

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

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

February 12, 2024

Dear Chairperson Hope and Judiciary Committee Members,

As HB 4488 & HB 4490 are before the House Criminal Justice Committee, I am writing to inform you that the Michigan Domestic and Sexual Violence Prevention and Treatment Board¹ reviewed and voted to oppose HB 4488 as introduced, with recommendations, and support HB 4490. Staff to the Board have met with Representative Brixie's office to discuss the Board's opposition and recommendations to HB 4488, to which a H-1 draft 1 substitute was crafted and addresses the Board's concerns. *With the adoption of the substitute, the Board would support this bill.*

On behalf of the Board, please allow me to explain the rationale for the Board's opposition to and recommendations for current HB 4488.

HB 4488: Board Opposes but would move to Support if all three concerns are addressed.

The Board agrees that victims should be allowed to have a support person with them during these very intense and difficult times. However, the Board recommends amending the bill to reflect the following changes:

1. Remove "attorney retained by the survivor" from being allowed to be present during the administration of sexual assault evidence kit (2a (2))
2. Include "sexual assault counselor" within individuals allowed to be present during an interview 2a (1), and "support person" Sec 2a (2)
3. Remove Section 2b

¹ 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.

Further explanation and rationale listed below for #1 and #2

Allowing support persons, including an attorney, in an interview during the course of a criminal sexual conduct investigation or during a SAFE exam may provide additional support to a sexual assault survivor. However, the presence of an attorney during both an interview and an exam could compromise any investigation and prosecution. Testimony of a Sexual Assault Nurse Examiner is most often allowed into evidence under the medical treatment exception to the hearsay rules. If an attorney, especially a civil attorney, is present during the exam, defense counsel may succeed in convincing a court that the primary focus of the exam was for litigation, evidence collection and/or a civil lawsuit, not for medical treatment. If so, the testimony of the SANE may be ruled inadmissible and excluded.

It is a concern of the Board that any additional person present during the interview or exam may become a witness that could be called in a prosecution. That person could also be required to testify and possibly rebut a victim's statement should there be any alleged change or different version at trial.

For these reasons, the Board does not feel that an attorney should be present during the administration of a sexual assault evidence kit, and only be allowed in an interview if it is determined the attorney won't impede or compromise the ongoing investigation.

3. Delete Section 2b.

Creating new research and reporting requirements of the Board would present challenges as it would require significant staff time to gather the data required and draft what is essentially a state needs assessment for sexual assault counselors and services. This request would require additional funding and staff in order to comply.

In addition, the Board recognizes Michigan's need for additional Sexual Assault Nurse Examiners (SANE) who are trained to administer Sexual Assault Medical Forensic Exams (SAFE). Forensic Nurses are Registered or Advanced Practice Nurses who received specific education and training to treat trauma associated with the wrong that has been done to the survivor, including sexual assault, in a victim-centered way.

The Board encourages the deletion of Section 2b and hopes for the continued conversations of providing more funding and resources to increase SANEs within the state.

Thank you for your time and interest in protections for sexual assault victims. Please contact Angie Povilaitis, Staff Attorney for the Board at povilaitisal@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 Pollard Hines (Ret.)
Chair, Michigan Domestic and Sexual Violence Prevention and Treatment Board