

## **VICTIM AND WITNESS RIGHTS**

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### **CONSTITUTIONAL PROVISION ARTICLE I. SECTION 9m**

#### **Victims of crime**

This state shall treat crime victims, as defined by law, with fairness, dignity and respect for their privacy. This state shall ensure that crime victims have all of the following privileges and protections as provided by law:

- ▶ Timely disposition of the case
- ▶ The opportunity to attend court proceedings unless the trial court finds sequestration is necessary to a fair trial for the defendant
- ▶ Reasonable protection from the accused throughout the criminal justice process
- ▶ Notification of court proceedings
- ▶ The opportunity to confer with the prosecution
- ▶ The opportunity to make a statement to the court at disposition
- ▶ Restitution
- ▶ Compensation
- ▶ Information about the outcome of the case and the release of the accused.

The legislature shall provide remedies for the violation of this section. Nothing in this section, or in any statute enacted pursuant to this section, shall limit any right of the accused which may be provided by law. [1993 J.R. 2, vote April 1993]

### **WISCONSIN STATUTES CHAPTER 950**

- ▶ Enabling legislation for these constitutional rights.
- ▶ Articulates victim and witness rights.
- ▶ Delegates responsibilities for providing these rights.
- ▶ Establishes an enforcement mechanism and remedies.
- ▶ Effective December 1, 1998.

## **DEFINITION OF VICTIM UNDER Wis. Ch. 950**

“**Victim**” under sec. 938.02 (20m) and 950.02(4)(a) means:

- ▶ A person against whom a delinquent act or crime has been committed.
  - ▼ “Person” includes natural persons as well as businesses and governments Sec. 990.01.(26)
- ▶ If a child — a parent, guardian or legal custodian.
- ▶ If physically or emotionally unable to exercise the rights then a person designated by the person or a family member.
- ▶ If deceased, any of the following:
  - ▼ A family member
  - ▼ A person who resided with the person who is deceased.
- ▶ If incompetent under ch. 880, the guardian of the person.
- ▶ Does not include a person alleged to have committed the delinquent act or crime.

## **950.04 (1v) RIGHTS OF VICTIMS**

**Victims of crimes have the following rights:**

- ▶ (a) To have his or her interest considered when the court is deciding whether to grant a continuance in the case, as provided under ss. 938.315 (2) and 971.10 (3) (b) 3.
- ▶ (b) To attend court proceedings in the case, subject to ss. 906.15 and 938.299 (1). The court may require the victim to exercise his or her right under this paragraph using telephone or live audiovisual means, if available, if the victim is under arrest, incarcerated, imprisoned or otherwise detained by any law enforcement agency or is admitted or committed on an inpatient basis to a treatment facility under ch. 51, 971 or 980, and the victim does not have a person specified in s. 950.02 (4) (a) 3. to exercise the victim’s right under this paragraph.
- ▶ (bm) To be provided with appropriate intercession services to ensure that employers of victims will cooperate with the criminal justice process and the juvenile justice process in order to minimize an employee’s loss of pay and other benefits resulting from court appearances.

- ▶ (c) To be accompanied by a service representative, as provided under s. 895.73.
- ▶ (d) To request an order for, and to be given the results of, testing to determine the presence of a sexually transmitted disease or of any strain of human immunodeficiency virus, of antigen or nonantigen products of any strain of human immunodeficiency virus, or of an anti-body of any strain of human immunodeficiency virus, as provided under ss. 938.296 or 968.38.
- ▶ (dL) To not be the subject of a law enforcement officer's or district attorney's order, request, or suggestion that he or she submit to a test using a lie detector, as defined in s. 111.37(1)(b), if he or she claims to have been the victim of a sexual assault under s. 940.22(2), 940.225, 948.02(1) or (2), or 948.085, except as permitted under s. 968.265.
- ▶ (e) To be provided a waiting area under ss. 938.2965 and 967.10.
- ▶ (em) To have his or her interests considered by the court in determining whether to exclude persons from a preliminary hearing, as provided under s. 970.03(4).
- ▶ (f) To have the parole commission make a reasonable attempt to notify the victim of applications for parole, as provided under s. 304.06(1).
- ▶ (g) To have reasonable attempts made to notify the victim of hearings or court proceedings, as provided under ss. 938.27 (4m) and (6), 938.273(2), 971.095(3) and 972.14(3)(b).
- ▶ (gm) To have reasonable attempts made to notify the victim of petitions for sentence adjustment as provided under s. 973.195 (1r)(d).
- ▶ (i) To have, at his or her request, the opportunity to consult with intake workers, district attorneys and corporation counsel in cases under ch. 938, as provided under ss. 938.245(1m), 938.265 and 938.32(1)(am).
- ▶ (j) To have, at his or her request, the opportunity to consult with the prosecution in a case brought in a court of criminal jurisdiction, as provided under s. 971.095(2).
- ▶ (k) To 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.
- ▶ (L) To have the district attorney or corporation counsel, whichever is applicable, make a reasonable attempt to contact the victim concerning the victim's right to make a statement, as provided under ss. 938.32 (1)(b) 2., 938.335 (3m)(b) and 972.14(3)(b).

- ▶ (m) 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).
- ▶ (n) To have direct input in the parole decision-making process, as provided by the rules promulgated under s. 304.06(1)(em).
- ▶ (nn) To attend parole interviews or hearings and make statements as provided under s. 304.06(1)(eg).
- ▶ (nt) To attend a hearing on a petition for modification of a bifurcated sentence and provide a statement concerning modification of the bifurcated sentence, as provided under s. 302.113(9g)(d).
- ▶ (o) To have information concerning the impact of a delinquent act on the victim included in a court report under s. 938.33 and to have the person preparing the court report attempt to contact the victim, as provided under s. 938.331.
- ▶ (p) To have the person preparing a presentence investigation under s. 972.15 make a reasonable attempt to contact the victim, as provided in s. 972.15(2m).
- ▶ (pm) To have the court provided with information pertaining to the economic, physical and psychological effect of the crime upon the victim and have the information considered by the court.
- ▶ (q) To restitution, as provided under ss. 938.245 (2) (a)5., 938.32(1t), 938.34(5), 938.345, 943.212, 943.23(6), 943.245, 943.51 and 973.20.
- ▶ (r) To a judgment for unpaid restitution, as provided under ss. 895.035(2m) and 973.09(3)(b).
- ▶ (rm) To compensation, as provided under ch. 949.
- ▶ (s) To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis and property the ownership of which is disputed, shall be returned to the person within 10 days of being taken.
- ▶ (t) To receive information from law enforcement agencies, as provided under s. 950.08(2g).
- ▶ (u) To receive information from district attorneys, as provided under s. 950.08(2r).

- ▶ (um) To have district attorneys make a reasonable attempt to notify the victim under s. 971.17(4m) regarding conditional releases under s. 971.17.
- ▶ (v) To have the department of corrections make a reasonable attempt to notify the victim under s. 301.046(4) regarding community residential confinements, under s. 301.048(4m) regarding participation in the intensive sanctions program, under s. 301.38 regarding escapes from a Type 1 prison, under s. 301.46(3) regarding persons registered under s. 301.45, under s. 302.115 regarding release upon expiration of certain sentences, under s. 304.063 regarding parole releases, and under s. 938.51 regarding release or escape of a juvenile from correctional custody.
- ▶ (vm) To have the appropriate clerk of court send the victim a copy of an inmate's petition for extended supervision and notification of the hearing on that petition under s. 302.114(6).
- ▶ (w) To have the department of corrections make a reasonable attempt to notify the victim under s. 303.068(4m) regarding leave granted to qualified inmates under 303.068.
- ▶ (x) To have the department of health and family services make a reasonable attempt to notify the victim under s. 971.17(6m) regarding termination or discharge under s. 971.17 and under s. 51.37(10) regarding home visits under s. 51.37(10).
- ▶ (xm) To have the department of health and family services make a reasonable attempt to notify the victim under s. 980.11 regarding supervised release under s. 980.06 and discharge under s. 980.09 or 980.10.
- ▶ (y) To have reasonable attempts made to notify the victim concerning actions taken in a juvenile proceeding, as provided under ss. 938.24(5m), 938.25(2m), 938.312 and 938.346.
- ▶ (yd) To have the appropriate clerk of court make a reasonable attempt to send the victim a copy of a motion made under s. 974.07(2) for postconviction deoxyribonucleic acid testing of certain evidence and notification of any hearing on that motion, as provided under s. 974.07(4).
- ▶ (ym) To have the governor make a reasonable attempt to notify the victim of a pardon application, as provided under s. 304.09(2) and (3).
- ▶ (z) To make a written statement concerning pardon applications, as provided under s. 304.10 (2).

- ▶ (zm) To request information from a district attorney concerning the disposition of a case involving a crime of which he or she was a victim, as provided under s. 971.095 (6).
- ▶ (zx) To complain to the department of justice concerning the treatment of crime victims, as provided under s. 950.08(3), and to request review by the crime victims rights board of the complaint, as provided under s. 950.09(2).

## **WITNESS RIGHTS UNDER ACT 181**

### **950.04 (2w) RIGHTS OF WITNESSES.**

Witnesses of crimes have the following rights:

- ▶ (a) To request information from the district attorney about the final disposition of the case.
- ▶ (b) To be notified that a court proceeding to which they have been subpoenaed will not go on as scheduled, in order to save the person an unnecessary trip to court.
- ▶ (c) To receive protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available.
- ▶ (d) To be informed of financial assistance and other social services available as a result of being a witness of a crime, including information on how to apply for the assistance and services.
- ▶ (e) To be informed of the procedure to be followed in order to apply for and receive any witness fee to which they are entitled.
- ▶ (f) To be provided a waiting area under ss. 938.2965 and 967.10.
- ▶ (fm) To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis and property the ownership of which is disputed, shall be returned to the person within 10 days of being taken.
- ▶ (g) To be provided with appropriate employer intercession services to ensure that employers of witnesses will cooperate with the criminal justice process and the juvenile justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.

- (h) To be entitled to a speedy disposition of the case in which they are involved as a witness in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.

## **CHILD VICTIMS AND WITNESSES**

### **950.055 CHILD VICTIMS AND WITNESSES – ADDITIONAL RIGHTS**

**950.055(2) ADDITIONAL SERVICES.** In addition to all rights afforded to victims and witnesses under s. 950.04 and services provided under s. 950.06(1m), counties are encouraged to provide the following additional services on behalf of children who are involved in criminal or delinquency proceedings as victims or witnesses:

- (a) Explanations, in language understood by the child, of all legal proceedings in which the child will be involved.
- (b) Advice to the judge, when appropriate and as a friend of the court, regarding the child's ability to understand proceedings and questions. The services may include providing assistance in determinations concerning the taking of depositions by audiovisual means under s. 908.08 or 967.04(7) and (8) and the duty to expedite proceedings under s. 971.105.
- (c) Advice to the district attorney concerning the ability of a child witness to cooperate with the prosecution and the potential effects of the proceedings on the child.
- (d) Information about and referrals to appropriate social services programs to assist the child and the child's family in coping with the emotional impact of the crime and the subsequent proceedings in which the child is involved.

## **RECOMPENSE FROM FORFEITED BOND**

969.13(5)(b) RECOMPENSE FOR VICTIMS IF BOND IS FORFEITED. The court shall determine a recompense amount for any victim, or if the victim is deceased, for his or her estate, of the crime for which the bond was entered into unless the court finds substantial reason not to do so and states the reason on the record. The court shall determine the recompense amount in the same manner as the court would have determined the restitution amount under s. 973.20(2), (3), (4), (4m), (5), and (7) had the person been convicted.

## **DISTRICT ATTORNEY<sup>1</sup> RESPONSIBILITIES JUVENILE SYSTEM**

Make a reasonable attempt to inform if decide not to file a petition.	938.25(2m)
As soon as practicable, but before plea hearing, offer those who have requested, an opportunity to confer concerning possible outcomes, including potential plea agreements and disposition recommendations.	938.265
Make reasonable attempt to contact victim to inform of the right to be notified of any hearing involving the juvenile. Shall attempt to notify of future appearances if victim wishes.	938.27(4m) <b>(existing law)</b>
Make a reasonable attempt to inform if petition is dismissed or does not result in consent decree or dispositional order.	938.312
Before agreeing to a consent decree, offer opportunity to confer to all victims that have requested it.	938.32(1)(am)
Before entering into a consent decree, make a reasonable attempt to inform the victim of the right to make a statement to the court.	938.32(1)(b) 2.
After a finding of delinquency or JIPS, make a reasonable attempt to inform the victim of the right to make a statement to the court.	938.335(3m)(b) <b>(existing law)</b>

<sup>1</sup> 950.02 **(2m)** "District attorney" means any of the following: (a) The district attorney or other person authorized to prosecute a criminal case or a delinquency proceeding under ch. 938. (b) A person designated by a person specified in par. (a) to perform the district attorney's duties under this chapter.

Also applies to corporation counsel in ch. 938 proceedings.



<p>Make a reasonable attempt to provide notice of the:</p> <ul style="list-style-type: none"> <li>▪ Procedure for requesting HIV or STD testing of a juvenile*</li> <li>▪ Right to request and receive notice of hearings*</li> <li>▪ Right to a separate waiting area*</li> <li>▪ Right to have his or her interest considered concerning continuances</li> <li>▪ Right to have victim impact information included in a court report and to have the person preparing the court report attempt to contact the victim*</li> <li>▪ Right to employer intercession services*</li> <li>▪ Right to make a statement to the court*</li> <li>▪ Right to information regarding any consent decree or dispositional order*</li> <li>▪ Right to request an opportunity to confer, if requested, on amendment of petitions, consent decrees and disposition recommendations and if the district attorney decides not to file a petition or <u>the proceeding is terminated without a consent decree or dispositional order</u>* after the filing of a petition.</li> </ul>	<p>938.346(1m)  <b>*(existing law)</b></p>
<p>Make a reasonable attempt to provide all victims with information about the consent decree and dispositional order.</p>	<p>938.346(1m)  <b>(existing law)</b></p>
<p>Make a reasonable attempt to provide all victims with release and escape notification cards.</p>	<p>s. 938.51(2)  <b>(existing law)</b></p>

## DISTRICT ATTORNEY RESPONSIBILITIES ADULT SYSTEM

<p>As soon as practicable, but no later than 10 days after initial appearance or 24 hours before a preliminary examination, whichever is earlier, shall make a reasonable attempt to provide to each victim the following written information:</p> <ul style="list-style-type: none"> <li>▪ Statement of the procedure for prosecuting a crime</li> <li>▪ List of the rights under sec. 950.04(1v) and how to exercise those rights.</li> <li>▪ Person to contact if victim changes address and wants to continue to receive notices and services</li> <li>▪ Information about compensation under ch. 949</li> <li>▪ Person to contact for further information about the case.</li> </ul>	<p>950.08(2r)</p>
<p>In any charged crime, as soon as practicable, offer an opportunity to confer to victims that have requested, concerning the prosecution, possible outcomes including potential plea agreements and sentencing recommendations.</p>	<p>971.095(2)</p>
<p>At the request of a victim, make reasonable attempt to notify of date, time and place of scheduled court proceedings and any changes. Does not apply to proceedings held prior to initial appearance to set conditions of release.</p>	<p>971.095(3)</p>
<p>Make reasonable attempt to inform victim of decision to not charge a person who has been arrested.</p>	<p>971.095(4)</p>
<p>Make reasonable attempt to inform victim of dismissal of charges.</p>	<p>971.095(5)</p>
<p>Make reasonable attempt to provide victim information concerning the disposition of a case if requested.</p>	<p>971.095(6)</p>
<p>Make a reasonable attempt to notify a victim and DOC if a court conditionally releases an NGI defendant.</p>	<p>971.17(4m)(b)  <b>(existing law)</b></p>
<p>After conviction, make a reasonable attempt to inform victims of convicted offenses and any read-in crimes of right to provide a statement to the court.</p>	<p>972.14(3)(b)  <b>(existing law)</b></p>

## COURT RESPONSIBILITIES JUVENILE SYSTEM

Victims may not be excluded from hearing testimony in a criminal or delinquency proceeding unless finds exclusion is necessary to provide for a fair trial or fact-finding hearing. Mere presence is not sufficient to exclude under this provision	906.15(2)(d)
Before accepting a plea, inquire of District Attorney's compliance with consultation and notice of hearing requirements, and whether notice of hearing given to victims that requested it.	938.30(4m)
Must take into account the interests of the victims in considering a request for a continuance.	938.315(2)
Before entering a consent decree, determine if victim wants to make a statement. If requested, to allow the statement in court or in writing.	938.32(1)(b)1 <b>(existing law)</b>
Before entering a consent decree, inquire of District Attorney's compliance with consultation, notice of right to make a statement, notice of hearing requirements, and whether notice of hearing given to victims that requested it.	938.32(1)(b)1m
Before imposing a disposition, determine if victim wants to make a statement. If requested, to allow the statement in court or in writing.	938.335(3m)(a) <b>(existing law)</b>
Before imposing disposition, inquire of District Attorney's compliance with notice of right to make a statement, notice of hearing requirements and whether notice of hearing given to victims that requested it.	938.335(3m)(am)
Upon request of the victim-witness coordinator open for inspection by the victim-witness coordinator the records of the court relating to the enforcement of these rights or the provision of these services.	938.396(2)(f) <b>(existing law)</b>
Upon request of a victim's insurer disclose the amount of restitution, if any, the court has ordered a juvenile to make to the victim.	938.396(2)(fm)

## COURT RESPONSIBILITIES ADULT SYSTEM

Victims may not be excluded from hearing testimony in a criminal or delinquency proceeding unless the court finds exclusion is necessary to provide for a fair trial or fact-finding hearing. Mere presence is not sufficient to exclude under this provision	906.15(2)(d)
Before accepting a plea of guilty or no contest, shall inquire of District Attorney's compliance with consultation requirements.	971.08(1)(d)
When determining whether to grant a continuance, shall consider the interests of the victim.	971.10(3)(b)3
Before dismissing a criminal charge, shall inquire of District Attorney's compliance with consultation requirements.	971.315
Before pronouncing sentence, shall inquire of District Attorney's compliance with consultation, notice of right to make a statement, notice of hearing requirements and whether notice of hearing given to victims that requested it. (Includes read-ins.)	972.14(2m)
Before pronouncing sentence, shall determine if victim wants to make a statement. (Includes read-ins.)	972.14(3)(a) <b>(existing law)</b>
When a defendant's bond is forfeited, the court shall determine a recompense amount for any victim of the crime for which the bond was entered unless it finds substantial reason not to do so.	969.13(5)(b)

## INTAKE WORKER RESPONSIBILITIES

Offer opportunity to confer before entering a deferred prosecution agreement.	938.24(5) & 938.245(1m)
Make a reasonable attempt to inform if case is closed.	938.24(5) & 938.24(5m)
Make a reasonable attempt to inform victims of the following information: <ul style="list-style-type: none"> <li>▪ Procedure to obtain identity of juvenile and juvenile's parents</li> <li>▪ Procedure to obtain police reports</li> <li>▪ Potential liability of the juvenile's parents</li> </ul>	938.346(1)(a), (b) & (c) <b>(existing law)</b>
Make a reasonable attempt to inform all victims of their right: <ul style="list-style-type: none"> <li>▪ To be accompanied by a service representative,</li> <li>▪ To restitution,</li> </ul>	s. 938.346(1)(h)

<ul style="list-style-type: none"> <li>▪ To crime victim compensation,</li> <li>▪ To a speedy disposition,</li> <li>▪ To have personal property returned</li> <li>▪ To complain to DOJ.</li> </ul>	
<p>Make a reasonable attempt to provide information to all victims regarding the deferred prosecution agreement.</p>	<p>s. 938.346(1m)  <b>(existing law)</b></p>

**COUNTY RESPONSIBILITY**

<p>If available and practical, provide waiting area for victim and witnesses that is separate from any used by juvenile, defendants or their relatives and witnesses. If not, provide means to minimize contact.</p>	<p>938.2965 &amp; 967.10</p>
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**LAW ENFORCEMENT AGENCY RESPONSIBLE FOR INVESTIGATION RESPONSIBILITY**

<p>If requested by the victim-witness coordinator, disclose to the victim-witness coordinator any information in its records relating to the enforcement of rights under the constitution, this chapter and s. 950.04 or the provision of services under s. 950.05 950.06 (1m).</p>	<p>938.396(1g)  <b>(existing law)</b></p>
<p>No later than 24 hours after initial contact, make a reasonable attempt to provide the victim with the following written information:</p> <ul style="list-style-type: none"> <li>▪ List of the rights under sec 950.04(1v)</li> <li>▪ Information about compensation under ch. 949</li> <li>▪ Address and phone number of intake worker, DA, or corp. counsel, to obtain info about rights, notice of hearings and to request opportunity to confer</li> <li>▪ Address and phone number of custodial agency</li> <li>▪ Procedures to follow if threatened or intimidated</li> <li>▪ Addresses and phone numbers for victim assistance, including medical services.</li> </ul>	<p>950.08(2g)</p>
<p>If requested by a victim, may disclose any information in its records relating to the injury, loss or damage suffered by the victim, including the name and address of the juvenile and parents.</p>	<p>938.396(1r)  <b>(existing law)</b></p>

## **VICTIM & WITNESS RIGHTS ENFORCEMENT & REMEDIES**

### **Department of Justice Wis. Stat. § 950.08 (3)**

- ▶ May receive complaints
- ▶ Seek to mediate complaints
- ▶ With the consent of the involved parties, actually mediate complaints regarding the treatment of crime victims and witnesses by public officials, employees or agencies or under crime victim and witness assistance programs.
- ▶ May act as a liaison between crime victims or witnesses and others when seeking to mediate these complaints and
- ▶ May request a written response regarding the complaint from the subject of a complaint.
- ▶ If asked by the department to provide a written response regarding a complaint, the subject of a complaint shall respond to the request within a reasonable time.

### **Crime Victims' Rights Board Wis. Stat. § 15.255(2)**

- ▶ 5 Members:
  - ▾ One District Attorney (WDAA appointee)
  - ▾ One local law enforcement representative (AG appointee)
  - ▾ One Victim-Witness Coordinator (AG appointee)
  - ▾ Two state citizens (one Crime Victim Council appointee; one Governor appointee)
- ▶ The board shall promulgate rules establishing procedures for the exercise of its powers under this section.
- ▶ May review a complaint made to DOJ regarding a violation of the rights of a crime victim at the request of one of the involved parties, Sec. 950.09(2)
- ▶ Request to the Board may not be made until DOJ has completed its action on the complaint.
- ▶ The board may not begin any investigation or take any action until it first determines that there is probable cause to believe that the subject of the complaint violated the rights of a crime victim.

### **Crime Victims' Rights Board Actions Wis. Stat. §§ 950.09(2), (3), (4)**

- ▶ Issue private or public reprimands
- ▶ Refer judge violations to judicial commission
- ▶ Seek appropriate equitable relief (no appeal to reverse or modify conviction or sentence)
- ▶ Bring a civil actions for forfeiture of up to \$1,000
  - ▼ Violation - Public official, employee or agency that **intentionally** fails to provide victim right subject to \$1,000 forfeiture. 950.11
  - ▼ Board may settle for agreed upon sum; shall treat comparable situations in a comparable manner and assure that settlement bears a reasonable relationship to severity of offense.
  - ▼ Forfeiture action shall be brought in county in which violation alleged to have occurred.
- ▶ Issue reports and make recommendations on victim rights and services.
- ▶ Actions not subject to review or approval of AG

### **Confidentiality of Complaints Wis. Stat. § 950.095**

- ▶ DOJ records on complaints confidential unless waived by subject of the complaint.
- ▶ Complaint referred to the Board confidential before probable cause finding unless waived
- ▶ If complaint becomes public before a finding of probable cause by the board:
  - ▼ DOJ/Board may confirm complaint made/being reviewed
  - ▼ Clarify the procedural aspects of the action
  - ▼ Explain subject's right to respond and deny allegations
  - ▼ Advise that action completed and no basis for the complaint was found.
  - ▼ Correct public misinformation

### **Complaint Investigation restrictions Wis. Stat. § 950.095 (1m)**

- Avoid unnecessary embarrassment/publicity for the subject of the complaint.
- Request nondisclosure of the investigation by others.

### **DOJ/Board may: Wis. Stat. § 950.095 (2)**

- Inform complainant of outcome
- Refer to information judicial commission, chief justice, attorney disciplinary board, or law enforcement agency its findings.

### **Limitation on liability; appeals Wis. Stat. § 950.10**

- No cause of action for money damages for failure to comply.
- Failure to provide right, service or notice not grounds to appeal, reverse or modify a conviction or sentence.

### **FAQ's**

The following reflects an interpretation of the law and what the current common practices are.

**1. Are victims of county or municipal ordinance violations entitled to the same rights?** Law enforcement agencies need not provide victims with the required written information if they are certain the case will be handled as a county or municipal ordinance violation. However, if it is unknown how the case will be handled, law enforcement should provide victims with the required written information. If an arrest has been made and the prosecutor chooses not to file criminal charges and refers it back as an ordinance violation, the victim should be informed of the prosecutor's decision not to charge.

**2. Are law enforcement officers considered a "victim" when injured by an offender?** Law enforcement officers who suffer a personal injury should be afforded the same rights as "citizen" victims. There is not a consensus on whether these offenses without injury require notice. Some judges are considering the officers a victim and requiring notice.

**3. Are there victims in cases involving mutual combatants?** "Victim" does not include persons charged with or alleged to have committed the crime. In appropriate situations (e.g., domestic violence cases), agencies may choose to provide information and services to the parties.



**4. Can victims be given the identity of a juvenile offender in order to obtain information about the offender's pre-adjudication release from a detention facility?** The law permits a law enforcement agency, pursuant to official agency policy, to disclose to a victim any information in its records relating to the injury, loss or damage suffered by the victim, including the juvenile's name and address [s. 938.396(1r)]. A law enforcement agency, if requested shall disclose to the victim-witness coordinator information in its records and may be used by the coordinator for the purpose of ensuring victims receive the rights and services to which they are entitled [s. 938.396(1g)]. A victim-witness coordinator may disclose the juvenile's name and address to the victim [s. 938.396(1g)].

**5. To which rights are victims of read-in offenses entitled?** The victim should be informed of the decision not to charge if an arrest was made or to dismiss the charge, whichever is pertinent, and of their rights to receive notice of, to attend and to make a statement at the sentencing hearing, to confer with the prosecutor regarding the sentencing recommendation, and to an order of restitution.

**6. Can victims waive their rights?** In situations where there may be a large volume of offenses committed against an identifiable entity, e.g., worthless check cases, retail theft, some offices are allowing potential victims to indicate in advance whether they wish to exercise their right to receive notices of and attend court proceedings or to confer with the prosecutor (i.e., a notice and waiver on the worthless check form). The victims are provided with information on the disposition of the case, including restitution orders. Victims are always entitled to request to exercise all their rights in any specific case.

**7. How should cases consolidated with another county be handled?** Extra efforts should be taken to coordinate and document information and services to ensure that all victims (including read-ins) are afforded all of their rights, including information on how to exercise those rights.

**8. When and how should a victim's interest be considered by a court in granting a continuance under s. 971.10?** Under this section, courts are required to consider several factors, including the interests of the victim, in granting or denying a motion for a continuance. Courts may consider the victim's interest in the same manner and to the same extent, as the other specified interests, and must set forth its reasons either orally or in writing. There is no specific requirement that victims be given notice or an opportunity to provide direct input into the court's decision, although a court has the discretion to solicit such input. Since courts have the inherent authority to set its own calendar, many changes in court schedules are made that are not continuances under s. 971.10 and, therefore, do not mandate consideration of victims' interests.

**9. Can the victim's rights form be given to a Child Protection Worker or the Guardian ad Litem until the non-offending parent has been determined?**

An officer may be justified in providing the victim rights notice to the child's protection worker or a guardian ad litem until the non-offending parent has been determined. Victim is defined in § 938.02(20m)(a) and § 950.02(4)(a) to include a child's parent, guardian, or legal custodian. The definition of victim also excludes any person charged with or alleged to have committed the crime under § 940.02(4)(b). Thus, child protection workers or guardians ad litem could be reasonably interpreted to fall under the persons capable of receiving notice for the child. Further, until the law enforcement officers have determined who the non-offending parent is, the parents are not entitled to notification. When the non-offending parent is identified, he or she should be provided with the required information.

**11. If you have conferred with a victim regarding a specific plea agreement, when must you "re-confer" if the agreement changes?**

Under 971.095 the opportunity to confer references are made to the possible outcomes of the prosecution, including potential plea agreements and sentencing recommendations. Using this as a guideline it is recommended that if the newly negotiated terms of the plea agreement change with respect to the outcome and particularly if there are changes in the sentencing recommendation by the prosecution, the victim should be made aware of that in advance of the plea actually being entered. Sufficient opportunity should be given to the victim for the conferring opportunity to be meaningful, i.e. not as a prosecutor is walking into the court for the plea hearing. There should be no "surprises" to the victim, i.e. that certain charges are going to be dismissed, charge reduced from a felony to a misdemeanor, changes in the amount of jail time recommended, etc.

**12. Do the victim rights provisions apply to sexual predator proceedings?**

Technically under 950.05(1v)(xm), information is to be provided to the victim regarding supervised release and discharge. That is the extent of what the law requires in sexual predator proceedings relative to victims' rights. However, a good practice to incorporate if you are responsible for a Chapter 980 case is to determine if there are any crime victims registered in the PENS system through the Department of Corrections. If there are victims registered for notification of release of the offender, it is an indication that the crime victim has at some point made a decision to receive information concerning an offender's whereabouts. The victim may want to be notified that a commitment proceeding is being undertaken by the district attorney's office.