

**MICHIGAN DOMESTIC AND SEXUAL VIOLENCE
PREVENTION AND TREATMENT BOARD
MEETING MINUTES
May 12, 2023**

Members Present:

Dr. NiCole Buchanan - conference line (per AG Opinion No. 7318. Will be counted toward quorum).
Kristen Howard
Hon. Melissa Lopez Pope - conference line (per AG Opinion No. 7318. Will be counted toward quorum).
Hon. Elizabeth Pollard Hines - Chairperson
Rebecca Shiemke
Matt Wiese

Members Absent with Notice:

Kyla Williams

Staff Present:

Jess Averill
Michael Bobbitt, Board Secretary
Meg Higham
Gail Krieger
Beth Nagel
Angela Povilaitis

Guests:

Stephanie Beyersdorf - State Court Administrative Office
Isabella Copeland - Michigan Advocacy Network
Heath Lowry - Michigan Coalition to End Domestic and Sexual Violence
Cheree Thomas - Michigan Coalition to End Domestic and Sexual Violence

WELCOME AND INTRODUCTIONS

E. Hines convened the May 12, 2023 Michigan Domestic and Sexual Violence Prevention and Treatment Board meeting at the Grand Tower Building, Dempsey Room in Lansing, Michigan at 1:32 p.m.

BOARD CONSENT

Review of May 12, 2023 agenda and approval of April 21, 2023 meeting minutes.

MOTION: Moved by R. Shiemke to approve the May 12, 2023 agenda. Motion seconded by K. Howard.

MOTION: Moved by M. Wiese to approve the April 21, 2023 meeting minutes. Motion seconded by R. Shiemke. Motion carried.

CHAIR REPORT

E. Hines said the Missing and Murdered Indigenous People march in Grand Rapids last Friday was very well attended and brought lots of people together at a very powerful event. It was a solemn event, but it was also inspirational. She said the Board will continue to recognize and bring awareness to the historical trauma and suffering of indigenous people.

M. Pope said the march was empowering and brought focus on the enormous amount of work that needs to be done to take care of survivors. She thanked the Board for its resolution and the accompanying media coverage as well as for supporting the gathering.

E. Hines mentioned that the subcommittee that volunteered to update the Board's Governance Policy had a productive meeting on April 28th. C. Sullivan from Michigan State University facilitated the meeting in which K. Howard, R. Shiemke and E. Hines participated along with B. Nagel and Board staff. There will be a follow up meeting next week to draft an initial revised policy which will eventually be brought back to the Board for approval.

E. Hines asked to move the time for the June 9th MDSVPT Board meeting to 1:00 p.m. Board members agreed.

STAFF REPORT

I. Copeland from the Michigan Victim Advocacy Network (MiVAN) provided a presentation on new online training modules available on MI-VAN re understanding confidentiality requirements of VOCA, VAWA, and FVPSA.

M. Higham and L. Rogers presented on the Track-Kit Sexual Assault Evidence Tracking System.

G. Krieger provided an update on the Michigan Department of Health and Human Services (MDHHS) Governmental Affairs team which are working with the Division of Victim Services (DVS). The Governmental Affairs team has asked if DVS staff can do first draft analysis for bills that are assigned to the Department and fall within the Division's expertise. A. Povilaitis and J. Averill will be working on providing advice to the Department. It was discussed that the Board may and can have a different position than the Department on bills.

LEGISLATIVE REVIEW

L. Rogers presented a legislative analysis on HB 4489 which seeks to amend the Sexual Assault Kit Evidence Submission Act (SAKESA). The Sexual Assault Kit Evidence Submission Act created the current submission deadlines around which the TRACK-Kit™ system was developed.

First, this bill would give victims who have released the sexual assault kit evidence for testing the option to submit a written request to the laboratory to defer testing. If the laboratory had already begun testing, it would then be prohibited from testing and would need to hold the kit until either the victim releases the kit for testing, or a certain period has passed. The deferral provisions in the bill are not workable. There is already a deferral process stating that survivors do not have to release the kit and it will be stored for a minimum one year to allow victims time to decide. The bill creates a very real possibility that someone other than the victim could request that testing be deferred or that testing begin after a deferral. The laboratory has no way to verify that written requests for deferral of analysis, or subsequent requests to begin testing, are actually from the victim with whom the kit is associated. The statewide electronic tracking system is not set up to account for the location and status of "deferred" kits.

Second, the bill adds a notification requirement for health care conducting the sexual assault medical forensic exam. It requires health care to inform the victim that evidence will be analyzed in not more than thirty days unless the victim requests a deferral.

Third, the bill adds a notification requirement for law enforcement that submits a sexual assault kit for testing to immediately give the victim contact information for the laboratory that receives the evidence.

Fourth, the bill changes healthcare's obligation to store unreleased kits from a minimum of one year to a minimum of 20 years before the kit can be destroyed. The requirement that a healthcare provider store unreleased kits for 20 years creates a significant burden on healthcare providers. There would be significant chain of custody issues. Staff recommend that if there is a need for long term storage of kits that there be a central repository or two that any unreleased kit could be sent to remain until it is released by the victim for testing. This is not something that can be fixed easily in this bill.

Fifth, the bill eliminates the 14-day timeline within which law enforcement is required to pick up a released kit from either the healthcare facility that collected it or from the law enforcement agency that originally picked up the kit. Instead, the amendments say the investigating law enforcement agency has 14 days after it is notified that either the healthcare provider or another law enforcement agency has a kit to be picked up.

Sixth, the bill changes the timeline within which the lab must analyze the kit evidence, from 90 days to 30 days after receiving the evidence, and it eliminates the qualifier that the deadline only applies if sufficient staffing and resources are available. However, this is not feasible because even in the best circumstances it will take 44 days from the date of consent for a kit to be analyzed by a lab.

Seventh, the bill prohibits the Michigan State Police Forensics Laboratory or an accredited lab from destroying or disposing of a deferred kit in its possession before either the applicable statute of limitations has expired or, if the victim was a minor at the time of the offense, before the victim turns 40 years old. It is impossible for a lab to determine what the applicable statute of limitations for a kit is and or to determine if a victim has turned 40. The problem is that the lab does not know the age or birth date of the victim. That information is not written on the outside of the box. The only way the lab can ascertain that information is by opening every sealed box and looking at the paperwork to see if the victim's date of birth was written on the medical record.

The bill also changes the requirements regarding uploading of DNA profiles obtained from analysis of the sexual assault evidence kit. It is unclear what the impact of this change would be.

During the discussion the Board highlighted the idea of creating a central repository to hold kits that have been received designation for testing. The Board does not believe that health care facilities are the correct place to hold these for an extended period of time.

MOTION: Moved by K. Howard to oppose HB 4489 as written, for the reasons stated in the staff analysis memo and any other reasons the Board identifies, and request that legislative staff meet with Board staff and other stakeholders to discuss these concerns. Motion seconded by R. Shiemke. Motion carried.

A. Povilaitis presented on HB 4482-4487 which amend the civil and criminal statutes of limitations and governmental immunity statutes. The Board has prior positions that support these bills and concepts.

HB 4482 would eliminate the civil statute of limitations if there is a criminal prosecution brought because of conduct that results in a conviction for criminal sexual conduct. It provides for a two-year revival or look back window wherein civil claims may be filed in cases where the civil statute of limitations has already expired. It also raises the age time frames within the current civil statute of limitations which is either 10 years after the time the "claim accrues" or an individual reaches the age of 52, whichever is later.

HB4483 adds inclusive language to the statute.

HB 4484 and 4487 look very similar and exempts claims to recover damages from criminal sexual conduct from the court of claims filing requirements.

HB 4485 amends the criminal statute of limitations. Currently there is no statute of limitation for 1st degree criminal sexual conduct if it has not expired, if there is DNA, or if there is a reason to toll the statute. This bill amends the criminal statute of limitations to eliminate all statutes of limitations for criminal sexual conduct second and third degrees.

HB 4486 would amend the governmental immunity statute and not grant immunity for a government agency for employees if the governmental agency or employee knew or should have known that the individual who committed the criminal sexual conduct had committed a prior act of criminal sexual conduct and the governmental agency or employee failed to act or intervene to prevent the subsequent criminal sexual conduct.

The staff's intent is to take forward the prior position which says the "Board supports the elimination of statute of limitations in civil case and support the concept of removing barriers that prohibit child sexual assault victims from recovering from governmental agency or actors and to support removing the statute of limitations for victims of sexual assault less than 18 years of age at the time of the assault."

MOTION: Moved by R. Shiemke to support HB 4482-4487 and to use the language provided in the staff analysis. Motion seconded by M. Wiese. Motion carried.

A. Povilaitis presented on HB 4488 which would allow a sexual assault survivor a right to have a support person selected by the survivor and an attorney retained by the survivor present during an interview conducted during an investigation of criminal sexual conduct. It also provides for a survivor to have a right to consult with a sexual assault counselor and an attorney retained by the survivor during the administration of a sexual assault evidence kit. It would also require the board to compile yearly research and a report regarding sexual assault counselors and data related to sexual assault.

The right to have a support person present doesn't apply if a law enforcement officer, prosecutor, or defense attorney conducting the interview determines in his or her good-faith professional judgment that the presence of a support person with a sexual assault survivor during an interview would be detrimental to the purpose of the interview, unless the support person is an attorney retained by the sexual assault survivor.

Section 2b, mandates the Board do the following, no later than 18 months after the effective date of the amendatory act:

(a) Study nationally recognized best practices regarding the following topics:

- (i) The number of current sexual assault counselors and utilization of those counselors.
- (ii) The use of sexual assault counselors after a medical examination following a sexual assault or after the administration of a sexual assault evidence kit.

(b) Collect data from this state regarding all of the following:

- (i) The reporting of sexual assaults.
- (ii) Arrest and prosecution rates for criminal sexual conduct.
- (iii) Sexual assault survivor access to sexual assault crisis centers and sexual assault counselors.

(iv) Any other information that the board considers important in creating the report described under subdivision (e).

(c) Collect information regarding the care and treatment of sexual assault survivors from stakeholders, practitioners, state and local law enforcement agencies, providers of victim services, forensic science practitioners, and health care providers.

(d) Consult with experts.

(e) Create a report that includes all the following:

(i) A conclusion of whether there is a need for additional sexual assault counselors in this state and the information used for that conclusion.

(ii) If the board concludes there is a need for additional sexual assault counselors under subparagraph (i), a plan to provide a sufficient number of sexual assault counselors with sexual assault crisis centers to meet the needs of sexual assault survivor

(iii) An estimate of the cost and any method of funding the plan under subparagraph (ii), if applicable.

This would be an onerous burden on the Division, on staff and on the Board and nearly impossible to obtain with the data that is available. Staff recommend opposing HB 4488.

Additionally, the Board highlighted that the issues addressed in this bill may be more appropriate within the Sexual Assault Access to Justice Act. At a minimum, there may need to be a companion bill in amending the Sexual Assault Access to Justice Act to reflect the new rights for survivors outlined in this legislation.

Also, the Board flagged the language should indicate the survivor “if requested, **shall** have the right” to having the outlined individuals present during the interview or during the administration of the sexual assault evidence kit.

MOTION: Moved by M. Wiese to oppose HB 4488 as introduced for reasons stated in the staff analysis and discussion but move to support if the following suggested changes are made:

1. Add language in Section 2a that says a sexual assault survivor if requested shall be allowed to have a sexual assault counselor, victim advocate or support person of their choosing present but not an attorney during the administration of the sexual assault evidence kit.

2. Regarding a police interview, add language in Section 2a that says a sexual assault survivor shall be allowed to have a victim advocate or support person of their choosing during the examination, but not an attorney. The right to have a support person does not apply if the law enforcement officer or prosecutor conducting the interview determines in his or her good faith professional judgment that the presence of the support person with the survivor during an interview would impede or compromise the ongoing investigation or has an articulable reason why it would be detrimental to the purpose of the interview.

3. Delete Section 2b.

Suggested language below

Sec. 2a. (1) Except as provided in subsection (4), a sexual assault survivor **if requested shall have** ~~has~~ a right to have a **sexual assault counselor**, a support person selected by the survivor and an attorney retained by the survivor present during an interview conducted in the course of an investigation of criminal sexual conduct.

(2) A sexual assault survivor **if requested shall have** ~~has~~ a right to consult with a sexual assault counselor, **or a support person selected by the survivor** ~~and an attorney retained by the survivor~~ during the administration of a sexual assault evidence kit. If the sexual assault counselor, **or support person** ~~or attorney~~ cannot be summoned in a timely manner, the sexual assault survivor must be notified of any ramifications to delaying the administration of the sexual assault evidence kit.

(3) A sexual assault survivor must be informed of the right to have a support person, ~~attorney~~, and sexual assault counselor present under subsections (1) and (2), **and an attorney under subsection (1)**. A sexual assault survivor is not required to participate in the criminal justice system or cooperate with law enforcement as a condition of exercising a right under subsection (1) or (2). Except as otherwise required by law, the presence of a support person does not waive a privilege to which a survivor is otherwise entitled.

(4) ~~Unless the support person designated under subsection (1) is an attorney retained by the sexual assault survivor,~~ Subsection (1) does not apply if a law enforcement officer, prosecutor, or defense attorney conducting the interview **has an articulable reason** ~~determines in his or her good faith professional judgment that the presence of~~ **sexual assault counselor, attorney, or** a support person with a sexual assault survivor during an interview would **impede or compromise the ongoing investigation** ~~be detrimental to the purpose of the interview.~~

Motion seconded by R. Shiemke. Motion carried.

A. Povilaitis presented on HB 4490 which would provide a sexual assault survivor with the right to access a shower facility at no cost after having undergone a sexual assault forensic kit and exam. The bill only addresses hospitals and does not appear to include off- site/standalone agencies.

MOTION: Moved by R. Shiemke to support 4490 and allow staff to recommend including additional language to include SANE exams occurring outside of hospitals at SANE facilities also be included if necessary. Motion seconded by K. Howard. Motion carried.

L. Rogers reported on SB 263-264 which would amend the address confidentiality program to include victims of kidnapping on the list of specified crime victims when the applicant is applying on behalf of a minor. Staff were informed that the bill was prompted by the National Center for Missing and Exploited Children, because that organization believed that child survivors of abduction are not eligible to participate in the ACP's protections. Board staff believe adult and minor victims of kidnapping already are entitled to ACP protections therefore an amendment is not necessary. The "catch all" language in the ACP Act as currently written was included to avoid excluding any victims of crime who fear that disclosure of their address could put them in danger.

The ACP is scheduled to launch by the end of May. The passage of these bills would mean that the application forms and training materials would need to be changed, and that could potentially delay the launch of the program and thus make it unavailable to survivors who need it sooner rather than later.

The amendment only applies to the section of the ACP Act which addresses when the applicant is a parent or legal guardian applying on behalf of a minor. The addition of kidnapping to this subsection applies to both the parent/guardian and the minor, i.e., either the parent/guardian or the minor were kidnapping victims. That same change is not proposed for the section that applies to an adult (without minor children) who applies on their own behalf. Specifically adding kidnapping as a listed crime to one but not the other could result in the catch-all provision of the Act being interpreted as not including kidnapping as an eligible victimization for a childless adult applicant.

MOTION: Moved by R. Shiemke take a neutral position on SB 263-264 and authorize staff to convey its concerns in the staff analysis to the legislature. Motion seconded by K. Howard. Motion carried.

A. Povilaitis presented on HB 4173 and 4384, bills that would create/amend the Criminal Justice Policy Commission/Michigan Sentencing Commission.

The bills as introduced identifies the Attorney General as the only individual representing crime victims on the Commissions, but not a true crime victim seat.

MOTION: Moved by R. Shiemke to remain neutral on HB 4173 and 4384 and request the Board to provide staff with the authority to act on their behalf to advocate to policymakers and bill sponsors to include a DVS/MDSVPT Board member representative, a DVS/MDSVPTB staff member representative, an MCEDSV representative, a UTFAV representative, and a crime victim representative on the Michigan Sentencing and Criminal Justice Commissions. Motion seconded by K. Howard. Motion carried.

J. Averill reported on HB 4422 which amends the definition of “serious misdemeanors.” Crimes that would be removed as serious misdemeanors which have often been seen in domestic violence cases include:

- Malicious destruction of personal property.
- Malicious destruction of a building.
- Interfering with a crime report.
- Malicious use of telecommunications services or destruction or interference of a telecommunication device.

Additional offenses which Board members had previously voted to support include:

- Malicious annoyance by writing – stalking.
- Tracking device on a motor vehicle without consent- stalking.

By adding these crimes to serious misdemeanors victims of these crimes would be afforded the rights under the Crime Victims Act which include:

- Opportunity to be notified.
- Opportunity to fully participate.
- Attend court proceedings.

- Restitution.
- Impact statement.

It is important to note that recent criminal justice reform legislation including probation and jail reform passed in 2020 and recently introduced bail reform bills all point to serious misdemeanor definition to exempt certain crimes from mandatory probation sentences and provide for different treatment.

MOTION: Moved R. Shiemke remain neutral to HB 4422 and advocate for additional language as described in the Board's position on February 11, 2022 and June 7, 2022. Motion seconded by M. Wiese. Motion carried.

J. Averill said the House and Senate bill logs have been updated since the last Board meeting and asked Board members if they have had a chance to review and would like any further bills to be analyzed.

After Board interest in SB 53, J. Averill said further research could be done and presented to the interested Board member or the Board as a whole at the next meeting.

MOTION: Moved by K. Howard that Board members acknowledged they had an opportunity to review the House and Senate bills of interest to the Board's constituency that had been introduced since the April 21, 2023, meeting and could ask for further review. Motion seconded by M. Pope. Motion carried.

J. Averill asked Board to help spread the work about an in-person Standing Together Against Trafficking (STAT) conference the Division of Victim Services is organizing for September 6th at the Lansing Center.

BOARD ANNOUNCEMENTS

No announcements.

PUBLIC COMMENT

H. Lowry from MCEDSV said the bill amending the Board's enabling legislation to include tribal programs is up for hearing next Tuesday.

L. Rogers mentioned how grateful she is to work for the Board members and support the work they are doing.

A. Povilaitis said she and L. Rogers attended a Train the Trainer event held by MCOLES the previous week and it was great to be around the trainers that do the Board's domestic violence, sexual assault, and strangulation trainings.

ADJOURNMENT

MOTION: Moved by K. Howard adjourn the meeting. Motion seconded by M. Wiese. Motion carried. The meeting ended at 4:41 p.m.

Respectfully submitted by
Michael Bobbitt
Board Secretary