

DCF Memo 2020-30i Attachment

Comparison of Selected Provisions of WI Constitution, Chapter 938, and Chapter 950

VICTIM RIGHTS RELATED TO INTAKE

	Ch 938 Juvenile Justice Code	Ch. 950 Rights of Victims and Witnesses of Crime	WI Constitution Article I, Section 9m  <i>The following provisions of the WI Constitution relate to the corresponding topics in Chapters 938 and 950 and may be relevant in their interpretation and implementation.</i>
General	<p>To ensure that victims and witnesses of acts committed by juveniles that result in proceedings under this chapter are, consistent with this chapter and the Wisconsin constitution, afforded the same rights as victims and witnesses of crimes committed by adults, and are treated with dignity, respect, courtesy, and sensitivity throughout those proceedings.</p> <p><b>938.01(2) (g)</b></p>	<p>In recognition of the civic and moral duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this chapter, to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy and sensitivity; and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants.</p> <p><b>950.01</b></p>	<p>(2) In order to preserve and protect victims' rights to justice and due process throughout the criminal and juvenile justice process, victims shall be entitled to all of the following rights, which shall vest at the time of victimization and be protected by law in a manner no less vigorous than the protections afforded to the accused:</p>

	<b>Ch 938 Juvenile Justice Code</b>	<b>Ch. 950 Rights of Victims and Witnesses of Crime</b>	<b>WI Constitution Article I, Section 9m</b>
Victim's right to timely notice of information	Each known victim of a juvenile's act shall receive timely notice of certain information in ch. 938 some of which must be provided by the intake worker, and some of which must be provided by the district attorney.  <b>938.346 (1)</b>	To have reasonable attempts made to notify the victim concerning actions taken in a juvenile proceeding, as provided under ss. 938.24 (5m) [case closure], 938.25 (2m) [DA decides not to file petition], 938.312 [notice of dismissal] and 938.346 [notice of juvenile's acts].  <b>950.04 (1v) (y)</b>	The victim is entitled to timely notice about all rights [under 9m] and all other rights, privileges, or protections of the victim provided by law, including how such rights, privileges, or protections are enforced.
Type of information victims have a right to receive notice of  *only ch. 938 outlines intake worker's specific duties	The intake worker shall make a reasonable attempt to provide notice of the information about: <ul style="list-style-type: none"> <li>• The procedure for obtaining the identity of the juvenile and the juvenile's parents</li> <li>• The procedure for obtaining the juvenile's police records</li> <li>• The potential liability of the juvenile's parents</li> <li>• All of the following: <ul style="list-style-type: none"> <li>The right to be accompanied by a service representative, as provided under s. 895.45.</li> <li>The right to restitution, as provided under ss. 938.245, 938.32 (1t) and 938.34 (5).</li> <li>The right to compensation, as provided under subch. I of ch. 949.</li> <li>The right to a speedy disposition of the case under s. 950.04 (1v) (k).</li> <li>The right to have personal property returned, as provided under s. 950.04 (1v) (s).</li> </ul> </li> </ul>	To have reasonable attempts made to notify the victim concerning actions taken in a juvenile proceeding, as provided under ss. 938.24 (5m) [ case closure], 938.25 (2m) [DA decides not to file petition], 938.312 [notice of dismissal] and 938.346 [notice of juvenile's acts].	(n) To compensation as provided by law.  (o) Upon request, to reasonable and timely information about the status of the investigation and the outcome of the case.  (p) To timely notice about all rights under this section and all other rights, privileges, or protections of the victim provided by law, including how such rights, privileges, or protections are enforced.

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	<b>Ch 938 Juvenile Justice Code</b>	<b>Ch. 950 Rights of Victims and Witnesses of Crime</b>	<b>WI Constitution Article I, Section 9m</b>
	<p><b>6.</b> The right to complain to the department of justice concerning the treatment of crime victims, as provided under s. 950.08 (3), and to request review by the crime victims rights board of the complaint, as provided under s. 950.09 (2).</p> <p>NOTE: The notice “shall include an explanation” of the restrictions on disclosing information and information on the penalties for violating the restrictions</p> <p><b>938.346(1m)</b></p>		
Right to confer	<p>The intake worker must provide the information relating to the right to confer, if requested, on deferred prosecution agreements.</p> <p>An intake worker must, “as soon as practicable” but before entering into a DPA, offer all the victims of the juvenile’s alleged act who have requested an opportunity to confer with the intake worker concerning the proposed DPA.</p> <ul style="list-style-type: none"> <li>NOTE: The duty to offer an opportunity to confer does not limit the obligation of the intake worker to perform their intake responsibilities.</li> </ul>	<p><b>950.04(1v)(y)</b></p> <p>To have, at his or her request, the opportunity to consult with intake workers, district attorneys and corporation counsel in cases under ch. 938, as provided under ss. 938.245 (1m) [DPAs], 938.265 [prosecution to consult with victims] and 938.32 (1) (am) [consent decrees].</p>	<p>(h) Upon request, to confer with the attorney for the government.</p>

	<b>Ch 938 Juvenile Justice Code</b>	<b>Ch. 950 Rights of Victims and Witnesses of Crime</b>	<b>WI Constitution Article I, Section 9m</b>
	<b>938.24(5)</b> <b>938.245(1m)</b> <b>938.346(1)(em)</b>	<b>950.04 (1v)(i)</b>	
Limits on information provided to victim	<p>The information may not include reports of certain medical or mental health examinations, court reports, or any other information that deals with sensitive personal matters of the juvenile and the juvenile's family and that does not directly relate to the act or alleged act committed against the victim.</p> <ul style="list-style-type: none"> <li>Note: this limitation does not affect the right of a victim to attend any hearing that the victim is permitted to attend under ch. 938.</li> </ul> <p><b>938.346(2)</b></p>		

**VICTIM RIGHTS RELATED TO DEFERRED PROSECUTION AGREEMENTS (DPAs)**

	<b>Ch 938 Juvenile Justice Code</b>	<b>Ch. 950 Rights of Victims and Witnesses of Crime</b>	<b>WI Constitution Article I, Section 9m</b>
General	<p>To ensure that victims and witnesses of acts committed by juveniles that result in proceedings under this chapter are, consistent with this chapter and the Wisconsin constitution, afforded the same rights as victims and witnesses of crimes committed by adults, and are treated with dignity, respect, courtesy, and sensitivity throughout those proceedings.</p> <p><b>938.01(2) (g)</b></p>	<p>In recognition of the civic and moral duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this chapter, to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy and sensitivity; and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants.</p> <p><b>950.01</b></p>	<p><i>The following provisions of the WI Constitution relate to the corresponding topics in Chapters 938 and 950 and may be relevant in their interpretation and implementation.</i></p> <p>(2) In order to preserve and protect victims' rights to justice and due process throughout the criminal and juvenile justice process, victims shall be entitled to all of the following rights, which shall vest at the time of victimization and be protected by law in a manner no less vigorous than the protections afforded to the accused:</p>
Right to confer	<p>The intake worker must provide the information relating to the right to confer, if requested, on deferred prosecution agreements.</p>	<p>To have, at his or her request, the opportunity to consult with intake workers, district attorneys and corporation counsel in cases under ch. 938, as provided under ss. 938.245 (1m)</p>	<p>(h) Upon request, to confer with the attorney for the government.</p>

	<b>Ch 938 Juvenile Justice Code</b>	<b>Ch. 950 Rights of Victims and Witnesses of Crime</b>	<b>WI Constitution Article I, Section 9m</b>
	<p>An intake worker must, “as soon as practicable” but before entering into a DPA, offer all the victims of the juvenile’s alleged act who have requested an opportunity to confer with the intake worker concerning the proposed DPA.</p> <ul style="list-style-type: none"> <li>NOTE: The duty to offer an opportunity to confer does not limit the obligation of the intake worker to perform their intake responsibilities.</li> </ul> <p><b>938.24(5)</b> <b>938.245(1m)</b> <b>938.346(1)(em)</b></p>	<p>[DPAs], 938.265 [prosecution to consult with victims] and 938.32 (1) (am) [consent decrees].</p> <p><b>950.04(1v)(i)</b></p>	
Restitution	<p>A DPA can require that the youth repair damage to property or “make reasonable restitution” for any damage or injury. The agreement must include a determination that the youth alone is financially able to pay.</p> <p>A DPA can also require that a parent make “reasonable restitution.” The agreement must include a determination that the youth alone is financially able to pay. Except for retail theft, the amount of restitution that a parent must pay is capped at \$5,000.</p> <p><b>938.245(2)(a)5</b></p>	<p>To restitution, as provided under ss. 938.245 (2) (a) 5., 938.32 (1t), 938.34 (5), 938.345, 943.212, 943.23 (6), 943.245, 943.51 and 973.20.</p> <p><b>950.04(1v)(q)</b></p>	<p>(m) Victim has right to full restitution from any person who has been ordered to pay restitution to the victim and to be provided with assistance collecting restitution.</p>

## VICTIM RIGHTS RELATED TO CUSTODY HEARINGS

	Ch 938 Juvenile Justice Code	Ch. 950 Rights of Victims and Witnesses of Crime	WI Constitution Article I, Section 9m  <i>The following provisions of the WI Constitution relate to the corresponding topics in Chapters 938 and 950 and may be relevant in their interpretation and implementation.</i>
Right to request and receive notice of hearings	<p>The district attorney or corporation counsel shall make a reasonable attempt to contact any known victim or alleged victim of a juvenile's act or alleged act to inform them of the right to receive notice of any hearing under this chapter involving the juvenile.</p> <p>Victims have the right to request and receive notice of the time and place of any hearing that the victim may attend.</p> <p><b>938.346(1)(f)</b></p>	<p>To have reasonable attempts made to notify the victim of hearings or court proceedings, as provided under ss. 302.113 (9g) (g) 2., 302.114 (6), 938.27 (4m) and (6), 938.273 (2), 971.095 (3) and 972.14 (3) (b).</p> <p><b>950.04(1v)(g)</b></p>	<p>(g) Upon request, to reasonable and timely notification of proceedings.</p> <p>Note “hearings” vs. “proceedings”</p>
Responsibility for notice of hearing	<p>If a victim indicates that he or she wishes to receive notice, the district attorney or corporation counsel shall make a reasonable attempt to notify the victim of any hearing under this chapter involving the juvenile.</p> <p>Notification of the victim of a juvenile's act under s. 938.27 (4m) shall be made by the district attorney or corporation counsel.</p> <p><b>938.27(4m)</b> <b>938.346(1m)</b></p>	<p>To have reasonable attempts made to notify the victim of hearings or court proceedings, as provided under ss. 302.113 (9g) (g) 2., 302.114 (6), 938.27 (4m) and (6), 938.273 (2), 971.095 (3) and 972.14 (3) (b).</p> <p><b>950.04(1v)(g)</b></p>	<p>(g) Upon request, to reasonable and timely notification of proceedings.</p> <p>Note “hearings” vs. “proceedings”</p>

	<b>Ch 938 Juvenile Justice Code</b>	<b>Ch. 950 Rights of Victims and Witnesses of Crime</b>	<b>WI Constitution Article I, Section 9m</b>
Right to attend proceedings	<p>The right to request and receive notice of the time and place of any hearing that the victim may attend under s. 938.299 (1) (am)</p> <p>In general, a victim of a juvenile's act or alleged act may attend any hearing under this chapter based upon the act or alleged act, except that the court may exclude a victim from any portion of a hearing that deals with sensitive personal matters of the juvenile or the juvenile's family and that does not directly relate to the act or alleged act committed against the victim.</p> <p>A member of the victim's family and, at the request of the victim, a representative of an organization providing support services to the victim, may attend the hearing under this subsection.</p> <p><b>938.299(1)</b></p>	<p>To attend court proceedings in the case, subject to ss. 906.15 and 938.299 (1). The court may require the victim to exercise his or her right under this paragraph using telephone or live audiovisual means, if available, if the victim is under arrest, incarcerated, imprisoned or otherwise detained by any law enforcement agency or is admitted or committed on an inpatient basis to a treatment facility under ch. 51, 971 or 980, and the victim does not have a person specified in s. 950.02 (4) (a) 3. to exercise the victim's right under this paragraph.</p> <p><b>950.04(1y)(b)</b></p>	<p>(e) Upon request, to attend all proceedings involving the case.</p>
Right to be heard	<p>The court shall determine whether a victim of the juvenile's act wants to make a statement to the court. If a victim wants to make a statement, the court shall allow the victim to make a statement in court or to submit a written statement to be read to the court. The court may allow any other person to make or submit a statement under this paragraph. Any statement made under this paragraph must be relevant to the disposition.</p>	<p>To provide statements concerning sentencing, disposition, or parole, as provided under ss. 304.06(1)(e), 38.32(1)(b)1g., 938.335 (3m)(ag), and 972.14(3)(a).</p>	<p>(i) Upon request, to be heard in any proceeding during which a right of the victim is implicated, including release, plea, sentencing, disposition, parole, revocation, expungement, or pardon.</p>

	<b>Ch 938 Juvenile Justice Code</b>	<b>Ch. 950 Rights of Victims and Witnesses of Crime</b>
	<b>938.335(3m)(ag)</b>	<b>950.04(1v)(m)</b>
Protection from the “accused”	The county must provide separate waiting rooms for victims (or must provide other means to minimize contact with youth, the youth’s relatives, and witnesses for the youth) during hearings, if possible.  <b>938.2965</b>	To be provided a waiting area under ss. 938.2965 and 967.10.  <b>950.04(1v)(e)</b>

<b>WI Constitution Article I, Section 9m</b>
(f) To reasonable protection from the accused throughout the criminal and juvenile justice process. <ul style="list-style-type: none"> <li>The application of this right to the juvenile justice process is new. Previously, the state was required to ensure that crime victims had “reasonable protection from the accused throughout the criminal justice process.”</li> </ul>

## VICTIM RIGHTS RELATED TO COURT REPORTS

	Ch 938 Juvenile Justice Code	Ch. 950 Rights of Victims and Witnesses of Crime	WI Constitution Article I, Section 9m
Court reports	<p>If the delinquent act would constitute a felony if committed by an adult, the person preparing the report under s. 938.33 (1) shall attempt to determine the economic, physical and psychological effect of the delinquent act on the victim,</p> <p>If the delinquent act would not constitute a felony but a victim has suffered bodily harm or the act involved theft or damage to property, the person preparing the report is encouraged to seek the information described in this section.</p> <p><b>938.331</b></p>		<p><i>The following provisions of the WI Constitution relate to the corresponding topics in Chapters 938 and 950 and may be relevant in their interpretation and implementation.</i></p> <p>(j) To have information pertaining to the economic, physical, and psychological effect upon the victim of the offense submitted to the authority with jurisdiction over the case and to have that information considered by that authority.</p>

References: [Chapter 938, Wis. Stats.](#)  
[Chapter 950, Wis. Stats.](#)  
[Wisconsin Constitution](#)

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