

IN THE MATTER OF COMPLAINT
AGAINST THE WASHINGTON COUNTY
SHERIFF'S OFFICE,

Case No. 2212-018

Respondent.

FINAL DECISION

1. The Crime Victims Rights Board finds that the complainant AM¹ has shown by clear and convincing evidence that the respondent Washington County Sheriff's Office violated AM's rights as a crime victim.

BOARD PROCEDURE

2. AM filed a complaint with the Board on December 2, 2022.
3. Upon receipt of the complaint, the Board contacted the Department of Justice, Office of Crime Victim Services, Victim Resource Center (VRC) which verified that the substance of the complaint had been presented to the VRC and that the VRC had completed its action under Wis. Stat. §§ 950.08(3), 950.09(2). *See* Wis. Admin. Code CVRB § 1.05(1), (4).
4. The Board gave a copy of the complaint to the respondent and invited it to answer the complaint. *See* Wis. Admin. Code CVRB § 1.05(5).

¹ This final decision uses the initials of the complainant and her son to protect the victim's privacy.

Sheriff Martin R. Schulteis filed a response on behalf of his office on February 23, 2023.

5. At a meeting on March 15, 2023, the Board made a probable cause determination that AM's victim rights had been violated. *See* Wis. Admin. Code CVRB § 1.05(6).

6. The Board notified the parties and the VRC of its conclusions through the issuance of a written probable cause determination. *See* Wis. Admin. Code CVRB § 1.05(8).

7. The Board made this final decision at a meeting on June 21, 2023.

PROBABLE CAUSE DETERMINATION

8. The Board found probable cause that the Sheriff's Office violated AM's right to timely written notice of a victim's rights. *See* Wis. Const. art. I, § 9m(2)(p); *see also* Wis. Stat. § 950.04(1v)(t); Wis. Stat. § 950.08(2g)(a).

HEARING REQUESTS

9. In its probable cause determination, the Board notified the parties of their right to request a hearing. Neither party requested a hearing.

FINDINGS OF FACT

10. The Board finds the following facts.

11. AM is the mother of JM.

12. JM is a 23-year-old male who has been diagnosed with Down's Syndrome and speech apraxia.

13. JM was receiving respite services and reported that he was assaulted by another individual who was also receiving services.

14. The Washington County Sheriff's Office investigated the case. Investigator Nickols was assigned the case.

15. Nickols referred JM to the local child advocacy center for a forensic interview.

16. After the interview, there was little communication from the Sheriff's Office. AM reached out to Nickols several times without receiving a response for several weeks.

17. AM then obtained the assistance of a victim advocacy program, which reached out to Nickols to inform her that AM was concerned about the lack of communication.

18. After two or three weeks with no response, the victim advocate called the Sheriff's Office and spoke with Detective Lieutenant Tim Kemps.

19. Kemps said there was insufficient evidence to refer the case to the district attorney's office for prosecution.

20. Kemps followed up with an email explaining the decision, and the case was closed shortly thereafter.

21. The Sheriff's Office did not provide notice of victim's rights to AM or JM.

22. Sheriff Schulteis contended that the Sheriff's Office investigated the incident and, "[b]ased on the totality of the circumstances we were simply not able to establish probable cause that any crime occurred."

23. The Sheriff's Office did not provide notice of a victim's rights because it thought "[t]here was no evidence to suggest that a crime occurred and thus Wisconsin [Statutes chapter] 950 would not be applicable."

24. The Sheriff's Office contended that the second prong of Wis. Stat. § 950.02(1m) was not met. That statute provides that a "crime" is "an act committed in this state which, if committed by a competent adult, would constitute a crime," and the respondent contended that because the alleged offender was not competent, then there was no "crime" under Wis. Stat. § 950.02(1m).

VICTIM RIGHT AT ISSUE

25. **Right to timely notice about victim's rights.** A crime victim has a right "[t]o 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." Wis. Const. art. I, § 9m(2)(p); see also Wis. Stat. § 950.04(1v)(t) (right "[t]o receive information from law enforcement agencies, as provided under s. 950.08 (2g)"); Wis. Stat. § 950.08(2g)(a) (law enforcement agency within 24 hours "shall make a

reasonable attempt to provide to the victim” “[a] list of rights of victims under s. 950.04(1v)”).

CONCLUSIONS OF LAW

26. The Board’s evidentiary standard for resolving disputed factual questions is the “[c]lear and convincing evidence” standard. “Clear and convincing evidence’ means evidence which satisfies and convinces the Board, because of its greater weight, that a violation occurred.” Wis. Admin. Code CVRB § 1.07(7). In its probable cause determination, however, the Board concluded that there was no dispute of material fact between the parties.

27. The burden of proof is on the complainant. This burden of proof is very important and can be the deciding factor in the Board’s resolution of factual disputes. Where the evidence on a particular factual question is equally believable or plausible, the effect of the burden of proof is that the Board must find that the complainant failed to prove the point by clear and convincing evidence.

28. The Board concludes that JM and AM are crime victims. JM was a crime victim during the time relevant to the complaint because the incident was investigated as a possible 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). AM brought the complaint on behalf of her son JM, who has Down’s Syndrome and receives long-term adult care services. AM is a statutory

victim because she is a family member of JM, who “is physically or emotionally unable to exercise” his victim’s rights. Wis. Stat. § 950.02(4)(a)3.

29. Contrary to the position of the Sheriff’s Office, criminal conduct does not have to be substantiated to trigger the duty to make a reasonable attempt to provide written notice of a victim’s rights pursuant to Wis. Stat. § 950.04(1v)(t), which is to be carried out “[n]o later than 24 hours after a law enforcement agency has initial contact with a victim of a crime that the law enforcement agency is responsible for investigation.” Wis. Stat. § 950.08(2g). This statutory command shows that a crime need not be substantiated before giving the required notice because many, if not most, crimes will not be able to be substantiated within 24 hours of first contact with a victim.

30. The Board concludes that the Sheriff’s Office is a public agency subject to the authority of the Board. *See* Wis. Stat. § 950.09(2)(a).

31. The Board concludes that none of the allegations in AM’s complaint are time-barred. *See* Wis. Admin. Code CVRB § 1.04(5).

32. The Board concludes that the allegations in the complaint implicate AM’s right to timely notice about a victim’s constitutional and statutory rights. Wis. Const. art. I, § 9m(2)(p); Wis. Stat. §§ 950.04(1v)(t), 950.08(2g)(a).

33. **Right to notice of victim’s rights.** JM and AM were entitled to receive a notice of their rights as a crime victim no later than 24 hours after

speaking with law enforcement. Wis. Stat. § 950.08(2g); Wis. Stat. § 950.04(1v)(t). It is undisputed that the Sheriff's Office did not provide either JM or AM with notice of their rights at any time after the sexual assault incident. Therefore, the Board concludes that the Sheriff's Office violated AM's rights as provided in Wis. Stat. § 950.08(2g) and Wis. Stat. § 950.04(1v)(t).

34. The fact that the alleged offender's competency could not be confirmed does not affect whether AM and JM are victims. A "crime" is defined as "an act committed in this state which, if committed by a competent adult, would constitute a crime, as defined in s. 939.12." Wis. Stat. § 950.02(1m). This definition focuses on the "act committed," and provides that a crime is an act that would be a crime if it had been committed by a competent adult; it does not require that the act be committed by a competent adult. The respondent's interpretation would deprive those who are victims of crimes of their rights if the offender was not competent or was not an adult. The Board rejects this interpretation of Wis. Stat. § 950.02(1m), which is intended to extend rights to those subjected to acts that would be crimes if committed by a competent adult.

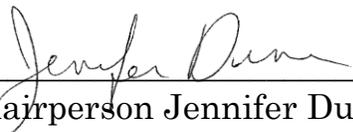
ORDER

Based on the foregoing, it is hereby ORDERED:

1. That the complainant has shown by clear and convincing evidence that the respondent violated her rights as a crime victim.
2. That the Board declines to issue a sanction. *See Wis. Stat. § 950.09(2).*
3. That this is a final, appealable order of the Board, and as such makes final and appealable any previous non-final orders of the Board.
4. That judicial review of this final decision is governed by Wis. Stat. §§ 227.52–.59. *See Wis. Admin. Code CVRB § 1.10.*
5. That a copy of this final decision shall 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 27th day of July, 2023.

Signed on behalf of the Wisconsin Crime Victims Board,



Chairperson Jennifer Dunn
Crime Victims Rights Board

SERVICE LIST

A.M.

[Address Withheld]

DELIVERED VIA EMAIL

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