 days of the close of the hearing, or by another date established by the board if no hearing is held, the board's legal counsel shall prepare a written proposed decision for the board, including findings of fact, conclusions of law, and a recommended remedy, and shall provide the proposed decision to the board.

(3) The board shall consider the proposed decision at its next regularly scheduled meeting or at a meeting called by the chairperson. The board may amend any portion of the recommended decision prior to approving the final decision. Upon a vote of the board, the board may conduct its discussion of the final decision in closed session as provided by s. 19.85 (1) (a), Stats.

(4) The board shall provide the final decision to the parties along with a notice of the right to request rehearing or seek judicial review under ch. 227, Stats.

(5) If no hearing has been held, the board shall make its final decision under the process provided in subs. (2) and (3).

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

CVRB 1.09 Rehearing. (1) A party aggrieved by the final decision may file a written request for rehearing with the board within 20 days after the date of the final decision.

(2) The request for rehearing shall include a detailed statement of the grounds for the request, including the material error of fact or law, or newly discovered evidence, that in the party's view warrants a rehearing. If the request is based on newly discovered evidence, the party shall state why the evidence could not have been previously discovered through reasonably diligent effort.

(3) The board may grant a rehearing on the basis of one or more of the following:

(a) A material error of law.

(b) A material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the original decision which could not have been previously discovered through reasonably diligent efforts by the parties.

(4) The board shall determine whether to grant the request for rehearing at its next regularly scheduled meeting or at a meeting called by the chairperson. If the board grants rehearing, it shall follow the procedures in s. CVRB 1.07 in conducting the rehearing.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

CVRB 1.10 Judicial review. Judicial review of the board's final decision is governed by ss. 227.52 to 227.59, Stats.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

CVRB 1.11 Miscellaneous provisions. (1) RELIEF FROM DEADLINES. The board may grant a party's request for reasonable extension of the deadlines set forth in this chapter.

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(2) REPRESENTATION. A party may be represented throughout proceedings under this chapter, including at hearing, by counsel or by another advocate.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.