

IN THE MATTER OF A COMPLAINT
AGAINST THE VILLAGE OF PEWAUKEE
POLICE DEPARTMENT

Case No. 224-006

FINAL DECISION

1. The Crime Victims Rights Board (Board) concludes that the complainant CB¹ has shown by clear and convincing evidence that the respondent Village of Pewaukee Police Department (VPPD) violated CB's rights as a crime victim.

BOARD PROCEDURE

2. CB filed a complaint with the Board dated April 11 and 12, 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). *See* Wis. Admin. Code CVRB § 1.05(1), (4).
4. The Board gave a copy of the complaint to the VPPD and invited it to answer the complaint. *See* Wis. Admin. Code CVRB § 1.05(5). Chief Timothy Heier filed a response on behalf of the VPPD.

¹ The Board uses CB's initials to protect her privacy.

5. At a meeting on February 15, 2023, the Board found probable cause that the VPPD violated CB's right to reasonable protection from the accused, Wis. Const. art. I, § 9m(2)(f), and the right to a timely disposition of the case, Wis. Const. art. I, § 9m(2)(d); Wis. Stat. § 950.04(1v)(k).

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).

HEARING REQUEST

7. By letter dated June 8, 2023, the VPPD requested an evidentiary hearing pursuant to Wis. Admin. Code CVRB § 1.07. The letter also contained supplemental information that the VPPD considered relevant to the Board's probable-cause determination.

8. The Board reviewed the VPPD's hearing request on June 21, 2023. The Board did not find the request and the supplemental information provided with the request material to VPPD's duties to CB. VPPD's hearing request is thus denied because there is not a dispute as to a material fact.

FINDINGS OF FACT

9. TL is the father of CB's child. TT is TL's ex-partner.²

² The Board uses the initials of TL and TT to protect their privacy.

10. CB was granted a four-year harassment injunction against TT on June 22, 2020.

11. CB provided the VPPD with a copy of the restraining order on May 2, 2021. That same day, CB complained to the VPPD that TT had violated the restraining order on May 1, 2021.

12. Officer Foth of the VPPD prepared an investigative report regarding this allegation and forwarded the report to the Waukesha County District Attorney's Office (WCDAO) with a request to consider charges.

13. CB contacted VPPD later in May 2021 to report another violation of the restraining order.

14. CB contacted the VPPD multiple times in summer 2021 to report additional violations of the restraining order against TT. These complaints were noted, but VPPD stated that no further action was taken because the WCDAO had initially decided not to issue charges on the alleged May 1 restraining-order violation. Another reason given by VPPD that action wasn't taken by VPPD was that the alleged violation occurred when CB called TL and TT got on the line. A third reason given was that CB lived in the City of Pewaukee, outside the VPPD's jurisdiction. A final reason that VPPD stated it did not act on these reported violations was that CB had told the WCDAO about the same violations.

15. On October 4, 2021, the WCDAO filed criminal charges against TT for the May 1 violation of the restraining order. TT was ultimately found guilty and fined for this violation.

VICTIM RIGHTS AT ISSUE

16. **Right to reasonable protection from the accused.** A crime victim has the right “[t]o reasonable protection from the accused throughout the criminal . . . justice process.” Wis. Const. art. I, § 9m(2)(f).

17. **Right to a timely disposition.** A crime victim has the right to a “timely disposition of the case, free from unreasonable delay.” Wis. Const. art. I, § 9m(2)(d); Wis. Stat. § 950.04(1v)(k) (providing a crime victim the 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”).

CONCLUSIONS OF LAW

18. 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).

19. 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.

20. The Board concludes that CB was a crime victim because TT violated CB's restraining order against her on May 1, 2021

21. The Board concludes that the VPPD is a public agency subject to the authority of the Board. *See* Wis. Stat. § 950.09(2)(a).

22. The Board concludes that none of the allegations in CB's complaint occurred outside the three-year limitations period.

23. The Board concludes that the allegations in CB's complaint implicate the right to reasonable protection from the accused, Wis. Const. art. I, § 9m(2)(f), and the right to a timely disposition of the case, Wis. Const. art. I, § 9m(2)(d); Wis. Stat. § 950.04(1v)(k).

24. CB was entitled to reasonable protection from TT throughout the criminal-justice process. Wis. Const. art. I, § 9m(2)(f). She was also entitled to a timely disposition of the case against TT. Wis. Const. art. I, § 9m(2)(d); Wis. Stat. § 950.04(1v)(k).

25. In summer 2021, CB contacted the VPPD multiple times to report violations of the restraining order she had against TT. The VPPD admits that these allegations were not investigated or forwarded to the WCDAO. In its

response to the Board, VPPD said this was because the WCDAO had not brought charges on a previously alleged restraining-order violation. Another reason VPPD decided not to take action was the nature of the contact that CB alleged, namely, that TT would talk to CB on a phone call that CB had initiated with TL. A third reason given for VPPD's inaction was it thought the alleged violation had taken place outside its jurisdiction. In VPPD's hearing request submitted June 8, 2023, a fourth reason was given: That CB had already called WCDAO about the same violations.

26. The Board finds these explanations inadequate: Just because a district attorney had declined to press charges on a complainant's prior allegation does not mean a future allegation should be ignored; the fact that TT allegedly violated the restraining order on CB's phone call to TL should not have precluded an investigation into the alleged violation; and the VPPD did not make clear to CB if she was not within their jurisdiction, especially since VPPD continued interacting with CB regarding her allegations. Furthermore, the VPPD was not relieved of its victim-rights duties because CB called the WCDAO: Any such contact should not substitute for direct communication between public officials regarding a reported violation of a restraining order. District attorneys' offices are not investigative agencies; indeed, individuals attempting to make complaints or referrals directly to a district attorney's office are referred instead to law enforcement agencies to take the report.

27. The Board finds the VPPD's delayed action and, at times, inaction and failure to investigate denied CB the reasonable protection to which CB was entitled. The same overall delay and inaction was unreasonable and denied CB timely disposition of the case.

28. The Board concludes that the VPPD violated CB's rights to reasonable protection from the accused, Wis. Const. art. I, § 9m(2)(f), and to a timely disposition of the case, Wis. Const. art. I, § 9m(2)(d); Wis. Stat. § 950.04(1v)(k).

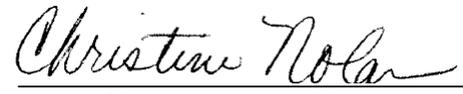
ORDER

Based on the foregoing, it is hereby ORDERED:

1. That CB has shown by clear and convincing evidence that the VPPD violated her rights as a crime victim.
2. That the VPPD shall receive a private reprimand as a sanction.
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 Crime Victims Rights Board,

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

Vice Chairperson Christine Nolan
Crime Victims Rights Board

SERVICE LIST

CB

[street address withheld]
DELIVERED VIA EMAIL

Chief Timothy Heier
Village of Pewaukee Police Department
c/o
Joseph M. Wirth
Wirth + Baynard
9898 W. Bluemound Road, Ste. 2
Wauwatosa, WI 53226
DELIVERED VIA EMAIL: jmw@wbattys.com

Julie Braun
CVRB Operations Director
Wisconsin Department of Justice
17 West Main Street, 8th Floor
Madison, WI 53703