

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

Case No. 232-001

Respondent.

FINAL DECISION

1. The Crime Victims Rights Board (the "Board") finds that the complainant AS¹ has shown by clear and convincing evidence that the Dane County District Attorney's Office ("Respondent") violated AS's rights as a crime victim.

BOARD PROCEDURE

2. AS filed a complaint with the Board on February 13, 2023.
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).

¹ This final decision uses the initials of the victim to protect the victim's privacy.

4. The Board gave a copy of the complaint to Respondent and invited it to answer the complaint. *See Wis. Admin. Code CVRB § 1.05(5)*. Respondent filed a response.

5. The Board made a probable cause determination at a meeting on June 21, 2023. *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 notified the parties and the VRC of its conclusions through the issuance of a probable cause determination dated October 31, 2023. *See Wis. Admin. Code CVRB § 1.05(8)*.

PROBABLE CAUSE DETERMINATION

8. The Board found probable cause that Respondent violated AS's right to confer with the prosecution (Wis. Const. art. I, § 9m(2)(h); Wis. Stat. § 971.095(2)), her right to receive notice of case dispositions (Wis. Const. art. I, § 9m(2)(o); Wis. Stat. § 971.095(5); Wis. Stat. § 971.095(6)), and her right to reasonable protection from the accused (Wis. Const. art. I, § 9m(2)(f)).

INVESTIGATION

9. The Board requested additional information from Respondent regarding the allegations on which probable cause was found.

10. The Board received a response letter from Respondent dated November 13, 2023.

FINDINGS OF FACT²

11. 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).

12. 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.

13. The Board finds the following facts.

14. AS is a victim in Dane County Case No. 2022CM920.

² Unless otherwise described, the facts described in this section summarize uncontested facts derived from the Complainant's complaint, Respondent's response, and the supplemental materials obtained during the Board's investigation.

15. AS obtained a temporary restraining order against her neighbor, CW, in Dane County Case No. 2020CV928.

16. On March 16, 2022, CW allegedly violated the terms of the restraining order. AS reported the matter to the police that same day.

17. The matter was referred to Respondent on March 17, 2022. Respondent filed a two-count criminal complaint on May 13, 2022, containing one charge of disorderly conduct and one charge of knowingly violating a harassment restraining order.

18. At some point thereafter, the defendant was placed under pre-trial conditions, including GPS monitoring and a zone of exclusion.

19. Dane County Pretrial Services is the county entity responsible for administering pre-trial conditions like these; it is separate from the Dane County District Attorney's office.

20. Respondent only learns of violations of pre-trial conditions administered by Dane County Pretrial Services if Pretrial Services reports a violation to a judge.

21. After CW's initial appearance on May 19, 2022, AS was emailed an Initial Victim Rights Information packet on May 20, 2022.

22. On July 5, 2022, AS returned a Victim Rights Request Form to Respondent. AS requested: to be notified of all court hearings, the final outcome, and the defendant's release via VINE; to confer with the prosecutor;

and to submit a Victim Impact Statement. AS did not request to attend all court hearings and did not request restitution.

23. Respondent highlights how the Victim Rights Request Form states: “Upon request, victims have the right to confer with the prosecutor assigned to their case. To exercise this right you will need to contact the Victim Witness case manager to discuss the different ways to communicate your feelings about this case.”

24. On the form, the “yes” option for this request states: “Yes, I wish to confer with the prosecutor and will contact the Victim Witness Case Manager.”

25. AS was provided with notices for various hearings in the criminal case, all of which state: “If you would like to confer with the prosecutor regarding this case, we are interested in speaking with you and hearing your input regarding possible outcomes. Please contact me by email or telephone as soon as possible to discuss your options for conferring and to ensure your input is considered prior to this court event.”

26. Although AS had been in direct contact with Respondent’s victim witness case manager, AS did not specifically ask the Victim Witness Case Manager during those contacts to confer with a prosecutor regarding the case outcome. Although AS had indicated a wish to confer on the request form, a

conference between AS and a prosecutor was never set up because AS never subsequently requested one.

27. At a September 25, 2022, pre-trial conference, Respondent offered to dismiss the charge of knowingly violating a harassment restraining order in exchange for the defendant meeting certain conditions.

28. At a November 11, 2022, status conference, the defendant's counsel could not supply documentation that the conditions had been met but the offer was repeated. AS was not present for this status conference, but she had been notified of it by email.

29. On November 22, 2022, outside of a court hearing, the defendant's counsel supplied documentation that the conditions had been met. Respondent therefore amended the disorderly conduct charge to a non-criminal county ordinance violation and the defendant pleaded guilty; the charge of knowingly violating a harassment restraining order was dismissed.

30. Based on this plea and dismissal, the defendants' pretrial conditions were also lifted.

31. AS did not receive prior notice from Respondent of this disposition and instead learned about it from CCAP.

32. Respondent acknowledges that the handling prosecutor "did not stop to think to contact" AS before disposing of the case through a plea agreement.

33. On December 6, 2022, AS discussed the disposition with Respondent's victim witness case manager, and Respondent sent a written disposition letter to AS the next day, December 7, 2022.

34. After some initial correspondence, AS expressed her concerns about the disposition on a December 9, 2022, call with multiple of Respondent's representatives and she received information about the victim's rights complaint process.

35. On the December 9, 2022, call, Respondent acknowledges "apologiz[ing] to AS for the oversight" and that the handling prosecutor "personally took responsibility."

36. On December 12, 2022, AS filed with the circuit court a request for remedy on a victim's rights violation.

37. A hearing was held on AS's request on December 20, 2022. At this hearing, the district attorney appeared and "acknowledged that [Respondent] made a mistake and violated AS's rights."

38. At the December 20, 2022, hearing, Respondent explained that any notification to AS regarding the termination of pretrial conditions would not have been Respondent's responsibility, because Dane County's entity that manages pretrial conditions is now housed within the Clerk of Court's office. The presiding judge responded that this pretrial services entity only deals with defendants and that it is Respondent's duty to communicate with victims.

39. AS had further discussions with Respondent about her complaints on December 23, 2022.

40. Respondent's response to the complaint acknowledged that "AS's rights as a victim were violated" by an "oversight." Respondent pointed to the fact that the resolution occurred outside a scheduled court hearing and stated that the mistake was unintentional.

41. As a result of AS's complaint, Respondent took steps and instituted policies to prevent the problems that occurred here from happening again, including:

- Adding the following language to its dispositional letters that are sent to victims following the resolution of a case: "Because this defendant has been sentenced in this criminal court matter, any bail conditions previously ordered in this case are no longer in place."
- Informing all its attorneys in writing that they must confer with victims regarding dispositions of the type that occurred in this matter and that all such dispositions may only occur during scheduled court hearings in which the victim has an opportunity to be heard.
- Informing all its attorneys that they may not amend criminal cases to ordinance violations informally with the court or by written motion outside of a scheduled court date.

- Emailing the lead judicial clerk in every criminal court branch in Dane County Circuit Court informing them that Respondent's attorneys will no longer be permitted to amend cases to ordinance violations outside of scheduled and noticed court dates.
- Designating breaches of these new policies as work rule violations.
- Organizing discussions among relevant stakeholders, including the interim director of Dane County Pretrial Services, the Chief Judge of the Dane County Criminal Courts, and the Dane County Commission regarding victim notice of violations and termination of pre-trial conditions administered by Dane County Pretrial Services.

42. Similarly, the individual assistant district attorney has since made several changes to her personal practice to guard against the problems that arose here:

- Resolving ordinance cases solely through written stipulations and orders rather than informal "blotters" that are not placed on the record.
- Communicating all offers to Respondent's victim/witness coordinator before communicating them to the defense.

VICTIM RIGHTS AT ISSUE

43. AS's complaint raises three potential victim rights violations: the right to confer with the prosecution; the right to receive notice of case dispositions; and the right to reasonable protection from the accused.

44. The right to confer with the prosecution arises from both constitution and statute. Under Wis. Const. art. I, § 9m(2)(h), a victim has the right “[u]pon request, to confer with the attorney for the government.” And under Wis. Stat. § 971.095(2), “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.”

45. The right to receive notice of case dispositions arises from both constitution and statute. Under Wis. Const. art. I, § 9m(2)(o), a victim has the right “[u]pon request, to reasonable and timely information about the status of the investigation and the outcome of the case.” Under Wis. Stat. § 971.095(5), “[i]f a person is charged with committing a crime and the charge against the person is subsequently dismissed, the district attorney shall make a reasonable attempt to inform all of the victims of the crime with which the person was charged that the charge has been dismissed.” Similarly, under Wis. Stat. § 971.095(6), “[a] district attorney shall make a reasonable attempt to

provide information concerning the disposition of a case involving a crime to any victim of the crime who requests the information.”

46. The right to reasonable protection from the accused arises from Wis. Const. art. I, § 9m(2)(f), which provides a victim with the right “[t]o reasonable protection from the accused throughout the criminal . . . process.”

CONCLUSIONS OF LAW

47. Whether a person is a crime victim is determined both by the Wisconsin Constitution and 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 an act is committed that would constitute a crime if committed by a competent adult.” Wis. Const. art. I, § 9m(1)(a)1.; *see also* Wis. Stat. § 950.02(4)(a)1.

48. 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).

49. Whether the allegations occurred outside the three-year limitations period is determined by the filing requirements in the

administrative code. The Board may not consider allegations relating to “conduct that occurred prior to December 1, 1998 or more than 3 years before a complaint was filed with the board or the board was otherwise notified of the conduct,” except that the Board may consider issuing a report and recommendation concerning such conduct. Wis. Admin. Code CVRB § 1.04(5).

50. The Board finds that AS was a crime victim because CW allegedly violated the harassment restraining order AS had obtained against him, conduct prohibited by state law and punishable by a fine or imprisonment or both. *See* Wis. Stat. § 813.125(7).

51. The Board finds that Respondent is an agency subject to the authority of the Board. *See* Wis. Stat. § 950.09(2)(a).

52. The Board finds that none of the allegations in the complaint occurred more than three years before the complaint was filed. *See* Wis. Admin. Code CVRB § 1.04(5).

53. The Board finds that AS’s complaint implicates the rights described above at paragraphs 44–46.

54. The Board concludes that Respondent violated the first two of these rights; the Board also finds a violation of the third right, but not by Respondent.

55. First, the Board considers AS's right to confer with the prosecution. The Board construes AS's complaint as contending that she had a right to confer with Respondent regarding the plea agreement it reached with CW and that Respondent failed to confer with her prior to reaching that plea agreement.

56. The Board concludes that, as required by both the relevant constitutional and statutory provision, AS invoked her right to confer with the prosecution by checking the relevant "Yes" box on the Victim Rights Request Form that she filled out and returned to Respondent. The Board is not persuaded by Respondent's position that it was AS's job to take additional affirmative steps to contact Respondent's victim witness case manager to discuss different ways to communicate with a prosecutor about the case. Although the Victim Rights Request Form and various notice letters purported to place that affirmative duty on AS, it is not contained in either Wis. Const. art. I, § 9m(2)(h), Wis. Stat. § 950.04(1v)(j), or Wis. Stat. § 971.095(2).

57. The Board concludes that by checking the relevant box on the Victim Rights Request Form, AS adequately invoked her right to confer, and that Respondent violated that right by not conferring with AS prior to reaching a plea deal with the defendant. This conclusion is bolstered by the fact that the plea agreement was reached outside of court during an informal discussion of

which AS was not notified in advance. Absent conferral, it is unclear how AS could have provided any input on the proposed plea agreement.

58. Second, the Board considers AS's right to receive notice of case dispositions. Respondent does not contest that a violation of this right occurred. The Board therefore concludes that AS's rights were violated in this regard.

59. As to these first two violations, the Board commends Respondent for taking meaningful action to guard against similar future violations. The Board finds it significant that Respondent has corrected its practices to require its assistant district attorneys to amend criminal cases to ordinance violations only during scheduled court dates, rather than sometimes through off-the-record resolutions. This positive change should help ensure that victims receive advance notice of such dispositions. Likewise, the Board recognizes the efforts of Respondent's leadership to underscore to assistant district attorneys the importance of conferring with victims prior to these dispositions, and it appreciates the individual assistant district attorney's changes to her own practice to better protect victims' rights.

60. Third, the Board considers AS's right to reasonable protection from the accused. We construe AS's complaint as contending that the pretrial conditions placed on defendant were imposed partly for her safety and that, by

failing to notify her in advance that they would be lifted, she was deprived of this right.

61. It is undisputed that AS received no advance notice of the termination of the defendant's pretrial conditions, and it is reasonable to infer that those conditions—namely, GPS monitoring and the corresponding exclusion zone—served (at least partly) to protect her from the defendant. The Board concludes that, by not receiving any advance notice, AS was deprived of the opportunity to prepare for the termination of these conditions. This deprived AS of her right to reasonable protection from the accused.

62. However, the Board concludes that Respondent is not responsible for this violation. From the information provided, it appears that Respondent is not generally responsible for administering defendants' pretrial conditions and is not notified when those conditions are violated or otherwise lifted (unless Pretrial Services reports this information to a judge). This indicates that Respondent does not have a broad duty to notify victims of a defendant's release from pretrial services.

63. Even so, the Board notes that Respondent's two violations discussed above themselves potentially threatened AS's safety, in that Respondents' failure to notify AS of her case's disposition meant she had no opportunity to learn that CW's pretrial conditions would be lifted.

64. The Board does not today reach any conclusions about where exactly this kind of duty to notify victims resides. However, the Board observes that violations and terminations of pretrial conditions might often implicate victims' constitutional right to protection from the accused, and that protecting this right will likely often entail a duty to notify victims of those violations and terminations. When such a duty to notify arises, it must reside somewhere in government.

65. The Board again notes Respondent's commendable efforts to bring together relevant stakeholders to address these issues surrounding pretrial conditions. Respondents' efforts fulfill the letter and spirit of Wis. Stat. § 950.07, which requires "[t]he county board, district attorney, local law enforcement agencies, local social service agencies, victim and witness offices and courts [to] all cooperate with each other to ensure that victims and witnesses of crimes receive the rights and services to which they are entitled under this chapter." This statutory requirement is tailor-made for situations like these, where victims have a constitutional right that is not being adequately protected by the many distinct actors in government.

66. All relevant local government actors—at a minimum, district attorneys' offices, courts, and pre-trial services entities—should have a strong interest in ensuring that victims are receiving their constitutional right to protection from the accused. In situations like these, violations and

termination of pretrial conditions without notice to victims present serious potential breaches of this right and could lead to grave physical and emotional harm. The Board encourages prompt action, as Wis. Stat. § 950.07 requires, by counties statewide to ensure that such breaches—and possibly worse—do not happen in the future.

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 this is a final, appealable order of the Board, and as such makes final and appealable any previous non-final orders of the Board.
3. That judicial review of this final decision is governed by Wis. Stat. §§ 227.52–.59. *See* Wis. Admin. Code CVRB § 1.10.
4. 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 31st day of January 2024.



Chairperson Jennifer Dunn
Crime Victims Rights Board

SERVICE LIST

AS

[street address withheld]

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