

2011 DRAFTING REQUEST

Assembly Amendment (AA-AB232)

Received: 09/19/2011

Received By: phurley

Wanted: 09/20/2011

Companion to LRB:

For: Andre Jacque (608) 266-9870

By/Representing:

May Contact:

Drafter: phurley

Subject: Criminal Law - victims

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Jacque@legis.wi.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Rights of crime victims

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	phurley 09/19/2011	kfollett 09/20/2011	phenry 09/20/2011	_____	lparisi 09/20/2011	lparisi 09/20/2011	

FE Sent For:

<END>

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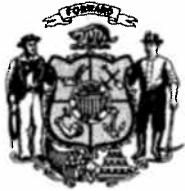
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/1	phurley	1/1 g/f 9/20	a/ [signature] ph	[signature]			
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FE Sent For:

<END>



2011 ASSEMBLY BILL 232

August 29, 2011 - Introduced by Representatives JACQUE, BIES, BERNARD SCHABER, BROOKS, ENDSLEY, HINTZ, KAUFERT, KERKMAN, KLEEFISCH, MOLEPSKE JR, A. OTT, RIVARD, ROYS, THIESFELDT, VAN ROY and VRUWINK, cosponsored by Senators WANGGAARD, MOULTON, OLSEN and TAYLOR. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT to renumber** 950.04 (1v) (a); and **to create** 950.04 (1v) (ag), 950.04 (1v)
2 (dr) and 950.105 of the statutes; **relating to:** rights of crime victims and
3 witnesses.

Analysis by the Legislative Reference Bureau

Currently, the statutes and the state constitution provide various rights to victims of a crime. Under current law the Crime Victim Rights Board (board) has the right and duty to enforce victims' rights. The board may seek to impose a penalty against a public official, agency, or employee that violates a victim's statutory or constitutional rights, obtain equitable relief on a victim's behalf, and may issue a public or private reprimand against the public official, agency, or employee.

This bill confers upon victims the right to be treated with fairness, dignity, and respect for privacy by public officials, employees, or agencies, the right to be free from intimidation, harassment, discrimination, or abuse by public officials, employees, or agencies, and the right not to have their personally identifying information used by any public official, employee, or agency for the purpose of attempting to obtain a personal benefit or financial gain by the official, employee, or agency. Under the bill, a victim has the right, if his or her rights are violated, to seek relief on his or her own behalf, or may request a district attorney to seek relief, at the district attorney's discretion, on his or her behalf.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

ASSEMBLY BILL 232

1 SECTION 1. 950.04 (1v) (a) of the statutes is renumbered 950.04 (1v) (ar).

2 SECTION 2. 950.04 (1v) (ag) of the statutes is created to read:

3 950.04 (1v) (ag) To be treated with fairness, dignity, and respect for his or her
4 privacy by public officials, employees, or agencies, and to be free from intimidation,
5 harassment, discrimination, or abuse by public officials, employees, or agencies.
6 This paragraph does not impair the right or duty of a public official or employee to
7 conduct his or her official duties in a reasonable and proper manner, including the
8 right and duty for a district attorney to determine whether to file criminal charges
9 in a particular case.

10 SECTION 3. 950.04 (1v) (dr) of the statutes is created to read:

11 950.04 (1v) (dr) To not have his or her personal identifying information used
12 by a public official, employee, or agency for the purpose of attempting to obtain a
13 personal benefit or financial gain by the official, employee, or agency.

of, s, d, o, s, c, o

14 SECTION 4. 950.105 of the statutes is created to read:

15 **950.105 Enforcement; standing.** A crime victim has a right, independent
16 of the rights and duties of the crime victims rights board under s. 950.09, to exercise
17 ~~and~~ ^{to} assert in any court his or her rights as a crime victim under the statutes or under
18 article I, section 9m of the Wisconsin constitution. A crime victim, a victim's legal
19 representative, or upon a victim's request, a district attorney may represent the
20 victim's interests in a proceeding or motion brought under this section. A district
21 attorney may, in his or her discretion, decline to represent a victim under this section.

22 (END)

Hurley, Peggy

simple

From: Jacque, Andre
Sent: Friday, September 16, 2011 1:34 PM
To: Hurley, Peggy
Subject: AB 232 substitute amendment request

MA

HC w/ Rep Jacque

Hi Peggy,

I just left you a voicemail explaining this request. I can be reached at 920-819-8066 with any questions.

Thanks!

André

Keep everything the same except:

SECTION 3. 950.04 (1v) (dr) of the statutes is created to read:

950.04 (1v) (dr) To not have his or her personal identifiers used or disclosed by a public official, employee, or agency for a purpose that is unrelated to the official responsibilities of the official, employee, or agency. "Personal identifier" has the meaning given in s. 85.103 (1).

Insert language similar to above in 950.04 (2w) Rights of Witnesses

yes - include personal ident.

SECTION 4. 950.105 of the statutes is created to read:

950.105 Standing. A crime victim has a right to assert, in a court in the county in which the alleged violation occurred, his or her rights as a crime victim under the statutes or under article I, section 9m of the Wisconsin Constitution. This section does not preclude a district attorney from asserting a victim's statutory or constitutional victim's rights in a criminal case or in a proceeding or

motion brought under this section.



gf

ASSEMBLY AMENDMENT ,
TO 2011 ASSEMBLY BILL 232

By a-20-11
PM

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 10: delete lines 10 to 21 and substitute:

3 "SECTION 2d. 950.04 (1v) (dr) of the statutes is created to read:

4 950.04 (1v) (dr) To not have his or her personal identifiers, as defined in s.
5 85.103 (1), used or disclosed by a public official, employee, or agency for a purpose
6 that is unrelated to the official responsibilities of the official, employee, or agency.

7 SECTION 2m. 950.04 (2w) (dm) of the statutes is created to read:

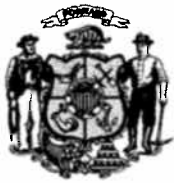
8 950.04 (2w) (dm) To not have his or her personal identifiers, as defined in s.
9 85.103 (1), used or disclosed by a public official, employee, or agency for a purpose
10 that is unrelated to the official responsibilities of the official, employee, or agency.

11 SECTION 2r. 950.105 of the statutes is created to read:

12 **950.105 Standing.** A crime victim has a right to assert, in a court in the county
13 in which the alleged violation occurred, his or her rights as a crime victim under the

1 statutes or under article I, section 9m, of the Wisconsin constitution. This section
2 does not preclude a district attorney from asserting a victim's statutory or
3 constitutional crime victim's rights in a criminal case or in a proceeding or motion
4 brought under this section.".

5 (END)



**ASSEMBLY AMENDMENT ,
TO 2011 ASSEMBLY BILL 232**

*and including an electronic
mail address*

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 10: delete lines 10 to 21 and substitute:

3 **"SECTION 2d.** 950.04 (1v) (dr) of the statutes is created to read:

4 950.04 (1v) (dr) To not have his or her personal identifiers, as defined in s.
5 85.103 (1) used or disclosed by a public official, employee, or agency for a purpose
6 that is unrelated to the official responsibilities of the official, employee, or agency.

7 **SECTION 2m.** 950.04 (2w) (dm) of the statutes is created to read:

8 950.04 (2w) (dm) To not have his or her personal identifiers, as defined in s.
9 85.103 (1) used or disclosed by a public official, employee, or agency for a purpose
10 that is unrelated to the official responsibilities of the official, employee, or agency.

11 **SECTION 2r.** 950.105 of the statutes is created to read:

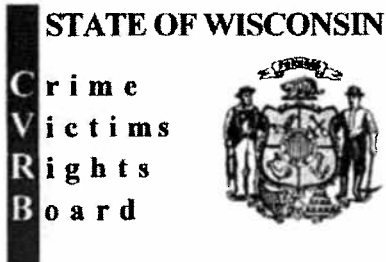
12 **950.105 Standing.** A crime victim has a right to assert, in a court in the county
13 in which the alleged violation occurred, his or her rights as a crime victim under the

1 statutes or under article I, section 9m, of the Wisconsin Constitution. This section
2 does not preclude a district attorney from asserting a victim's statutory or
3 constitutional crime victim's rights in a criminal case or in a proceeding or motion
4 brought under this section."

5 (END)

Board Members:

Trisha Anderson, Chair
Keith Govier
Tim Gruenke
Charles McGee
Carmen Pitre



Julie Braun
CVRB Operations Director
819 North Sixth Street, Suite 180
Milwaukee, WI 53203
Voice: 414-227-1865
Fax: 414-227-1842

September 19, 2011

VIA EMAIL (Rep.Bies@legis.wisconsin.gov)

Chairman Carey Bies
Room 216 North
State Capitol
Madison, WI 53708

VIA EMAIL (Rep.Jacque@legis.wi.gov)

Vice Chairman Jacque
Room 9 West
State Capitol
Madison, WI 53708

Chairman Bies and Vice Chairman Jacque,

On September 16, 2011, the Wisconsin Crime Victims Rights Board ("CVRB") met and discussed Assembly Bill 232. I am writing to you by request of the CVRB in my capacity as CVRB Operations Director, to share information about that discussion.

As you are aware, the CVRB operates by statutory authority to review complaints submitted by victims of crime who have alleged violations of their statutory crime victim's rights. The CVRB must interpret the victims' rights statutes, determine whether the respondent's alleged conduct constitutes a violation of those statutes and if so, impose a remedy for the violation. The CVRB rights enforcement process was intended to be accessible and understandable so that parties can effectively represent themselves, if they so choose. Most crime victims do, in fact, represent themselves throughout the CVRB formal review.

The CVRB supports the concepts embodied in AB 232 and has suggestions meant to clarify the current language. The CVRB recommendations are based on the belief that in order for victims' rights to be meaningful, victims must fully understand not only what their rights are but how they can exercise those rights. In order for *enforcement* to be fair respondents must fully understand what they must defend against. The CVRB believes the following refinements will strengthen AB 232 by clarifying the proposed new rights so they can be effectively exercised and enforced.

1. **Section 3. 950.04(1v) (dr)** seeks to protect the treatment of victim information from misuse by public officials. The CVRB believes this right as currently written could be difficult to enforce because it requires that a determination be made about whether the accused was attempting to obtain “personal benefit” or “financial gain” by using the victim’s information. A more straightforward constraint would aid enforcement. Additionally, the misuse of a victim’s personal information should also include sharing that information for potential misuse by others.

Suggested language:

- 950.04(1v)(dr) is created to read: To not have his or her personal identifiers used or disclosed by a public official, employee or agency for any purpose that is unrelated to the official responsibilities of the official, employee, or agency.
- Create 950.02(32) in definitions: Personal identifier has the meaning given in s. 85.103(1) and includes an electronic mail address.

[Note: The definition above includes: name, social security number, telephone number, street name and number or post-office number and an electronic email address. The CVRB offers it as one possible option which is not overly broad and provides some specificity for the purpose of enforcement.]

2. **Section 4. 950.105** provides victims of crime with standing to assert their crime victims rights in court. Again, the CVRB supports the concept of this section but has concerns that the current language may create confusion about the process by which a crime victim may exercise this right. Because this section contemplates that victims may assert their crime victims rights in court *pro se*, clarity of process is of the utmost importance. The CVRB noted these specific concerns:

- The proper venue for bringing an action may be unclear to victims who are unfamiliar with the court structure and/or venue statutes. Specifying jurisdiction will help define the process by which this right is exercised.
- The reference to the CVRB on line 16 may be confusing to victims and is not necessary to confer standing.
- The language regarding district attorney “representation” could create unclear—and possibly unmet—expectations and complicate the ability of victims and prosecutors to work together on a prosecution. It would be helpful however, to maintain permissive language in this section so it is

clear that district attorneys are not prevented from helping victims assert their rights.

Suggested language:

950.105 Standing. A crime victim has a right to assert his or her rights in a district court in the county in which his or her rights as a crime victim under the statutes or under article I., section 9m of the Wisconsin Constitution were allegedly violated. This section does not preclude a district attorney from asserting a victim's statutory or constitutional victim's rights in a criminal case or in a proceeding or motion brought under this section.

On behalf of the Wisconsin Crime Victims Rights Board, thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julie Braun".

Julie Braun

CC VIA EMAIL

Members of the Assembly Committee on Criminal Justice and Corrections, CVRB Members