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M E M O R A N D U M

To: District Attorney Rod Underhill, Sheriff Mike Reese, Chair Deborah Kafoury

From: Melissa Marrero, Deputy District Attorney

cc: Captain Harry Smith, Jenny Madkour, Marissa Madrigal

Date: November 18, 2019

Subject: Prosecution Decline Memorandum, Multnomah County Sheriff's Case No. 18-67244

Having concluded review of the above-mentioned investigation, I find that the evidence does not support criminal charges against any Multnomah County Adult Protective Services (APS) employee for failure to notify law enforcement after receiving a report of abuse through the APS reporting line.

BACKGROUND

Multnomah County APS operates an abuse reporting line, which receives reports of abuse and neglect of senior and disabled persons. County APS employees who staff the reporting line are mandatory reporters under Oregon law, and are required to notify law enforcement if there is reason to believe that a crime has occurred.

In August of 2018, county officials requested a meeting to discuss concerns that had been raised regarding reports of abuse received by the reporting line related to the Unity Center for Behavioral Health (Unity), and how those reports were handled by the screeners who were responsible for taking initial reports of abuse or neglect. A county administrative inquiry revealed several instances where screeners received reports related to Unity, but law enforcement was not notified when they arguably should have been, pursuant to the Oregon mandatory reporting laws. County administration paused the administrative inquiry and requested an investigation so as to not jeopardize any potential criminal case. The Multnomah County

Sheriff's Office and the Multnomah County District Attorney's Office were asked to assist by investigating and determining whether any county employees may be criminally liable for failing to notify law enforcement when required by law. The Multnomah County Sheriff's Office conducted an investigation with the aid of the Multnomah County District Attorney's Office, who then reviewed the completed investigation to determine if charges were appropriate.

SUMMARY OF INVESTIGATORY STEPS TAKEN

With the assistance of the Department of County Human Services (DCHS), investigators reviewed every report received by APS beginning in January 2017 through August 2018 that did not result in formal APS investigation to determine whether law enforcement should have been notified about any particular report. This timeframe captured all reports received after the opening of Unity through August of 2018, when changes to the administrative rules and county policies took place. Detectives with the Multnomah County Sheriff's Office and the Oregon State Police assisted with the investigation by conducting interviews of witnesses and involved persons. Additionally, interviews were conducted of individuals who reached out to the District Attorney's Office regarding the investigation after learning about it via media reports. County emails and training materials were obtained and reviewed.

SUMMARY OF THE ISSUE

The following is an abbreviated summary of the identified issue. For more detailed information about the investigation and what it revealed, the reader is referred to the investigative reports.

- Between January of 2017 and August of 2018, APS operated an abuse reporting line, which took reports of abuse and neglect of seniors and people with disabilities.
- When a report of abuse or neglect was received by the reporting line, an APS screener would receive that report and gather information to determine whether the person who was the subject of the report met APS eligibility requirements and whether the reported concern met the APS definition of abuse or neglect.
- The information gathered by the screener was documented on a Serious Event Reporting Form (SERF).

- If the screener determined that the person who was the subject of the report met APS eligibility requirements and also that the reported concern met the APS definition of abuse or neglect, the SERF related to that report would be forwarded to an APS investigator, who would open a formal investigation.
- If the screener determined that the person who was the subject of the report did not meet APS eligibility requirements or that the reported concern did not meet the APS definition of abuse or neglect, the report of abuse would be “screened out.” The SERF associated with the report would not be forwarded to investigators and there would be no formal APS investigation.
- APS screeners and investigators are mandatory reporters under Oregon law. Therefore, if a screener or investigator determined that there was reason to believe that a crime had occurred, they were required to notify law enforcement. This was true regardless of whether a report of abuse resulted in a formal investigation or whether the report was “screened out.”
- APS screeners often did not report “screened out” cases to law enforcement when required under the mandatory reporting laws.
- APS investigators did not notify law enforcement about “screened out” cases because they did not review SERFs related to those cases and therefore did not have the information needed to determine whether there was reason to believe that a crime occurred.
- A system should have been in place to ensure that law enforcement was notified of all reports of abuse received by APS where there was reason to believe that a crime occurred, regardless of whether APS opened a formal investigation or “screened out” the case. No such system was in place.

RELEVANT STATUTES

In determining whether any county employee should be held criminally liable as a result of the failure to notify law enforcement in appropriate cases, the following statutes are relevant:

ORS 430.765 (Duty of officials to report abuse) provides that “Any public or private official who has reasonable cause to believe that any adult with whom the official comes in contact has suffered abuse, or that any person with whom the official comes in contact has abused an adult, shall report or cause a report to be made in the manner required in ORS 430.743.”

ORS 430.743(2) (Abuse report; content; action on report; notice to law enforcement agency and Department of Human Services) provides that “When a report is received by the department’s designee under this section, the designee shall immediately determine whether abuse occurred and if the reported victim has sustained any serious injury. If so, the designee shall immediately notify the department. If there is reason to believe a crime has been committed, the designee shall immediately notify the law enforcement agency having jurisdiction within the county where the report was made.”

Individuals working as APS screeners, investigators and supervisors are considered “public or private officials” pursuant to ORS 430.735, and therefore are required to notify law enforcement when they have reason to believe that a crime has occurred.

This investigation specifically examined criminal liability for official misconduct of county employees who received reports of abuse through the APS reporting line and who failed to notify law enforcement of those reports when there was reason to believe that a crime had occurred. Official misconduct is defined by law as follows:

ORS 162.405 (Official Misconduct in the Second Degree) provides that “A public servant commits the crime of official misconduct in the second degree if the person knowingly violates any statute relating to the office of the person.”

ORS 162.415 (Official Misconduct in the First Degree) provides that “A public servant commits the crime of official misconduct in the first degree if:

- a. With intent to obtain a benefit or to harm another:
 - A. The public servant knowingly fails to perform a duty imposed upon the public servant by law or one clearly inherent in the nature of office; or

- B. The public servant knowingly performs an act constituting an unauthorized exercise in official duties; or
- b. The public servant, while acting as a supervisory employee, violates ORS 162.405 and is aware of and consciously disregards the fact that a violation creates a risk of:
 - A. Physical injury to a vulnerable person;
 - B. The commission of a sex crime as defined in ORS 163A.005 against a vulnerable person; or
 - C. The withholding from a vulnerable person of necessary and adequate food, physical care or medical attention.”

Thus, to be criminally liable for official misconduct, a public servant must either knowingly violate a statute related to the office of the person or with the intent to obtain a benefit or to harm another, must knowingly fail to perform a duty imposed by law or clearly inherent in the nature of the office or knowingly perform an act constituting an unauthorized exercise in official duties.

Oregon law defines “knowingly” or “with knowledge,” when used with respect to conduct or to a circumstance described by a statute defining an offense, as meaning that “a person acts with an awareness that the conduct of the person is of a nature so described or that a circumstance so described exists.”

CONCLUSIONS

The investigation ultimately revealed that between January 1, 2017 and August 30, 2018, there were abuse reports screened by APS that did not result in notification to law enforcement when arguably necessary. However, Captain Smith with the Multnomah County Sheriff’s Office and I have concluded that prosecution is not warranted for the reasons that follow.

There is insufficient evidence to establish that any county worker knowingly violated statutes relating to the office of the person, that any county worker obtained or intended to obtain a personal benefit or that any county worker intentionally harmed or intended to harm another

person by not notifying law enforcement about abuse reports. Additionally, there is no evidence of discrimination related to any failure to report. Rather, the evidence indicates that there was significant confusion surrounding reporting obligations for screeners and insufficient training in this area. APS screeners, investigators and supervisors expected investigators to report to law enforcement if there was reason to believe a crime had occurred because investigators were generally better equipped to provide more reliable information than screeners to law enforcement. Screeners did not report to law enforcement because they believed that investigators would do so if necessary. However, investigators did not receive the information needed to assess whether law enforcement notification was required in cases that were “screened out” because they did not receive the SERFs documenting those reports of abuse.

Further, in 2017, legal clarification from the Oregon Health Authority (OHA) and the Department of Human Services (DHS) regarding jurisdiction over abuse investigations unintentionally exacerbated the problem of law enforcement not being notified in appropriate cases. APS was informed that investigations went beyond the scope of the law when they involved individuals who did not qualify for APS services or if the reported concerns did not meet the legal definition of abuse or neglect. APS was notified that, in future cases, investigations must be limited to the populations and types of abuse covered by law. Changes to the Oregon Administrative Rules followed, but not before significant confusion developed over work and reporting obligations, including whether APS employees were allowed to take action on certain cases. These changes resulted in a significant decline in the number of cases that APS was able to investigate. The evidence demonstrates that APS employees took steps to offer protective services, even if the agency was unable to formally investigate a complaint. However, APS practices were not adjusted to ensure notification to law enforcement when necessary given the reduced ability to formally investigate complaints of abuse.

Ultimately, county employees were insufficiently trained regarding the interplay between the requirements of their positions with regard to taking reports of abuse and the requirements for law enforcement notification. Established office procedures contributed to this lack of knowledge, and changes and clarification within the legal parameters of APS jurisdiction further compounded the problem. There is no evidence that county employees had sufficient knowledge of the organizational failure to justify criminal charges, or that any individual acted intentionally. Further, there is insufficient evidence that county employees intentionally or knowingly violated

statutes related to the office of the person, including ORS 430.765 (Duty of officials to report abuse), or that any employee intended to obtain a benefit or harm another by failing to notify law enforcement about reports of abuse.

Having reached the conclusion that criminal prosecution is not warranted here, it is worth mentioning that, with the assistance of the Portland Police Bureau's Family Services Division, steps have been taken to ensure the appropriate law enforcement agencies are notified about any reports that still required notification. Any investigation that may result from such notification is beyond the scope of this investigation and is not addressed in this memorandum. Additionally, following the Department of County Human Services (DCHS) review of the APS processes, policies and procedures were amended to address concerns related to this investigation to ensure safe and appropriate practices moving forward. Corrective measures instituted after August of 2018 are also beyond the scope of this investigation and are not addressed in this memorandum.