



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 following Report & Recommendation relates to a victim's right to receive notice of court proceedings and a meaningful opportunity to present information to the court.

Factual Background

A victims' rights complaint was filed with the Board by a victim whose neighbor pointed a handgun at the victim in the presence of the complainant's small children.

Shortly after the case was charged, the district attorney's office sent the complainant a Victim Notification Request Form with instructions to return it by a certain date. The Victim Notification Request Form provided the complainant with notice of the right to make a statement to the court in person and cautioned that sentencing might occur at any stage of the process. The form instructed that if the complainant wanted to make a statement at sentencing, a request should be made to receive notice of all hearings and the complainant should plan to attend the hearings. The complainant returned the form by the deadline with a request to exercise specific rights, including the right to receive notice of all hearings and to confer with the prosecutor.

The case moved quickly. Prior to the defendant's initial appearance, the defendant and his attorney entered into a Deferred Prosecution Agreement with the prosecutor. The complainant was not given an opportunity to confer with the prosecutor prior to the initial appearance and consequently was unaware of the agreement reached with the defendant. The complainant was not given notice of the hearing. At the hearing, the terms of the Deferred Prosecution Agreement were entered into the record. Having been deprived of notice of the hearing, the complainant was not present and therefore not afforded the right to make a statement to the judge about the significant trauma suffered by the complainant's young children and the complainant as a result of the crime.

The complainant filed a formal complaint with the Crime Victims Rights Board, alleging that the district attorney's office violated the victim's right to attend court hearings, Wis. Stat. § 950.04(1v)(g); to confer with the prosecution, Wis. Stat. § 950.04(1v)(j); and to provide the court with information about the crime's impact, Wis. Stat. § 950.04(1v)(pm).

The Board found that because the complainant was not given notice of the initial hearing and was not given the opportunity to consult with the prosecutor prior to the initial hearing, the complainant was deprived of a meaningful opportunity to attend the hearing and a meaningful opportunity to provide the court with information, resulting in violations of the complainant's victims' rights.

The Board ordered the issuance of this report and recommendation in response to the violations, noting that the complaint involves actions taken by the former district attorney, prior to the time the current district attorney assumed the duties of the office. The Board appreciates the candor of the current district attorney and prompt cooperation with the Board's duty to review the complaint involving that office.

Relevant Statutes

Wisconsin Constitution Art. I, Sec. 9m provides that the state "shall ensure that crime victims have... the opportunity to attend court proceedings... notification of court proceedings; the opportunity to confer with the prosecution; the opportunity to make a statement to the court at disposition."

Wisconsin Stat. § 950.04(1v)(j) provides that a crime victim has the right "[t]o 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)."

Wisconsin Stat. § 950.04(1v)(L) provides that a crime victim has the right "[t]o have the district attorney or corporation counsel, whichever is applicable, make a reasonable attempt to contact the victim concerning the victim's right to make a statement, as provided under s[. . . . 972.14(3)(b)]."

Wisconsin Stat. § 950.04(1v)(pm) provides that a crime victim has the right "[t]o have the court provided with information pertaining to the economic, physical and psychological effect of the crime upon the victim and have the information considered by the court."

Wisconsin 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.

Wisconsin Stat. § 971.095(3): At the request of a victim, a district attorney shall make a reasonable attempt to provide the victim with notice of the date, time and place of scheduled court proceedings in a case involving the prosecution of a crime of which he or she is a victim and any changes in the date, time or place of a scheduled court proceeding for which the victim has received notice. This subsection does not apply to a proceeding held before the initial appearance to set conditions of release under ch. 969.

Wisconsin Stat. § 972.14(3):

(a) Before pronouncing sentence, the court shall determine whether a victim of a crime considered at sentencing wants to make a statement to the court. If a victim wants to make a statement, the court shall allow the victim to make a statement in court or to submit a written statement to be read in court. The court may allow any other person to make or submit a statement under this paragraph. Any statement under this paragraph must be relevant to the sentence.

(b) After a conviction, if the district attorney knows of a victim of a crime to be considered at sentencing, the district attorney shall make a reasonable attempt to contact that person to inform him or her of the right to make or provide a statement under par. (a). Any failure to comply with this paragraph is not a ground for an appeal of a judgment of conviction or for any court to reverse or modify a judgment of conviction.

Recommendations:

1. District attorneys should be mindful that the failure to provide one right might result in the violation of additional crime victims' rights. In this case, the failure of the district attorney's office to provide the complainant with notice of the hearing, and the failure to confer the complainant prior to that hearing, resulted in the deprivation of the complainant's crime victim right under Wis. Stat. § 950.04(1v)(pm) to have the court provided with information pertaining to the economic, physical and psychological effect of the crime upon the victim and have the information considered by the court.
2. Wisconsin Stat. § 950.04(1v)(pm) provides that a crime victim has the right "[t]o have the court provided with information pertaining to the economic, physical and psychological effect of the crime upon the victim and have the information considered by the court." In contrast to the right to make a statement at sentencing provided by Wis. Stat. § 950.04(1v)(L), the right under Wis. Stat. § 950.04(1v)(pm) is not triggered by a conviction, and is not tied to a sentencing hearing.
3. When victims are not allowed to provide information to the court pursuant to their rights to do so, the court is deprived of potentially relevant information. The transcript from the hearing in the present case reflects the court's willingness to hear from the victim that day. During the hearing, the district attorney represented to the court that the prosecution had complied with the victim's rights legislation and apparently handed a written victim impact statement to the court. The prosecutor's duties under the victims' rights legislation were not fulfilled by merely handing the court a victim impact statement.
4. The respondent in the case, who is not the same district attorney that held office when the actions leading to the complaint occurred, indicated that the case had resulted in new inter-office procedures. Chief among the newly implemented procedures is that the

district attorney will give any plea information to the victim witness coordinator as early in the process as possible, to ensure such information reaches victims as early in the process as possible. Additionally, the district attorney will not go forward with plea hearings until it is clear that the office has complied with victims' rights. The Board recommends these policies to other offices.

5. The provision of victims' statutory and constitutional rights can have a significant impact on a victim's perceptions of, and satisfaction with, the criminal justice system. For some victims, the deprivation of a right exacerbates the feelings of helplessness he or she already feels as a result of the crime. It is in the best interest of the victim and the overall justice system that public officials make sincere and meaningful efforts to comply with their constitutional and statutory duties to victims of crime.

Dated this 28th day of May, 2014.



TRISHA ANDERSON

Chairperson, Wisconsin Crime Victims Rights Board