

Probe worry curbs actions

Police called to handle outbursts; workers fear restraining patients

By Brendan J. Lyons Published 8:02 pm, Saturday, October 8, 2016

Albany

It was a routine police call that quickly turned serious. In late July, employees at a group home for troubled teenagers needed help controlling a 15-year-old girl who was accused of stabbing a worker in the arm with a pen and refusing orders to leave her room.

Two Albany police officers, including Ervis Miftari, who has less than three years on the force, responded to the call. It was one of hundreds that Albany police handle each year at group homes and psychiatric facilities around the city, according to police records. After the girl was escorted to a "timeout" room, the situation became physical when Miftari allegedly grabbed the uncooperative girl by the neck and slammed her to the ground, holding her down. His actions, captured on a surveillance camera, triggered an Albany police internal investigation that resulted in Miftari's suspension and subsequent arrest on charges of harassment and endangering the welfare of a child, a misdemeanor.

Police Chief Brendan Cox called the officer's conduct "unacceptable."

Despite thousands of police calls to city group homes through the years, the officer's arrest was extraordinary in Albany. The case also underscores a pattern that police and state labor union leaders say is becoming common: group home workers are frequently turning to police to handle combative or emotionally disturbed people in their care.

They said the perceived shift has occurred in the four years since Gov. Andrew Cuomo established the Justice Center for the Protection of People with Special Needs. The unit, headquartered in Delmar, has roughly 160 investigators across New York devoted to safeguarding disabled and other vulnerable people in state care or in facilities under the jurisdiction of the state. The unit includes special prosecutors with authority to pursue criminal or disciplinary cases against workers who physically abuse or neglect people with special needs. In some instances, the Justice Center's investigations are referred to local district attorneys for prosecution.

Miftari's arrest for the incident at St. Anne Institute, a nonprofit group home for troubled girls, was not handled by the Justice Center, which did not have jurisdiction over the officer's conduct. But the state unit has probed similar allegations there. Three months before the officer's arrest, an investigation by the Justice Center resulted in criminal charges against Brant Conine, 43, a staff member at St. Anne's, who allegedly grabbed a 15-year-old girl by the neck, slammed her to the ground and briefly obstructed her breathing. Conine's case is also pending in Albany City Court. He faces misdemeanor charges of attempted assault, menacing and endangering the welfare of a child, as well as harassment, a violation.

Cheryl Coleman, an Albany criminal defense attorney who represents Miftari and Conine — although their cases are not directly related — said she believes that staff at St. Anne's and other city group homes have been reluctant to use physical restraint, especially workers at St. Anne's following Conine's

arrest. She said their reluctance, in part, may be why police were called to the home in late July. Coleman noted that, a few weeks after Miftari's arrest, the same teenager he grappled with in July fled the group home, stole a van and led State Police on a 30-mile chase along the Thruway into Fulton County, according to police.

"It's going to put everyone at risk," Coleman said, adding that group home workers are telling people they are wary of physically stopping unruly teenagers from running away.

Conine's confrontation with the teenager last year was captured on video. Coleman said the footage shows her client appearing to defend himself as the girl allegedly struck him with an object when he tried to prevent her from leaving the facility, where many of the girls are placed in secure residency under court orders.

"You can clear as day see her hit him in the face and you see him restrain her until a second staff member comes," Coleman said, calling the charges "ridiculous."

Jay Kiyonaga, executive deputy director at the Justice Center, said workers at facilities for people with special needs receive thorough training and are required to take action when necessary. He said any worker not restraining a person out of fear of losing their job or being arrested is taking a risk.

"That's like a doctor not treating a patient because they don't know what the outcome is going to be," he said. "I would hope that we're not having a chilling effect on people doing their job. It's their job to provide proper care to these people in these facilities."

The Justice Center was created in 2012 in the wake of a series of stories in The New York Times exposing decades of abuse in facilities run by state agencies such as the Office for People with Developmental Disabilities and the Office of Mental Health. Although some employees of care centers said they fear the unit's investigative powers, it also has a documented history of filling a gap that existed in probing and prosecuting abuse allegations.

Last year, the Justice Center received 10,894 reports of abuse or neglect; more than half of the 6,014 substantiated cases involved neglect, according to the unit's annual report. The reports are confidential and may come from anyone with knowledge of problematic behavior, such as workers, patients or family members. As a result of those 2015 cases, 191 employees were barred from working in facilities under the Justice Center's jurisdiction, and another 184 were terminated from their state jobs. The Justice Center's investigations also resulted in 89 arrests last year, including 73 cases prosecuted by local district attorneys.

Kiyonaga, a former acting deputy commissioner with OPWDD before being appointed to the team that formed the Justice Center, said their investigations are thorough but fair, and investigators take into account that some workers may need to abandon the techniques they are trained to use if their safety is in jeopardy. Those techniques include safely gaining control of a person without choking or striking them.

"Self-defense is self-defense," Kiyonaga said. "Some of these kids aren't necessarily 'kid-sized.' Some of the staff are probably physically disadvantaged in these cases. That's all taken into account."

Kevin Flynn, a juvenile-unit detective and president of the Albany Police Officers Union, said uniformed officers he represents have reported an uptick in calls for help at city group homes and psychiatric facilities.

"I do believe our members are asked more to assist in potential violent physical restraints because the staff feels any physical interactions they have with the clients in these facilities could potentially cost them their job," Flynn said.

The number of police calls to Albany group homes and psychiatric facilities are difficult to quantify, in part, because officers routinely document what happened in different ways. Last year at Parsons Child and Family Center, for instance, police responded to the facility 692 times, including 19 cases involving a fight or assault and 92 incidents involving a person attempting suicide or suffering another psychiatric issue. There were also five police calls for incidents involving a weapon, and 10 for someone being injured or suffering a laceration.

But the 2015 police calls at Parsons also included 264 incidents recorded as "get a report," which some police officers said is a generic term they use in reports to document a wide range of incidents.

At St. Anne's last year, police records indicate there were more than 300 calls, including 17 incidents involving a fight or assault, 134 documented only as "get a report," and 42 responses for a laceration, overdose, attempted suicide or psychiatric issue.

The belief by police and labor unions that officers are being called on more in violent group-home situations is not unique to Albany.

Darek Robinson, vice president of a New York City labor union that represents social services' workers, including juvenile counselors, said those workers have faced intensive scrutiny for their physical confrontations with the people in their care, including many teenagers who are violent.

"These kids are extremely challenging," Robinson said. "If you don't restrain you're brought up on disciplinary charges. If you do restrain they review the cameras and look for any little slip-up ... and you can be prosecuted."

Robinson's union, Local 371, represents Rafael Pasols, a juvenile counselor who was arrested in December 2014 and charged with assault, strangulation and criminal obstruction of breathing following an incident where he grappled with a 17-year-old boy. The incident took place at Horizon Juvenile Justice Center in the Bronx.

"What got this story so elevated was the kid had a seizure, so they're trying to say that he was allegedly choked and that's why the kid had a seizure ... but he had a history of seizures," Robinson said. The boy died recently due to health complications unrelated to the 2014 incident, and Pasols' case is headed for trial later this month. But the felony strangulation charge was dropped by prosecutors and he's facing only misdemeanor counts.

Still, Robinson said the fallout has been devastating for Pasols, who was suspended, lost his health insurance coverage and endured a marital breakup in the wake of his arrest.

Officials with Local 371 and the Public Employees Federation, the state's second-largest public labor union, said they are forming a coalition to convince state leaders to review the Justice Center's effects on the workers who are investigated.

"The Justice Center just takes too long to investigate a case," Robinson said. "Once you're investigated by the Justice Center, and you get a founded case [or a case with merit], social workers and nurses ... they lose everything. ... We're saying people in a correctional-type setting, that's their job to restrain, almost every day. The counselors now are kind of backing off and would rather take their disciplinary charges than deal with the Justice Center and being prosecuted."

Wayne Spence, president of PEF, said the clients in many state-run facilities can turn violent against staff or one another, and that his members also are reporting instances of employees hesitating to get involved.

"The state rushed to create the Justice Center based on things that came out in The New York Times," Spence said. "I believe they created a process where my members are guilty until proven innocent. There is a big reluctance on use of restraint and it's resulting in these people with special needs basically running these facilities."

blyons@timesunion.com • 518-454-5547 • @brendan_lyonstu