

IN THE MATTER OF COMPLAINT
AGAINST THE JACKSON COUNTY
DISTRICT ATTORNEY'S OFFICE,

Case No. 21-012

Respondent.

PROBABLE CAUSE DETERMINATION

1. The Crime Victims Rights Board (the "Board") reviewed a complaint filed by AM¹ against the Jackson County District Attorney's Office (the "DA's Office"). The Board evaluated the complaint to determine whether it stated probable cause that the DA's Office violated AM's rights as a crime victim. *See Wis. Stat. § 950.04(1v)*. The Board finds no probable cause.

BOARD PROCEDURE

2. AM filed a complaint with the Board on November 22, 2021.

3. Upon receipt of the complaint, the Board contacted the Department of Justice (DOJ) Office of Crime Victim Services, which verified that the substance of the complaint had been presented to DOJ and that DOJ had completed the informal complaint process as to the issues raised in the complaint. *See Wis. Admin. Code CVRB § 1.05(1), (4)*.

¹ This probable cause determination uses the victim's initials to protect the victim's privacy.

4. The Board gave a copy of the complaint to the DA's Office and invited it to answer the complaint. *See Wis. Admin. Code CVRB § 1.05(5)*. The DA's Office filed a response on January 11, 2022.

5. The Board made this probable cause determination at a meeting on February 23, 2022. *See Wis. Admin. Code CVRB § 1.05(6)*.

6. In making the probable cause determination, the Board considered all relevant information, including the complaint and response. *See Wis. Admin. Code CVRB § 1.05(7)(a)–(c)*.

7. The Board notifies the parties and DOJ of its conclusions through the issuance of this probable cause determination. *See Wis. Admin. Code CVRB § 1.05(8)*.

STATEMENT OF THE CASE

I. AM's complaint.

8. AM was sexually assaulted on May 29, 2020. She reported the crime a few days later.

9. AM alleges that her case was referred to the DA's Office in November 2020. AM says she reached out to the DA's Office, but it is unclear when. She says the DA's Office did not get back to her until almost a year after she reported the assault.

10. AM met with District Attorney Emily Hynek (“DA Hynek”) on April 9, 2021. DA Hynek told AM that she was not going charge the case and explained why.

11. AM says she felt frustrated by DA Hynek’s decision and reasoning, so she contacted DOJ Special Agent Anne Sheridan and Assistant Attorney General Noelle Lawrence, whom she knew from a previous case, to get more information about the decision not to charge.

12. At the request of Sheridan and Lawrence, DA Hynek sent AM a letter further explaining the reasons for her decision. A copy of DA Hynek’s letter dated August 6, 2021, is attached to AM’s complaint. AM claims that the letter is inconsistent with what DA Hynek told her at their meeting and that the letter “victim blames” and made AM feel “like [her] life didn’t matter.” (Compl. 3.)

II. The respondents’ answer to the complaint.

13. DA Hynek submitted a response on behalf of the DA’s Office.

14. DA Hynek says that she was first notified of the case in June 2020 and received the completed law enforcement referral in November 2020.

15. She explains that the charging decision was delayed by several factors. The referral from law enforcement was delayed because of incomplete reports which necessitated additional interviews and investigation. After the case was referred, the charging decision was postponed during the pendency of

a different case in which AM was the victim, as a matter of prosecutorial strategy.

16. DA Hynek denies ignoring AM and says that from July 2020 forward, AM had contact with, or had the ability to have contact with, the DA's Office. DA Hynek reports that there is no record of AM asking the DA's Office for clarification regarding the charging decision after the April 2021 meeting.

17. At the request of Sheridan and Lawrence, DA Hynek sent AM a letter further explaining the reasons for her charging decision. She says she "took great care in crafting [the letter] in an attempt to emphasize that [she] empathize[d] with [AM], that she is not to blame, and her feelings are valid." (Resp. 3.) DA Hynek says it was "jarring and heartbreaking" to learn that her choice of words in the letter caused AM emotional trauma. (Resp. 3.)

ALLEGATIONS OF VICTIM RIGHTS VIOLATIONS

18. AM does not articulate a specific victim rights violation in her complaint. For this probable cause determination, the Board identifies two victim rights that may be implicated by the facts alleged in AM's complaint.

19. **Right to a speedy disposition of the case.** A crime victim has a right to "a speedy disposition of the case in which they are involved as a victim in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter." Wis. Stat. § 950.04(1v)(k); *see also* Wis. Const. art. I, § 9m(2)(c), (d). A victim also has a right to "have his

or her interest considered when the court is deciding whether to grant a continuance.” Wis. Stat. § 950.04(1v)(ar).

20. **Right to be treated with fairness and dignity.** A crime victim has a right to “be treated with fairness [and] dignity.” Wis. Stat. § 950.04(1v)(ag); *see also* Wis. Const. art. I, § 9m(2)(a) (right to “be treated with dignity, respect, courtesy, sensitivity, and fairness”). This right “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.” Wis. Stat. § 950.04(1v)(ag).

DETERMINATIONS OF FACT

21. The Board finds no dispute of material fact between the parties.

INTERPRETATIONS OF LAW

22. The Board employs a three-step methodology to analyze the complaint: (1) whether the complainant was a crime victim; (2) whether the allegations implicate any constitutional or statutory victim rights; and (3) whether the respondent failed to comply with any duty imposed by a constitutional or statutory provision.

23. Whether a person is a crime victim is determined by statute. “A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both.” Wis. Stat. § 939.12. A crime victim is “[a] person against whom a crime has been committed.” Wis. Stat. § 950.02(4)(a)1.

24. Whether a respondent is subject to the Board's authority is also determined by statute. The Board has authority to review complaints about "public officials, employees or agencies that violate the rights of crime victims." Wis. Stat. § 950.09(2)(a); *but see Gabler v. Crime Victims Rights Bd.*, 2017 WI 67, 376 Wis. 2d 147, 897 N.W.2d 384 (statute unconstitutional as applied to judges).

25. Probable cause is "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." Wis. Admin. Code CVRB § 1.02(9). Probable cause is satisfied by a believable or plausible account that the respondent probably has violated or is violating the victim's rights. *See State v. Sorenson*, 143 Wis. 2d 226, 251, 421 N.W.2d 77 (1988).

26. At the probable cause stage, the Board evaluates the limited information available to it in the light most favorable to the complainant. The probable cause determination is not the proper time to debate and resolve credibility issues if essential facts, circumstances, and reasonable inferences are strong enough to warrant a prudent person to believe a violation probably has occurred or is occurring. *See State ex rel. Huser v. Rasmussen*, 84 Wis. 2d 600, 614, 267 N.W.2d 285 (1978).

PROBABLE CAUSE DETERMINATION

27. The Board finds no probable cause that AM's rights as a crime victim were violated.

28. The Board reaches this conclusion after applying its interpretations of law to the determinations of fact.

29. The threshold question is whether AM is a crime victim. AM was a crime victim because she reported that she was the victim of a sexual assault, conduct prohibited by state law and punishable by a fine or imprisonment or both. *See Wis. Stat. §§ 939.12, 950.02(1m), (4).*

30. The next question is whether the respondent is subject to the authority of the Board. The DA's Office is a public agency subject to the authority of the Board. *See Wis. Stat. § 950.09(2)(a).*

31. The final question is whether the allegations in the complaint implicate a constitutional or statutory victim right. The Board addresses each potential victim rights violations identified above.

32. **Right to a speedy disposition of the case.** In analyzing an alleged violation of the right to a speedy disposition, the Board (1) identifies each delay, (2) determines the cause of the delay, (3) determines whether the delay was reasonable, and (4) if the delay was unreasonable, determines whether the delay was attributable to the respondent.

33. Here, AM alleges that the DA's Office delayed the charging decision. There is no dispute that AM reported the assault to law enforcement in June 2020 and that the case was referred to the DA's Office in November 2020. DA Hynek decided not to charge the case and told AM of her decision on April 9, 2021. DA Hynek provided a reasonable explanation for the five-month delay between the referral and the charging decision. Viewing these facts in the light most favorable to the complainant, the Board finds no probable cause that the DA's Office violated AM's right a speedy disposition of the case. *See* Wis. Stat. § 950.04(1v)(k), (ar); Wis. Const. art. I, § 9m(2)(c), (d).

34. **Right to be treated with fairness and dignity.** In analyzing an alleged violation of the right to be treated with fairness and dignity, the Board determines whether there is probable cause that the respondent's conduct could reasonably be construed as violating those standards.

35. Here, AM disagrees with DA Hynek's charging decision and characterization of some of AM's statements. She describes feeling disappointed and "like [her] life didn't matter." (Compl. 3.) DA Hynek says that the charging decision was difficult, and she sought input from colleagues before concluding she could not charge with the information she had. She says the case "weighed heavily on [her] mind" and that she believed AM, but ultimately her decision was based on her obligation to only file charges that she could prove beyond a reasonable doubt at trial. (Resp. 2.)

36. It is clear from the record that neither party is happy that the case could not be prosecuted, and both agree that the burden put on sexual assault survivors is often unfair. AM disagrees with DA Hynek's charging decision. But it is not for the Board to second guess DA Hynek's discretionary charging decision, even if that decision felt unfair to AM. The undisputed facts show that DA Hynek appropriately communicated and explained the charging decision to AM. Therefore, the Board finds no probable cause that the DA's Office violated AM's right to be treated with fairness and dignity. *See Wis. Stat. § 950.04(1v)(ag); Wis. Const. art. I, § 9m(2)(a).*

ORDER

Based on the foregoing, it is hereby ORDERED:

1. That there is no probable cause that a victim rights violation occurred, so the complaint is dismissed. A finding of no probable cause is a final decision of the Board under Wis. Admin. Code CVRB § 1.05(8).

2. That the Board hereby provides notice to the parties of the right to seek judicial review of this final decision pursuant to Wis. Stat. § 227.52. Attached to this decision is a summary of appeal rights.

3. That judicial review of this final decision is governed by Wis. Stat. §§ 227.52–227.59. *See Wis. Admin. Code CVRB § 1.10.*

4. That a copy of this probable cause determination will be provided to all parties in this proceeding and in accordance with Wis. Admin. Code CVRB § 1.05(8), as identified in the service list below.

Dated this 13th day of April, 2022.

A handwritten signature in cursive script that reads "Jennifer Dunn". The signature is written in black ink and is positioned above a horizontal line.

Chairperson Jennifer Dunn
Crime Victims Rights Board

SERVICE LIST

A.M.

[Address Withheld]

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