

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2568/P1dn
JEO:cmh:km

June 8, 1999

Debbie:

Please review this draft carefully to ensure that it is consistent with your intent. In particular, please note the following:

1. Under s. 938.27 (4m), the district attorney or corporation counsel is obligated to make a reasonable attempt to notify a victim of a juvenile's delinquent act or alleged delinquent act of any hearing involving the juvenile. As you may know, in some juvenile delinquency cases, the court conducts the dispositional hearing on the same day as the fact-finding hearing, even if the former hearing has not been scheduled for that date. In some of those cases, the victim may already be present for the fact-finding hearing, so he or she will receive notice in court that the dispositional hearing will be held then. If a victim is not present, the notice previously provided informing him or her of the fact-finding hearing could be construed as meeting the notice requirements of s. 938.27 (4m). Alternatively, the district attorney or corporation counsel could provide notice through a phone call to the victim, which might entail only a brief recess. On the other hand, a court may construe this provision as requiring a more lengthy adjournment, notwithstanding the changes made by this bill.

A similar problem may arise in criminal cases under s. 972.14 (2m) and (3) (a). For example, if, on the date his or her case is scheduled for trial a defendant pleads guilty, the defendant and the district attorney may agree to proceed to sentencing the same day. If a victim has requested notice of the sentencing hearing, the court may be unwilling to proceed with that hearing if the victim is not present and has not been informed that the sentencing hearing would be held that day. Please let us know if you would like to address this issue in the bill.

2. The bill also eliminates the inaccurate and unnecessary references to s. 972.14 (3) (b) in s. 950.04 (1v) (g) and to ss. 938.335 (3m) (b) and 972.14 (3) (b) in s. 950.08 (2g) (c). Other sections referred to in ss. 950.04 (1v) (g) and 950.08 (2g) (c) relate to notice of hearings or court proceedings generally, while the references being stricken by the bill relate to the right to make a statement at a dispositional hearing or sentencing. In addition, s. 950.04 (1v) (L) makes clear that victims have the right to make a statement under ss. 938.335 (3m) (b) or 972.14 (3) (b), whichever is applicable.

Jefren E. Olsen
Legislative Attorney
Phone: (608) 266-8906
E-mail: Jefren.Olsen@legis.state.wi.us