

**MICHIGAN DOMESTIC AND SEXUAL VIOLENCE
PREVENTION AND TREATMENT BOARD
MEETING MINUTES
February 11, 2022**

***** Approved *****

Members Present:

Dr. NiCole Buchanan - conference line (AG Opinion No. 7318). Will be counted as quorum.
Hon. Thomas Cameron
Hon. Elizabeth Pollard Hines - conference line. Will not be counted toward quorum.
Hon. Melissa Lopez Pope
Matt Wiese

Members Absent with Notice:

F/Lt. Yvonne Brantley
Hon. Amy Ronayne Krause, Chair

Staff Present:

Jess Averill
Michael Bobbitt, Board Secretary
Debi Cain, Executive Director
Gail Krieger
Angela Povilaitis

Guests:

Linda Cunningham
Michael Christie - Children's Advocacy Centers of Michigan
Heath Lowery - Michigan Coalition to End Domestic and Sexual Violence
Stephanie Beyersdorf - State Court Administrative Office

Guests introduced themselves, but it was not required under the Open Meetings Act

WELCOME AND INTRODUCTIONS

M. Pope convened the February 11, 2022, Michigan Domestic and Sexual Violence Prevention and Treatment Board meeting at the Grand Tower Building, Room 1A in Lansing, Michigan at 1:40 p.m.

BOARD CONSENT

Review of February 11, 2022, agenda and approval of October 1, 2021, meeting minutes.

MOTION: Moved by T. Cameron to approve the February 11, 2022, agenda. Motion seconded by M. Wiese. Motion carried.

MOTION: Moved by T. Cameron to approve the October 1, 2021, meeting minutes. Motion seconded by M. Wiese. Motion carried.

CHAIR'S REPORT

M. Pope spoke about the Missing and Murdered Indigenous Women (MMIW)/ Missing and Murdered Indigenous Persons (MMIP) movement. Recent legislation makes it a requirement to gather and keep statistics on missing and murdered indigenous women. The MMIW/MMIP movement is also tied to concerns of human trafficking on and off reservations. Three Potawatomi tribes, Nottawaseppi Huron Band of the Potawatomi, Pokagon, and Gun Lake have decided to organize a gathering in Grand Rapids on May 5th. May 5th is a national day which is recognized for missing and murdered indigenous persons.

Tribes are requesting Governor Whitmer proclaim May 5th as Missing and Murdered Indigenous Persons (MMIP) Day. A rally is scheduled, which the Governor has been invited to attend. M. Pope said she is honored to be a speaker at the gathering. She hopes the gathering will help raise awareness in mainstream society of the epidemic of violence against indigenous people.

M. Pope asked the board to support a resolution to recognize May 5th as Missing and Murdered Indigenous Person Day. The actual language of the resolution will be brought back at a later board meeting.

MOTION: Moved by T. Cameron to support the recommendation to have staff create language for a resolution to recognize May 5th as Missing and Murdered Indigenous Person Day. Motion seconded by M. Wiese. Motion carried.

EXECUTIVE DIRECTOR'S REPORT – GENERAL OVERVIEW OF WORK TO DATE

D. Cain discussed a recent talking circle conducted with tribes regarding the STOP plan that the Board is responsible for to the Department of Justice. Sandra Pilgrim Lewis, Sarah Heuser and Gail Krieger from the Division of Victim Services also attended.

D. Cain said she is a member of the Jail Reform Advisory Council, as a representative of the Michigan Domestic and Sexual Violence Prevention and Treatment Board and the Michigan Department of Health and Human Services.

D. Cain attended a PAAM conference recently and sat on a panel discussion with Sarah Prout Rennie, the Director of Michigan Coalition to End Domestic and Sexual Violence. The panel was a discussion centered around victim voices in the legislative/policy process.

The Department of Justice asked the Division of Victim Services to help distribute funds to victims of the Oxford shooting incident. She is currently meeting with superintendents of the school system in Oxford. The Division of Victim Services will fund some of the initiatives that are needed with funds from VOCA, Victims' Rights, and Compensation. One initiative includes creating a resilience center for direct and indirect victims as well as first responders.

Fines and fees distributed from the Treasury Department are used to fund Child Advocacy Centers in Michigan. As per the Child Advocacy Center Act, the Michigan Domestic and Sexual Violence Prevention and Treatment Board is required to provide an annual report of incomes and expenditures to the secretary of the senate and the clerk of the house of representatives. The State Auditor General's Office performed an audit and there were no major findings. Board members were asked to approve sending a letter to the legislature indicating the results of the audit.

MOTION: T. Cameron moved to accept the Fiscal Year 2021 Children's Advocacy Audit letter and

forward it as written to the legislature. Motion seconded by M. Wiese. Motion carried.

LEGISLATIVE REVIEW

SB 244 S-2 is related to proof of service processing and amends the Revised Judicature Act to delete the current affidavit requirement and allow for proof of service of process to be made by a non-law enforcement individual who acknowledges service in a written statement of the facts of service that is signed, dated, and verified using a statement under the penalty of perjury. SB 244 S-2 broadens the legislation to allow a deputy sheriff, medical examiner, court officer, or constable, or a deputy of any of these officers to provide service even if officers do not hold office in a county in which the court issuing process is held. Eliminating the affidavit requirement would make service of Personal Protection Orders easier for survivors of domestic violence, stalking and sexual assault as they would be able to have any trusted adult not involved in the action serve the order and petition and only be required to file a written statement instead of a notarized affidavit.

One critique of SB 244 S-2 is that it is not clear from the language that the person who is declaring, is the person who is serving. The bill sponsor may need to fix this technical issue. It was suggested to change the language of the bill to read "If service is made by any other individual, a written statement of the facts of service that is signed and dated and verified by that individual with the following statement: "I declare under the penalty of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.""

MOTION: Moved by T. Cameron to support SB 244 S-2 with a recommendation to determine if the suggested fix for the technical issue in the bill is necessary. Motion seconded by M. Wiese. Motion carried.

SB 497 would amend the Penal Code and the definition of "mentally incapacitated" in the Criminal Sexual Conduct definition section by deleting the current language "administered to that person without his or her consent". Among the definitions that may be used to charge or enhance a criminal sexual conduct charge is when the assailant commits a sexual penetration or sexual contact and "knows or has reason to know that the victim is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless." The definition of physically helpless is "that a person is unconscious, asleep, or for any other reason is physically unable to communicate an unwillingness to an act." If a victim is sexually assaulted while unconscious, but wakes up during the assault, then passes out again, it would not technically be considered physically helpless.

SB 497 would only amend the definition of mentally incapacitated. Under the current statute, mentally incapacitated means "that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance, administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent." SB 497 would delete both the terms "administered to that person without his or her consent" and "other".

By deleting the above phrase, prosecutors could charge Criminal Sexual Conduct if a victim voluntarily consumed a substance, narcotic or some other anesthetic and was temporarily incapable of appraising or controlling his or her conduct.

The intent of this legislation is to provide prosecutors with the opportunity to address situations where a victim is voluntarily intoxicated or incapacitated in some manner and is not able to provide consent and appraise the control over their conduct. The Board had conversations on if the definition of physically

helpless in the bill is changed to read: "(m) "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act, this includes if a person is temporarily incapable of appraising or controlling his or her conduct due to a narcotic, anesthetic, alcohol or any other substance that is voluntarily taken or consumed." It was noted that putting all the elements of (k) into (m), might make (k) irrelevant. It was suggested that it might be better to strike all (k) and add it to (m).

MOTION: Moved by T. Cameron to support SB 497 in concept but table it to provide staff time to reexamine some of the legal issues that were discussed. Motion seconded by N. Buchanan. Motion carried.

A. Povilaitis discussed draft bill 04183'21 Draft 2/HB 5679 which would amend the William Van Regenmorter Crime Victim's Act to increase the list of crimes identified as serious misdemeanors under the Crime Victim's Rights Act. Victims of serious misdemeanors are afforded the rights found in the Crime Victim's Rights Act. These rights include the opportunity to be notified of court hearing, be provided an opportunity to participate as fully as they wish in the criminal justice system and their cases, attend court proceedings, provides that restitution may be ordered and enforceable and that they have an opportunity to provide a victim impact statement and input. It was suggested that MCL 750.390 (Malicious annoyance by writing – stalking) and MCL 750.539I (tracking device on a motor vehicle without consent- stalking) be added to the bill.

MOTION: Moved by T. Cameron to support 04183'21 Draft 2 and recommend the additional offenses that were identified. Motion seconded by M. Wiese. Motion carried.

A. Povilaitis discussed HB 5496 that would amend the Crime Victim's Rights Act to expand protections surrounding the disclosure of names, addresses and other identifying information of victims of certain crimes. Currently, a victim's home address, home phone number, work address and work address (unless the address is the location of the crime) are exempt from FOIA disclosure. Under the proposed amendments, if the crime is one of abuse, criminal sexual conduct, assault with intent to commit CSC or a similar crime, regardless of the age of the victim, the victim's name and address, the name and address of an immediate family member or relative of the victim, who has the same surname as the victim, other than the accused, and any other information that would reveal the identity of the victim, including reference to a victim's familial or other relationship to the accused, would also be exempt from disclosure under FOIA.

HB 5496 allows adults to also be protected from FOIA disclosure. The types of crimes have been expanded to include victims of domestic violence, human trafficking, child sexually abusive material and child abuse. There is also a provision in the bill on what can be redacted or discoverable under FOIA, and the bill provides a mechanism to allow victims of these crimes to use a pseudonym in court filings. It was suggested that gender identity and expression also be protected from FOIA disclosure.

The Board discussed several possible court challenges of the bill: the victim is not a party to the court so how will they be allowed motion to speak, how will the court know what is a pseudonym/initials that are to be protected – should there be a uniform practice i.e., victim A, victim B, would the court have to redact what is already in court records.

The Board also discussed the protection of adding gender identity to the FOIA provisions.

MOTION: Moved by T. Cameron to support aspects of HB 5496 that deal with FOIA, but table other related issues with a recommendation to add gender identity to the FOIA provisions. Motion

seconded by M. Wiese. Motion carried.

A. Povilaitis discussed HB 5560 which amends the Code of Criminal Procedure to allow a prosecuting attorney or police officer to provide a domestic violence or sexual assault provider agency with the name, demographics and other pertinent information of, and information to facilitate contact with, a victim of domestic violence for the purposes of offering supportive services to the victim. HB 5560 is currently limited to domestic violence victims, and it was suggested that the bill also include sexual assault and stalking victims as well. Police and/or a prosecuting attorney must notify the victim that the information was provided.

Passage of HB 5560 could result in greater access to domestic violence and sexual assault services for victims of domestic violence. Police and prosecutors have regular contact with domestic 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 met.

To clarify language involving the Address Confidentiality Program in this bill, it was suggested to change the proposed language of HB 5560 to read:

“Sec. 21b. A police officer or a prosecuting attorney may provide a domestic or sexual violence service provider agency with the name, demographics, and other pertinent information of a victim and information to facilitate contact with a victim of domestic and sexual violence for the purpose of offering supportive services to the victim. Authority for providing information does not apply to an address known to be a confidential address.

Section 3. Defines confidential address to mean that term is defined in the Address Confidentiality Act.”

The Board also discussed the importance of law enforcement giving victims information to resources, as they are instructed to do so in statute.

MOTION: Moved by M. Wiese to support HB 5560 with the recommendations that the bill include “sexual assault victims,” add suggested staff language regarding the address confidentiality program, and reference sexual assault and domestic violence victims be provided with pertinent information from law enforcement (per current statute). Motion seconded by T. Cameron. Motion carried.

J. Averill discussed HB 4674 (H-3) & 4675 (H-2) which amend the Crime Victim’s Compensation statute and greatly alters the types of claims allowable, who is eligible to seek compensation, the amount paid out, the timeframe for seeking a claim and the procedures involved in crime victim compensation, among other things.

Previously those who could apply for crime victim compensation was limited mainly to victim/intervenors and surviving family members, but this has been greatly expanded. The aggregate award was increased from \$25,000 to \$45,000. The requirement of a physical injury was expanded to include psychological, mental, or emotional injury resulting from a reasonably perceived or actual threat of injury or death. The time limit that claimants can file was expanded from one to five years and the time limit for reporting to law enforcement was eliminated. Good cause was extended to all cases to all applicant’s not just criminal

sexual conduct. Many new and amended benefits were also added.

There was a concern that the term “religious” in HB 4674 (H-3), may need to be replaced with alternative language to accurately include non-religious, tribal and/or cultural practices.

MOTION: Moved by T. Cameron to support HB 4674 (H-3) & 4675 (H-2) and support removing the term “religious” in 4674 (H-3) if the opportunity arises. Motion seconded by M. Wiese. Motion carried.

MOTION: Moved by T. Cameron 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 October 1, 2021, meeting. Motion seconded by M. Wiese. Motion carried.

Gail Krieger spoke about STOP funding in Michigan which comes from the Office of Violence Against Women. She said every four years a STOP grant plan must be generated. The STOP plan will be mailed to Board members next week. It is 45 pages long with five sections and is essentially a federal grant application. The STOP grant plan will be discussed at the next board meeting.

BOARD ANNOUNCEMENTS

None.

PUBLIC COMMENT

None.

ADJOURNMENT

MOTION: Moved by T. Cameron to adjourn the meeting. Motion seconded by M. Wiese. Motion carried. The meeting ended at 4:36 p.m.

Respectfully submitted by
Michael Bobbitt
Board Secretary