



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 raises concerns about the manner in which victims' rights and services are provided by district attorneys and victim witness staff. The situation provides the Board with an opportunity to recommend to prosecutors and victim witness professionals the best practice for protecting victims' rights to speedy disposition of their cases by minimizing the stress endured by victims during the criminal justice process.

Factual Background

Two children, who were minors, disclosed to their parents that they had been sexually assaulted by a family acquaintance over a period of several years. The crimes were reported and investigated without delay. Law enforcement referred the matter to the district attorney's office approximately one month after the victims reported the crime. Shortly thereafter, the prosecutor sent a pre-charging letter to the suspect.

The suspect's attorney requested that the prosecutor postpone making a charging decision until the completion of a sexual offender assessment. The prosecutor agreed. One of the prosecutor's primary concerns in the case was that the victims would not have to testify. The prosecutor believed the assessment would be helpful in achieving a good disposition in the case without requiring the victims' testimony. This agreement was not in writing and timelines were not discussed. The prosecutor believed that the assessment would be delivered as soon as it was completed.

Several months elapsed during which the victims' parents repeatedly requested information about the status of the case and inquired about when a charging decision would be made. Several phone calls made by the victims' parents to the district attorney's office were not returned. For a short period of time during this case, the office was without a victim witness coordinator and no one was specifically assigned to be the contact person for the victims. When the victim witness coordinator was hired, the coordinator was not given training regarding the office's responsibilities for providing victims' rights and services. The coordinator sought some consultation from a victim witness coordinator in another county, but in the words of the prosecutor, the office was "muddling through" with respect to the provision of victim services.

The victims' parents felt isolated because no one at the district attorney's office seemed to want to talk to them. They were unsure of who to contact within the district attorney's office for information. Their children were asking questions they could not answer because they weren't getting information from the district attorney's office. The lack of information caused a great deal of anxiety among the victims, their parents and other family members.

On two occasions when the victims called to find out why the case had not been charged, they were told by the district attorney's office that the prosecutor was waiting for "evidence" and further "investigation," giving the victims the erroneous impression that the case was still being investigated. The prosecutor decided not to disclose the fact that the prosecutor was waiting for the sexual offender assessment because of concerns that that may have infringed on the suspect's right to privacy of personal medical information. Knowing from their contacts with law enforcement that the investigation was completed, the victims' parents began to feel frustrated at the lack of information from, and lack of responsiveness of, the district attorney's office.

The children became increasingly anxious about when the offender would be charged and arrested and they wanted to know if they would need to testify in court. The victims were worried about other children who had been, or might be victimized by the offender, who was not in custody. The children looked to their parents for information about the case, who in turn tried to get information from the district attorney's office. Despite the fact that they were doing everything that was within their power to do, the parents of the victims told the Board they felt like they were letting their children down by not having answers to their questions and by the length of time it was taking for the offender to be charged.

During this time, the prosecutor had very little communication with the defense attorney regarding the sexual offender assessment. Parties do not recall when it was discussed except that the prosecutor may have requested it in passing and the two lawyers may have missed each others' phone calls a few times. Eventually, the prosecutor requested the assessment in writing, and it was sent shortly thereafter. By the time the prosecutor received it, the assessment had actually been completed for nearly five months. The delay in receiving the completed assessment was caused by a combination of the defense attorney's deliberate avoidance of the subject (knowing that if the prosecutor did not directly ask for the assessment, the defense attorney wouldn't technically have to produce it) and the prosecutor's failure to assertively request it.

The offender was charged with one count of Repeated First Degree Sexual Assault of the Same Child and one count of First Degree Sexual Assault of a Child. After the charges were filed, the case proceeded quickly from a plea to sentencing.

In response to complaints filed by the victims, the Crime Victims Rights Board held a fact-finding hearing to decide whether the victims' right to a speedy disposition (Wis. Stat. Sec. 950.04(1v)(k)) was violated by the length of time it took for the district attorney to file charges after receiving the referral from law enforcement. The Board found that the delay in receiving the sexual offender assessment was unreasonable but not attributable to the

prosecutor, because the defense attorney failed to send it when it was completed, as the prosecutor expected he would. The defense attorney testified before the Board that he made a strategic decision to withhold the report until he was asked for it by the prosecutor in order to “buy more time” for his client.

The Board found that additional delays in the case were not unreasonable. At the conclusion of the hearing, the Board decided there was not a violation of the victims’ right to speedy disposition. However, the Board noted that the district attorney’s office and victim witness staff could have taken steps that would have minimized the stress endured by the victims as they waited for the charging decision to be made.

The Crime Victims Rights Board analyzes the right to a speedy disposition guaranteed by Wis. Stat. § 950.04)(1v)(k) using four factors. First, the Board identifies each delay. Second, the Board determines the reason for the delay. Third, the Board determines whether the delay is reasonable. Fourth, if a delay is unreasonable, the Board 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. Even if no violation occurs, however, prosecutors and victim witness professionals occasionally unnecessarily exacerbate the stress endured by crime victims when they fail to take steps that would minimize victims’ stress.

Statutes Involved

Wisconsin Stat. § 950.02(4)(a)2. “Victim” includes a “parent, guardian or legal custodian” of a child against whom a crime has been committed if the person specified in Wis. Stat. § 950.02(4)(a)1. is a child.

Wisconsin Stat. § 950.04 (1v)(k) provides that victims of crime have the right to “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.”

Report and Recommendation

1. The intent of the right to speedy disposition is that victims will not have to unnecessarily endure the stress of prolonged engagement in the criminal justice system. The Board acknowledges that there are many legitimate and unavoidable sources of delay when a case is referred to a district attorney. Even reasonable delays can cause anxiety to victims. This anxiety can be minimized if victim witness staff and the prosecutor provide victims with accurate information about the case and any source(s) of delay. As stated by the victim involved in the situation described above:

“We had questions about what was happening and didn’t know where to go or who to talk to. We just felt real isolated and that was hard... We just felt that if we called in with a question, they should answer it [or] call us back and we just didn’t get that... They never told us what was happening and an interesting thought that continued to go through our minds at this time was that [the defendant] was surely being well informed by his

attorney about how things were going. He knew what was happening and we were in the dark.”

Prosecutors and victim witness staff should *at minimum* return all phone calls that come in to the office.

Prosecutors and victim witness staff should explain the source of delays clearly and accurately. They should take care to use terminology that is not misleading. They should explain delays promptly rather than allowing the frustration [and possible misunderstanding] of the delay(s) to erode trust and confidence in the district attorney’s office.

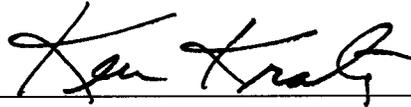
Lack of responsiveness of prosecutors and/or victim witness can exacerbate a victim’s stress and trauma. When a prosecutor becomes aware that a victim is frustrated with delays and/or inadequate victim services, best practice would be for the prosecutor to speak directly with the victim(s) to ensure their concerns are evaluated and appropriately addressed.

2. A prosecutor should be mindful that a prosecutor’s responsibility to protect a victim’s right to speedy disposition begins as soon as a case is referred to the district attorney’s office. The right to speedy disposition attaches throughout the life of a case, not only after a charge is filed by the prosecutor. [Note that the right can be violated, for example, by law enforcement that fails to investigate or refer a valid criminal complaint.]
3. Prosecutors and victim/witness should be attentive to the testimony-related characteristics of specific child victims when making determinations as to their ability to testify in court. Though it may be preferable that a child not have to testify, there is great variance in the ability of children to testify and in the affect such testimony has on children. There are several strategies used to minimize the stress to children who testify. In the situation described above, the prosecutor had very little interaction with the victims and their parents yet held the unwavering opinion that the victims would be harmed by testifying. In delaying the charging decision [in part in an effort to ensure the victims would not have to testify] the prosecutor created an additional trauma which had a negative impact on the victims. Prosecutors should communicate with parents and victims to make an informed decision relative to the persons involved, rather than rely on the broad assumption (no matter how well intentioned) that children should never testify in court.
4. The district attorney and other prosecutors in the district attorney’s office have specific duties for which they are responsible regarding the provision of victims’ rights and services. If the victim witness function of an office is compromised due to staffing or competency issues, it is the responsibility of the prosecutor to ensure that victims’ rights are still carried out in his or her case.

5. If a victim witness staff person needs training, it is the responsibility of the district attorney to ensure the staff person attends available training, such as the "Nuts & Bolts" and quarterly regional victim/witness training meetings conducted by the Wisconsin Department of Justice. If a district attorney believes that no training is available for their victim witness staff, he or she should contact the Department of Justice Victim Services Director (608-264-9497) for a list of regional meeting times/dates and other training (including site visits from the director) available. Technical assistance is available upon request and district attorneys are responsible for seeking it out for their victim witness staff if there is a need.

Dated this **3rd** day of

August , 2006.



KENNETH R. KRATZ
Chairperson
Crime Victims Rights Board

c: Service list