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HOUSE BILL 355

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Don Tripp

AN ACT

RELATING TO CRIMINAL PROCEDURE; PERMITTING THE ELECTRONIC  
RECORDING OF DEPOSITIONS OF VICTIMS AND WITNESSES UNDER SIXTEEN  
YEARS OF AGE IN SEXUAL ASSAULT AND DOMESTIC VIOLENCE CASES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-3-10 NMSA 1978 (being Laws 1995,  
Chapter 221, Section 1) is amended to read:

"30-3-10. SHORT TITLE.--~~[This act]~~ Sections 30-3-10  
through 30-3-17 NMSA 1978 may be cited as the "Crimes Against  
Household Members Act"."

Section 2. A new Section 30-3-17 NMSA 1978 is enacted to  
read:

"30-3-17. [NEW MATERIAL] ELECTRONIC RECORDING OF  
DEPOSITIONS OF ALLEGED VICTIMS AND WITNESSES UNDER SIXTEEN  
YEARS OF AGE--PROCEDURE.--

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underscored material = new  
[bracketed material] = delete

1           A. In a prosecution for a crime arising from a  
2 domestic violence incident, upon motion of the district  
3 attorney and after notice to the opposing counsel, the district  
4 court may, for good cause shown, order the electronic recording  
5 of a deposition of any alleged victim of or witness to a  
6 domestic violence incident who is under sixteen years of age.  
7 Good cause shall include a finding of unreasonable and  
8 unnecessary mental harm to the victim or witness. The  
9 deposition shall be taken before the judge in chambers, under  
10 oath, in the presence of the district attorney and the  
11 defendant's attorneys. The defendant must be able to hear the  
12 testimony and communicate with defense counsel during the  
13 deposition. Examination and cross-examination shall proceed in  
14 the same manner as permitted at trial pursuant to the New  
15 Mexico Rules of Evidence.

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

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

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

25           E. Electronic recordings that are part of the court

underscored material = new  
[bracketed material] = delete

1 record are subject to a protective order of the court for the  
2 purpose of protecting the privacy of the victim or witness.

3 F. As used in this section, "electronic recording"  
4 means a complete and authentic visual and audio recording  
5 created by motion picture, videotape or digital media."

6 Section 3. Section 30-9-17 NMSA 1978 (being Laws 1978,  
7 Chapter 98, Section 1) is amended to read:

8 "30-9-17. [~~VIDEOTAPED~~] ELECTRONIC RECORDING OF  
9 DEPOSITIONS OF ALLEGED VICTIMS [WHO ARE] UNDER SIXTEEN YEARS OF  
10 AGE--PROCEDURE [USE IN LIEU OF DIRECT TESTIMONY].--

11 A. In [~~any~~] a prosecution for criminal sexual  
12 penetration or criminal sexual contact of a minor, upon motion  
13 of the district attorney and after notice to the opposing  
14 counsel, the district court may, for [~~a~~] good cause shown,  
15 order the [~~taking of a videotaped~~] electronic recording of a  
16 deposition of any alleged victim under the age of sixteen  
17 years. Good cause shall include a finding of unreasonable and  
18 unnecessary mental harm to the victim. The [~~videotaped~~]  
19 deposition shall be taken before the judge in chambers, under  
20 oath, in the presence of the district attorney [~~the defendant~~]  
21 and [~~his~~] the defendant's attorneys. The defendant must be  
22 able to hear the testimony and communicate with defense counsel  
23 during the deposition. Examination and cross-examination [~~of~~  
24 ~~the alleged victim~~] shall proceed [~~at the taking of the~~  
25 ~~videotaped deposition~~] in the same manner as permitted at trial

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[bracketed material] = delete

1 ~~[under the provisions of Rule 611 of]~~ pursuant to the New  
2 Mexico Rules of Evidence. ~~[Any videotaped]~~

3 B. An electronically recorded deposition taken  
4 under the provisions of this ~~[act]~~ section shall be viewed and  
5 heard at the trial and entered into the record in lieu of the  
6 direct testimony of the alleged victim.

7 ~~[B. For the purposes of this section, "videotaped~~  
8 ~~deposition" means the visual recording on a magnetic tape,~~  
9 ~~together with the associated sound, of a witness testifying~~  
10 ~~under oath in the course of a judicial proceeding, upon oral~~  
11 ~~examination and where an opportunity is given for cross-~~  
12 ~~examination in the presence of the defendant and intended to be~~  
13 ~~played back upon the trial of the action in court.]~~

14 C. The supreme court may adopt rules of procedure  
15 and evidence to govern and implement the provisions of this  
16 ~~[act]~~ section.

17 D. The cost of ~~[such videotaping]~~ the electronic  
18 recording shall be paid by the state.

19 E. ~~[Videotapes which]~~ Electronic recordings that  
20 are a part of the court record are subject to a protective  
21 order of the court for the purpose of protecting the privacy of  
22 the victim.

23 F. As used in this section, "electronic recording"  
24 means a complete and authentic visual and audio recording  
25 created by motion picture, videotape or digital media."

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