Chairperson Hope, House Criminal Justice Committee
Anderson House Office Building
N-1093
Lansing, MI 48933

May 22, 2023

RE: MDSVPTB Opposition to HB 4450-4453

Dear Chairperson Hope and Criminal Justice Committee Members,

As HBs 4450-4453 are before the House Criminal Justice Committee, I am writing to inform you that the Michigan Domestic and Sexual Violence Prevention and Treatment Board reviewed and voted to oppose these bills. The Board expresses serious safety concerns with the "productivity credits" proposed in HB 4450-4453 that would reduce the minimum and maximum time eligible prisoners must serve. These bills would, in effect, repeal Michigan's Truth in Sentencing Law[1] and restore a type of credit expressly rejected by Michigan voters. These positions are based on a discussion of similar HBs 4670-73'21 at the Board's May 2021 meeting. On behalf of the Board, please allow me 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 do not necessarily represent the view of any individual member of the Board, nor 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.

If HBs 4450-4453 were enacted into law, victims of extremely serious crimes—Torture, Assault with Intent to Murder, Assault with Intent to do Great Bodily Harm, Felony Domestic Violence, Aggravated Stalking, Solicitation to Murder, Kidnapping, Home Invasion and Felony Child Abuse offenses, to name a few-- would no longer have the certainty and peace of mind of knowing exactly how long their convicted offender would be in prison before becoming eligible

[1] See appendix.

for parole. Without the ability to know how long the offender will be incarcerated, meaningful plea agreements would be difficult to negotiate, too.

For example, in a number of domestic violence homicide cases where the defendant- father killed the victim-mother in front of child witnesses, with the consent of the surviving family, the prosecutor could occasionally offer a reduced plea of Second-Degree Murder with a sentence agreement of 40 or 50 years on the minimum (depending on the defendant's age), because they had the certainty that the defendant would serve his minimum sentence. The prosecutor could guarantee to the family that the defendant would be of an advanced age when he became eligible for parole. Not only would the children be spared from having to testify and "re-live" the murder in court, but the children could also grow into adulthood without fear or worry the defendant would get out of prison or that they would have to go through a parole hearing process. Should Michigan's Truth in Sentencing laws be essentially repealed by HB 4450-4453, many victims could be negatively impacted after enduring and surviving horrific crimes and still not know when their offender will be released.

The Board recognizes the value in prisoners completing educational and other programs while incarcerated to prepare them to come home ready to work and live productive lives in their communities, and such program are already currently being completed. The Board was informed that, in fact, a very high percentage of MDOC prisoners (sometimes between 80-90%, depending on the program) already avail themselves of educational and vocational programs offered while incarcerated, both by enrolling in and completing such programs. The additional incentives offered by HB 4450-4453 in the form of "productivity credits" are not needed and would harm victims. For these reasons and others, the Board voted to oppose HB 4450-4453.

Thank you for your time in considering the Board's views. Please contact Angie Povilaitis, Staff Attorney for the Board at povilaitisa1@michigan.gov, Jess Averill, Board Policy Analysist at Averillj@michigan.gov, or me if you have any questions or would like to further discuss these Board positions.

Sincerely,

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

Appendix

The Board discussed this legislation in the Spring of 2021. The following information was presented to Board members during its review of the legislation, as historical information pertaining to Truth in Sentencing.

What is Truth in Sentencing?

In Michigan, when a criminal defendant is sentenced to a prison term, they are sentenced to both a minimum term and maximum term. The maximum term is set by statute (for example, Criminal Sexual Conduct Second Degree has a 15-year statutory maximum sentence). The minimum term is determined by the Michigan Sentencing guidelines[2] and provides the sentencing judge a range in which to sentence an offender, barring any departure from the guidelines range. The sentencing judge determines the minimum sentence term.

For offenses that were committed on or after December 15, 1998, Michigan's truth in sentencing laws apply. This means that an offender must serve every day of their minimum sentence term before becoming eligible for parole. A parole board can then decide to either release the offender on parole or keep them incarcerated until their maximum release date, with periodic reviews and/or hearings until that maximum date is met.

What is the history surrounding Michigan's adoption of Truth in Sentencing laws?

It is important to understand the history related to felony sentencing in Michigan. Sentencing reform efforts began well-before truth in sentencing laws were passed in the late 1990s. In 1978, Proposal B passed by a 75%-25% statewide vote margin and eliminated "good time" for certain violent crimes and revised standards for a grant of parole.

Prior to truth in sentencing laws, there was much uncertainty surrounding how long a defendant would remain in prison. A judge would impose a sentence, yet no one knew, especially at the time of sentencing, how long a defendant would remain incarcerated. Defendants were eligible for both "good time" credit reductions to their sentence if they behaved in prison and disciplinary credits if there were behavioral problems. Early release decisions were therefore made using numerical calculations and left to MDOC officials who had no connection to the case, victims or community involved in the defendant's crime.

In the late-1990s, Michigan adopted legislative sentencing guidelines following recommendations from a legislatively created Sentencing Commission[3]. Prior to this adoption of those legislative sentencing guidelines, there existed judicial sentencing guidelines. The enactment of the legislative sentencing guidelines was tie-barred to the adoption of truth-in-

[2] Sentencing guidelines are used to assess prior record variable points and offense variable points to an offender, depending up on the facts of the case and offender's prior record. Those points are then mapped out in a sentencing grid. The grid placement provides the minimum sentencing range.
[3] MCL 769.320.

sentencing laws[4] requiring that offenders serve at least the entire minimum prison sentence imposed by the court and precluding any early release for good behavior or otherwise.

The Commission included four senators and four representatives (two from each caucus), the directors of the Department of Corrections and the Department of Management and Budget, a circuit and a recorder's court judge, two representatives of the public, a prosecutor, a defense attorney, a sheriff, an individual advocating alternatives to incarceration, and an individual representing victims of crime[5]. In drafting legislative sentencing guidelines, the Sentencing Commission cataloged all felony offenses, ranking them into severity levels. The Commission also determined minimum ranges, considered impact upon jail and prison populations, and made decisions about when a prison sentence is appropriate instead of a probationary or jail sentence. Under its statutory direction, the Commission also considered community and victim impact as they were directed to develop guidelines that would, among other things, provide for the protection of the public, treat offenses against the person more severely than other offenses and include guidelines for habitual offenders.

While these determinations were being made, prosecutors and victims groups consented to many sensible compromises to lessen the impact truth in sentencing might have on the state's prisons system. Those include the elimination of consecutive sentencing for many crimes, incorporating then existing good time and disciplinary credits into the sentencing guidelines cells which resulted in at least a 25-50% reduction in minimum sentence, increasing felony threshold amounts for many crimes including arson, retrial fraud and uttering and publishing, establishing scoring caps and a 10-year gap for prior records in guideline scoring, and establishing straddle cells to grant judges discretion to decide whether to sentence certain felons to prisons to community sanctions. In summary, many concessions were made by prosecutors and victim's groups in exchange for the certainty that comes with truth in sentencing laws[6].

Why is Truth in Sentencing important for crime victims, especially victims of sexual assault, sexual abuse, domestic violence and other intimate partner crimes?

Truth in sentencing provides victims with certainty about the minimum prison incarceration term of a defendant. With truth in sentencing, victims can have meaningful plea discussions, understanding exactly when an offender will be eligible for parole. At the time of sentencing, a victim will know the exact time their offender will be incarcerated. Without this information, it can be nearly impossible for a victim to know when exactly their offender might become eligible for parole or released. Further, knowing that truth in sentencing is the law, prosecutors often enter into plea agreements to a set number of years, knowing that an offender will be incarcerated for the minimum of a plea term. In very serious and heinous offenses, those plea offers can result in a term that is essentially a life term of incarceration due to an offender's age while allowing a victim or family to avoid the uncertainty and trauma of a jury trial.

[4] MCL 791.233 et. seq.

[5] Michigan Sentencing Guidelines, Sheila Robertson Deming, Michigan State Bar Journal, June 2000, Volume 79, No. 6. https://www.michbar.org/journal/article?articleID=92&volumeID=8&viewType=archive

[6] Historical information and material were provided to staff by the Prosecuting Attorneys Association of Michigan discussing the history of Truth in Sentencing laws.

When considering the impact that truth in sentencing reforms could have, many domestic violence homicide cases involving child witnesses should be considered. For example, in a number of domestic violence homicide cases where the defendant- father killed the victim-mother in front of child witnesses, with the consent of the surviving family, the prosecutor could occasionally offer a reduced plea of Second-Degree Murder with a sentence agreement of 40 or 50 years on the minimum (depending on the defendant's age), because they had the certainty that the defendant would serve his minimum sentence. The prosecutor could guarantee to the family that the defendant would be of an advanced age when he became eligible for parole. Not only would the children be spared from having to testify and "re-live" the murder in court, but the children could also grow into adulthood without fear or worry the defendant would get out of prison or that they would have to go through a parole hearing process.