



## REPORT AND RECOMMENDATION OF THE WISCONSIN CRIME VICTIMS RIGHTS BOARD

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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 criminal justice officials some guidelines when determining whether a person fits the statutory definition of “victim” for the purpose of providing services and rights.

### **Factual Background**

The Department of Justice was contacted by Mr. K., who alleged his crime victim rights were being violated by the district attorney of the county in which he lived. Mr. K. sought mediation services to assist him in exercising his crime victim rights. The Department determined that Mr. K was not entitled to seek mediation services because of his own criminal conduct during the incident in which he was victimized. The Department determined that Mr. K.’s victimization was an inseparable part of a single incident among mutual combatants and that Mr. K. fit the exception to the definition of “victim” contained in Wis. Stat. § 950.02(4)(b). Mr. K. requested that the Wisconsin Crime Victims’ Rights Board review the Department’s decision, alleging that he had been unfairly denied the right of crime victims to complain to the Department of Justice concerning the treatment of crime victims, [as provided under s. 950.08(3)].

### **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)(b)** provides: “‘Victim’ does not include the person charged with or alleged to have committed the crime.”

**Wisconsin Stat. § 950.04(1v)(zx)** provides that victims of crime have the right “[t]o 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).”

## **Report and Recommendation**

The need to determine whether a person is a victim arises at multiple points in the criminal justice process. The facts that contribute to this decision are not always clear. Sometimes determining victim status is a discretionary determination that requires the exercise of reason and judgment. For example, a law enforcement officer who has initial contact with a person must determine whether that person is a victim to whom the officer is obligated to provide the information required by Wis. Stat. § 950.08(2g). At that time, it may not be clear to the law enforcement officer that a crime has been committed, or that the person with whom the officer has had contact is entitled to “victim” status. Under those circumstances, law enforcement acts reasonably by providing the required written information to those individuals who might be crime victims.

A law enforcement agency’s initial determination about that person’s victim status might change during the course of an investigation, as additional information is gathered. Similarly, a district attorney must make a determination whether that person is a victim to whom the district attorney’s office is obligated to provide the information required by Wis. Stat. § 950.08(2r). That initial determination, too, might change during the course of a prosecution, at various points in the process when victims have the opportunity to exercise their victims’ rights.

In addition, law enforcement, prosecutors and judges might allow some individuals to participate in some or all of the criminal justice process as if they are victims, even if they do not satisfy the statutory requirements for victim status.

In general, the criminal justice system benefits when decisions about victim status are consciously made at various stages of the process, because mistakes can be corrected and correct decisions can be reinforced. In the case at hand, the Department of Justice made its decision to deny victim status based on the fact that the complainant engaged in criminal conduct during the incident in which he was victimized. The Board concluded that the Department’s method in reaching its decision was not unreasonable. The Board did not make a finding as to whether the complainant would be considered a victim by the Board’s interpretation of the victims’ rights statutes. However, the case highlighted the challenges and consequences of making a determination that makes someone ineligible to receive victim rights and services. Therefore, the following recommendations are presented to practitioners responsible for making this determination:

1. Decision-makers should seek as much information about a case as possible before making a determination about victim status.
2. While every case must be evaluated based on the information available at the time, an agency or public official would benefit from developing a policy or methodology to be applied uniformly to all potential victims with whom the agency or official has contact. Agencies and officials should document decisions that deny persons of services and maintain a complete record of those decisions.

3. To most effectively serve the Legislature's intent that "victims and witnesses of crime are treated with dignity, respect, courtesy and sensitivity," Wis. Stat. § 950.01, law enforcement agencies, district attorneys offices, judges and the Department of Justice would be well served by :
  - a. determining at the appropriate stages of their respective involvement in a case whether particular individuals affected by events in the case are victims entitled to exercise the full set of crime victims rights;
  - b. determining whether some individuals who are not victims will be afforded some or all of the rights and services available to crime victims;
  - c. identifying what limitations will be placed on the rights and services that are to be made available to individuals who are not victims; and
  - d. clearly communicating to those individuals who are not "victims" the extent of information, services and participation, if any, that will be provided.
4. An agency or official's decision to deny victim status during one stage of a case does not preclude a different agency or official from making a different assessment as more information becomes available in a later stage of a case. Agencies and officials should not blindly adhere to a previous determination about victim status. Each official and agency must make a decision about victims' rights entitlement based on the applicable statutory obligations and the facts of the case.
5. A decision made by the Department of Justice regarding eligibility for reimbursement through the Crime Victims Compensation Program is not relevant when determining whether a person is entitled to victim status under Wis. Stat. Chapter 950 for the purpose of the rights and services.
6. A decision by the Department of Justice to deny victim status need not sever that person's access to the Crime Victims Rights Board. In the case at hand, a decision was made to withhold a formal complaint form, based on the fact that the Board's jurisdiction is limited to complaints brought by persons who are victims of crime. This approach can be problematic given the Department's role as both an agency with statutory obligations to victims and as gatekeeper to the formal complaint process in which the Department could be a respondent. If a person wants to challenge the Department's victim status determination (i.e., allege a violation of his or her right to complain to the Department or to receive mediation services) it would be helpful to the Board to have a full record of action taken by the Department. The Board recommends that the Department do the following to create a record when there is a disagreement regarding victim status:

- a. Explain to the person to whom victim status was denied the standard used by the Department based on the "victim" definition in Wis. Stat. 950.02(4) and;
- b. Ask the person to whom victim status was denied how he or she fits into the statutory definition and why he or she avoids the exception in Wis. Stat. 950.02(4)(b).
- c. The Department can demonstrate the reasoning process it used to deny victim status under the appropriate standards. If the disagreement about victim status remains, the Department can inform him or her that a request can be made of the Board to review the Department's decision by sending a letter to the Board.

Dated this 5<sup>th</sup> day of June, 2007.



KENNETH R. KRATZ  
Chairperson  
Crime Victims Rights Board