

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

Case No. 233-004

Respondent.

FINAL DECISION

1. The Crime Victims Rights Board finds that the complainants, NH and HH,¹ have shown by clear and convincing evidence that the respondent, Waupaca County District Attorney's Office ("DA's Office"), violated NH and HH's rights as crime victims.

BOARD PROCEDURE

2. NH and HH filed a complaint with the Board on March 1, 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 decision uses the victims' initials to protect their 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 May 19, 2023.

5. At a meeting on June 21, 2023, the Board found probable cause that NH and HH'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 found probable cause that the DA's Office violated NH and HH's right to a speedy disposition of the case; their right to information about the status of the case; and their right to be treated with dignity, respect, courtesy, sensitivity, and fairness.

8. The Board did not request an investigation. *See Wis. Admin. Code CVRB § 1.06*.

9. Neither party requested a hearing. *See Wis. Admin. Code CVRB § 1.07*.

FINDINGS OF FACT

10. 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).

11. 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.

12. The Board finds the following facts.

13. NH and HH’s minor daughter, LH, was repeatedly sexually assaulted by her cousin in Waupaca County and Marquette County.

14. LH disclosed the sexual assaults on August 28, 2020.

15. On September 29, 2020, the defendant was arrested in Waupaca County and brought to Marquette County.

16. On October 1, 2020, the defendant posted bond in Marquette County. The Marquette County case proceeded.

17. In the meantime, on October 9, 2020, charges were referred to the Waupaca County DA’s Office.

18. From that date forward, NH and HH contacted the DA’s Office dozens of times seeking information about the case, as documented in their complaint. Staff were frequently slow to respond and sometimes did not

respond at all. When they did respond, they often provided contradictory and confusing information.

19. For example, on November 18, 2020, Victim/Witness Specialist Maryann Carlson told NH and HH that District Attorney (DA) Veronica Isherwood was going to file charges and that NH and HH would receive notice in the mail. But then on December 2, 2020, Carlson told NH and HH that DA Isherwood had decided not to file charges and was instead going to proceed with a deferred prosecution agreement and would request a psychosexual evaluation of the defendant.

20. On January 13, 2021, at the victims' request, Carlson and DA Isherwood, had a virtual meeting with NH, HH, and their representative, Jessica Bielmeier. DA Isherwood explained that she was holding off on charging until after the psychosexual evaluation, which she intended to ask the Marquette County DA's Office to obtain as part of its case. DA Isherwood told NH and HH that she would share the content of the evaluation with them.

21. On April 12, 2021, after the victims and their representative made several requests for information, DA Isherwood sent an email, attempting to clarify "misunderstandings which are obvious from your requests." (Compl. 14, 39.) Counter to her previous assertions, DA Isherwood now stated that the psychosexual evaluation was confidential, and she was not at liberty to share information from the evaluation. She also indicated that there was no deferred

prosecution agreement and that she was waiting to make a charging decision until after the conclusion of the Marquette County prosecution. DA Isherwood admitted there had been a “lack of communication” with NH and HH because she had not provided Carlson with “timely direction.” (Compl. 15, 38.)

22. In September 2021, NH and HH commenced the informal complaint process with the VRC. As part of that process, VRC staff contacted DA Isherwood, who explained that she was waiting for the Marquette County case to conclude before making a charging decision.

23. The Marquette County case concluded on July 19, 2022. The defendant pled no contest to Second Degree Sexual Assault of a Child and was sentenced to two years of initial confinement in prison and five years of extended supervision with conditions. The defendant is also required to register as a lifetime sex offender.

24. NH and HH immediately contacted Carlson to let her know that the Marquette County case was completed. The Marquette County DA also contacted DA Isherwood to let her know that the case had concluded.

25. NH and HH, with the assistance of the VRC, continued to seek information from the DA’s Office, which continued to respond sporadically and with little substantive information.

26. The current district attorney, DA Kat Turner, who was not the DA for most of the time about which NH and HH complain, acknowledged the

delay in charging the defendant and attributed it to staff turnover. DA Turner indicated that her office intended to provide notice to NH and HH once the complaint was filed and an initial hearing was scheduled and that the current Victim/Witness Coordinator would reach out with information so that NH and HH would have an opportunity to exercise their rights as victims.

27. According to electronic court records, the DA's Office filed charges against the defendant on June 5, 2023.

28. The Waupaca County case concluded on July 18, 2023. The defendant pled no contest to Fourth Degree Sexual Assault and was sentenced to nine months confinement consecutive to the sentence in the Marquette County case.

ALLEGATIONS OF VICTIM RIGHTS VIOLATIONS

29. **Right to a speedy disposition of the case.** A crime victim has a 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.” Wis. Stat. § 950.04(1v)(k); *see also* Wis. Const. art. I, § 9m(2)(d).

30. **Right to information about the status of the case.** A crime victim has a right to receive, “[u]pon request, . . . reasonable and timely information about the status of the investigation and the outcome of the case.” Wis. Const. art. I, § 9m(2)(o); *see also* Wis. Stat. § 950.04(1v)(zm)

(A crime victim also has the right to “request information from a district attorney concerning the disposition of a case involving a crime of which he or she was a victim, as provided under s. 971.095(6).”; 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.”).

31. **Right to be treated with dignity, respect, courtesy, sensitivity, and fairness.** Under the Wisconsin Constitution, a crime victim has a right to “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).

CONCLUSIONS OF LAW

32. The Board concludes that NH and HH are crime victims because their minor daughter was a victim of sexual assault, conduct prohibited by state law and punishable by a fine or imprisonment or both. *See* Wis. Const. art. I, § 9m(1)(a)1., 3.; Wis. Stat. §§ 939.12, 950.02(1m), (4).

33. 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).*

34. 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).*

35. The Board concludes that the allegations in the complaint implicate NH and HH's victim rights and that the DA's Office violated those rights as explained below.

Right to a speedy disposition of the case.

36. In analyzing an alleged violation of the right to a speedy disposition, the Board (1) identifies each delay, (2) determines the cause of the delay, (3) determines whether the delay was reasonable, and (4) if the delay was unreasonable, determines whether the delay was attributable to the respondent.

37. The Board identifies a delay of over two and half years from when the case was referred to the DA's Office on October 9, 2020, until the DA's Office filed charges against the defendant on June 5, 2023.

38. The Board finds that while a delay of over two and half years is long under any circumstances, it is particularly long given that the victim is a child entitled to additional rights and protections in criminal proceedings,

including expedited proceedings once charges are filed. *See, e.g.*, Wis. Stat. §§ 950.055 (addressing rights and services for child victims), 971.105 (duty to expedite proceedings involving a child victim “in order to minimize the length of time the child must endure the stress of the child’s involvement in the proceeding”).

39. The DA’s Office attributes the delay to several factors, including needing to obtain a psychosexual evaluation of the defendant, waiting for the Marquette County case to conclude, and staffing issues. None of these explanations fully account for the long delay, especially since it appears that no psychosexual evaluation was ever procured, and that the DA’s Office delayed charging for almost a year after the Marquette County case ended. In addition, although there were staffing changes, the case remained with the same prosecutor after those changes occurred.

40. Based on these undisputed facts, the Board concludes that the DA’s Office violated NH and HH’s right a speedy disposition of the case. *See* Wis. Stat. § 950.04(1v)(k); Wis. Const. art. I, § 9m(2)(d).

Right to information about the status of the case.

41. During the over two and half years before filing charges, the DA’s Office rarely, if ever, initiated contact with the victims.

42. NH and HH, in contrast, contacted the DA’s Office dozens of times seeking information about the case. The DA’s Office was frequently slow to

respond and sometimes did not respond at all. When they did respond, they often provided contradictory and confusing information.

43. DA Isherwood did meet with NH and HH, at their request, but she again provided inconsistent information.

44. Based on these undisputed facts, the Board concludes that the DA's Office violated NH and HH's right to information about the status of the investigation and the outcome of the case. *See* Wis. Const. art. I, § 9m(2)(o); Wis. Stat. §§ 950.04(1v)(zm), 971.095(6).

Right to be treated with dignity, respect, courtesy, sensitivity, and fairness.

45. In addition to the long delay and admitted lack of communication, when DA Isherwood did communicate with NH and HH she was dismissive and gave contradictory information about the status of the case. It was not until NH and HH filed their complaint with the Board that the DA's Office finally gave them an update and proper consideration. The Board concludes that the DA's Office violated NH and HH's right to dignity, respect, courtesy, sensitivity, and fairness. *See* Wis. Const. art. I, § 9m(2)(a); Wis. Stat. § 950.04(1v)(ag).

ORDER

Based on the foregoing, it is hereby ORDERED:

1. That the complainants have shown by clear and convincing evidence that the respondent violated their rights as crime victims.
2. That the Board sanctions the respondent with a private reprimand which will be sent under separate cover. *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 12th day of December 2023.

A handwritten signature in black ink, appearing to read "Jennifer Dunn", is written over a horizontal line.

Chairperson Jennifer Dunn
Crime Victims Rights Board

SERVICE LIST

NH and HH
[street address withheld]

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