



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 a situation that provides the Board with an opportunity to recommend to criminal justice officials some guidelines to ensure that the provision of crime victim rights and services are meaningful.

Factual Background

A complaint was filed with the Board by the legal guardian of a minor whose father was killed as a result of an automobile crash caused by an intoxicated driver. The complaint alleged that the district attorney’s office had been unresponsive to calls made by the complainant seeking information about court dates and alleged that the victim would have liked to have met with the prosecutor prior to a sentence recommendation being presented to the court. The circumstances described in the complaint indicated that the victim’s right to confer might have been violated. However, the complaint was ultimately dismissed because the complainant in fact had not made a request to confer. Though written materials provided to the complainant explained how to exercise the right to confer (instructing the complainant to call the district attorney’s office to request an appointment) the complainant had instead expected that the prosecutor would initiate the contact to set up an appointment prior to the resolution of the case.

Though the Board found no evidence of a violation of the right to confer, it did note practices that may have contributed to the complainant’s confusion about how to exercise that right. Shortly after the crime, the victim’s legal guardian received notice of victims’ rights from the district attorney’s office, along with a form to request certain rights. The form gave the victim the opportunity to check boxes to indicate the level of notification of court proceedings desired by the victim. At the top of the form was the statement: “You must return this form by August 9...” The form included a paragraph explaining that if the victim wanted to confer with the prosecutor, the victim would need to call the prosecutor’s office to make an appointment “by the date indicated at the top of this form” [August 9]. The timelines imposed by the form gave the victim less than one week to fill out and return the form and to make an appointment to confer with the prosecutor, if desired. The victim had to make these decisions within days of the homicide and funeral. At the time the form was returned, the victim did not make an appointment to confer. The timeline on the form

implies that a victim has only one chance—in this case “by August 9”—to assert the right to confer.

It is possible that the deadline on the form contributed to victim’s confusion about how the right to confer would be exercised, particularly after the deadline of August 9 had passed.

Statutes Involved

Wis. Stat. 950.04(1v) Rights of victims. Victims of crimes have the following rights:

950.04(1v)(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) .

Wis. Stat. 971.095(2):

In any case in which a defendant has been charged with a crime, the district attorney shall, as soon as practicable, offer all of the victims in the case who have requested the opportunity an opportunity to confer with the district attorney concerning the prosecution of the case and the possible outcomes of the prosecution, including potential plea agreements and sentencing recommendations. The duty to confer under this subsection does not limit the obligation of the district attorney to exercise his or her discretion concerning the handling of any criminal charge against the defendant.

Report and Recommendation

1. District attorneys should consider the reasonableness of any deadlines imposed upon victims to assert their rights. In some cases, particularly serious and sensitive crimes, such deadlines may prevent victims from fully exercising their victims’ rights. It is not reasonable to expect a victim to know by a deadline early in the case that he or she might want to confer later, regarding a plea negotiation, for example.
2. Victims have the right to request to confer throughout the case. A victim may initially opt not to request to confer but desire to do so later. Any forms that give the impression that the right to confer is limited by some type of deadline should be clarified.
3. Victim witness staff and district attorneys should keep in mind that victims may not fully comprehend or remember details provided to them while they were in trauma and/or engaged with medical or funeral details. Meaningful conversation with victims throughout the case is vital to ensure that victims have the full capacity to exercise their rights. In cases of serious or sensitive crimes, the need to communicate with the victim may be even more imperative to ensure the meaningful provision of victims’ rights.

4. Victim witness staff plays a pivotal role in setting realistic expectations for victims regarding victim services and how to assert victim rights at different points in the case. A layperson's understanding of the system is often limited. A victim may have expectations for a level of contact that is not feasible or not standard practice. For serious and sensitive crimes, a more proactive approach involving direct communication from victim witness to ensure that a victim understands the process is recommended.
5. Plea negotiations evoke strong emotions for many victims and it is prudent to review rights and services with a victim when a plea is being considered. Victims often misunderstand the meaning of conferring. This misunderstanding can be exacerbated amid the heightened emotions that arise when a plea is contemplated. Best practice in serious and sensitive crimes is to speak with the victim to ensure that the victim understands the right to confer and how to exercise it.
6. In the case at hand, the district attorney's office staff spent considerable time assisting the victim's legal guardian with questions about court proceedings. However, calls placed by the guardian were not returned quickly and it was up to the guardian to be persistent to reach staff in order to get information. This greatly contributed to the victim's perception that the office was unresponsive, despite the considerable contact that occurred. Staff could have minimized the victim's frustration by returning calls in a timelier manner.

Dated this 7th day of Aug, 2008.



KENNETH R. KRATZ

Chairperson, Crime Victims Rights Board