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FISCAL IMPACT REPORT

SPONSOR HJC DATE TYPED 3/15/05 HB 347/HJCS

SHORT TITLE Electronic Depositions in Certain Cases SB _____

ANALYST Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			\$0.1		General Fund

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute for House Bill 347 creates the Crimes Against Household Members Act.

The bill updates existing state law permitting the recording and use of videotaped depositions for victims under the age of 16 years in proceedings involving a domestic violence incident or a prosecution for criminal sexual penetration or criminal sexual contact of a minor,. The updated language is broader, taking into account advancements in technology by using terms such as "electronic recording" rather than "videotaped".

In a prosecution for a crime arising from a domestic violence incident or a prosecution for criminal sexual penetration or criminal sexual contact of a minor, upon motion of the district attorney and after notice to the opposing counsel, the district court may, for good cause shown, order the electronic recording of a deposition of any alleged victim of or witness to a domestic violence incident who is under sixteen years of age.

Good cause shall include a finding of unreasonable and unnecessary mental harm to the victim or witness. The deposition shall be taken before the judge in chambers, under oath, in the presence of the district attorney and the defendant's attorneys. The defendant must be able to hear the testimony and communicate with defense counsel during the deposition. Examination and cross-examination shall proceed in the same manner as permitted at trial pursuant to the New Mexico Rules of Evidence.

An electronically recorded deposition taken under the provisions of this bill shall be viewed and heard at the trial and entered into the record in lieu of the direct testimony of the alleged victim or witness.

The supreme court may adopt rules of procedure and evidence to govern and implement the provisions of this section.

The cost of the electronic recording shall be paid by the state.

Electronic recordings that are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim or witness.

As used in this bill electronic recording means a complete and authentic visual and audio recording created by motion picture, videotape or digital media.

Significant Issues

Electronic depositions allow a broader medium that may be used rather than a video tape for recording purposes. The definition for “electronic recording” includes digital media which is becoming a more frequent technology used today for video recording.

In crimes of domestic violence many times child witnesses are reluctant to testify against a parent or an adult, as they are in child abuse cases. Often, children are in the home and are the only witnesses to the violence reported. In instances where children are traumatized and too fragile to testify in front of the defendant, the electronic recording method is a good alternative for prosecutors to obtain the witness’s testimony.

The PDD states that in current law, in cases involving criminal sexual penetration of a minor or criminal sexual contact of a minor, the victim may testify in a videotaped proceeding. Special protection is afforded to minor victims of these crimes that is not afforded to other victims in cases where the child may not be able to testify without suffering unreasonable and unnecessary mental or emotional harm. This protection need not be afforded to other witnesses or adult victims and may run afoul of the constitutional right to confront witnesses.

CYFD does not believe electronic depositions to create a constitutional issue. Opponents of allowing electronic depositions such as Public Defenders and criminal defense trial lawyers often attempt to argue that denying a defendant the opportunity to “confront” his accuser or witness, face-to-face, at the time of obtaining deposition testimony compromises the defendant’s constitutional rights. While such constitutional arguments are still raised, they have largely been set aside by the courts with the creation of electronic deposition statutes.

FISCAL IMPLICATIONS

The existing law provides the State to pay for depositions. The expanded scope in this bill will increase the use of electronic depositions and therefore, increase costs.

The PDD believes the bill will substantially increase the cost of these cases as both the state and the defense have the right to present expert testimony on whether the witnesses would suffer unreasonable and unnecessary mental or emotional harm if recorded testimony is not used.

ADMINISTRATIVE IMPLICATIONS

Expanded access to electronic depositions may result in more victims or witnesses being willing to come forward and to pursue matters further. It may mean more reliable testimony and increased law enforcement and judicial activities. This should translate into fewer repeat and new victims, a positive for CYFD's protective services efforts.

DW/lg:yr