

# 99hr\_AC-JPP\_CRule\_99-153\_pt01



(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 1999-00

(session year)

### Assembly

(Assembly, Senate or Joint)

### Committee on ... Judiciary and Personal Privacy (AC-JPP)

#### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

#### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Mike Barman (LRB) (May/2012)

**Assembly**

**Record of Committee Proceedings**

**Committee on Judiciary and Personal Privacy**

**Clearinghouse Rule 99-153**

Relating to the review of complaints alleging violations of the rights of crime victims.

Submitted by the Department of Justice.

March 16, 2000      Referred to committee on Judiciary and Personal Privacy.

April 18, 2000      **NO ACTION TAKEN**

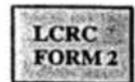


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Robert Delaporte  
Committee Clerk



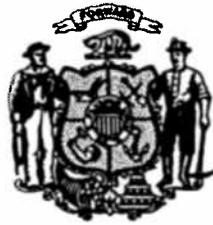
WISCONSIN LEGISLATIVE COUNCIL STAFF



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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 99-153**

AN ORDER to create chapter CVRB 1, relating to the review of complaints alleging violations of the rights of crime victims.

Submitted by **DEPARTMENT OF JUSTICE**

11-01-99 RECEIVED BY LEGISLATIVE COUNCIL.

11-16-99 REPORT SENT TO AGENCY.

RS:AS:jal;rv

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO

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## CLEARINGHOUSE RULE 99-153

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### I. Statutory Authority

a. Section 950.08 (3), Stats., provides that the Department of Justice (DOJ) may receive complaints, seek to mediate complaints and actually mediate complaints regarding the treatment of crime victims and witnesses by public officials, employees or agencies or under crime victim and witness assistance programs. Section 950.09 (2), Stats., provides that the Crime Victims Rights Board may review a complaint made to DOJ and that a party may not request the board to review such a complaint until DOJ has completed its action. The statutes clearly envision that all complaints be routed through DOJ before the board becomes involved. However, s. CVRB 1.05 (5) provides that a complaint that names an employee of DOJ as a respondent need not be presented to the department before being presented to the board. While the rule provision appears to be an attempt to avoid a conflict of interest, what statutory authority exists for the rule provision?

b. Section CVRB 1.11 (2) and (3) in general contain provisions that prohibit actions against any person who attempts to vindicate crime victims' rights. What statutory authority exists for the creation of these substantive prohibitions and what statutory authority exists for their enforcement?

## 2. Form, Style and Placement in Administrative Code

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a. Section 227.15 (1), Stats., provides in part that an agency may not hold a public hearing on a proposed rule until after it has received a written report of the Legislative Council Staff review of the proposed rule or until after the initial review period of 20 working days, whichever comes first. Clearinghouse Rule 99-153 was received by the Legislative Council Staff on November 1, 1999 and, according to the rule submission, a public hearing on the rule was held on November 9, 1999. The hearing should not have occurred prior to the receipt of the Clearinghouse report.

b. The text of the rule-making order must be divided into sections. Therefore, "SECTION 1. CVRB 1 is created to read:" should be inserted at the beginning of the text of the rule.

c. In s. CVRB 1.05 (9), the first sentence does not grammatically lead into the following subunits. Consequently, either the first sentence should be renumbered as par. (a), and the remaining paragraphs renumbered accordingly, or all four sentences should be collapsed into one subsection. [See also s. CVRB 1.11 (2) and s. 1.03 (8), Manual.]

d. An effective date clause must be inserted at the end of the rule text. [See s. 1.02 (4), Manual.]

## 4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. CVRB 1.02 (11), the drafter may wish to cite s. 950.02 (4), Stats., instead of s. 950.02 (4) (a), Stats., to clarify that "victim" does not include the person charged with or alleged to have committed the crime. [See s. 950.02 (4) (b), Stats.]

b. Section CVRB 1.04 (2) refers to a form. The agency should ensure that the requirements of s. 227.14 (3), Stats., are met.

c. In s. CVRB 1.05 (8) (c), it appears that the reference to sub. (3) should be replaced with a reference to sub. (4). Also, "of this section" should be deleted.

d. In s. CVRB 1.08 (5), "sub." should be replaced with "subs." Also, "of this section" should be deleted.

e. In s. CVRB 1.11 (2) (c), the word "subdivision" should be replaced by the word "subsection."

## 5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. CVRB 1.04 (1), "but not limited to" could be deleted. This comment also applies to s. CVRB 1.05 (8).

b. In s. CVRB 1.04 (3), why is the remedy limited to equitable relief if the complaint is not filed or signed by the victim? Section 950.09 (2), Stats., does not include such a limitation.

c. In s. CVRB 1.04 (5), "alleged" in the second sentence could be replaced with "complaints alleging."

d. In s. CVRB 1.05 (6), should the word "may" be replaced by the word "shall"?

e. In s. CVRB 1.05 (7), in order to be consistent with ss. CVRB 1.07 (9) and 1.08 (1), an appropriate cross-reference to s. 19.85, Stats., should be included.

f. In s. CVRB 1.05 (8), "all of the following" should be inserted after "including." Also in that subsection, the sentences in pars. (a) to (c) should begin with a capital letter. This comment also applies to s. CVRB 1.07 (3) (a) and (b).

g. In s. CVRB 1.05 (9) (a), it would be helpful to insert "under s. CVRB 1.07" after "a hearing." [See also s. CVRB 1.06 (3).]

h. In s. CVRB 1.06 (2), it may be clearer to replace "limited release" with a phrase such as "statement authorizing the limited release of specified records." Also, sub. (2) provides that a party who was asked to sign a release may request a protective order from the board limiting the disclosure of any limited-release records outside the board's process. This appears to mean that these records may not be distributed for purposes other than the board's proceedings. However, sub. (3) provides that the board may also limit distribution of limited-release records to parties within a proceeding. Either sub. (2) should be amended to avoid any conflict with sub. (3) or documents in a proceeding should not be subject to any protective orders regarding release.

i. In s. CVRB 1.08 (2), should "if no hearing is held" be inserted after "or by another date established by the board"? Also, it would be helpful to insert a phrase such as "a recommended" before "remedy."

j. In s. CVRB 1.09 (1), "20 days of" should be replaced with "20 days after." Also, the drafter may wish to use a more specific date than the date the final decision is provided to the parties for the commencement of the time limitation. As currently drafted, it is unclear whether 20 days should be counted from the date the final decision is made or from the date it is received by the parties. Perhaps the date the final decision is issued should be used.

k. In s. CVRB 1.11 (3), "these rules" should be replaced with "this chapter."

l. In s. CVRB 1.11 (4), "these" should be deleted and "under this chapter" should be inserted after "proceedings."





**STATE OF WISCONSIN  
CRIME VICTIMS RIGHTS BOARD**

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**ANALYSIS OF CLEARINGHOUSE RULE NO. 99-153  
SUBMITTED BY THE CRIME VICTIMS RIGHTS BOARD**

1. PROPOSED RULE.

The proposed rule is attached to this analysis as Attachment 1.

2. PLAIN LANGUAGE ANALYSIS.

Statutory Authority: s. 950.09(5), Stats.  
Statutes Interpreted: ss. 950.09 and 950.095, Stats.

Under the proposed rule, a party that has been involved in efforts by the Wisconsin Department of Justice ("Department") to resolve a complaint alleging violations of the rights of a crime victim may, once the Department has completed its efforts on the complaint, seek review of the complaint before the Crime Victims Rights Board ("Board"). The Board may implement various remedies if it concludes that a violation of the rights of a crime victim has occurred. The Board also has authority to issue reports and recommendations concerning the securing and provision of crime victims' rights and services.

In reviewing a complaint alleging violations of a crime victim's rights, the Board must make a probable cause determination before beginning any investigation or pursuing any of the authorized remedies. If the Board finds probable cause, it may conduct an investigation of the complaint. A hearing may be held at the request of either party or the Board. The Board, its designee, or a hearing examiner may conduct the hearing. Following the hearing, the Board will issue a written decision including findings of fact and conclusions of law. If the complaint is brought by a crime victim, or with a victim's signed consent, the Board may consider one or more of the remedies provided by s. 950.09(2), Stats. A party that is adversely affected by the Board's final decision may request rehearing and may also seek judicial review of the Board's final decision under the provisions of ch. 227, Stats.

If a complaint is not submitted by a victim or with a victim's signed consent, the Board may investigate the complaint and may issue a report or recommendation based upon the complaint under s. 950.09(3), Stats. The Board may also issue reports or recommendations on other victims' rights issues brought to its attention and need not make a probable cause determination before doing so.

### 3. REFERENCES TO APPLICABLE FORMS.

Proposed CVRB 1.04(2) refers to the complaint form that must be completed in order to file a complaint with the board. That complaint form must be obtained from the Department after the Department has completed its action on the complaint as provided in ss. 950.08(3) and 950.09(2), Stats. A sample complaint form may be obtained by contacting the Office of Crime Victim Services, Victim Resource Center, Post Office Box 7951, Madison, Wisconsin, 53707-7951, (800) 446-6564.

### 4. STATEMENT EXPLAINING THE NEED FOR THE PROPOSED RULE.

The Crime Victims Rights Board was created by 1997 Wisconsin Act 181, effective December 1, 1998, to enforce the victims' rights established by Wis. Const. Art. I, § 9m, adopted in 1993. The Wisconsin Constitution states that the Legislature shall provide remedies for the violation of victims' constitutional rights. The Board's process represents the means of enforcing the rights of, and providing the remedies available to, victims of crime who are not provided with the rights guaranteed to them by the Wisconsin Constitution and the Wisconsin statutes. Alleged violations of crime victims' rights must be presented to the Department of Justice before they can be presented to the Board. The Department estimates that it receives 200 complaints annually involving the treatment of crime victims. The Department has no authority to enforce victims' rights; the Department can only seek to mediate disputes. Of those complaints, approximately 25 per year cannot be resolved to the parties' satisfaction, and are therefore ripe for the Board's consideration.

The Legislature directed the Board to promulgate rules establishing procedures for the exercise of its powers under ch. 950.09, Stats. See s. 950.09(5), Stats. The Board hereby proposes the creation of Wis. Admin. Code § CVRB 1 in response to this legislative direction.

### 5. EXPLANATION OF MODIFICATIONS MADE AS A RESULT OF PUBLIC HEARING TESTIMONY.

The Board held public hearings on the proposed rule on November 9, 1999 and February 25, 2000. Those appearing or submitting written comments to the Board raised the following concerns:

- a. The three year statute of limitations in CVRB 1.04(5) is too long.

Board Response: The Board has retained the three year statute of limitations in CVRB 1.04(5). The Board feels that under certain

circumstances victims may wait until the completion of the criminal justice process, including appeal, before bringing a complaint about an array of alleged violations. Some of those violations may have occurred several years earlier during the initial, investigatory phase of the criminal justice process. The Board recognizes that victims are likely to be focused initially on the criminal justice process, and only after the case is closed may victims reflect on whether they were provided their rights as required by law. The Board wishes to afford victims the opportunity to file complaints after the criminal justice process is complete.

- b. The Board should not accept complaints filed by an involved party other than the victim him or herself.

Board Response: The Legislature has authorized the Board to accept complaints from "one of the involved parties...." See s. 950.09(2), Stats. The Board understands this phrase to refer to the parties involved with the Department's informal mediation process under s. 950.08(3), Stats. The Board therefore concludes that it is obligated to accept complaints from persons other than victims. In addition, the Board believes that it is consistent with the Legislature's goal of protecting the rights of crime victims to permit persons with knowledge of victims' rights violations, who are not victims themselves, to bring complaints to the Board's attention. A victim may have many reasons for not wanting to initiate a complaint with the Board, and yet there may be serious rights violations occurring that should be brought to the Board's attention. The Board has therefore concluded that authorizing complaints to be filed by involved parties other than victims is consistent with both the letter and the spirit of s. 950.09, Stats.

- c. The emergency rule provided that a probable cause determination could be made before a copy of the complaint was provided to the respondent. Under the emergency rule, CVRB 1.05(5) permitted but did not require the Board to provide a copy of the complaint to the respondent before making its probable cause determination.

Board Response: The Board has modified CVRB 1.05(5) so that the complaint must be provided to the respondent prior to the probable cause determination.

- d. The Board's rule should not authorize the Board to request a hearing when neither party requests one.

Board Response: The Board assumes that in most cases one of the parties will request a hearing. However, the Board also acknowledges that there may be circumstances where its investigation is inconclusive and a hearing is necessary to resolve disputed issues of fact. The Board wishes to preserve its right to call for a hearing where it determines that one would

be beneficial to its decision making process, even where neither party has requested one.

- e. The rule's statement that cross-examination by parties is not favored, and that cross-examination may be limited, denies respondents due process.

Board Response: The limitations on cross-examination in CVRB 1.07(5) are consistent with s. 227.45(6), Stats., and with the due process rights that attach to the administrative process. The Board understands its obligation to provide the parties with an opportunity to present their evidence and to rebut the opposing party's evidence. The Board is also well aware of the power imbalance that may exist between a victim of crime and, for example, a district attorney or chief of police who is alleged to have violated a crime victim's rights. The Board is concerned that the fear of cross-examination may deter crime victims from bringing complaints to the Board's attention. Accordingly, the Board has designed a process whereby questioning by the parties, while possible, is not favored. The Board anticipates that in most cases, the parties will submit to the Board questions for the other party and witnesses, and the Board or the hearing examiner will ask those questions of the parties and witnesses. The Board has concluded that this process will provide due process to the participants while minimizing the intimidation of crime victims.

- f. The parties should be allowed to call the DOJ mediator as a witness.

Board Response: A summary of the DOJ mediator's contact with the parties will be made available as part of the Board's investigation, assuming that the Board finds probable cause on a complaint. Beyond the provision of this information, the mediator's involvement would be of little relevance since the Board's process consists of an independent evaluation and investigation of the complaint. In order to preserve the DOJ mediator's ability to mediate disputes effectively, the Board has concluded that his or her role in complaints before the Board should be limited to verification that the complaint was presented to the mediator as required by s. 950.09(2), Stats. and provision of a summary of contacts.

- g. The Board should not be allowed to impose limitations on the number of witnesses called or on the length of time allocated for testimony.

Board Response: Proposed CVRB 1.07(6) provides that the Board may set reasonable limits on the amount of time allocated for testimony and may impose limits on the number of witnesses called. The Board anticipates that it will rarely be obligated to impose limits, but that these limits may be necessary to avoid the presentation of cumulative or irrelevant testimony. Out of fairness to and respect for the parties and the members of the Board, all of whom may have traveled some

distance to attend a hearing, the Board concludes that this option is necessary.

- h. The Board should not be permitted to deliberate on probable cause, and on the evidence presented at the hearing, in closed session.

Board Response: Deliberating on probable cause and on the ultimate resolution of the complaint is consistent with Wisconsin's open meetings law, ss. 19.85(1)(a) and (f), Stats., and is also consistent with the Legislature's charge to the Board in ss. 950.095(1)(am) and (1m)(a), Stats., to keep complaints confidential prior to a finding of probable cause and to avoid unnecessary embarrassment to and publicity for the subject of the complaint.

- i. Because law enforcement officers may be subjected to discipline as a result of the conduct complained of to the Board, or as a result of action taken by the Board, the rule should reflect law enforcement officers' rights to legal representation when their employment rights are imperiled.

Board Response: Proposed CVRB 1.11(2) provides that any party may be represented by counsel or another advocate throughout the Board's process.

- j. Respondents should have the option of not responding to complaints or otherwise participating in the Board's process, and the Board should not draw an adverse inference from such non-participation.

Board Response: The proposed rule permits an adverse inference to be drawn where a party refuses to cooperate with the Board's investigation. A party who chooses to provide no information whatsoever to the Board, at the probable cause, investigation, and hearing stages, obviously runs the risk that the Board will find against that party simply because the Board will have information from one side but not the other. The Board understands the concern that individuals named as respondents in a complaint to the Board may also be sued civilly or be the subject of criminal prosecution on related charges, and that these potential liabilities may make certain individuals reluctant to participate in the Board's process. The Board notes, however, that a civil action for money damages may not be based on violations of crime victims' rights. See s. 950.10, Stats. An individual who may face criminal charges for the conduct that gave rise to the complaint before the Board has the option of asserting the Fifth Amendment right against self-incrimination during the Board's process. Furthermore, these concerns are not unique to this Board. The Board concludes that such situations are likely to rare exceptions rather than the rule, and that the Board's process will provide for a fair airing of the issues in the vast majority of cases.

k. Two district attorneys advised the Board of their concerns that district attorneys' offices are already overworked and understaffed, and that the district attorneys' overall shortage of resources makes compliance with the many detailed and time-sensitive provisions of the crime victims' rights laws very difficult.

Board Response: The Board is sympathetic to the district attorneys' concerns. The Board anticipates considering the resources available in district attorneys' offices, and the impact of resources on compliance with the victims' rights laws, under its reports and recommendations function in s. 950.09(3), Stats.

6. PERSONS WHO APPEARED OR REGISTERED AT THE PUBLIC HEARINGS.

At the November 9, 1999 hearing, Paul E. Bucher registered in favor of the rule on behalf of the Wisconsin District Attorneys' Association, testified, and also submitted written comments. Following the November hearing, E. Michael McCann submitted written comments on behalf of the Office of the Milwaukee County District Attorney. At the February 25, 2000 hearing, Gordon E. McQuillen registered for information only on behalf of the Wisconsin Professional Police Association, testified, and also submitted written comments.

7. LEGISLATIVE COUNCIL STAFF CLEARINGHOUSE REPORT.

The Clearinghouse Report is attached to this analysis as Attachment 2.

8. RESPONSE TO LEGISLATIVE COUNCIL STAFF CLEARINGHOUSE REPORT.

The Clearinghouse Report's recommendations have been adopted in their entirety, with one exception. Changes recommended by the Legislative Council are reflected in the attached draft of the rule.

The Board has not adopted recommendation 5.b, which appears on page two of the Clearinghouse Report. That recommendation suggests that the Board should not limit the available relief to reports and recommendations if a complaint is not filed or co-signed by a crime victim. The Board recognizes that there may be violations of victims' rights that should be brought to the Board's attention, but that victims may not, for a variety of reasons, wish to bring complaints on their own. The Board believes that a victim who chooses not to bring or even co-sign a complaint to the Board may make this choice, in many cases, out of a desire to be done with "the system." The Board does not wish to revictimize victims by forcing them to participate against their wishes in the Board's process or in court proceedings that may accompany the Board's process such as, for example, forfeiture proceedings. In addition, where a victim refuses to participate in any fashion in the Board's process, the Board has concluded that it may be difficult to obtain the information required to justify and support a finding of a violation against a respondent. Accordingly, out of fairness to victims and potential respondents, the Board believes that complaints that are not brought or co-signed by victims are most

appropriately handled through the Board's reports and recommendations function provided by s. 950.09(3), Stats.

In addition, the Board wishes to comment on one of the Legislative Council recommendations which the Board has adopted with reservations. The Board's emergency rule included provisions that prohibited retaliation against individuals who participated in any fashion with the Board's process and also prohibited coercion not to participate with the Board. The Clearinghouse Report, point 1.b on page one, questioned the statutory authority for these provisions, and the Board has concluded that they should be deleted. The Board wishes to note its strong concern, however, that public and private sector employees need and deserve statutory protection from retaliation and coercion in order to make the Board's process meaningful.

For example, a victim witness coordinator may know that a certain district attorney routinely fails to confer with victims as required by s. 950.04(1v)(j), Stats. The victim witness coordinator may complain to the Department about this ongoing rights violation, and may ultimately complain to the Board. Many victim witness coordinators are hired and supervised by district attorneys, and the district attorney in this hypothetical example could retaliate against the victim witness coordinator by disciplining or firing him or her. Under current law, a public sector employee would appear to have no recourse for this conduct other than to bring a lawsuit for violation of his or her First Amendment rights. A private sector employee (for example, an employee of a domestic abuse shelter) would appear to have no recourse at all. The Board is, therefore, concerned that fear of retaliation, and the inadequacy of remedies for retaliation, may discourage the people who know the most about victims' rights violations from speaking up about them. Accordingly, the Board urges the Legislature to consider extending the protection against retaliation in s. 111.322(2m), Stats., to those who participate as complainants or witnesses in the Board's process.

#### 9. FINAL REGULATORY FLEXIBILITY ANALYSIS.

The proposed rule has no impact on small business, and a regulatory flexibility analysis is therefore not required.

**ATTACHMENT 1**

**Text of Clearinghouse Rule No. 99-153**

The Wisconsin Crime Victims Rights Board proposes an order to create CVRB 1, relating to the review of complaints alleging violations of the rights of crime victims.

SECTION 1. TEXT OF RULE. CVRB 1 is created to read:

**CVRB 1.01 Purpose.** The purpose of this chapter is to establish procedures for the review of complaints made to the crime victims' rights board. This chapter interprets the provisions of ss. 950.09 and 950.095, Stats., and also interprets the provisions of ch. 227, Stats., concerning the conduct of proceedings under this chapter.

**CVRB 1.02 Definitions.** In this chapter:

- (1) "Board" means the crime victims' rights board.
- (2) "Chairperson" means the chairperson of the board.
- (3) "Complainant" means the individual filing a complaint with the board.
- (4) "Complaint" means a written, sworn complaint made to the board regarding a violation of the rights of a crime victim.
- (5) "Department" means the department of justice.
- (6) "Involved party" means an individual who participated in the mediation process as provided in s. 950.08(3), Stats.
- (7) "Mediator" means an employe of the department who has sought to mediate or has actually mediated a complaint made to the department as provided in s. 950.08(3), Stats.
- (8) "Party" means the complainant, the respondent, or both.
- (9) "Probable cause" means a reasonable basis for belief, supported by facts, circumstances, and reasonable inferences strong enough to warrant a prudent person to believe that a violation probably has been or is being committed as alleged in the complaint.
- (10) "Respondent" means the individual identified in the complaint as the subject of the complaint.
- (11) "Victim" has the meaning given in s. 950.02(4), Stats.

**CVRB 1.03 Delegation of responsibilities.** The board may delegate its responsibilities in ss. CVRB 1.05 to 1.07 to an appropriate designee.

**CVRB 1.04 Filing.** (1) All written statements of a party's position submitted to the board, including the complaint and the answer, shall be signed by the person preparing the statement. A party shall verify that the contents of each filing submitted by that party or on that party's behalf are true and correct to the best of the party's knowledge and shall sign the filing.

(2) All complaints shall be prepared on a complaint form obtained from the mediator. The completed complaint shall be returned to the board at the address provided on the form.

(3) A complaint may be filed by any involved party. The board may not take any action provided by s. 950.09(2), Stats., other than seeking equitable relief as provided by s. 950.09(2)(c), Stats., unless the complaint is filed by a victim or a victim has signed the complaint indicating that he or she consents to the filing of the complaint by the involved party.

(4) The board may consider issuing a report or recommendation as provided by s. 950.09(3), Stats., in response to a complaint filed by an involved party without endorsement by a victim. The board may consider a complaint filed under this subsection, and may issue a report or recommendation as provided by s. 950.09(3), Stats., without making a probable cause determination.

(5) The board may consider complaints alleging violations of victims' rights that occurred on or after December 1, 1998. The board may not consider alleged conduct that occurred more than three years from the date the complainant knew or should have known of a violation of the rights of a victim. The board may consider issuing reports or recommendations as provided by s. 950.09(3), Stats., relating to conduct that occurred prior to December 1, 1998 or more than three years before a complaint was filed with the board or the board was otherwise notified of the conduct.

**CVRB 1.05 Probable cause determination.** (1) Upon receipt of the complaint, the board shall contact the mediator and request verification that the substance of the complaint has been presented to the department and that the department has completed its action as required by ss. 950.08(3) and 950.09(2), Stats.

(2) If the substance of the complaint has not been presented to the department, the board shall advise the complainant of the complainant's obligation to present the substance of the complaint to the department before filing a complaint with the board.

(3) If the department has not completed its action as provided in s. 950.08(3), Stats., the board shall return the complaint form to the complainant and shall advise the complainant that the board cannot review the complaint until the department has completed its action.

(4) If the department has completed its action as provided in s. 950.08(3), Stats., the mediator shall provide the board with information on the mediation process and its

outcome. This information may take the form of a memorandum, other written documentation, or both.

(5) The board shall provide a copy of the complaint, with a cover letter, to the respondent and invite the respondent to submit an answer to the complaint. The board shall provide a copy of this letter to the complainant. If the respondent submits an answer, the board shall provide a copy of the answer to the complainant.

(6) The board shall determine probable cause at its next regularly scheduled meeting or at a meeting called by the chairperson. Upon a vote of the board, the board may deliberate and vote on the probable cause determination in closed session pursuant to s. 19.85(1)(f), Stats.

(7) In making the probable cause determination, the board may consider all relevant information, including all of the following:

(a) The complaint

(b) The answer

(c) The information provided by the mediator pursuant to sub. (4).

(8) The board shall notify the parties and the mediator of its probable cause determination. If the board finds probable cause, the board shall advise the parties of their right to request a hearing under s. CVRB 1.07 on the complaint. A finding of no probable cause is a final decision of the board. If the board finds no probable cause, the board shall provide notice to the parties of the right to seek judicial review pursuant to ch. 227, Stats.

**CVRB 1.06 Investigations.** (1) The board may conduct an investigation of any complaint which meets the probable cause standards under this chapter. The board may request responses to written questions, participation in a personal or telephonic interview with the board, and written documentation. The board may consider a party's refusal to cooperate with the board's investigation in making its determination on the complaint.

(2) The board may request a party to sign a statement authorizing the limited release of specified records to the board. A party who is asked to sign a release may request a protective order from the board limiting the disclosure of any such records outside the board's process.

(3) Following its investigation and prior to the hearing under s. CVRB 1.07, the board shall provide copies to the parties of any documentation obtained during its investigation.

**CVRB 1.07 Hearings.** (1) A hearing may be requested by any party or by the board. A party may appear in person or by telephone at the hearing, or may submit a written statement of position on the complaint in place of a personal appearance.

(2) A party who chooses not to appear at the hearing shall notify the board not later than two weeks prior to the hearing of this intent. A party who chooses to submit a written statement shall submit that statement to the board not later than one week prior to the scheduled hearing date.

(3) One month prior to the hearing, or at another date determined by the board, the parties may provide the board with all of the following:

(a) A list of witnesses whom the party wishes to have the board subpoena for the hearing. Subpoenas may also be issued in accordance with s. 227.45(6m), Stats.

(b) A list of questions for the board to ask another party or witness at the hearing.

(4) The board, or its designee, or a hearing examiner proceeding under ch. 227, Stats., may preside over the hearing.

(5) The parties appearing at the hearing shall be afforded reasonable opportunity to be represented by counsel, to call witnesses, and to present evidence. Questioning of a party by another party is not favored and may be limited by the board consistent with s. 227.45(6), Stats.

(6) The board may set reasonable time limits for testimony and may limit the number of witnesses called by a party. No party may require the mediator to testify as a witness at the hearing.

(7) Proof of a violation of the rights of a crime victim shall be made by clear and convincing evidence. "Clear and convincing evidence" means evidence which satisfies and convinces the board, because of its greater weight, that a violation occurred.

(8) A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence. Testimony will not be transcribed unless a party requests a transcript and pays any costs required to prepare the transcript. The board shall prepare a transcript, at its own expense, in the event a party seeks judicial review of the board's decision.

(9) The board may vote to hold the hearing in closed session pursuant to s. 19.85(1)(f), Stats. Parties and their counsel or another advocate, including a family member, shall be permitted to be present during the entire hearing.

(10) Witnesses subpoenaed at the request of a party or the board shall be entitled to compensation from the board for attendance and travel as provided in ch. 885, Stats.

**CVRB 1.08 Decisions.** (1) At the close of the hearing, the board shall meet for purposes of deliberating on the complaint. Upon a vote of the board, the board may deliberate in closed session as provided by s. 19.85(1)(a), Stats.

(2) Within 30 days of the close of the hearing, or by another date established by the board if no hearing is held, the board's legal counsel shall prepare a written proposed decision for the board, including findings of fact, conclusions of law, and a recommended remedy, and shall provide the proposed decision to the board.

(3) The board shall consider the proposed decision at its next regularly scheduled meeting or at a meeting called by the chairperson. The board may amend any portion of the recommended decision prior to approving the final decision. Upon a vote of the board, the board may conduct its discussion of the final decision in closed session as provided by s. 19.85(1)(a), Stats.

(4) The board shall provide the final decision to the parties along with a notice of the right to request rehearing or seek judicial review under ch. 227, Stats.

(5) If no hearing has been held, the board shall make its final decision under the process provided in subs. (2) and (3).

**CVRB 1.09 Rehearing.** (1) A party aggrieved by the final decision may file a written request for rehearing with the board within 20 days after the date of the final decision.

(2) The request for rehearing shall include a detailed statement of the grounds for the request, including the material error of fact or law, or newly discovered evidence, that in the party's view warrants a rehearing. If the request is based on newly discovered evidence, the party shall state why the evidence could not have been previously discovered through reasonably diligent effort.

(3) The board may grant a rehearing on the basis of one or more of the following:

(a) A material error of law.

(b) A material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the original decision which could not have been previously discovered through reasonably diligent efforts by the parties.

(4) The board shall determine whether to grant the request for rehearing at its next regularly scheduled meeting or at a meeting called by the chairperson. If the board grants rehearing, it shall follow the procedures in s. CVRB 1.07 in conducting the rehearing.

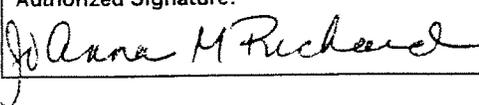
**CVRB 1.10 Judicial Review.** Judicial review of the board's final decision is governed by ss. 227.52 to 227.59, Stats.

**CVRB 1.11 Miscellaneous provisions.** (1) RELIEF FROM DEADLINES. The board may grant a party's request for reasonable extension of the deadlines set forth in this chapter.

(2) REPRESENTATION. A party may be represented throughout proceedings under this chapter, including at hearing, by counsel or by another advocate.

SECTION 2. REFERENCE TO APPLICABLE FORMS. CVRB 1.04(2) refers to the complaint form that must be completed in order to file a complaint with the board. That complaint form must be obtained from the department after the department has completed its action on the complaint as provided in ss. 950.08(3) and 950.09(2), Stats. To obtain a sample complaint form, contact the Office of Crime Victim Services, Victim Resource Center, Post Office Box 7951, Madison, Wisconsin, 53707-7951, (800) 446-6564.

SECTION 3. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

<b>1999 Session</b>		LRB Number
<b>FISCAL ESTIMATE</b> DOA-2048 N(R06/99)		Bill Number
<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL		Amendment No. if Applicable
<b>Subject</b>		Administrative Rule Number
<b>CRIME VICTIMS RIGHTS BOARD EMERGENCY ADMINISTRATIVE RULES</b>		
<b>Fiscal Effect</b> State: <input type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.		
<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation		<input checked="" type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Decrease Costs
Local: <input type="checkbox"/> No local government costs		
1. <input checked="" type="checkbox"/> Increase Costs <input checked="" type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input checked="" type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
<b>Fund Sources Affected</b> <input checked="" type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		<b>Affected Chapter 20 Appropriations</b>
<b>Assumptions Used in Arriving at Fiscal Estimate</b>  <p>The Crime Victims Rights Board is a five-member board charged to hear and decide complaints concerning possible violations of rights of crime victims. The Board is attached to the Department of Justice (DOJ) for administrative purposes. The Board will require 20 hours per week of staff assistance, as well as approximately 5 hours per week of legal counsel assistance, excluding special counsel for forfeiture actions. In addition to salary and fringe benefit costs, a majority of the Board's expenses will be related to travel and lodging for Board meetings. The estimate assumes an average of 500 miles of round trip travel, reimbursed at \$.29 per mile, for each Board member and staff for each of 6 meetings, in addition to meals and lodging.</p> <p>Remedies available to the Board if it finds a violation include initiating legal action against the respondent to seek a forfeiture. Forfeiture actions have fiscal implications for the Board and the respondent, as both entities will need legal counsel. The estimate assumes that forfeiture actions will cost DOJ \$9000 in special counsel fees, and will cost the respondent, whether a state entity or municipality, another \$9000 in fees for special defense counsel.</p> <p>It is impossible to predict with certainty at this time how many complaints the Board will receive each year and how many hearings the Board will hold. The estimate assumes that the Board will meet 6 times per year, that 8 complaints will lead to hearings, and that 2 cases will lead to forfeiture actions requiring special counsel for the Board and for the respondent in the forfeiture action.</p>		
<b>Long-Range Fiscal Implications</b>		
Prepared by: Karen E. Timberlake, Asst. Atty. Gen.	Telephone No. 267-1300	Agency DOJ
Authorized Signature: 	Telephone No. 267-1932	Date 9-21-99

**FISCAL ESTIMATE WORKSHEET**

Detailed Estimate of Annual Fiscal Effect  
DOA-2047 (R06/99)

ORIGINAL                       UPDATED  
 CORRECTED                       SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number

Subject

**CRIME VICTIMS RIGHTS BOARD EMERGENCY ADMINISTRATIVE RULES**

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

**\$3000 to purchase computer, modem, printer, fax for Board staff**

II. Annualized Costs:		Annualized Fiscal impact on State funds from:	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
State Operations - Salaries and Fringes		\$ 34,264	\$ -
(FTE Position Changes)		(.5 FTE)	(- FTE)
State Operations - Other Costs		30,100	-
Local Assistance			-
Aids to Individuals or Organizations			-
TOTAL State Costs by Category		\$ 64,364	\$ -
<b>B. State Costs by Source of Funds</b>		Increased Costs	Decreased Costs
GPR		\$ 64,364	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
<b>State Revenues</b> Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		Increased Rev.	Decreased Rev.
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
TOTAL State Revenues		\$	\$ -

**NET ANNUALIZED FISCAL IMPACT**

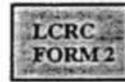
	STATE	LOCAL
NET CHANGE IN COSTS	\$ 64,364	\$ 9,000
NET CHANGE IN REVENUES	\$	\$

Prepared by: <b>Karen E. Timberlake, Asst. Atty. Gen.</b>	Telephone No. <b>267-1300</b>	Agency <b>DOJ</b>
Authorized Signature: <i>Joanna M. Richard</i>	Telephone No. <b>267-1932</b>	Date <b>9/2/99</b>

ATTACHMENT 2

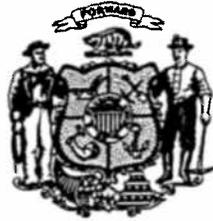
Legislative Council Clearinghouse Report on  
Clearinghouse Rule No. 99-153

WISCONSIN LEGISLATIVE COUNCIL STAFF



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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 99-153**

AN ORDER to create chapter CVRB 1, relating to the review of complaints alleging violations of the rights of crime victims.

Submitted by **DEPARTMENT OF JUSTICE**

11-01-99 RECEIVED BY LEGISLATIVE COUNCIL.

11-16-99 REPORT SENT TO AGENCY.

RS:AS:jal;rv

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

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## CLEARINGHOUSE RULE 99-153

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 1. Statutory Authority

a. Section 950.08 (3), Stats., provides that the Department of Justice (DOJ) may receive complaints, seek to mediate complaints and actually mediate complaints regarding the treatment of crime victims and witnesses by public officials, employees or agencies or under crime victim and witness assistance programs. Section 950.09 (2), Stats., provides that the Crime Victims Rights Board may review a complaint made to DOJ and that a party may not request the board to review such a complaint until DOJ has completed its action. The statutes clearly envision that all complaints be routed through DOJ before the board becomes involved. However, s. CVRB 1.05 (5) provides that a complaint that names an employee of DOJ as a respondent need not be presented to the department before being presented to the board. While the rule provision appears to be an attempt to avoid a conflict of interest, what statutory authority exists for the rule provision?

b. Section CVRB 1.11 (2) and (3) in general contain provisions that prohibit actions against any person who attempts to vindicate crime victims' rights. What statutory authority exists for the creation of these substantive prohibitions and what statutory authority exists for their enforcement?

## 2. Form, Style and Placement in Administrative Code

a. Section 227.15 (1), Stats., provides in part that an agency may not hold a public hearing on a proposed rule until after it has received a written report of the Legislative Council Staff review of the proposed rule or until after the initial review period of 20 working days, whichever comes first. Clearinghouse Rule 99-153 was received by the Legislative Council Staff on November 1, 1999 and, according to the rule submission, a public hearing on the rule was held on November 9, 1999. The hearing should not have occurred prior to the receipt of the Clearinghouse report.

b. The text of the rule-making order must be divided into sections. Therefore, "SECTION 1. CVRB 1 is created to read:" should be inserted at the beginning of the text of the rule.

c. In s. CVRB 1.05 (9), the first sentence does not grammatically lead into the following subunits. Consequently, either the first sentence should be renumbered as par. (a), and the remaining paragraphs renumbered accordingly, or all four sentences should be collapsed into one subsection. [See also s. CVRB 1.11 (2) and s. 1.03 (8), Manual.]

d. An effective date clause must be inserted at the end of the rule text. [See s. 1.02 (4), Manual.]

## 4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. CVRB 1.02 (11), the drafter may wish to cite s. 950.02 (4), Stats., instead of s. 950.02 (4) (a), Stats., to clarify that "victim" does not include the person charged with or alleged to have committed the crime. [See s. 950.02 (4) (b), Stats.]

b. Section CVRB 1.04 (2) refers to a form. The agency should ensure that the requirements of s. 227.14 (3), Stats., are met.

c. In s. CVRB 1.05 (8) (c), it appears that the reference to sub. (3) should be replaced with a reference to sub. (4). Also, "of this section" should be deleted.

d. In s. CVRB 1.08 (5), "sub." should be replaced with "subs." Also, "of this section" should be deleted.

e. In s. CVRB 1.11 (2) (c), the word "subdivision" should be replaced by the word "subsection."

## 5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. CVRB 1.04 (1), "but not limited to" could be deleted. This comment also applies to s. CVRB 1.05 (8).

b. In s. CVRB 1.04 (3), why is the remedy limited to equitable relief if the complaint is not filed or signed by the victim? Section 950.09 (2), Stats., does not include such a limitation.

c. In s. CVRB 1.04 (5), "alleged" in the second sentence could be replaced with "complaints alleging."

d. In s. CVRB 1.05 (6), should the word "may" be replaced by the word "shall"?

e. In s. CVRB 1.05 (7), in order to be consistent with ss. CVRB 1.07 (9) and 1.08 (1), an appropriate cross-reference to s. 19.85, Stats., should be included.

f. In s. CVRB 1.05 (8), "all of the following" should be inserted after "including." Also in that subsection, the sentences in pars. (a) to (c) should begin with a capital letter. This comment also applies to s. CVRB 1.07 (3) (a) and (b).

g. In s. CVRB 1.05 (9) (a), it would be helpful to insert "under s. CVRB 1.07" after "a hearing." [See also s. CVRB 1.06 (3).]

h. In s. CVRB 1.06 (2), it may be clearer to replace "limited release" with a phrase such as "statement authorizing the limited release of specified records." Also, sub. (2) provides that a party who was asked to sign a release may request a protective order from the board limiting the disclosure of any limited-release records outside the board's process. This appears to mean that these records may not be distributed for purposes other than the board's proceedings. However, sub. (3) provides that the board may also limit distribution of limited-release records to parties within a proceeding. Either sub. (2) should be amended to avoid any conflict with sub. (3) or documents in a proceeding should not be subject to any protective orders regarding release.

i. In s. CVRB 1.08 (2), should "if no hearing is held" be inserted after "or by another date established by the board"? Also, it would be helpful to insert a phrase such as "a recommended" before "remedy."

j. In s. CVRB 1.09 (1), "20 days of" should be replaced with "20 days after." Also, the drafter may wish to use a more specific date than the date the final decision is provided to the parties for the commencement of the time limitation. As currently drafted, it is unclear whether 20 days should be counted from the date the final decision is made or from the date it is received by the parties. Perhaps the date the final decision is issued should be used.

k. In s. CVRB 1.11 (3), "these rules" should be replaced with "this chapter."

l. In s. CVRB 1.11 (4), "these" should be deleted and "under this chapter" should be inserted after "proceedings."