

MICHIGAN DOMESTIC & SEXUAL VIOLENCE PREVENTION & TREATMENT BOARD

Board Members

- ◆ Hon. Elizabeth Pollard Hines (Ret.) -Chair
 - ◆ Hon. Melissa Pope ◆ Matt Wiese ◆ Dr. NiCole Buchanan
 - ◆ Rebecca Shiemke ◆ Kristen Howard ◆ Sgt. Kyla Williams
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Chairperson Hope, House Criminal Justice Committee
Anderson House Office Building
N-1093
Lansing, MI 48933

May 15, 2023

Dear Chairperson Hope and Criminal Justice members,

As HBs 4420-4423 is before the House Criminal Justice Committee, I am writing to inform you that the Michigan Domestic and Sexual Violence Prevention and Treatment Board discussed these pieces of legislation at its February and March 2022 meetings and again at our May 2023 meeting. On behalf of the Board, I would like to explain the rationale of our positions on these bills.

As you know, the Michigan Domestic and Sexual Violence Prevention and Treatment Board (the Board) is a seven-member Governor-appointed Board with legislative responsibilities including funding sexual assault and domestic violence services for victims and providing policy recommendations on the issues of domestic violence, sexual assault, stalking, and intimate partner violence. *Please note that the Board's position and rationale are solely that of the Board and does not necessarily represent the view of any individual member of the Board, or the views of the Michigan Department of Health and Human Services or any other body.* Although the Board is administratively housed within MDHHS in the Division of Victim Services, it is an independent, legislatively-created body.

HB 4420 (Rep. Rogers): Board Supports

The Board thanks Representative Rogers for developing a substitute bill last term that addressed the Board's concerns. This bill could result in greater access to domestic violence and sexual assault services for victims of domestic and sexual violence. Police and prosecutors have regular contact with domestic and sexual violence victims and by sharing the contact information they possess with service providers (and informing victims that they did), victims may be better supported, and their needs better met.

HB 4421 (Rep. Young): Board Opposes

The Board voted to oppose HB 4421 based on the presumption of live streaming court proceedings. This is the same position that the Board took on HB 5680'22. The Board recognizes and supports the intent of attempting to protect a victim's identity during a virtual court hearing, however, the Board has previously engaged in reviewing and providing comments on several proposed court rules related to the expanded use of virtual court proceedings and their impact on victim privacy, confidentiality, and participation in the criminal justice system.

At its meeting on October 1, 2021, the Board voted to oppose the proposed Michigan Supreme Court changes to MCR 2.407 and MCR 6.006 (summary of opposition below), and suggested alternatives to those two rules which encourage, but do not require, remote proceedings and which provide necessary protections for victim privacy and meaningful access to courts. The Board and Division staff have been monitoring this issue and submitted comments to the two workgroups (the Task Force on Open Courts, Media and Privacy, and the Lessons Learned Committee) that were created to provide recommendations on whether and how to continue with remote court proceedings.

Summary of opposition to MCR 2.407 and MCR 6.006:

- Making virtual proceedings presumptively preferred will compromise privacy and safety for some victims.
- Use of videoconferencing with livestream access via YouTube for public viewing can be unjustifiably humiliating and oppressive to survivors and adversely impact their willingness to participate in court, possibly depriving them of needed access to courts for protection order enforcement, resolution of custody disputes, and criminal prosecution.
- Virtual proceedings can adversely impact how factfinders perceive victim/survivor testimony and thus adversely impact the outcome of cases.
- Current online platforms do not appear to have functions that can make online proceedings safe and private for victims/survivors.
- The amendments create an ambiguity about whether courts can or must still apply the factors recited in MCR 2.407(C) - The amendments address only a party's Constitutional rights, and not a crime victim's rights under Michigan's Constitution as victims are not legally "parties" in criminal prosecutions.

While HB 4421 is well-intended, its effect on victims may be harmful. The blurring of a victim's face on a live stream or archived recording available online for later viewing, does not provide the best option for victim privacy and safety. The best policy and practice to maximize victim safety and protect privacy would be to not live-stream at all nor make testimony of victims available for later public viewing outside the courtroom.

In addition, the Board noted several challenges to implementing this bill. The current language does not *require* the blurring of a victim, only allowing for that if the court so chooses, and it does not address or provide additional protection to a victim's identity, such as their voice or other identifying information they may provide during their remote testimony. Under this bill, if a victim asks or requests that their face be blurred, the court may choose to deny that request, as the bill allows the court to make that decision. It is also unclear whether the victim's face must

not be blurred for those parties engaged in the court proceeding, including the defendant, and the judge and the jury sitting as fact-finders. Would enactment of this bill would require two separate live-streams, one blurred for the public and one not blurred for the court, jury and defendant? Defendants have the right to confront their accuser in open court, whether it is in a courtroom or virtually. It is also important for a judge and/or jury to see a victim's face while the victim is testifying.

The Board also notes the challenges this bill would bring to the courts, including acquiring software and additional court staff. Courts would need a dedicated staff member to manage the software and blurring filter while the court proceeding is being streamed and/or recorded. Also, there is no uniform guidance surrounding the use of live-streaming technology, retention of the video of those proceedings, or access by the public to those proceedings, leaving each court to decide whether to live-stream and retain video court proceedings, and how to disseminate that information and for how long to make it available to the public through computer programs such as Zoom and YouTube. There are currently vastly different practices from court to court and even case to case within courts. These inconsistencies not only harm individual victims but could have long-lasting and damaging effects if recordings are easily accessible for public viewing and dissemination. The Board has concerns that the ease of viewing and obtaining court hearing videos from the comfort of one's home could potentially increase the likelihood of improper dissemination of the online court hearing, compared to the current process of requiring an interested observer to physically go to a courthouse to watch the proceeding, or request a copy of the videotaped proceeding (where available) or to order a transcript.

The Board acknowledges and appreciates the intent of HB 4421 in seeking to provide some measure of victim privacy and confidentiality in criminal proceedings. However, as currently written, for the reasons stated above, we are concerned that the bill would have a damaging impact on victim privacy, confidentiality, and participation in the criminal justice system.

HB 4422 (Rep. Filler): Board Neutral

At its May 12, 2023, meeting, the Board voted to be neutral on HB 4422. Last term, the Board supported HB 5679'22; however, the substitute bill that was adopted in committee in June 2022, and is the same language now in HB 4422, removed many of the offenses that the Board feels necessary and should be added to the expanded definition of "serious misdemeanor".

There are many circumstances in which these removed offenses are seen in cases of domestic violence, sexual assault, stalking, and intimate partner violence. By adding these crimes back into the bill, the victims of these crimes would be afforded the rights found in the Crime Victims' Rights Act, MCL 780.811b through MCL 780.834. Those rights include the opportunity to: be notified of court hearings; be provided an opportunity to participate as fully as they wish in the criminal justice system and their cases; attend court proceedings; and provide a victim impact statement and input. Moreover, by including the crimes as "serious misdemeanors" within the Crime Victims' Rights Act, victims would have the *right* to have restitution ordered and enforced. It is also important to note that recent criminal justice reform legislation, including probation and jail reform bills passed in 2020, all point to the serious misdemeanor definition to

exempt certain crimes from mandatory probationary sentences and provide for different treatment when deciding bail or sentencing. Put another way, by excluding crimes the Board respectfully suggests be included in the definition of “serious misdemeanor” for the safety and well-being of victims of domestic and sexual violence and stalking, no such “rights” would be required. Conviction of a crime with dynamics of intimate partner violence, for example, could result in imposition of fines and costs only, with no judicial protective conditions or oversight.

The Board urges adding the following offenses to HB 4422: MCL 750.135a, leaving a child in a vehicle resulting in physical harm; MCL 750.145n, vulnerable adult abuse in the fourth degree; MCL 750.145p, retaliation or discrimination against an employee; MCL 750.377a, malicious destruction of personal property; MCL 750.380, malicious destruction of a building; MCL 750.410, buying or selling patient records; MCL 750.411t, hazing resulting in physical injury; MCL 750.483a, interfering with a crime report; malicious use of telecommunications services, or destruction or interference of a telecommunication device; and MCL 780.762 (felony victim), 780.790 (juvenile victim), & 780.822 (misdemeanor victim), discharge/discipline of victim by employer because the victim is subpoenaed or requested to attend court to give testimony.

Also, in 2022, the Board requested that several additional offenses be added to then HB 5679’22 and would request that those be included in HB 4422 as well. Those offenses are MCL 750.390 (Malicious annoyance by writing) and MCL 750.5391 (tracking device on a motor vehicle without consent). Both offenses may be a form of stalking behavior.

HB 4423 (Rep. VanWoerkom): Board Support

HB 4423 would have a positive impact on domestic and sexual violence survivors by allowing them to participate in the sentencing hearing remotely by providing a victim impact statement remotely if they choose to do so. This would prevent victims from being forced to be in the same room as their offender, yet still allow for their impact statement to be given by themselves, instead of having to designate another adult to deliver it.

Thank you for your time and your interest in protections for crime victims. Please contact Angie Povilaitis, Staff Attorney for the Board at povilaitis1@michigan.gov, Jess Averill, Board Policy Analyst at Averillj@michigan.gov, or me if you have any questions or would like to further discuss these Board positions.

Sincerely,



Hon. Elizabeth PollardHines (Ret.)
Chair, Michigan Domestic and Sexual Violence
Prevention and Treatment Board