

Colorado Crime Victim Services Advisory Board

Victim Rights Act Subcommittee

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OFFICE FOR VICTIMS PROGRAM
Ms. Kelly Kissell, Manager

Victim Rights Specialist: Ms. Kim Branham

June 21, 2021

Honorable Alonzo Payne
P.O. Box 197
Saguache, CO 81149

Dear Honorable Payne,

Enclosed please find a Request for Enforcement of Compliance with the Requirements of the Victim Rights Act (complaints) that was received by the Crime Victim Services Advisory Board. In this complaint, Mr. John Luhman is alleging noncompliance with the provisions of the Victim Rights Act (VRA) and the related enabling legislation. C.R.S. § 24-4.1-303 (17) states:

Any affected person, except as provided in subsection (16) of this section, may enforce compliance with this article by notifying the crime victim services advisory board created pursuant to section 24-4.1-117.3 (1) of any noncompliance with this article. The crime victim services advisory board shall review any report of noncompliance, and if the board determines that the report of noncompliance has a basis in fact, and cannot be resolved, the board shall refer the report of noncompliance to the Governor, who shall request that the Attorney General file suit to enforce compliance with this article. A person, corporation, or other legal entity shall not be entitled to claim or to receive any damages or other financial redress for failure to comply with this article.

Enclosed please find the procedures established by the Crime Victim Services Advisory Board and the Division of Criminal Justice (DCJ). These procedures may assist you in responding to this letter. The VRA Subcommittee understands this may be your first time going through this process so please feel free to contact Kim Branham at the Division of Criminal Justice if you have any questions.

It is the role of the Crime Victim Services Advisory Board and the Victim Rights Act Subcommittee to act as an impartial fact-finding entity. The Victim Rights Act Subcommittee is committed to following all complaints to resolution by engaging in a process that is accurate, thorough, and responsive to crime victims and to the citizens of Colorado.

Please note that a copy of your response will be provided to the complainant in this case. In addition, the Division of Criminal Justice is subject to the provisions of Colorado's Open Records Act. If you have any concerns about submitting information to the Division of Criminal Justice, please contact Kim Branham by phone at 303-239-4497 or by email at kim.branham@state.co.us.

I. Enclosed Documents

- John Luhman's Formal VRA Complaint.
- The Policies and Procedures for Reviewing and Responding to Requests for the Enforcement of Compliance with Provisions of the Victim Rights Act.

II. Case Summary

On December 24, 2019, Mr. John Luhman reported to Sheriff Warwick of the Saguache County Sheriff's Office that Mr. Luhman was assaulted on three occasions by his partner Travis Tomlinson.

On December 19, 2019, Mr. Luhman reported that he was not feeling well and he asked Mr. Tomlinson to leave Mr. Luhman's house so he could get some rest. Mr. Tomlinson then jumped on Mr. Luhman and began beating him with open hands, closed fist and a belt.

On December 20, 2019, Mr. Tomlinson was at Mr. Luhman's house and he got upset with Mr. Luhman after Mr. Luhman asked Mr. Tomlinson to leave for the night. Mr. Tomlinson grabbed a piece of wood that was on fire in the wood stove and threw it on Mr. Luhman's bed, burning the bed.

The following morning, on December 21, 2019, Mr. Luhman and Mr. Tomlinson got into an argument and Mr. Tomlinson grabbed a knife. Mr. Luhman ran into the bedroom and tried to close the door to keep Mr. Tomlinson out. Mr. Luhman was trapped between the door and the wall and Mr. Tomlinson stabbed the door trying to get to Mr. Luhman. Mr. Tomlinson then forced Mr. Luhman into signing over his car to Mr. Tomlinson.

Sheriff Warwick determined that probable cause existed and Mr. Tomlinson was charged with third degree assault, domestic violence, criminal mischief, criminal extortion of a vehicle, false imprisonment, menacing and second degree assault.

On March 16, 2021, the 12th Judicial District Court dismissed the case on a prima facia basis and questioned the victim's creditability.

III. Allegations:

Allegation #1: Mr. Luhman alleges that he was not treated with fairness, respect and dignity by the 12th Judicial District Attorney's Office.

Below are some excerpts from Mr. Luhman's complaint regarding the allegations related to fairness, respect and dignity.

- Mr. Luhman did not receive a "credible response" from the District Attorney's Office after inquiring why all of the charges would not be filed.
- The Victim Advocate gave Mr. Luhman the wrong WebEx link/call in information for an advisement hearing on July 1, 2020 and he was in the wrong "courtroom".
- The Victim Advocate did not respond to his emails.
- During a conversation with staff from the District Attorney's Office regarding the plea, Mr. Luhman was not provided a "credible explanation" why the plea was being offered and asked to speak to the District Attorney. Instead of speaking to the District Attorney, he was transferred to the Investigator who threatened to have him arrested for harassment if Mr. Luhman called or emailed the office again.

- According to Mr. Luhman, the case was dismissed because the District Attorney's Office informed Mr. Luhman that he was not a "credible witness". Mr. Luhman stated this is due to his PTSD and not having the opportunity to get into treatment.
- Mr. Luhman was not provided with the date and time of the status conference hearing on March 16, 2021, in which the case was dismissed.

The following is the relevant section of the Victim Rights Act:

C.R.S. §24-4.1-302.5(1) In order to preserve and protect a victim's rights to justice and due process, each victim of a crime shall have the following rights:

(a) The right to be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.

Allegation #2: Mr. Luhman alleges that he was not provided the right to consult with the prosecutor about the resolution of the case.

According to Mr. Luhman, the District Attorney's Office made an offer to the defense attorney prior to speaking with him about the offer and it was not clear that the offer was contingent upon consultation with the victim.

The following are the relevant sections of the Victim Rights Act:

C.R.S. §24-4.1-302.5 (1) In order to preserve and protect a victim's rights to justice and due process, each victim of a crime shall have the following rights:

(e) The right to consult with the prosecution after any crime against the victim has been charged, prior to any disposition of the case, or prior to any trial of the case, and the right to be informed of the final disposition of the case;

C.R.S. §24-4.1-303(4) After a crime has been charged, unless inconsistent with the requirements of investigative activities, the district attorney shall consult, where practicable, with the victim concerning the reduction of charges, negotiated pleas, diversion, dismissal, seeking of death penalty, or other disposition. Failure to comply with this subsection (4) shall not invalidate any decision, agreement, or disposition. This subsection (4) shall not be construed as a restriction on or delegation of the district attorney's authority under the constitution and laws of this state.

IV. Response Requested

As the Chair of the Victim Rights Act Subcommittee, I am requesting that you review the attached complaint and respond to the allegation in the complaint within 4 weeks of the date on this letter, up to and including July 19, 2021. Your response can be mailed or scanned with any supporting documentation and emailed to Kim Branham at kim.branham@state.co.us.

In order to assist the Subcommittee in making its findings as to whether Mr. Luhman's rights as enumerated in the Victim Rights Act were provided, please provide the following:

- 1) Any documentation from the District Attorney's Office regarding communication with Mr. Luhman including notes regarding the advocate's communication with Mr. Luhman for the status hearing.
- 2) Any documentation from the District Attorney's Office that shows the plea offer was conditional pending consultation with Mr. Luhman or any documentation that the District Attorney's Office made the offer and then spoke with Mr. Luhman.
- 3) Any additional information that may assist the Subcommittee in determining if the complaint has a basis in fact and what steps might be taken to resolve the matter.

The Victim Rights Act Subcommittee will review the information provided and will respond in the manner outlined in the enclosed procedures.

Please include all information that you determine is relevant to this complaint. Information that was available during this time but not submitted will not be considered at a future date.

Please send your response, to my attention, in care of the following staff person at the Division of Criminal Justice:

Ms. Kim Branham
Division of Criminal Justice
700 Kipling Street, Suite 1000
Denver, CO 80215
Kim.branham@state.co.us

If you have any questions regarding the process, please contact Ms. Kim Branham at 303-239-4497. Thank you for your timely response to this matter.

Sincerely,



Steve Aurand
Chair, Victim Rights Act Subcommittee

cc: Mr. John Luhman