



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 prosecutors the best practice for protecting a victim's right to a speedy disposition of the case.

Factual Background

The matter before the Board concerns theft of cattle worth over \$250,000. The victim of the crime reported the theft to law enforcement. The crime was investigated and referred to the district attorney's office. After waiting approximately two years for the district attorney to make a charging decision, the victim filed an informal complaint with the Department of Justice ("DOJ") alleging a violation of the victim's right to a speedy disposition of the case. During informal mediation, the district attorney informed the DOJ that a charging decision would be made within 30 days. However, a charging decision was not made and shortly after the DOJ informal complaint case was closed, the victim filed a formal complaint with the Wisconsin Crime Victims Rights Board ("Board").

In analyzing allegations of violations of the right to a speedy disposition, the Board employs the following methodology. First, each delay is identified. Second, the Board determines the reason given for the delay. Third, the Board determines whether the delay is reasonable. Fourth, if the Board determines that the delay is unreasonable, it determines whether the delay is attributable to the respondent. Violation of the right to a speedy disposition occurs only if each of the four elements is present.

The Board identified six periods of delay during the nearly three years since the case had been referred to the district attorney for a charge. The Board found that two of the six periods of delay (one an 18-month delay and the other a 10-month delay) constituted a violation of the complainant's right to a speedy disposition.

The principal reasons given for the 18-month delay were: (1) the district attorney preferred to delay a charging decision altogether rather than decline the case and reopen it if new information surfaced. The case was left pending with the intention that a charging decision would be made sometime prior to the expiration of the statute of limitations. During this period of time, the investigation was completed and there were no pending requests for further information or investigation; and, (2) the district attorney assumed the victim would prefer to have no decision rather than a "no charge"

decision. Additionally, the Board found that the DA's Office did not have a system by which uncharged cases were reviewed, which made it easy to forget how long the case had been pending with no activity.

The principal reasons given for the 10-month delay were: (1) the district attorney preferred to delay a charging decision rather than close the case and have to open a new file if additional information surfaced prior to expiration of the statute of limitations. During this time period, the law enforcement investigation was completed with no pending requests from the district attorney for information or investigation; and (2) the district attorney believed the victim would prefer to have no decision rather than a "no charge" decision. During this time period, the district attorney was aware that the victim had filed a complaint with DOJ and the Board.

Statutes Involved

Wisconsin Stat. § 950.04(1v)(k) provides that victims of crimes have the right "[t]o 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."

Recommendations:

1. In this case, as in many cases that come before the Board, proactive communication between the agency and the victim may have reduced the frustration and distress caused by the charging delay. During the three years that the case was pending, the victim was never contacted by anyone in the district attorney's office. Though a "no charge" decision would have been viewed unfavorably by the victim, it would have provided the victim with the opportunity to assess other options, such as civil remedies, while the case was fresher. It would have relieved the victim of the stress of wondering when and whether the case was going to go forward.
2. The Board is very aware of the workload burdens experienced in district attorney's offices of all sizes. The experience of this office is likely similar to many others across the state in which there are many cases in progress and it is challenging to address the needs of all involved parties. These conditions make it even more important that district attorneys create and utilize systems for periodic review of pending cases. Without such reviews built into the system at regular intervals, it is very easy for a case to fall through the cracks. Being fully aware of how long a case has been pending without any activity will help an agency make decisions about taking action—even if such action is simply to notify victims that the case has not been forgotten.
3. It is concerning to the Board that the main timing constraint considered by the district attorney was the statute of limitations for the crime. The Wisconsin Constitution (article I, section 9m) requires the state to ensure that crime victims have a timely disposition of the case. Wisconsin Statute § 950.04(1v)(k) provides that crime victims have a right to speedy disposition of the case. Delaying a decision for years until just before the statute of limitations will expire, when there is no activity on the case and no plans for further activity on the case, does not align with those directives. A decision to not file charges could have been made when it was clear that the evidence obtained through the

investigation was insufficient to support a prosecution and no additional investigation was contemplated. If more information had become available at a later date, the agency could have opened a new file and moved forward at that point.

4. The financial losses incurred by the victim as a result of this crime were significant. Having to wait for a response from the criminal justice system while at the same time trying to mitigate the enormous financial impact of the crime on the victim's business caused considerable stress and frustration. The district attorney's office communicated with the victim only in response to communications initiated by the victim. If a district attorney determines that he or she cannot ethically proceed with charging a crime, the Board recommends that the decision be made and explained to the victim(s) at that time, rather than delaying the decision or the communication of that decision for an extended period of time. Though a "no charge" decision may be difficult for a victim to accept, it allows the victim the courtesy of knowing he or she will not have further responsibilities related to a criminal case.

Dated this 29th day of January, 2013.



TRISHA ANDERSON
Chairperson, Crime Victims Rights Board