

# Legislative Analysis

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## SANE LEGISLATION

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**House Bill 5054 (Substitute H-1)**

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**House Bill 5056 (Substitute H-1)**

**House Bill 5057 (Substitute H-1)**

**Sponsor: Rep. Marie Donigan**

**Committee: Judiciary**

**First Analysis (9-6-07)**

**BRIEF SUMMARY:** As a package, the bill would establish funding for organizations that provide services to victims of sexual assaults and perform evidence gathering for prosecution of sexual assault cases.

**FISCAL IMPACT:** A detailed discussion on the fiscal implications for the state follows later in the document.

### **THE APPARENT PROBLEM:**

Sexual Assault Nurse Examiners, referred to as SANE nurses, provide a valuable and necessary service to victims of sexual assault and to members of the law enforcement community that investigate and prosecute criminal acts involving sexual assaults. These medical professionals receive specialized training in assessing a patient for signs of sexual assault, treating victims with sensitivity and respect, and proper evidence collection procedures. They also work in collaboration with sexual assault counselors, either as part of a hospital program or a community-based organization that provides additional services to victims of sexual assaults.

In recent years, many communities and hospitals around the state have established SANE programs. However, it costs approximately \$500 per person for the training, a cost often borne by the individual nurse. In addition, the community organizations and agencies with SANE programs face an on-going struggle to obtain funding (whether private or public) necessary to support their programs. It is believed that if a revenue source could be established to help fund SANE programs, that these programs could be expanded to more communities in the state.

Without such programs in place, it is argued, victims presenting at hospital emergency rooms often face long waits in the waiting room (which exposes them to recognition by friends and acquaintances), a lack of privacy in an ER examining room (which is often just a gurney separated by a curtain from the next patient), a nurse or physician's assistant who is unfamiliar with the rape kits used to gather evidence, and staff who are not trained in the unique emotional needs of a sexual assault victim. In addition, criminal investigations and prosecutions may be impeded, if not derailed, if physical evidence on

the victim is destroyed during collection by an inexperienced person or failed to be collected altogether.

Legislation has therefore been introduced to provide a funding source that will increase the number of trained professionals and SANE programs available on a state-wide basis to assist victims of sexual assaults.

### ***THE CONTENT OF THE BILLS:***

House Bill 5054 would create the Sexual Assault Victims' Medical Forensic Intervention and Treatment Act and a corresponding fund. House Bills 5055 and 5056 would increase the amounts imposed as a minimum state cost on persons convicted of, and juveniles found responsible for, criminal offenses. House Bill 5057 would reallocate the distribution of the funds generated by collection of the minimum state costs. The bills, which would take effect April 1, 2008, are tie-barred to each other, meaning that none of the bills could take effect unless all were enacted. A more detailed description of each bill follows.

#### House Bill 5054

The bill would create the Sexual Assault Victims' Medical Forensic Intervention and Treatment Act, create a fund by the same name, define terms, allocate the distribution of money from the fund, and establish certain reporting requirements.

Sexual Assault Victims' Medical Forensic Intervention and Treatment Fund. The fund, also referred to as the SANE Fund, would be created within the state treasury; the state treasurer could receive money or other assets from any source for deposit into the fund and the treasurer would direct the fund investments as well as credit the interest and earnings from the investments to the fund. Money remaining in the fund at the close of a fiscal year would remain in the fund and not lapse to the general fund. However, for auditing purposes, the Department of Human Services (DHS) would be the administrator of the fund.

The Domestic Violence Prevention and Treatment Board would have the authority to require an annual audit of income and expenditures from the fund. The board would be required to provide an annual report of income and expenditures to the Secretary of the Senate and Clerk of the House of Representatives by February 1<sup>st</sup> of each year. The board also could promulgate administrative rules to implement the bill's requirements.

Expenditures from the fund would be by appropriation, in the form of grants and contracts awarded by the board in a manner that reflected the state's population, geographic area, and urban and rural diversity using criteria developed by the board in consultation with the DHS.

Money could not be expended from the fund for the first year after the bill's effective date (this would allow the fund to receive its share of the JSF for a year prior to issuing grants

or contracts), but could be expended beginning two years after its effective date. No more than 10 percent of the money in the fund could be expended for administrative costs incurred by the board in implementing and administering the bill. Not more than 15 percent could be expended for medical forensic intervention-related training and technical assistance for staff members and for needs assessment. At least 80 percent of the money would have to be distributed to entities that did all of the following:

\*\* Performed procedures required by sexual assault evidence kits.

\*\* Provided specialized assistance to victims.

\*\* Operated under the auspices of or in partnership with a local sexual assault crisis center. "Local sexual assault crisis center" would be defined to mean a public or private agency offering specialized direct assistance to victims, including, but not limited to, a 24-hour telephone hotline answered by a sexual assault counselor or trained volunteer; information and referral services; advocacy services; service coordination; and community awareness or education programs on sexual assault services.

\*\* Complied with training and practice standards of the International Association of Forensic Nurse Examiners or a similar organization designated by the board.

\*\* Provided 24-hour access to medical forensic intervention and treatment services.

#### House Bills 5055 and 5056

The bills would amend the Code of Criminal Procedure (MCL 769.1a) and the Probate Code (MCL 712A.18m), respectively, to increase the minimum state costs assessed in criminal cases by \$5 for each crime category. House Bill 5055 would apply to adults and juveniles tried as adults who were convicted of a crime and House Bill 5056 would apply to juveniles within the court's jurisdiction.

Under the bills, these costs would be increased from \$60 to \$65 for felony offenses, from \$45 to \$50 for serious or specified misdemeanor offenses (as defined by the William Van Regenmorter Crime Victim's Rights Act and the Crime Victim's Rights Services Act), and from \$40 to \$45 for other misdemeanor offenses. (Revenue generated by the minimum state costs is deposited into the Justice System Fund.)

#### House Bill 5057

The bill would amend the Revised Judicature Act to reallocate distributions from the Justice System Fund. Money in the fund is required to be distributed monthly to various other funds. Currently, from the fund's proceeds, the state treasurer must first distribute revenue to the Secondary Road Patrol and Training Fund in an amount equal to \$10 for each civil infraction action on which assessments are collected each month. The rest of the fund balance is then distributed to various funds on a percentage basis.

The bill would add the Sexual Assault Victims' Medical Forensic Intervention and Treatment Fund (created by House Bill 5054) to the list of funds that receive money from the Justice System Fund. As the chart below indicates, the bill would also revise the future percent allocation that each fund would receive from the Justice System Fund balance as follows:

\*\* To the Highway Safety Fund, 24.11 (decreased from 24.8).

\*\* To the Jail Reimbursement Program Fund, 12.06 percent (decreased from 12.4).

\*\* To the Michigan Justice Training Fund, 12.06 percent (decreased from 12.4).

\*\* To the Legislative Retirement System for deposit in the retirement fund, 1.12 percent (decreased from 1.15).

\*\* To the Drug Treatment Courts Fund, 2.78 percent (decreased from 2.85).

\*\* To the State Forensic Lab Fund, 5.45 percent (decreased from 5.6).

\*\* To the State Court Fund, 12.93 percent (decreased from 13.3).

\*\* To the Court Equity Fund, 24.79 percent (decreased from 25.5).

\*\* To the Sexual Assault Victims' Medical Forensic Intervention and Treatment Fund, 2.7 percent.

The current allocations to the state treasurer for monitoring of collection and distribution of fund receipts, and to the state court administrative office for management assistance and audit of trial court collections, would each remain at the current level of one percent of the Justice System Fund balance. Finally, the bill would delete an obsolete provision pertaining to distributions from the fund for the 2003-2004 fiscal year.

#### ***FISCAL INFORMATION:***

Currently, the Justice System Fund (JSF) receives revenue from various funding sources and distributes the revenue to ten different state funds. The distribution is determined by a set percentage of the total fund – except for the Secondary Road Patrol Training Fund which receives \$10 for each traffic assessment. The remaining nine funds divide 100 percent of the remaining funding after this deduction. In Fiscal Year 2006, the Justice System Fund total is estimated to be \$72.0 million. The secondary Road Patrol Training Fund is estimated to receive \$13.75 million which would leave approximately \$58.25 million to be divided among the remaining nine funds.

House Bill 5054 would create a Sexual Assault Victims' Medical Forensic Intervention and Treatment Fund within the State Treasury. Money from the fund would be distributed through the Domestic Violence Prevention and Treatment Board (DVPTB),

which is housed within the Department of Human Services. House Bill 5054 does not directly create any new revenue for deposit in the fund, although revenue is earmarked for the fund in companion bills. Assuming revenue is eventually deposited in the fund for distribution through the DVPTB, the bill would increase costs to the DVPTB related to administering these dollars. However, the bill allows up to 10 percent of money deposited in the fund to be used to meet these administrative expenses.

House Bills 5055 and 5056 increase by \$5 the minimum state costs that a defendant pays for a felony conviction or misdemeanor (including juvenile convictions – House Bill 5056). These \$5 increased assessments would be deposited into the JSF, generating additional revenue to the fund. Trial courts currently collect state court cost assessments now on every misdemeanor and felony (See chart below). This new assessment would be added to the current assessment amounts, meaning that, in general, the collection mechanism is already in place. The proposal would make the following changes to state court assessments:

<b>OFFENSE</b>	<b>CURRENT STATE COSTS ASSESSMENT</b>	<b>STATE COSTS ASSESSMENT WITH \$5 INCREASE</b>
Misdemeanors: Non-Crime Victims Rights	\$40.00	\$45.00
Misdemeanors: Crime Victims Rights	\$40.00	\$50.00
Felonies	\$60.00	\$65.00

According to Judiciary estimates, in Fiscal Year 2006, revenue was collected on approximately 35,000 to 40,000 felonies and 300,000 to 350,000 misdemeanors. Based on the assumption that JSF current revenue totals \$72.0 million and that the conservative estimate of approximately 335,000 felonies and misdemeanors are collected upon, the additional revenue from the \$5 increase in minimum state cost assessments would generate an estimated \$1.675 million to the JSF yearly. Thus the estimated new JSF total under this proposal would be \$73.7 million. If the highest estimate of felony/misdemeanor collections was calculated, 390,000 collections, then the estimate of additional revenue would be \$1.95 million. If an additional \$1.95 million revenue were added to the JSF fund, then the estimated total revenue to the JSF under this proposal would be \$74.0 million.

House Bill 5057 would revise the percentage amounts for each of the 9 funds that currently receive revenue from the JSF. The bill would also distribute money to the Sexual Assault Victims' Forensic Intervention and Treatment Fund which would receive a percentage of JSF funding as well.

## New Justice System Funding Model – Includes Proposed Sexual Assault Victims' Medical Forensic Intervention and Treatment Fund

The following table lists the current funds' funding distribution and what new percentage each fund would receive under House Bill 5057:

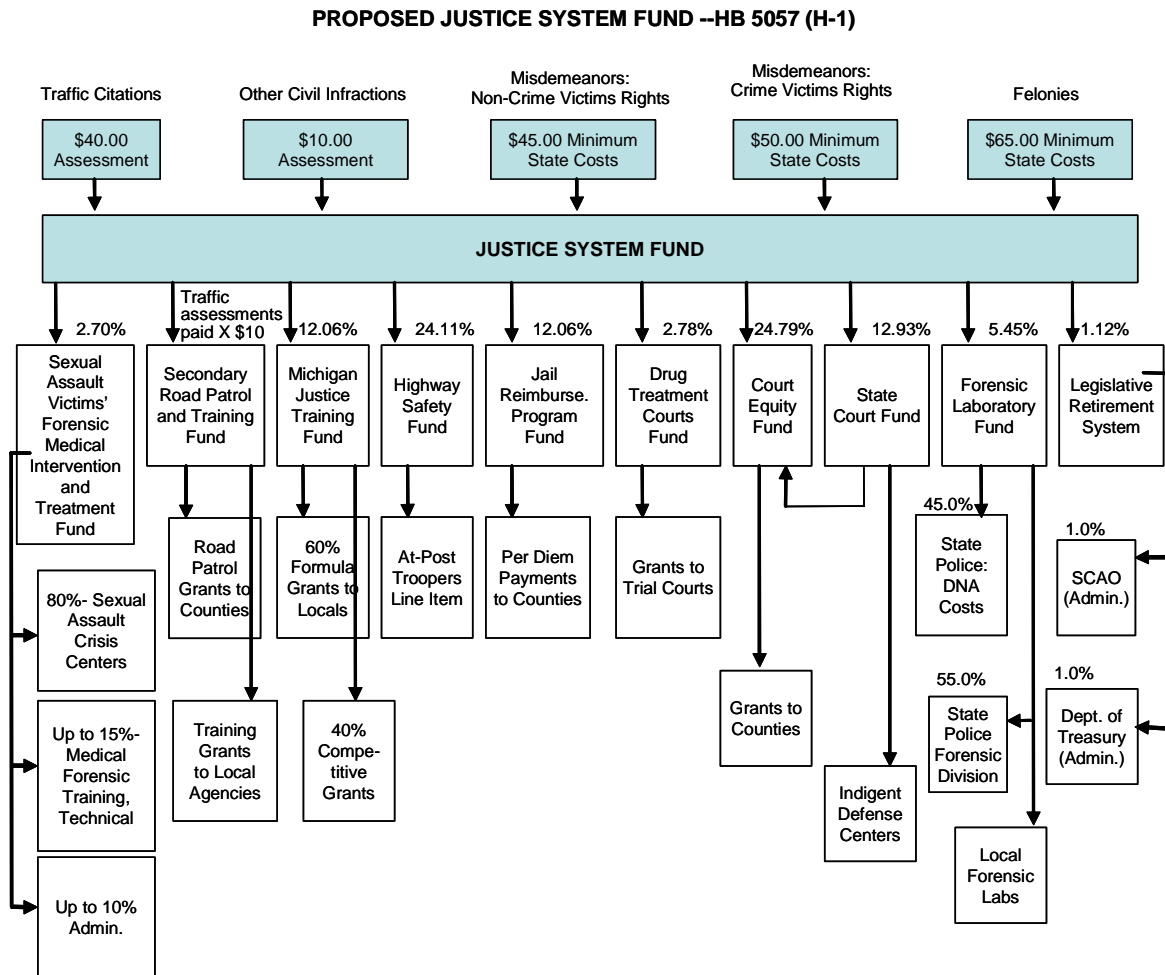
	Current % of Remaining Funds	Estimated FY 06 Distribution**	CY Funding as % New Distribution*	New Funding Distribution	Difference from Estimated Current Funding
Highway Safety Fund	24.80%	14,446,000	24.11%	14,447,918	1,918
County Jail Reimbursement Program	12.40%	7,223,000	12.06%	7,226,955	3,955
Michigan Justice Training Fund	12.40%	7,223,000	12.06%	7,226,955	3,955
Legislative Retirement System	1.15%	669,875	1.12%	671,160	1,285
Drug Treatment Courts Fund	2.85%	1,660,125	2.78%	1,665,915	5,790
State Forensic Laboratory Fund	5.60%	3,262,000	5.45%	3,265,913	3,913
State Court Fund	13.30%	7,747,250	12.93%	7,748,303	1,053
Court Equity Fund	25.50%	14,853,750	24.79%	14,855,408	1,658
State Treasurer	1.00%	582,500	1.00%	599,250	16,750
State Court Administrative Office	1.00%	582,500	1.00%	599,250	16,750
Proposed Sexual Assault Medical Forensic Intervention & Treatment Fund	--		2.70%	1,617,975	1,617,975
<b>TOTAL</b>	<b>100.00%</b>	<b>58,250,000</b>	<b>100.00%</b>	<b>59,925,000</b>	<b>1,675,000</b>

Under House Bill 5057, using the lower estimates of misdemeanor/felony collections, the existing nine funds that receive a percentage of the JSF are estimated to receive small increases from the funding they would receive under the current statute. The increases range from approximately \$1,000 to \$6,000 (See chart above). The percentage of funding for the State Treasurer and SCAO remain at 1 percent and both agencies would receive an estimated \$16,750 additional funding. Even though the existing funds' percentages are slightly decreased (by a few tenths of a percent), because of the increased revenue going into the JSF from the felony/misdemeanor assessment, each fund receives, in general, a small increase from current funding levels.

Based on the assumptions above and the lowest estimates of felony and misdemeanor collections, this model would generate an estimated \$1.64 million in funding for the sexual assault victims' medical forensic intervention and treatment fund annually. If the collections on felonies and misdemeanors are higher than the lowest estimates, then all funds would experience an increase from the estimated revenues above. House Bill 5054

requires that money shall not be expended from the Sexual Assault Victims' Medical Forensic Intervention and Treatment Fund the first year of its creation.

The following chart shows the flow of revenue from the Justice System Fund with the proposed changes.



Note: Administrative costs for most individual funds not reflected.  
Viola Bay Wild, House Fiscal Agency: 6/21/07

## ARGUMENTS:

### For:

According to information from the U. S. Department of Justice on Sexual Assault Nurse Examiner (SANE) Programs, the programs have made "a profound difference in the quality of care provided to sexual assault victims", offering victims "prompt, compassionate care and comprehensive forensic evidence collection." Whether a program is hospital-based or offered by a community service organization (for example, many agencies providing counseling and/or domestic violence services have a "suite" for

examining sexual assault victims and collecting physical evidence), the USDOJ reports that SANE programs "are enhancing evidence collection for more effective investigations and better prosecutions" as well as preserving the dignity of sexual assault victims and reducing their psychological trauma.

An example contrasting the actions of a medical professional without SANE training with one who had undergone SANE training offered in committee testimony underscored the need for the legislation. A rape kit typically contains three swabs for evidence collection. According to the testimony, untrained medical staffers tend to only use those swabs provided in the kit, thus missing areas of the victim's body that may contain crucial evidence. A SANE-trained person, on the other hand, knows to carefully listen to the victim's account of the assault and to adjust the collection of evidence accordingly. Therefore, a SANE nurse may use 30 swabs. Such action may significantly increase the likelihood that crucial evidence needed for the criminal investigation and prosecution will be located and preserved.

In addition, hospital-based and community SANE programs are able to offer victims a level of privacy that a typical emergency room setting cannot provide. Therefore, continued support of existing programs and the ability to create other programs in underserved areas will likely increase the chance that a sexual assault victim will report the incident (currently, only about half of all sexual assaults are reported), that evidence will be collected and preserved properly, and that a crime can be successfully investigated and prosecuted.

***For:***

The bills would work together to accomplish the goals discussed above. House Bill 5054, which would create the Sexual Assault Victims' Medical Forensic Intervention and Treatment Act, would create a funding mechanism to support organizations that perform evidence gathering for prosecutions of crimes involving sexual assault and provide services to victims. House Bills 5055 and 5056 would create a revenue stream for the programs eligible under House Bill 5054 by charging adult and juvenile felons and misdemeanants an additional five dollars for the minimum state cost. This money is currently designated for deposit into the Justice System Fund (JSF). House Bill 5057 would then include the SANE fund in the list of funds receiving distributions from the JSF and revise the formula for distributions so that current funds will not see a decrease in their JSF distributions.

***POSITIONS:***

The following agencies and organizations indicated support for, or testified in support of, the bills on 9-5-07:

Department of State Police  
Michigan Domestic Violence Prevention and Treatment Board  
Prosecuting Attorneys Association of Michigan (PAAM)  
Michigan Coalition Against Domestic and Sexual Violence



Michigan-NOW  
Michigan Sheriffs' Association  
Sexual Assault Services of Calhoun County  
HAVEN  
Center for Women in Transition  
YWCA of Kalamazoo Sexual Assault Program

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