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## FISCAL IMPACT REPORT

**SPONSOR** O'Neill **ORIGINAL DATE** 02/04/11  
**LAST UPDATED** \_\_\_\_\_ **HB** 196  
**SHORT TITLE** Uniform Child Witness Protective Measures Act **SB** \_\_\_\_\_  
**ANALYST** Haug

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$15.0 - \$50.0	\$15.0 - \$50.0	\$30.0 - \$100.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Veterans Service Department (VSD)

Children, Youth and Families Department (CYFD)

Administrative Office of the District Attorneys (AODA)

### SUMMARY

#### Synopsis of Bill

House Bill 196 sets out methods by which children under the age of 16 in both criminal and non-criminal proceedings are protected from testifying in open court, face to face with a defendant in a criminal case, or in front of all parties in a non-criminal case.

### FISCAL IMPLICATIONS

The AOC notes there may be an extra expense of additional technology for courtroom use, additional hearings and costs for litigating the meaning of the act all of which are unknown at this time and are pending analysis. The AODA echoes the additional equipment cost concerns:

There is a cost involved in taking depositions of witnesses. There is special equipment that needs to be set up for videotaping the child witness and special equipment is needed for the defendant if the defendant is not personally in the same room as the child.

CYFD states that it could incur additional costs related to securing evaluations to determine the extent of the possible emotional trauma that could be created by the child's direct testimony.

No respondent estimates what those costs would be, but there undoubtedly would be some additional cost, estimated in the table as a range of potential costs from \$15 thousand to \$50 thousand recurring annually.

## **SIGNIFICANT ISSUES**

The AOC comments:

HB 196, though similar to the Uniform Child Witness Testimony by Alternative Methods Act, approved and recommended for enactment in 2002 by the National Conference of Commissioners on Uniform State Laws, is not an exact replication. HB 196 is for children under the age of 16; the Uniform Act is for under age 13. The definition of “alternative method” in HB 196 is extensive; in the Uniform Act it is more general.

HB 196 does not set out a standard which must be met in determining whether to permit the presentation of testimony of a child by an alternative method. In the Uniform Act, it clearly states “clear and convincing evidence” must be found for a criminal case and “preponderance of evidence” for a non-criminal case.

There are existing statutes that allow for the same or similar action by the court. This will cause conflict and confusion for the courts. Section 30-9-17 allows for videotaped depositions for victims of criminal sexual penetration or criminal sexual contact of a minor who are less than 16 years old. Rules 5-504 for the district courts and 10-234 for delinquency cases support that statute. Section 32A-4-20 for child abuse cases and 32A-33-13 in families in need of services cases allow for the exclusion of a child less than 14 years old if there is a finding that it is in the child’s best interest; a child 14 and older can be excluded if there is a compelling reason to exclude the child and the court makes a factual basis for the finding.

According to the AODA, HB 196 does not address similar provisions for child victims of criminal sexual penetration and criminal sexual contact. See Section 30-9-17 and Rule 5-504, Rules of Criminal Procedure. One of the items that this bill doesn’t cover is the use of the deposition at trial. Language from 30-9-17 and Rule 5-504 could possibly be incorporated into this bill. This bill provides protection for all child witnesses in noncriminal proceedings and victims in criminal proceedings. (Hopefully child witnesses in criminal proceedings will be added to this bill.) 30-9-17 and Rule 5-504 only address the protection of victims of criminal sexual penetration and criminal sexual contact. This bill needs to address the issue of whether or not 30-9-17 should be repealed and Rule 5-504 withdrawn since this bill would cover those situations in addition to many other situations in which children are either victims or witnesses.

The CYFD states:

Alternative methods for child witnesses, also called “shielding procedures,” are controversial because they technically violate the Sixth Amendment, which provides that in criminal prosecutions “the accused shall enjoy the right...to be confronted with the witnesses against him.” This model, developed by the 2002 National Conference of Commissioners on Uniform State Law, was adopted by the American Bar Association in 2003. Some argue that research shows that shielding procedures can bias juries against

child witnesses, and that pretrial education and counseling would serve the child better.

CYFD carefully reviews the impact on a child when considering whether or not he/she will be called upon to testify in a dependency matter. If such testimony is required, CYFD works with all parties, including the child's attorney or Guardian ad Litem to mitigate any potential negative consequences. Within delinquency hearings, CYFD works with the district attorney as the local district attorney litigates delinquency matters.

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