

WISCONSIN'S HISTORY AND THE CRIME VICTIMS RIGHTS MOVEMENT



Jill J. Karofsky

Executive Director

Office of Crime Victim Services

Wisconsin Department of Justice



FUTURE

PRESENT

PAST

Defendants' Rights



Victims' Right





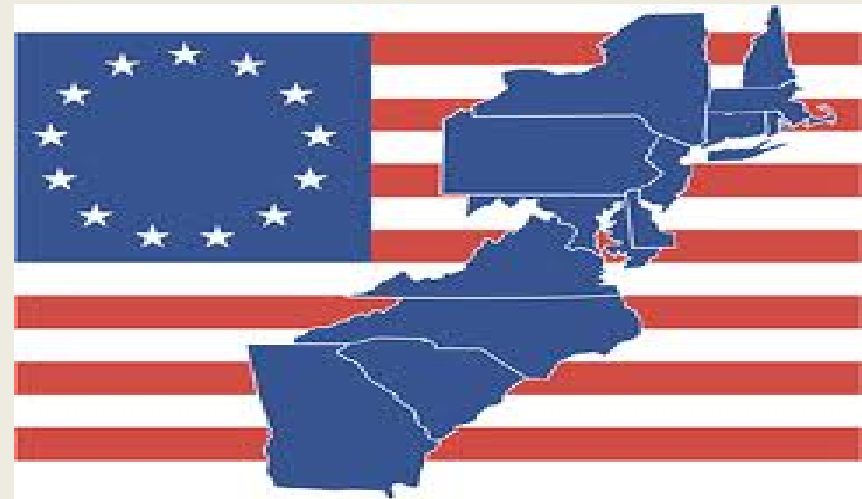
“The criminal justice system has long functioned on the assumption that crime victims should behave like good Victorian children – seen but not heard. The Crime Victims’ Rights Act sought to change this by making victims independent participants in the criminal justice system.”

Kenna v. District Court, 435 F.3d 1011 (9th Circuit 2006)

History of Victim Involvement in Prosecution at the Founding

- Public prosecutors relatively insignificant
- Only 5 of the 13 original constitutions mention a state attorney general

(p. S3249 of the Congressional Record) Sen. Dianne Feinstein 5/2/00)



History of Victim Involvement in Prosecution—19th Century

- Private prosecutions created inadequacies
- 19th Century – reform and professionalism of the police, prosecutors, and correctional systems
- Led to public prosecution model
- Victims almost completely out of the equation

William F. McDonald, *Towards a Bicentennial Revolution in Criminal Justice: The of the Victim*, 13 Amer. Crim. L. Rev. 649 (1976)



American Criminal Process Evolved by 1970s to Exclude Victim Involvement

1. Historical “Misunderstanding”
2. Practicality
3. Fairness to the Accused
4. Truth Seeking
5. Cultural and Institutional Dynamics
6. Product of Law School Curriculum



Victims in Criminal Procedure, 3rd Edition, pages 11-17, Doug Beloof, Paul Cassell, Steven Twist

History of Victim Involvement in Prosecution—US

“Therein lies the exquisite irony of modern law. The age-old struggle of civilization has been to persuade people not to take justice into their own hands but rather to let their vengeance and righteous indignation be wrought by the law.”

William F. McDonald, *Towards a Bicentennial Revolution in Criminal Justice: The Return of the Victim*, 13 Amer. Crim. L. Rev. 649 (1976)



Victims Rights Movement



Came from three contemporaneous social movements:

1. Women's liberation movement
2. Civil rights movement
3. Conservative law and order movement

Linda R.S. v. Richard D., 410 U.S. 614 (1973)

- U.S. Supreme Court
- Linda wanted Richard prosecuted for failing to pay child support
- DA wouldn't prosecute because Linda and Richard were not married
- Linda sued asking that the DA be enjoined from discriminately applying non-support statute by refusing to prosecute fathers of children born to unmarried women
- Court ruled that Linda didn't have standing because "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another"

Linda R.S. v. Richard D., 410 U.S. 614 (1973)

- Court found that crime victim cannot compel a criminal prosecution because “a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.”
- Court provided a foundation for remedy
- Congress could “enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute.”

1983 President Reagan's Presidential Task Force on the Victims of Crime

“The treatment of crime victims in America was a national disgrace. Ignored, mistreated, or blamed, the innocent victims had been handled like photographs or fingerprints—mere evidence to be manipulated at the criminal justice system's convenience. By the end of the ordeal, many victims vowed that they would never again become embroiled in the system, and that they would tell their friends and loved ones to stay away from the courts.”



1983 President Reagan's Presidential Task Force on the Victims of Crime

“Just as a pebble dropped in a pool causes rippling all across the water, the mistreatment of victims spread resentment and distrust of the justice system throughout entire communities. We saw that this insensitivity toward victims was not only unjust, it was unwise. The criminal justice system is absolutely dependent upon the cooperation of crime victims to report and testify. Without their help, the system cannot hold criminals accountable and stem the tide of future crime.”

VOCA

- 1984 Victims of Crime Act Passed
- Amended in 1988 allowing OVC to administer Crime Victims Fund
- Fund supports broad array of programs and services focus on helping victims in the immediate aftermath of crime and continuing to support
- Millions of dollars are invested annually in victim compensation and assistance in every U.S. state and territory
- Money also for training, technical assistance, and other capacity-building programs to enhance service providers' ability to support victims of crime

Victims' Rights in Wisconsin

- **1980:** First state to enact a Bill of Rights for Victims and Witnesses of Crime
- **1983:** First Child and Witness Bill of Rights
- **1993:** Wisconsin Constitution Ratified
- **1997:** Chapter 950



Art. 1, Sec. 9m

Wisconsin Constitution

- State shall treat victims with fairness, dignity and respect for privacy
- Privileges afforded victims:
 - Timely disposition
 - Opportunity to attend court
 - Notification
 - Opportunity to confer
 - Protection from the accused throughout criminal justice process

Art. 1, Sec. 9m Wisconsin Constitution

- Privileges afforded victims:
 - Statement at disposition
 - Restitution
 - Compensation
 - Information about case outcome
 - Information about release of accused

Intent of Chapter 950

- Recognize civic and moral duty of victims and witnesses crime to cooperate
- Recognize importance of cooperation to law enforcement and to the effectiveness and well being of the criminal justice system

Intent of Chapter 950

- Ensure all victims and witnesses are treated with dignity, respect, courtesy and sensitivity
- Rights are honored and protected by law enforcement agencies, prosecutors and judges
- **In a manner no less vigorous than the protections afforded criminal defendants**

950 Responsibilities

- **Over 50 specific rights listed in Chapter 950**
- Special sections: witnesses, district attorneys, law enforcement, judges, the media, and child victims and witnesses.
- (Also important victims' rights in Secs. 970.03(4), 971.095, 971.105, 971.315, and 972.14)

950 Victims' Rights

- Notification
- Timely Disposition
- Reasonable protection from the accused throughout criminal justice process
- Opportunity to confer
- Make a statement to court at disposition
- Restitution
- Compensation
- Information about outcome case and release of accused

Schilling v. Wisconsin Crime Victims Rights Board

2005 WI 17

- Case involving a 1999 murder
- Victim's son discovered her body and called 911
- At sentencing DA played 911 tape without informing all family members
- Realizing the emotional toll of 911 tape, DA discontinued
- Victims filed complaint with CVRB

Schilling v. Wisconsin Crime Victims Rights Board

2005 WI 17

- Did Schilling violate victims' rights to be treated with *fairness, dignity, respect* and *sensitivity* ?
- Are these rights that victims have or simply a statement of policy?

Enumerated Rights

- Enforceable Rights: To be treated with **fairness, dignity, and respect for his or her privacy by public officials, employees, or agencies.**
- This paragraph does not impair the right or duty of a public official or employee to conduct his or her official duties reasonably and in good faith.
- *950.04(1v)(ag)*

Protection of Privacy

- To not have personal identifiers used or disclosed by a public official, employee, or agency
- For purpose unrelated to the official responsibilities of the official, employee, or agency
- *950.04(1v)(dr) and 950.04 (1w)(dm)*

950.105 Standing

- Victim has a right to assert rights in a court in the county in which the alleged violation occurred
- DA not precluded from asserting a victim's rights in a criminal case or in a proceeding or motion brought under this section



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