



MICHIGAN DOMESTIC & SEXUAL VIOLENCE PREVENTION & TREATMENT BOARD

Board Members

Hon. Amy Ronayne Krause - Chair ♦ F/Lt. Yvonne Brantley
Dr. NiCole Buchanan ♦ Hon. Thomas Cameron
Hon. Elizabeth Pollard Hines ♦ Hon. Melissa Pope
Matt Wiese ♦ Debi Cain, Executive Director

Chairman Filler, House Judiciary
Anderson House Office Building
N-1197
Lansing, MI 48933

June 3, 2022

Dear Chairman Filler and Judiciary members,

As HB 5680 is before the House Judiciary Committee, I am writing to inform you that the Michigan Domestic and Sexual Violence Prevention and Treatment Board discussed this legislation at its March meeting. On behalf of the Board, I would like to explain the rationale of our position on this bill. This letter was previously sent to the bill's sponsor, Representative Borton.

As you know, the Michigan Domestic and Sexual Violence Prevention and Treatment Board (the Board) is a seven-member Governor appointed Board charged with funding sexual assault and domestic violence services for victims and providing policy recommendations on the issues of domestic violence and sexual assault. Please note that the Board's position and rationale is solely that of the Board and does not 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, it is an independent, legislatively created body with members appointed by the Governor within the Division of Victim Services.

The Board voted to oppose HB 5680 based on the presumption of live streaming court proceedings. The Board notes 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 its 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.

While HB 5680 is well-intended, 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, which would be to not live-stream, record and/or make available for public viewing of that testimony at all.

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 their face to be blurred the court can chose to deny that request, as the bill allows the court to make that decision. It is also unclear as to whether the victim's face must not be blurred for those parties engaged in the court proceeding, including the defendant, the judge and the jury, sitting as a fact-finder. The question was presented whether 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. The defendant has a 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 testifying.

The Board also notes the challenges this bill would bring to the courts, including acquiring software and court staffing requirements. 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 to the public to those proceedings, leaving each court to decide whether to live-stream, 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. 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, request a copy of the videotaped proceeding (where available) or to view or order the transcript.

The Board acknowledges and appreciates the intent of HB 5680 in seeking to provide some measure of victim privacy and confidentiality in criminal proceedings. While some measure of victim privacy is better than none, as is currently the case in remote proceedings, the Board feels strongly that the use of virtual court, without detailed and dedicated protective measures for victims of crime, would have a damaging impact on victim privacy, confidentiality, and participation in the criminal justice system.

Thank you for your time and your interest in protections for crime victims in the criminal justice system. Please contact me or staff to the Board, Angie Povilaitis, Staff Attorney povilaitisa1@michigan.gov, or Jess Averill, Policy Analyst Averillj@michigan.gov, if you have any questions or would like to further discuss this Board position.

Sincerely,



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Chair, Michigan Domestic and Sexual Violence
Prevention and Treatment Board
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