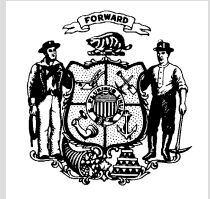


## STATE OF WISCONSIN

### Crime Victims Rights Board



#### Board Members:

Tim Gruenke, Chair  
Jennifer Dunn  
Rebecca Rapp  
Paul Susienka

## REPORT OF THE WISCONSIN CRIME VICTIMS RIGHTS BOARD

### The Right to Reasonable Protection from the Accused Throughout the Criminal Justice Process

**Wisconsin State Constitution Article I, Victims of crime.** Section 9m. [*As created April 1993*]:

“This state shall treat crime victims, as defined by law, with fairness, dignity and respect for their privacy. This state shall ensure that crime victims have all of the following privileges and protections as provided by law: timely disposition of the case; the opportunity to attend court proceedings unless the trial court finds sequestration is necessary to a fair trial for the defendant; **reasonable protection from the accused throughout the criminal justice process**; notification of court proceedings; the opportunity to confer with the prosecution; the opportunity to make a statement to the court at disposition; restitution; compensation; and information about the outcome of the case and the release of the accused. The legislature shall provide remedies for the violation of this section. Nothing in this section, or in any statute enacted pursuant to this section, shall limit any right of the accused which may be provided by law.

#### Introduction

Wisconsin Statutes § 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.” This report is issued as a result of issues raised in the course of a review of a complaint before the Board<sup>1</sup> alleging a violation of the victim’s constitutional right to reasonable protection from the accused throughout the criminal justice process.<sup>2</sup> The allegation was against an elected clerk of court.

<sup>1</sup> The Board has statutory authority to review complaints filed against public agencies, officials and employees by crime victims alleging violations of crime victims’ rights. See Wis. Stat. § 950.09.

<sup>2</sup> See Wisconsin Constitution Article I, section 9m.

## Factual Background

The complainant was a victim of felony child sexual assault. Many years after the offense, as an adult, the complainant requested a copy of the case file from the trial judge's clerk. The clerk told the victim that she must make a *written* request to see the records and must use her full legal name and home address in making the request. The complainant asked to use her maiden name to shield her current (married) name from the offender. The clerk refused and the victim reluctantly provided her full name and address as instructed in a written records request that became part of the public record.

When the victim's written request was received by the clerk's office, the fact that the letter was submitted was documented in the "text" field of the case record history accessible to the public online through the Wisconsin Circuit Court Access website ("CCAP"). The CCAP entry included the victim's full name. The victim contacted the clerk of court to remove the public entry of her name. The clerk of court removed the name and replaced it with "victim" in the case history.

The complainant subsequently filed a complaint with the Wisconsin Department of Justice, which was ultimately reviewed by the Board.<sup>3</sup> The complainant alleged that the requirement to provide a full name and address to request the record and the subsequent online posting of her name was unreasonable and unnecessarily put her at risk from an offender who, until this happened, only knew her by her maiden name.

As the respondent in the case before the Board, the clerk of court submitted to the Board a written response to the complaint. She did not provide an explanation for requiring the victim's full name in a written request in order to make a records request, except that it was the policy of the office to do so. She asserted that although the CCAP entry was unfortunate, it was unavoidable because it is not possible to have staff read each letter received to determine if a victim's identity should be protected.

The Board determined the victim's right was violated as alleged. The violation arose from an improper requirement that a requester of records provide a full name and written request to access records.<sup>4</sup> Everyone with contact with the victim from the first interaction knew she feared for her safety if the offender could locate her. The Board concluded that regardless of the origin of the faulty policy, the clerk of court bears the responsibility for it as the custodian of the records filed in the county's circuit court. The policy led directly to unnecessarily posting the victim's personally identifying information on a public website accessible to the offender. In her response to the Board, the respondent regretted that the victim's name was entered into CCAP but still endorsed the practices that resulted in the disclosure and did not offer a solution that would be protective of victims in similar situations in the future. Her conclusion appeared to be that the only course of action is to correct such errors after the fact, if they are brought to the attention of the office.

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<sup>3</sup> Wisconsin has a bifurcated victims' rights complaint system. A complainant must initially contact the Wisconsin Department of Justice for informal action pursuant to Wis. Stat. § 950.08(3). A formal review by the Board is prohibited until the department has completed its action. See Wis. Stat. § 950.09(2).

<sup>4</sup> Any requester may make a request orally and anonymously under Wisconsin law. See § Wis. Stat. 19.35 (1) (h), (i).

## **The State's Constitutional Duty to Victims**

In April 1993, Wisconsin voters ratified an amendment to the state constitution, conferring upon victims of crime certain protections.<sup>5</sup> In its preamble, the Victims of Crime Constitutional Amendment directs that the state shall treat crime victims with “fairness, dignity and respect for their privacy” in the process of ensuring the enumerated rights. The Wisconsin Supreme Court described this language as a constitutional mandate that articulates the state’s policy regarding the treatment of crime victims and a “statement of purpose that describes the policies to be promoted by the state.”<sup>6</sup>

The amendment continues, “[t]his state shall ensure that crime victims have all of the following privileges and protections as provided by law” followed by a list of the specific rights that the state must ensure. One of those rights is the right to reasonable protection from the accused throughout the criminal justice process.

In this case, the Board considers the standard of “reasonable” protection in its analysis. The clerk of court erred but all state actors should take note of the duty to take reasonable steps to ensure policies do not put in jeopardy crime victim rights guaranteed in Wisconsin’s constitution or statutes. In many settings, this may require a proactive review of policies to correct practices that may inadvertently disregard core interests of victims, such as privacy interests, that can very directly impact rights, such as the right to reasonable protection from the accused.

The state – public employees, public agencies and public officials – all share in the responsibility to enact and promote policies that ensure the protections enumerated in the state constitution in a manner that treats crime victims with fairness, dignity and respect for their privacy. The Board understands that crime victims’ privacy cannot be shielded absolutely during the criminal justice process. Public policy demands the balancing of victims’ interests with many competing interests. It is the duty of the state to earnestly perform this task of balancing through deliberate consideration and awareness of the standards set forth in statute and in the constitution. All too often, the rights of victims are an afterthought or incorrectly viewed as a suggestion or “best practice” or even a courtesy to provide if possible. It is imperative that those with authority over policies that impact victims are cognizant of, and take action to protect, victims’ rights with a sense of purpose befitting a constitutional mandate.

Signed on this 22<sup>nd</sup> day of March 2019,



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Tim Gruenke, CVRB Chair

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<sup>5</sup> Article I, Section 9m of the Wisconsin Constitution

<sup>6</sup> Patrick G. SCHILLING, Petitioner-Respondent, v. STATE of Wisconsin CRIME VICTIMS RIGHTS BOARD, Respondent-Appellant. No. 03-1855. Decided: February 23, 2005