

**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 several cases in which a person confined in a jail or prison and meeting the statutory definition of “victim” was denied his or her crime victims’ rights. The case at hand provides the Board with an opportunity to recommend to criminal justice officials some guidelines related to the securing of victims’ rights for confined persons.

Factual Background

The complainant was being held in a county jail when he received notice of a hearing involving a crime committed against his minor child. As the parent of a victim who was a minor, the complainant met the statutory definition of “victim” set forth in Wisconsin Stat. § 950.02(4)(a)2. He was entitled to rights, including the right to attend court proceedings in the case involving his child, pursuant to Wisconsin Stat. § 950.04(1v)(b).

The complainant made requests to jail staff that he be allowed to attend the hearing to support his child, who was to testify at the hearing. After several requests one of the jailors called the assistant district attorney prosecuting the case to discuss possible transport of the complainant. According to the jailor, the prosecutor replied that, “[Complainant] doesn’t need to be here.” The jailor interpreted that statement to mean that the jailors were not obligated to make arrangements for the complainant to attend the hearing. Consequently, the complainant was not allowed to attend the hearing.

Statutes Involved

Wisconsin Stat. § 950.02(4)(a)1. defines “victim” as “[a] person against whom a crime has been committed.”

Wisconsin Stat. § 950.02(4)(a)2. defines “victim” as “a parent, guardian or legal custodian of the child” if the person specified in Wis. Stat. § 950.02(4)(a)1. is a child; *i.e.*, is a person who is less than 18 years of age. Wis. Stat. § 950.02(1).”

Wisconsin Stat. § 950.04(1v)(b) provides that victims of crimes have the right 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.

Wisconsin Stat. § 950.07 provides that the county board, district attorney, local law enforcement agencies, local social service agencies, victim and witness offices and courts shall all cooperate with each other to ensure that victims and witnesses of crimes receive the rights and services to which they are entitled under this Wis. Stat. Chapter 950.

Report and Recommendation

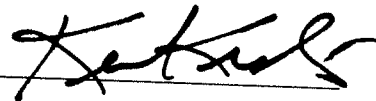
The Board has received evidence in this case, as well as in others, of confined victims not receiving the victims' rights to which they are entitled. Obviously, a confined victim lacks the practical resources and freedom of movement necessary to carry forth a vigorous and effective defense against violations of his or her victims' rights. This is especially true concerning the right to attend a proceeding. Ensuring the provision of rights to persons under the authority of the state requires communication and cooperation across governmental systems and such cooperation is mandated by Wisconsin Stat. § 950.07. In light of these considerations, the Board notes the following:

1. Procedures should be developed to ensure communication between institutions of confinement and any offices providing victims' rights and services to a confined victim of crime. The protocol should contain the following guidelines:
 - a. The persons with authority over the confined victim should be notified that the victim has the right to attend court proceedings, in accordance with Chapter 950.04(1v)(b), which provides for telephone or audiovisual options if transporting the victim is problematic.
 - b. If a person in confinement asserts a victims' right, the persons with authority over the confined victim should contact the victim witness office and/or prosecutor to ascertain whether the person has victim status; whether he or she is entitled to exercise the specific right requested; and if entitled to attend a hearing, to make arrangements for the method of attendance.
2. A victim's right to attend a hearing is independent of a prosecutor's need for the victim to be present.
3. If a 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], he or she is not automatically entitled to attend a hearing *in person*. The court can be asked to require that this right be exercised in a

manner other than physical attendance, using telephone or live audiovisual means, if available.

4. To best facilitate the intergovernmental cooperation mandated by Wisconsin Stat. § 950.07 to ensure the provision of rights, the Board will forward a copy of this Report and Recommendation to state offices and professional associations in affiliation with law enforcement, corrections staff, district attorneys, the courts and victim/witness professionals. The Board forwards this report with the hope the leadership of these agencies and associations will seek collaboration with one another across criminal justice systems to ensure that confined victims are afforded their rights in accordance with Wisconsin law.

Dated this 28th day of June, 2007.



KENNETH R. KRATZ
Chairperson
Crime Victims Rights Board