

## VIDEORECORD CHILD FORENSIC INTERVIEWS

Phone: (517) 373-8080  
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**House Bill 4547 (reported from committee as H-1)**  
**Sponsor: Rep. Thomas B. Hooker**

Analysis available at  
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**House Bill 4548 (reported as H-1)**  
**Sponsor: Rep. Robert L. Kosowski**

**House Bill 4549 (reported as H-1)**  
**Sponsor: Rep. Harvey Santana**

**Committee: Judiciary**  
**Complete to 7-31-15**

**BRIEF SUMMARY:** Taken together, the bills would amend various acts to:

- Require an electronic recording of a forensic interview of a child in a child abuse or neglect investigation that is conducted at an accredited or accreditable child assessment center (CAC). "Electronic recording" refers to a videorecording of a witness statement.
- Allow the videorecorded statement to be considered by a hearing officer in a departmental hearing to amend or expunge irrelevant or inaccurate evidence from a Central Registry report or record made under the Child Protection Law.
- Require a court order that allows a videorecorded statement to be viewed to specify who may view it.
- Increase the penalty for unauthorized disclosure of a statement.
- Require the Department of Health and Human Services to retain and store the forensic interviews and allow access to authorized persons, and specify how a court would retain, and other entities store, a videorecorded statement.

The bills are tie-barred to each other, meaning no bill could become law unless all are enacted. The bills would take effect 90 days after enactment.

**FISCAL IMPACT:** Corrections and the Judiciary: Given the increase in the maximum term of imprisonment and the increase in the amount of fines that could be assessed, the bills could increase costs on local correctional systems and could increase funding for local libraries. New convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. The bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how the provisions of the bills affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

DHHS and other governmental entities: House Bills 4547–4549 would have a minimal fiscal impact on the State of Michigan and local units of government. The state currently has the

videorecording of the interviews of children during a child abuse or neglect investigation as a best practice. The bills' requirements that the Department of Health and Human Services must retain these video recordings and allow access to them may increase costs to the Department, depending upon the amount of recordings to be stored and the number of requests they receive to view them.

### ***THE APPARENT PROBLEM:***

A forensic interview involving a child who may be the victim of (or witness to) neglect and/or physical or sexual abuse is an important part of an investigation when neglect and/or physical or sexual abuse of a child is reported to Child Protective Services or law enforcement. Often the forensic interview is conducted at a child advocacy center, also referred to as a child assessment center or CAC. According to the Michigan Chapter National Children's Alliance, CACs are "community based, child-focused and child-friendly facilities where representatives from many disciplines meet to discuss and make decisions about investigation, treatment and prosecution of child abuse cases." Individuals with specialized training in interviewing children conduct the forensic interviews following the Michigan Forensic Interviewing Protocol. According to information on the Michigan Department of Health and Human Services' website, the goal of the Protocol is "to obtain a statement from a child in a developmentally-sensitive, unbiased, and truth-seeking manner, that will support accurate and fair decision-making in the criminal justice and child welfare systems."

In 2006, the Governor's Task Force on Child Abuse and Neglect supported, as a best practice, that forensic interviews of sexually abused children at CACs or similar programs be videorecorded. It is reported, however, that not all CACs record every forensic interview and that some CACs do not even have the equipment necessary to videorecord a forensic interview.

Some child abuse experts maintain that it is not always in the best interest of a child to videorecord the interview and in some cases, doing so may actually hinder obtaining a quality interview (one that accurately presents what happened). However, supporters of videorecording forensic interviews believe that the practice reduces trauma to child victims and lessens the risk of re-victimizing the child by asking them the same questions over and over. It captures exactly what the interviewer and child said, as well as intonations and body language that help to establish an accurate interpretation of the statements beyond what a transcript can supply. Thus, some feel that the best practice of videorecording forensic interviews in suspected child abuse or child sexual assault cases as recommended by the Task Force be mandated in statute.

In a separate but related matter, some feel that persons who are the subject of a Central Registry case, as well as the DHHS hearing officer, should be able to access the recorded forensic interviews when seeking to correct inaccurate information from, or expunge, a child abuse allegation from the Registry. Currently, other than DHHS and law enforcement agencies, only a court and a defendant in a criminal child abuse or neglect case have access to the videorecorded statements. But not all Central Registry cases lead to criminal charges. It is believed that broadening access to the videorecordings of the forensic interviews may better enable parents and others to identify and clear up misunderstandings or inaccurate statements in a Central Registry report.

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

**House Bill 4547** would add a new section to the Child Protection Law, which pertains to complaints of child abuse or child neglect made to Children's Protective Services (CPS) and how complaints are handled (MCL 722.638f). At the time a child is interviewed in an accredited or accreditable child assessment center at the request of a Department of Health and Human Services investigator or law enforcement officer, the bill would require the person conducting the interview to make an electronic recording of the interview in its entirety. The recording would have to be started at the beginning of the interview and not be turned off until the interview was completed.

The Department of Health and Human Services (DHHS) would have to allow access to and retain electronic recordings in the same manner as provided by Section 2163a of the Revised Judicature Act (as revised by House Bill 4548).

(Currently, retention of videorecordings are governed by protocols established by county prosecutors. In general, videorecordings are likely to be retained at the facility in which the interview took place. In a criminal investigation, the investigating law enforcement agency and/or court would likely retain and store forensic videorecordings. Access to the videorecordings is limited and only those authorized by statute may view them and then only for authorized purposes.)

**House Bills 4548 and 4549** would make similar revisions to the Revised Judicature Act (MCL 600.2163a) and Juvenile Code (MCL 712A.17b), respectively.

Provisions in each of those two acts allow special accommodations for a witness who is under 16 years old or developmentally disabled and who is an alleged victim of abuse or criminal sexual conduct. The special accommodations apply to criminal prosecutions and juvenile proceedings and include, among other things, videotaping witness statements.

*Use of a videorecorded statement by a court.* A court may consider a videorecorded statement in a proceeding only if authorized in statute. For instance, a videorecorded statement may be considered by the court in determining the sentence or used as a factual basis for a no contest plea or to supplement a guilty plea. The bills would also allow a videorecorded statement to be considered by a hearing officer in a hearing pertaining to a Central Registry case held under Section 7(6) of the Child Protection Law.

[Section 7(6) of the Child Protection Law establishes a mechanism by which the subject of a report or record made under the act may request the Department of Health and Human Services (DHHS) to hold a hearing to determine whether the report or record in whole or in part should be amended or expunged from the Central Registry. "Central Registry" is the system maintained at the DHHS that is used to keep a record of all reports filed with the department under the Child Protection Act in which relevant and accurate evidence of child abuse or neglect is found to exist.

*Thus, in a section pertaining to use of videorecorded statements by a court in a court proceeding, the bills would allow the videorecorded statements to be used in a departmental hearing.]*

Copy of videorecorded statement provided to the defense. The RJA and Juvenile Code require, upon request, the prosecuting attorney to provide the defendant and, if represented, the defendant's attorney, with reasonable access and means to view and hear the videorecorded statement at a reasonable time before the defendant's pretrial or trial of the case. The bills would apply this requirement to a hearing held under Section 7(6) of the Child Protection Law (petitions to amend or expunge a Central Registry record). In doing so, the bills would allow access to videorecordings of forensic interviews to a subject of a Central Registry case and for a purpose other than for the prosecution or defense of a criminal abuse or neglect allegation. (Note: Not all Central Registry cases result in criminal prosecution; therefore, a local prosecutor may not be in possession of the videorecorded statement.)

Further, in a child abuse or neglect proceeding, a court may order that a copy of the videorecorded statement be given to the defense in preparation for a court proceeding and under protective conditions. The bills would require the order to specify who may view the videorecorded statement, indicate the time by which the recording is required to be returned, and state a reason for the release of the videorecorded statement.

Penalty. Currently, a person who intentionally releases a videorecorded statement in violation of the RJA or Juvenile Code is guilty of a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$500. The bills would increase the maximum term of imprisonment to one year and the maximum fine to \$1,000.

Retention of videorecorded statements. The bills would require a court to retain a videorecorded statement as required by state Supreme Court rule. All other entities would have to store a videorecorded statement made under the bills in accordance with the county protocols established under Section 8 of the Child Protection Act, which references protocols developed by the Governor's Task Force on Children's Justice and published in certain department publications.

## ***BACKGROUND INFORMATION:***

The bills are similar to House Bills 5270-5272 of the 2013-2014 Legislative session.

## ***ARGUMENTS:***

### ***For:***

House Bill 4547 would codify (meaning, place in statute) the Michigan Forensic Interviewing Protocol's recommendation that forensic interviews in child abuse investigations be videorecorded as a best practice. Supporters say that in cases involving child abuse and/or sexual abuse of children, if all forensic interviews involving a child were videotaped, there would be a clear record of exactly what the child said to the interviewer, rather than just the interviewer's written notes. Such a record could prevent undue influence on a child by an interviewer through misleading questions or body language, or written reports that did not accurately reflect the words and/or intonation of the child or that were influenced by the interviewer's own biases. The recording could also protect interviewers from charges that they did not follow current forensic protocols. Having one quality interview may eliminate the need for multiple interviews with the same child, thus sparing the child from the trauma of having to relive the event over and over again. Many, if

not most, child assessment centers already videorecord child forensic interviews in accord with the state's Forensic Interviewing Protocol.

House Bills 4548 and 4549 would allow viewing and use of the videorecordings in a hearing to correct errors or false information in a Central Registry report or to have the report expunged from the Registry. If the interviewer's written report contained misleading or inaccurate representations of the child's statements, identifying errors in the reports could prevent some children from wrongfully being taken away from parents who did not abuse them.

Lastly, the bills establish storage and retention requirements. A record held by the court would be retained per Supreme Court standards, and all other entities would follow any protocols adopted by the county in which the entity is located. DHHS would have to retain and allow access to the videorecorded statements as provided in the Revised Judicature Act and Child Protection Law.

***For:***

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. Pleading to a criminal charge of abuse and/or neglect 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.

***Against:***

Critics say that the bills are problematic. For instance, child abuse experts say that videorecording the forensic interview is not appropriate in every instance. Recording the interview can affect some children's comfort level, which can affect their responses to the interview questions. A child whose abuse involved being photographed or videorecorded may feel re-victimized by knowing that the interview is being recorded by a camera. This can hinder an interviewer's ability to obtain a quality interview (understood to mean an unbiased, truthful accounting of the event or events). Most importantly, children often disclose the details of abuse over time, in bits and pieces, not all at once, and many children suffer from post-traumatic stress syndrome (PTSD). Thus, in some cases, more than one interview may need to be conducted in order for the whole story to come out. Requiring every forensic interview for a DHHS or law enforcement case to be videorecorded may lead to overemphasis on statements made in the recordings rather than on evidence. It may also lead to an overemphasis on statements made in an early interview whereas statements in a subsequent interview may be more factual. At a minimum, the bills need to include a best practices exemption for those situations in which videorecording the interviews would be inappropriate.

***Against:***

House Bills 4548 and 4549 mark a departure regarding who may view a videorecorded forensic interview and for what purposes. Currently, due to the sensitive nature of the interviews and the need to protect a child victim from further victimization, access to the videorecorded statements are restricted to law enforcement agencies and/or DHHS investigators. If a parent or other person is charged with a crime involving child abuse or child sexual assault, the law allows a court—as part of a court proceeding—to consider the videorecorded statements in a limited number of

situations. Similarly, the law grants a defendant the right to access a videorecorded statement before the preliminary examination, pretrial, or trial.

The bills, on the other hand, require access in a departmental action. As such, the bills would provide access to the forensic interviews outside of a court or criminal trial. This makes access to these protected videorecordings too easy, especially if the parent is the one suspected or accused of harming the child. Abusers and molesters are master manipulators and could use information gleaned from the recorded interviews to inflict further damage to the child.

***Against:***

The requirement in House Bill 4547 for DHHS to allow access to and retain electronic recordings is very problematic for the following reasons:

- In essence, the bill requires the DHHS to retain and provide access to the recorded forensic interviews per county protocols established in the Child Protection Law. Each county has its own protocols, and not all counties have CACs. This means that a large number of interviews may involve only law enforcement and may be conducted at a law enforcement agency. Depending on a county's protocol and the nature of the investigation, the DHHS may not be the agency requesting the interview, and therefore may not even be in possession of the videorecording. Often it is up to the local prosecutor to decide if DHHS is provided a copy.
- According to the DHHS, the agency does not have the capacity to retain and store all videorecorded statements at the state or local DHHS office level.
- DHHS does not have a system that could accommodate access to view and hear a videorecorded statement by a person who is the subject of Central Registry case. The average length of a forensic interview is two to two-and-a-half hours. There could be significant costs to modify systems to allow downloading. Low speed networks, such as in rural communities, could be overwhelmed, take hours to download, and could impact other DHHS systems, which would impact delivery of services to other clients.
- Broadening access under the bills also raises confidentiality issues. Currently, only a prosecutor may provide access to a videorecording, and then only to a defendant in a criminal case. Even a court is restricted as to when it may consider a videorecorded statement. This is because of the extremely sensitive nature of the interview and the potential for harm if the recording is copied in whole or in part or information contained in the videorecording is disclosed contrary to statutory restrictions. Unless the person who is the subject of Central Registry case is charged with a child abuse or child assault crime, access to the videorecorded statement should not be given. Further, according to DHHS staff, because DHHS is on a statewide system, all offices, employees, even vendors such as private agency contractors have access to the system. Thus, retention by the DHHS could inadvertently provide access to many unauthorized persons. Though the companion bills increase the penalty for unauthorized disclosures, increasing penalties does not always deter the prohibited conduct.
- The bills create chain of custody concerns. Since many forensic interviews result in criminal charges being filed, the interview becomes part of the evidence. Establishing the chain of custody, which preserves the integrity of the evidence, is an integral component of a successful prosecution. The DHHS is not designed to provide the level of custody that

a law enforcement agency can provide and to require them to do so could put prosecutions of child abusers at risk.

***Against:***

Not all child assessment centers have the videorecording equipment necessary to comply with the recording requirements. These are private, not public, non-profit entities funded by private donations. Though committee testimony suggested that these interviews could be done by a DHHS employee's smartphone, it is not that simple or inexpensive. For one thing, recording a forensic interview on a public employee's private phone, or even department-issued phone, would be a serious breach of confidentiality. Moreover, statute and the state Protocol requires that the recording equipment be out of sight of the child, behind a one-way window. To meet the high standard for criminal prosecutions, the visual and audio portions of the recording must be high quality. Unless funding is provided, some CACs may not be able to afford to provide the equipment, thus forcing the interviews to be conducted elsewhere where the bills' provisions would not apply.

***POSITIONS:***

A representative of Citizens for Parental Rights testified in support of the bills as introduced. (5-26-15)

The Michigan Probate Judges Association indicated support for the bills as amended. (6-9-15)

The Children's Law Section – Michigan State Bar indicated it supports the bills in concept. (6-2-15)

The Green Union indicated a neutral position on House Bill 4549. (5-26-15)

Sons & Daughters United indicated a neutral position on House Bill 4549. (5-26-15)

The Department of Health and Human Services has no position on the bills. (6-2-15)

A representative of the St. Clair County Prosecutor's Office testified in opposition to the bills as introduced. (5-26-15)

The Michigan Coalition to End Domestic and Sexual Violence indicated opposition to the bills. (6-9-15)

The Michigan Domestic and Sexual Violence Prevention and Treatment Board indicated opposition to House Bill 4547. (6-2-15)

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Robin Risko  
Viola Bay Wild

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.