



REPORT AND RECOMMENDATION OF THE WISCONSIN CRIME VICTIMS RIGHTS BOARD

Determining Victim Status

Introduction

The Crime Victims Rights Board (“Board”) has authority to issue reports and recommendations concerning the securing and provision of crime victims’ rights and services. This report and recommendation is issued in response to a complaint received by the Board. The Board recognizes that a variety of practices exist for determining victim status in incidents involving multiple offenders. The Board provides the following recommendations to assist agencies in making these determinations.

Complaint and Board Action

An incident occurred that resulted in two individuals being charged with criminal acts. Individual A was charged with Disorderly Conduct in violation of Wis. Stat. § 947.01(1) and Bail Jump in violation of Wis. Stat. § 946.49(1)(a); Individual B was charged with Substantial Battery in violation of Wis. Stat. § 940.19(2), committed against Individual A.

The district attorney determined that Individual A was not a victim and, therefore, was not entitled to receive victims’ rights information and services from the district attorney’s office in the case against Individual B. In making this determination, the district attorney relied on Wis. Stat. § 950.02(4)(b). Individual A filed a complaint with the Board.

The complaint before the Board focused on the interpretation of Wis. Stat. § 950.02(4)(b), which provides that a “victim” does not include a person charged with or alleged to have committed the crime. The district attorney concluded that, because Individual A was charged with criminal offenses arising out of the same incident, Individual A was prohibited from asserting victim status with respect to the substantial battery charge against Individual B.

The Board determined that Individual A qualified as a victim entitled to victims’ rights in the case against Individual B. In reaching this determination, the Board noted that Individual B was charged with substantial battery against Individual A, while Individual A was not charged with that offense. Accordingly, § 950.02(4)(b) does not apply in this circumstance. The Board further found that the district attorney’s determination that Individual A was not a victim resulted in violations of Individual A’s statutory and constitutional victims’ rights.

Relevant Law

- **Wis. Stat. § 950.02(4)(a)(1):** “Victim” is defined as “a person against whom a crime has been committed.”
- **Wisconsin Stat. § 950.02(4)(b):** “Victim” does not include the person charged with or alleged to have committed the crime.
- **Wis. Const. art. I, § 9m(1)(a)(1):** “Victim” is defined as “a person against whom an act is committed that would constitute a crime if committed by a competent adult.”
- **Wis. Const. art I, § 9m (2):** “Victim” does not include the accused or a person who the court finds would not act in the best interests of a victim who is deceased, incompetent, a minor, physically or emotionally unable to exercise his or her rights under this section.

Board Recommendations

- For purposes of eligibility for victims’ rights, “victim” is defined in both state statute and the state constitution. 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), the person whom the alleged conduct is committed against is a victim for the purpose of eligibility for victims’ rights.
- Victims’ rights vest at the time of victimization¹. It is important that victim status is reviewed and determined as early as possible. The Board recommends agencies enact clear policies and protocols for identifying victims in a case, including defining responsibility within the agency for timely victim status determinations. The Board additionally recommends that decisions regarding victim status determinations be clearly documented.
- If a victim is included in the elements of the offense, any person who meets the definition of a victim should be considered a victim for purposes of determining eligibility for victims’ rights.² In cases where a crime does not include a victim as an element of the offense, the determination may be more complex; however, the analysis must still be conducted and documented.
- Wis. Stat. § 950.02(4)(b) provides that “victim” does not include **the** person charged with or alleged to have committed **the** crime (emphasis added). The Board interprets this provision as intended to prohibit an individual from asserting victim status for the crime they are charged with or alleged to have committed. The Board does not believe this provision is intended to be that a person who is alleged to have committed **a** crime during an incident or series of

¹ Wis. Const. art. I § 9m (2) states “In order to preserve and protect victims’ rights to justice and due process throughout the criminal and juvenile justice process, victims shall be entitled to all of the following rights, **which shall vest at the time of victimization** and be protected by law in a manner no less vigorous than the protections afforded to the accused...” (emphasis added).

² There may be circumstances that justify excluding an individual who would otherwise meet the definition of a victim. See Wis. Stat 950.02(4)(b) and Wis. Const. art. 1 § 9m(1)(b).

incidents is ineligible to assert victim status for a different crime committed against them by another individual.

- In incidents involving multiple participants, an individual may be alleged to have committed one offense while also being the victim of a separate offense committed by another person. In such cases, victim status should be evaluated separately for each alleged crime.
- The Board recognizes situations arise where a victim's status may change when additional information and evidence come to light. Agencies must act upon the best information they have at any given time and provide victims' rights immediately and up until it becomes clear that a person is not a victim.
- The Board recommends any change regarding eligibility for victims' rights be communicated to the affected individual in a timely manner. If an agency has initially provided an individual with victims' rights information and then later determines the individual is no longer eligible for victims' rights, the agency should inform the individual that their status has changed, and the agency will no longer provide the individual with victims' rights services.
- Victims who are also defendants may be represented by an attorney. Agencies should consider implementing policies and procedures for interacting with represented victims. Agencies' statutory and constitutional victims' rights obligations remain even when victims are represented by an attorney.

Dated this 20th day of March, 2026.



Chairperson Jennifer Dunn
Crime Victims Rights Board