

1999 DRAFTING REQUEST

Bill

Received: 03/21/99

Received By: **olsenje**

Wanted: As time permits

Identical to LRB:

For: **Brian Burke (608) 266-8535**

By/Representing: **Debbie**

This file may be shown to any legislator: **NO**

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - victims**

Extra Copies: **gmm**

Pre Topic:

No specific pre topic given


Topic:

Notification of victims concerning certain court proceedings

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>		<u>Required</u>
/?	olsenje 04/16/99			_____			Local
/P1	mdsida 06/4/99	chanaman 06/7/99	martykr 06/8/99	_____	lrb_docadmin 06/8/99		Local
/1	olsenje 06/9/99	chanaman 06/9/99	mclark 06/10/99	_____	lrb_docadmin 06/10/99	lrb_docadmin 06/10/99	

FE Sent For:
7/29/99

<END>

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FE Sent For:		cmu wla ll	6/9 MRC	MRC/JF 6/10 <END>			

Jacket "1" for Senate
JEO

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/?	olsenje	cmr /p w/h	dm/4	dm/4			

FE Sent For:

<END>



2589

BRIAN BURKE

WISCONSIN STATE SENATOR

Senate Chair, Joint Committee on Finance

Memorandum

To: Jefren Olsen - LRB
From: Senator Brian Burke
Date: 03/18/99
Re: Bill Drafting Request – Modification to Victims Rights Law

1998 Wisconsin Act 181 mandates the actions which must be taken by prosecutors and courts to safeguard the rights of crime victims.

Two provisions of this new law have caused substantial problems for prosecutors and courts. Under Section 972.14(3)(b) of the Statutes, the district attorney is required to notify crime victims of their right to make a statement at sentencing *after conviction*. Typically when a defendant pleads guilty, the court is forced to adjourn so the victim can be notified of their right to make a statement. The victim is already aware of this right, having been notified when the case was issued. Nonetheless, under current law, a second notification is required after conviction.

There is a similar provision in juvenile court in Section 938.335(3m)(b) of the Statutes.

Please draft legislation removing the requirement that such notification be made after conviction, a finding of delinquency or a finding that a child is in need of protection and services. (See enclosed language)

If you have any questions or comments, please contact Debbie from my office at 6-8535.

PROPOSED AMENDMENT**SECTION 972.14(3)(B), STATS.**

~~"After 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."

PROPOSED AMENDMENT**SECTION 938.335(3m)(b), STATS.**

~~"After a finding that a juvenile is delinquent under s. 938.12 or is found to be in need of protection or services under s. 938.13(12),~~ The district attorney or corporation counsel shall make a reasonable attempt to contact any known victim to inform that person of the right to make a statement under par. (a). Any failure to comply with this paragraph is not a ground for an appeal of a dispositional order or for any court to reverse or modify a dispositional order."



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2568/P1

JEO:.....
cmw

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

soon

1
2

repeal
AN ACT...; relating to: notice to a victim of the right to make a statement at
sentencing or disposition.

Analysis by the Legislative Reference Bureau

Under current law, a victim of a crime of which a defendant is convicted or any other crime to be considered by the court at sentencing has the right to make or provide a statement prior to the court imposing sentence. Current law also requires the prosecutor to make a reasonable attempt to contact any known victim to inform him or her of that right. Similarly, current law entitles a victim of a juvenile's delinquent act to make a statement prior to the court entering a dispositional order and requires the prosecutor to make a reasonable attempt after the court finds the juvenile delinquent or in need of protection or services to inform the victim of his or her right to make a statement.

This bill revises the prosecutor's obligation to provide a known victim notice of his or her right to make a statement with respect to the time at which that obligation must be met. Specifically, the bill eliminates the requirement that the notice be provided after a conviction or after the court finds a juvenile delinquent or in need of protection or services. Thus, under the bill, the prosecutor may provide the victim notice of his or her right at any time during the proceedings.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 938.335 (3m) (b) of the statutes is amended to read:

2 938.335 (3m) (b) ~~After a finding that a juvenile is delinquent under s. 938.12~~
3 ~~or is found to be in need of protection or services under s. 938.13 (12), the~~ The district
4 attorney or corporation counsel shall make a reasonable attempt to contact any
5 known victim to inform that person of the right to make a statement under par. (a).
6 Any failure to comply with this paragraph is not a ground for an appeal of a
7 dispositional order or for any court to reverse or modify a dispositional order.

8 History: 1995 a. 77; 1997 a. 181, 252.

8 **SECTION 2.** 950.04 (1v) (g) of the statutes is amended to read:

9 950.04 (1v) (g) To have reasonable attempts made to notify the victim of
10 hearings or court proceedings, as provided under ss. 938.27 (4m) and (6), 938.273 (2),
11 and 971.095 (3) ~~and 972.14 (3) (b).~~

12 History: 1979 c. 219; 1983 a. 102, 364; 1985 a. 311; 1987 ~~✓~~ s. 332 s. 64; 1989 a. 31; 1997 a. 181, 237, 283.

12 **SECTION 3.** 950.08 (2g) (c) of the statutes is amended to read:

13 950.08 (2g) (c) The address and telephone number of the intake worker,
14 corporation counsel or district attorney whom the victim may contact to obtain
15 information concerning the rights of victims and to request notice of court
16 proceedings under ss. 938.27 (4m) and (6), 938.273 (2), and 938.299 (1) (am) and
17 938.335 (3m) (b) or ss. s. 971.095 (3) ~~and 972.14 (3) (b)~~, whichever is applicable, and
18 to request the opportunity to confer under ss. 938.245 (1m), 938.265 or 938.32 (1)
19 (am) or s. 971.095 (2), whichever is applicable.

20 History: 1991 a. 39; 1997 a. 181.

20 **SECTION 4.** 972.14 (3) (b) of the statutes is amended to read:

21 972.14 (3) (b) ~~After a conviction, if~~ If the district attorney knows of a victim of
22 a crime to be considered at sentencing, the district attorney shall make a reasonable
23 attempt to contact that person to inform him or her of the right to make or provide
24 a statement under par. (a). Any failure to comply with this paragraph is not a ground

1 for an appeal of a judgment of conviction or for any court to reverse or modify a
2 judgment of conviction.

3 History: 1987 a. 27; 1989 a. 31; 1995 a. 77; 1997 a. 73, 181, 205; s. 13.93 (2) (c).

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2568/P1dn

JEO:.....

cmh

May 19, 1999

June 4

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 ~~the~~ ^{him or her} victim 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. 972.14

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

3. Jefren - does this require a fiscal estimate?

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.

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Jefren E. Olsen
Legislative Attorney
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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2568/11

JEO:cmh:km

redraft
make
run

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

negot

- 1 AN ACT to amend 938.335 (3m) (b), 950.04 (1v) (g), 950.08 (2g) (c) and 972.14 (3)
- 2 (b) of the statutes; **relating to:** notice to a victim of the right to make a
- 3 statement at sentencing or disposition.

Analysis by the Legislative Reference Bureau

Under current law, a victim of a crime of which a defendant is convicted or any other crime to be considered by the court at sentencing has the right to make or provide a statement prior to the court imposing sentence. Current law also requires the prosecutor to make a reasonable attempt to contact any known victim to inform him or her of that right. Similarly, current law entitles a victim of a juvenile's delinquent act to make a statement prior to the court entering a dispositional order and requires the prosecutor to make a reasonable attempt after the court finds the juvenile delinquent or in need of protection or services to inform the victim of his or her right to make a statement.

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5 for an appeal of a judgment of conviction or for any court to reverse or modify a
6 judgment of conviction.

7

(END)