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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/01/07

SPONSOR Tripp LAST UPDATED 3/14/07 HB 355/aHJC/aHFI#1

SHORT TITLE Electronic Recording of Certain Depositions SB \_\_\_\_\_

ANALYST Wilson

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Unknown	Unknown		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Public Defender Department (PDD)

Second Judicial District Attorney (SJDA)

Sentencing Commission (SC)

### SUMMARY

#### Synopsis of HFI Amendment #1

The House Floor amendment #1 clarifies the bill by removing the HJC amendment and changing the language to read as follows:

- in a prosecution for a crime arising from a domestic violence incident is changed to a prosecution under the Crimes Against Household Members Act;
- a witness of a domestic violence incident is changed to a witness and
- the defendant's attorneys is changed to the defendant's attorney.

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 355 clarifies that one can be prosecuted for domestic violence in general, not just for a domestic violence incident.

Synopsis of Original Bill

House Bill 355 allows motion picture, videotape or digital image recordings of depositions of victims and witnesses under the age of 16 in domestic violence and sexual assault cases. The bill amends Section 30-9-17, giving the court authority to order an electronic recording of a deposition upon good cause that includes a finding of unreasonable and unnecessary mental harm to the victim. The supreme court will adopt rules to govern the implementation of this bill. The cost of the electronic recording shall be paid by the state. Depositions shall be taken before the judge in chambers and under oath, but the defendant will be able to hear testimony during the taking of the deposition.

**FISCAL IMPLICATIONS**

There appears to be a significant cost to bear on the state agency that will be responsible for supplying the audio and video equipment statewide to implement this bill.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to challenges to this law and requests an increased number of motions for electronic recordings made to the district court. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

**SIGNIFICANT ISSUES**

The AOC states this bill will make discoverable a victim’s medical records and other evidence arguably relevant to the good cause definition. In addition, there will be additional hearings to determine if a victim can testify with videotape or digital media.

The AOC believes this bill could aid in protecting the victim’s rights as set out in Section 31-26-4A.

The PDD states that although the bill provides for the defendant to communicate with his attorney during the deposition, where presumably the attorney will be able to cross-examine the witness, the bill does not provide for a face to face confrontation as is contemplated by the Confrontation Clause of the United States Constitution .that provides a criminal defendant the right to “confront” face-to-face witnesses giving evidence against him at trial, and placement of screen between defendant and child sexual assault victims during testimony against defendant violated defendant's Confrontation Clause rights.

**ADMINISTRATIVE IMPLICATIONS**

There may be an administrative impact on the courts as a result of a potential increase in the number of motions for electronic recordings made to the district court.

**TECHNICAL ISSUES**

The SJDA provided the following:

The term domestic violence should be specifically defined. Does the use of depositions only apply to crimes enumerated in the 30-3-10, et. seq. or does it apply to any crime occurring in the home?

**POSSIBLE QUESTIONS**

The bill states the cost of deposition shall be paid for by the State. The SJDA asks whether this means the courts or the prosecutor's office.

DW/mt:csd