

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

Case No. 24-001

Respondents.

PROBABLE CAUSE DETERMINATION

1. The Crime Victims' Rights Board ("the Board") reviewed a complaint filed by M.J.¹ against the Winnebago County District Attorney's Office (WCDA). The Board evaluated the complaint and other relevant information to determine whether there is probable cause that the WCDA violated M.J.'s rights as a crime victim. *See* Wis. Stat. § 950.04(1v). **The Board finds no probable cause.**

BOARD PROCEDURE

2. In April 2024, M.J. filed a complaint with the Board.
3. Upon receipt of this complaint, the Board contacted the Department of Justice's 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 probable cause determination uses the initials of the alleged victim to protect the victim's privacy.

4. On July 8, 2024, the Board provided a copy of the complaint to the WCDA and invited them to answer the complaint. *See Wis. Admin. Code CVRB § 1.05(5).*

5. On July 25, 2024, the WCDA filed their answer to the complaint.

6. The Board made this probable cause determination at a meeting held on September 18, 2024. *See Wis. Admin. Code CVRB § 1.05(6).*

7. In making this probable cause determination, the Board considered all relevant information, the complaint, response, and the letter documenting the VRC's action. *See Wis. Admin. Code CVRB § 1.05(7)(a)–(c).*

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

STATEMENT OF THE CASE

M.J.'S COMPLAINT²

Claim I: Respondent failed to treat M.J. with courtesy and fairness and failed to provide reasonable protection.

9. On July 9, 2020, M.J. was granted a Domestic Abuse Injunction against C.D. (CVRB 24-001 Compl. 8)

² This section is derived from the submissions of the complainant. The information contained in this section does not constitute findings of fact by the Board.

10. C.D. was granted placement of M.J.'s and C.D.'s child. There was an agreed upon arrangement where M.J. would bring the child to a location and a named friend of C.D. would pick the child up. *Id.*

11. On April 4, 2023, C.D. violated the injunction by showing up at the prearranged child exchange location. *Id.*

12. This violation was reported to Neenah Police Department and a referral was made to the WCDA. *Id.*

13. M.J. received a letter from an Assistant District Attorney (ADA) with the WCDA indicating that they would not be pressing charges for the violation of the Domestic Abuse Injunction. *Id.* at 9.

14. M.J. met with the ADA. M.J. indicated that the ADA did not review the history of abuse of M.J. by C.D. The ADA explained to M.J. that she did not believe that the State could meet its burden of proof so she could not issue charges. *Id.*

15. M.J. believes that by declining to charge the case, the WCDA violated M.J.'s right to be treated with dignity, respect, courtesy, and fairness. Also, by not reviewing the history of abuse the WCDA has violated M.J.'s right to protection. *Id.*

WINNEBAGO COUNTY DISTRICT ATTORNEY'S OFFICE RESPONSE³

16. The WCDA, provided a response to the complaint. (Resp't Letter Resp. to Def.'s Compl., July 25, 2024.)

³ This section is derived from the submissions of the respondent. The information contained in this section does not constitute findings of fact by the Board.

Claim I: Respondent failed to treat M.J. with courtesy and fairness and failed to provide reasonable protection.

17. On July 9, 2020, M.J. was granted a Domestic Abuse Injunction against C.D. (*Id.* at 1.)

18. The WCDA received a referral for criminal charges involving M.J. as the victim.

19. The criminal referral stemmed from an incident on February 4, 2023, where a third-party child exchange was to occur. M.J. observed C.D. in the parking lot. M.J. stated that C.D. did not have contact with her. M.J. was uncomfortable with C.D. being present so the exchange did not occur. *Id.*

20. M.J. contacted the Neenah Police Department (NPD). The NPD spoke with C.D. C.D. stated that it was his understanding that he could be present at the exchange as long as he had no contact with M.J. C.D. said that he stayed by his vehicle and had no contact with M.J. *Id.*

21. The NPD then spoke with C.D.'s probation agent. The agent stated that C.D. notified her of the incident. The agent determined that the incident was not in violation of C.D.'s no contact rules. *Id.*

22. The NPD reviewed surveillance video of the incident. The video confirmed that C.D. remained by his vehicle and did not attempt to have contact with M.J. *Id.* at 2.

23. The WCDA declined to issue charges.

24. On March 8, 2023, the WCDA received an email from M.J. indicating that she disagreed with the WCDA's decision not to issue charges. A meeting was scheduled for March 21, 2023, to discuss these issues. *Id.*

25. Prior to the March 21st meeting, the WCDA reviewed the police reports, reviewed the Domestic Abuse Injunction and had a conversation with C.D.'s probation agent. *Id.*

26. C.D.'s probation agent stated that C.D. had no violations and was employed. C.D. self-reported the incident and explained that he was concerned with his child getting in a vehicle with a male stranger. C.D. said that he did get out of his vehicle but stayed by his vehicle. The agent also stated that she spoke with M.J. M.J. told the agent that C.D. did not have contact with her. The agent reviewed the conditions of the injunction with C.D. and entered into a Behavioral Contract with C.D. *Id.*

27. On March 21, 2023, the WCDA met with M.J. and her attorney. M.J. was able to express her disagreement with the WCDA's decision. The WCDA explained to M.J. how they came to their decision and their ethical obligations when making charging decisions. *Id.*

ALLEGATIONS OF VICTIM RIGHTS VIOLATIONS

28. **Right to be treated with dignity, respect, courtesy, sensitivity, and fairness.** Under the Wisconsin Constitution, a crime victim has a right “[t]o be treated with dignity, respect, courtesy, sensitivity, and fairness.” Wis. Const. art. I, § 9m(2)(a). The parallel statutory provision provides that a crime victim has a right

to “be treated with fairness, dignity, and respect for his or her privacy by public officials, employees, or agencies.” Wis. Stat. § 950.04(1v)(ag). 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).

29. **Right to reasonable protection from the accused.** Under the Wisconsin Constitution, a crime victim has a right “[t]o reasonable protection from the accused throughout the criminal and juvenile justice process.” Wis. Const. art. I, § 9m(2)(f).

DETERMINATIONS OF FACT

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

INTERPRETATIONS OF LAW

31. The Board employs a multi-step methodology to analyze the complaint: (1) whether the complainant was a crime victim; (2) whether the respondents are subject to the authority of the Board; (3) whether the allegations are time-barred; (4) whether the allegations implicate any constitutional or statutory victim rights; and (5) whether the respondents failed to comply with any duty imposed by a constitutional or statutory provision.

32. 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.; *see also* Wis. Const. art. I, § 9m(1)(a)1. A crime victim “does not include the person charged with or alleged

to have committed the crime.” Wis. Stat. § 950.02(4)(b); *see also* Wis. Const. art. I, § 9m(1)(b) (victim “does not include the accused”).

33. Whether respondents are 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).

34. Whether the allegations are time-barred 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).

35. 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).

36. 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

The Board Finds the Following:

37. The Board finds **no probable cause** of a crime victims' rights violation.

38. That M.J. is a crime victim because of her reported violation of a Domestic Abuse Injunction in violation of Wis. Stat. § 813.12.

39. That the members of the Winnebago County District Attorney's Office are public officials or employees subject to the authority of the Board. *See* Wis. Stat. § 950.09(2)(a).

40. That M.J.'s March 24, 2023, allegation of a victims' rights violation falls within the three-year limitations period. *See* Wis. Admin. Code CVRB § 1.04(5).

41. That the decision to issue charges or not is within the discretion of the WCDA, and the Board has no authority over that decision. Wis. Const. art. I, § 9m(5) and Wis. Stat. § 950.01.

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–.59. *See* Wis. Admin. Code CVRB § 1.10.

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

Dated this 10th day of January 2025.



Chairperson Jennifer Dunn
Crime Victims Rights Board