

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

Case No. 226-011

Respondent.

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### **FINAL DECISION**

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1. The Crime Victims Rights Board finds that the complainant JW<sup>1</sup> has shown by clear and convincing evidence that the respondent Ashland County District Attorney's Office ("DA's Office") violated JW's rights as a crime victim.

### **BOARD PROCEDURE**

2. JW filed a complaint with the Board on June 9, 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).

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<sup>1</sup> This decision uses the initials of the victim 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 November 15, 2022.

5. At a meeting on April 12, 2023, the Board found probable cause that JW'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 on June 9, 2023. *See Wis. Admin. Code CVRB § 1.05(8)*.

#### **PROBABLE CAUSE DETERMINATION**

7. The Board found probable cause that the DA's Office violated JW's right to consult with the prosecutor. *See Wis. Const. art. I, § 9m(2)(h); Wis. Stat. § 950.04(1v)(j)*.

#### **INVESTIGATION**

8. The Board requested additional information from the parties regarding the allegation on which probable cause was found.

9. As requested, the DA's Office provided information regarding its efforts to arrange a meeting with JW.

#### **FINDINGS OF FACT**

10. JW was the victim of an assault on May 9, 2021.

11. A criminal complaint was filed on May 17, 2021, and the case was assigned Ashland County Case No. 21-CF-0104.

12. The DA's Office provided JW with a Victim Rights Request Form, which JW returned on May 19, 2021, indicating that she wanted to be notified of all proceedings and the outcome of the case, attend all proceedings, confer with the prosecutor, and make a victim impact statement.

13. On May 19, 2021, JW also sent an email with an attached letter to the assigned Assistant District Attorney (ADA), Lynne Van Hollen, and Victim Witness Coordinator, Heidi Thimm. ADA Van Hollen responded that same day, providing answers to JW's questions and indicating that JW could contact Thimm about setting up a time to discuss the case further.

14. The DA's Office had several contacts with JW in May 2021. Then, from June until December 2021, the DA's Office sent JW notice of all hearings and continued to have other contact with her via email and phone.

15. On December 7, 2021, ADA Van Hollen reached a plea agreement with the defense. Van Hollen did not notify Thimm of the agreement, however, and Thimm did not learn of it until she saw the hearing notice dated December 20, 2021.

16. On December 22, 2021, the DA's Office sent JW notice of the plea and sentencing hearing scheduled for January 21, 2022, along with a copy of the offer of settlement.

17. On December 29, 2021, JW called Thimm because she was upset about the plea offer and felt her voice was not being heard. She asked to talk to ADA Van Hollen about the plea offer.

18. Thimm attempted to reach out to JW via email and telephone several times before the hearing, but she was unable to connect with her. Thimm did not document these attempts in the case management system notes.

19. Thimm was unable to schedule a meeting between JW and ADA Van Hollen before the plea and sentencing hearing. On the morning of the hearing, Thimm asked JW if she wanted to meet with ADA Van Hollen, but JW declined.

20. At the hearing on January 21, 2022, the court accepted the plea, and the defendant was sentenced. Thimm sat with JW during the hearing, and JW gave an oral statement.

21. In response to JW's complaint to the Board, the DA's Office has implemented several changes, including:

a. When a plea agreement is imminent, the DA's Office tells the defense it cannot agree to the plea until the victim is consulted.

b. The DA's Office then contacts the victim about the plea, even if the victim did not initially ask to confer with the prosecutor.

c. If the victim asks to consult with the prosecutor about the plea, the victim witness coordinator participates in the meeting.

d. The plea agreement is described as “proposed” until the plea is entered so the victim knows she has the right to confer about the plea.

e. All contacts or attempted contacts with victims are documented in the case management system notes.

### **VICTIM RIGHTS AT ISSUE**

22. **Right to consult.** A crime victim has a constitutional right “[u]pon request, to confer with the attorney for the government.” Wis. Const. art. I, § 9m(2)(h). Similarly, a victim has the statutory right “[t]o have, at his or her request, the opportunity to consult with the prosecution in a case brought in a court of criminal jurisdiction, as provided under s. 971.095(2).” Wis. Stat. § 950.04(1v)(j). In turn, Wis. Stat. § 971.095(2) provides that “the district attorney shall, as soon as practicable, offer all of the victims in the case who have requested the opportunity an opportunity to confer with the district attorney concerning the prosecution of the case and the possible outcomes of the prosecution, including potential plea agreements and sentencing recommendations.”

### **CONCLUSIONS OF LAW**

23. The Board concludes that JW is a crime victim because she was the victim of battery, conduct prohibited by state law and punishable by a fine or imprisonment or both. *See* Wis. Stat. §§ 939.12, 950.02(1m), (4); *see also* Wis. Const. art. I, § 9m(1)(a)1.

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

25. The Board concludes that none of the allegations in the complaint occurred outside the three-year limitations period. *See* Wis. Admin. Code CVRB § 1.04(5).

26. The Board concludes that the allegations in the complaint implicate JW's right to confer with the prosecution about potential plea agreements and that the DA's Office violated that right as explained below.

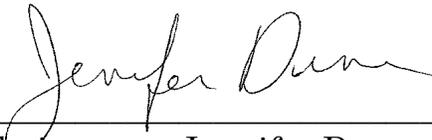
27. Victims who request an opportunity to confer must be given that opportunity as to "*potential* plea agreements," Wis. Stat. § 971.095(2), meaning they must be given the opportunity to confer *before* the plea is reached. Here, JW's Victim Rights Request Form dated May 19, 2021, indicates that she wanted an opportunity to confer with the prosecutor, and JW specifically asked to confer with ADA Van Hollen about the plea agreement on December 29, 2021. The DA's Office concedes that JW was not given an opportunity to confer with ADA Van Hollen before the plea deal was reached. The Board, therefore, concludes that the DA's Office violated JW's right to confer with the prosecutor before the plea deal was reached. *See* Wis. Const. art. I, § 9m(2)(h); Wis. Stat. § 950.04(1v)(j).

## 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). The remedial purpose of the Board's review has already been achieved because the respondent has implemented greatly improved practices for future victims, as described in paragraph 21 of this decision.
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 October 2023.

  
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Chairperson Jennifer Dunn  
Crime Victims Rights Board

## SERVICE LIST

JW

[street address withheld]

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Ashland County District Attorney's Office  
201 Main Street W, Room 301  
Ashland, WI 54806

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