

## Testimony On HB 4298, 4299, 4300 in Judiciary Committee, June 20, 2017

by John Tuinstra, President, Citizens For Parental Rights

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Thank you, Mr. Chairman, for holding the hearing on these bills concerning video-recording of child protection forensic interviews, and for allowing me to speak. I am the current president of the group that requested this legislation, about 12 years ago, I believe.

I have been watching this legislation for several years, and I believe this is my third time to testify on it. I was pleased in the 2013-14 session to see the main bill pass in committee as HB 5272 and pass the full House by 108-0. So thank you to those that were here and voted for it. Unfortunately it did not get the consideration it deserved in the Senate. It was interesting to see the sponsors, two Democrats and a Republican, testify in matching tan sports-coats in the 2015-16 session on that version. Unfortunately, it did not get a floor vote. I'm hoping we can all work to get it through this time.

Fortunately, most parents take fairly good care of their children. In child protection cases, we as a society are in a difficult situation. When real abuse or neglect is taking place, sometimes children need to go through the trauma of being placed in another home. When there is no other choice, it is the correct decision. If an accusation and charges of child abuse or neglect are brought forward, there are two serious mistakes we can make: 1.) We can leave a child in a dangerous situation, and 2.) we can tear a child away from his home unjustly, hurting the parents and the children, injuring them unnecessarily in a way from which they may never heal. I hope and I trust that no one on the committee wants to make either of these two mistakes.

To avoid serious mistakes we need to have accurate definitions of abuse and neglect, accurate and thorough investigations, and an accurate and careful judicial procedure in which the judge and jury get the best information possible, a procedure in which prosecution and defense get the same information. The testimony of the child or children involved is critical to making the right decision. Forensic interviews by trained professionals are intended to help that testimony be more accurate. But if the interviewers report that goes to the judge or the jury is inaccurate, the judge and/or jury are more likely to make a mistake. And that we don't want. When the testimony of the child is not appropriate in court, a video-recording is the next best alternative and is far better than a report from a Child Protective Services worker alone. A video recording in which the judge and jury can hear the volume and tone of every word, and watch the facial expression and body language, will tell a more complete story than an interviewer's report or even a transcript of the testimony. It will expose and reduce manipulative situations and "leading questions". We will have fewer mistakes and fewer negative consequences for those children.

Five years ago, I ran for township trustee and was elected. Soon afterward we passed a policy to make audio recordings of our meetings. We have at times reviewed them, and at times played excerpts at a board meeting to settle an issue. In one case, our tax assessor claimed that her \$150,000 contract was written incorrectly, and her accountant discovered it over a year later. We were able to review the discussion on the recording and confirm what the intent of our decision actually was. Indeed the former clerk had made a mistake in the math and no one caught it. Having the recording helped to prove the intent of the board, clear up the misunderstanding, pay what we had verbally discussed, and keep a good assessor. The recordings have been a valuable addition to the written record. We have also found that sometimes the "highly skilled professional" gets it wrong. There was an occasion when a hired attorney made incorrect statements about the law twice in the same afternoon and was corrected by a new trustee.

My experience as a township trustee is that the reporters who attend our township board meetings get the story wrong sometimes. A new trustee on our board recently said about a reporter, "He was not at the same meeting I was at." Some reporters make mistakes rarely and some make mistakes frequently because of their own biases and filters. But even if they are well-intended professionals, they all make mistakes, and the written report is not correct. I would guess that all of you know from personal experience that two different reporters may tell two very different stories of the same event. You have said something publicly and the report in the newspaper was incorrect, sometimes with a discernable intent. For me, if the story is incorrect and I don't get re-elected next year, that's not so important. For you, if the reports are inaccurate, and you don't get re-elected, that may be a little more important.

But think of a child, who is interviewed by the "professional." If the report from the trained professional is inaccurate, because of his or her own biases or mistakes, and the court makes the wrong decision, that could be more than important. It could be tragic if a child is left in an unsafe home. Or, the court could make the mistake of improperly taking a child from the parents who love her, and place her with strangers, and it could be the most upsetting experience in her life, even if she is placed in a good home. (The statistics and the stories show that not all foster homes and not all adoptive homes are good places for a kid to grow up.) And please think about the parents. If the report from the "trained professional" is inaccurate, because of his own biases, filters, or mistakes, and the court makes the wrong decision, and children are improperly taken from good parents, those parents will experience the hurt of a lifetime. They will never be the same. And that does happen to parents from time to time. Our organization has heard from hundreds of them.

Our duty as a society, and your duty as legislators, and especially as members of this committee, is to make the investigations and the trials on child protection as accurate and fair as possible; "...[J]ustice for all" the pledge of allegiance says. Mandating a video recording will help make more decisions correctly. Providing that video recording to both prosecution and defense will help make more correct decisions. Providing that recording to the judge and jury will help make more correct decisions. This is good legislation.

In mid-May the committee received testimony on these bills. I was not here, but watched the video-recording of the testimony at home a few days after the meeting. And Representative Theis, I am glad you are concerned about the cost of equipment and an unfunded mandate. It is reasonable to believe that the cost per location could be as low as a thousand dollars, and that is quite small compared to the financial expense for parents. My friend Sally says she spent \$60,000 trying to keep her granddaughter, and my friend Dave, one of the founders of our organization, reports spending a quarter of a million on his CPS case. The counties and the state regularly spend thousands prosecuting each case and a good process of video-recording might very well reduce the number of cases, and yield an overall net savings to the people of Michigan.

Parents need this change in the law, children need this change in the law, the justice system needs this, and your constituents deserve this. As soon as possible, please approve these three bills in committee and on the House floor and get them to the Senate and the Governor for their approval also.

Thank you. Are there any questions?



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April 8, 2016

To: Representative Eric Nesbitt  
House of Representatives, State of Michigan

Re: Floor Vote on HB 4547, 4548,4549

Dear Rep Nesbitt,

Thank you for your service to the people of Michigan.

This is to request that you work toward scheduling a floor vote on HB 4547, 4548,4549. These are worthy and helpful bills that would require electronic video recording of child interrogations in child protection cases, allow consideration of video recorded statements in certain proceedings, and provide other common sense controls. These are sponsored primarily by Rep Hooker, Rep Kosowski, and Rep Santana and secondarily by others from both parties.

These bills are closely related to HB 5270-5272 in the 2013-2014 session, which passed 108 to 0, with your votes in support. However, these did not progress in the Senate. Similar bills were previously sponsored by Rep Tom McMillen and Rep Fulton Sheen. We have testified in favor of the bills repeatedly. In 2014 Paulette Brack of ParentalRights.org also testified in support. Most of those who testified in this session and in the previous session supported the bills. The primary concept came out of efforts by Citizens For Parental Rights several years ago, working with Rep Sheen in response to many, many complaints about unfair treatment in child protection cases.

The intent of the bills is to support justice for children and for parents. These bills require the recording of interviews of children in child protection cases. The recordings can also be used to bring greater justice to placement of names onto the Central Registry of Child Protective Services. The fiscal impact would not be significant in comparison to the cost of unjust removal and termination of parental rights. Beyond the high immediate emotional costs in an unjust removal and termination, there are very often long term negative effects for the parents and for the children. The loss of one's children is a traumatic major life event for parents, and a traumatic major life event for children who lose their parents and lose their extended family. Unjust prosecution of alleged child abuse leads to significant distrust and even hostility toward government in general, and it leads to higher costs to the courts and DHHS as "damaged" children mature into angry adult lives.

A video recording allows judges, juries, and other decision-makers to observe tone-of-voice, volume, facial expression, eye contact, and other non-verbal cues, thus promoting a higher quality of decision-making than the interviewer's interpretation given in the notes. As I have said more than once in testimony, elected officials often make statements and find their comments reported quite differently in the newspapers a short time later. For a child and for parents in a child protection case, the consequences of misinterpretation by the interviewer is far more significant than the consequences for a misinterpretation by a news reporter, and both deserve a fair and unbiased report.

Video-recording of forensic interviews is currently a "best practice" in Michigan<sup>1</sup> which indicates that it is supported in-concept by DHHS. The goal of their Protocol is "to obtain a statement from a child in a developmentally-sensitive, unbiased, and truthseeking manner, that will support accurate and fair decision-making in the criminal justice and child welfare systems."<sup>2</sup> "In 2006, the Governor's Task Force on Child Abuse and Neglect supported [this] as a best practice..." Beyond the good intentions, there is also experiential evidence: "A pilot project conducted by the Governor's Task Force on Child Abuse and Neglect found that when interviews were videorecorded, it resulted in more pleas being entered to the original charge (rather than to a lesser offense) and that a higher percentage of criminal cases were pled out rather than going to trial. ... [which] spares a child victim the additional trauma of having to testify in a trial, as well as reducing costs to an often over-burdened judiciary system. Thus, many more children may be spared from having to testify against their abusers if all child abuse forensic interviews were videorecorded from beginning to end."<sup>3</sup>

The bills regulate access and retention to the recordings, and align well with county protocols and MI Supreme Court rules and refer to other sections of current statutory law, showing that these issues are carefully addressed.<sup>4</sup>

The arguments against the bills are weak, easily compensated for, and in some cases moot. For example, one argument is higher storage space; but if recorded to DVD's and stored in paper envelopes these take up little space, probably no more than the interviewers notes when a video recording is not used. The cost of a DVD and envelope are comparable to paper notes, and the time for finalizing a report is probably less. Some have suggested that the cost of recording equipment is high, but this is not prohibitive and would probably be recuperated by reducing the future burden on the judicial system and on DHHS for otherwise-poor decisions. Many locations are already equipped, and the cost for each new location is probably less than \$1000 per location. This is a small price to pay when compared to the tens and even hundreds of thousands of dollars spent by parents fighting to keep their children. In a worst case scenario, Michigan citizens might have to forego paving one half mile of roads to pay for justice to families<sup>5</sup>.

Again, this 3-bill package is good legislation, and will make a critical difference to some families and will indirectly benefit all families. The Michigan Probate Judges Association supports it, the Children's Law Section of the Michigan State Bar supports it, several parental rights organizations support it, and 100% of the MI House of Representatives supported it in 2014.<sup>6</sup>

Please make every reasonable effort to get this through the House, so the Senate can begin work on these bills soon.

For your convenience, supporting documentation is enclosed.

Sincerely,

John Tuinstra, President  
Citizens For Parental Rights

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<sup>1</sup> Legislative Analysis HB 4547-4549, page 1, last line

<sup>2</sup> Bill Analysis, p. 2

<sup>3</sup> Bill Analysis, p. 5

<sup>4</sup> Bill Analysis, p. 3-4

<sup>5</sup> [http://www.alleganroads.org/uploads/4/8/8/5/488583/bid\\_tab\\_-\\_142nd\\_39th\\_to\\_38th\\_st.pdf](http://www.alleganroads.org/uploads/4/8/8/5/488583/bid_tab_-_142nd_39th_to_38th_st.pdf)

<sup>6</sup> House Journal, 6/4/2014, HJ 54, p. 1048 Roll Call #343 Yeas 108, Nays 0, given immediate effect