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FISCAL IMPACT REPORT

ORIGINAL DATE 1/25/21

SPONSOR Padilla LAST UPDATED _____ HB _____

SHORT TITLE Allow Remote Court Testimony SB 36

ANALYST Dick-Peddie

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
AOC Operating Budget	\$0	Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
Administrative Office of the Courts (AODA)

No Response Received

Public Defender Department (PDD)
Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

Senate Bill 36 would create a new section under the Victims Crime Act to allow remote video testimony at a preliminary examination or criminal trial if the court makes a specific finding of necessity for the protection of the “witness’s welfare”. The court may allow remote video testimony for a child or an adjudicated incapacitated adult if testifying in person would be traumatizing by the presence of the defendant, the level of emotional distress from in-person testimony is significant and the trauma would impair the ability of the witness to communicate.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC) stated that while there may be some costs associated with administering new rules and updating judicial resources, cost to the agency is minimal and could likely be absorbed by the current operating budget. Though the Administrative Office of the District Attorneys (AODA) and Public Defender Department (PDD) did not submit agency response, LFC analysis projects that prosecution and defense agencies will likely be able to absorb any additional costs created by the rule change.

SIGNIFICANT ISSUES

The bill may violate the Confrontation Clause contained in the Sixth Amendment to the US Constitution, and the similar clause in Article II, Section 14 of the New Mexico Constitution, which allows the accused the right to confront witnesses testifying against them. AOC notes that the rights provided by the Confrontation Clause are not absolute, and that case law allows for the waiver of this right when there is an “actual finding of necessity to further an important public policy.” NMAG notes that SB36 can avoid violating the Confrontation Clause by ensuring “essential formalities of confrontation” such as swearing in the witness, having the Court preside over the testimony, permitting a defendant and fact-finder to view the remote testimony and allowing defense counsel cross-examine the witness.

The bill also allows judges to make a determination on the psychological state of witnesses without the aid of a formal psychological evaluation, without presetting clear criteria for judges to make such a determination. AOC states that without assistance from a mental health professional, these determinations could vary widely between courts.

TECHNICAL ISSUES

AOC notes that SB36 does not provide definitions for the terms “child”, “adjudicated incapacitated adult” or “remote video testimony”. AOC warns that ambiguity of these terms could lead to varied interpretations of the law, stating:

An adjudicated incapacitated adult could be a person under guardianship or conservatorship or could be adjudicated as developmentally delayed under competency standards. Likewise, Rule 5-504 NMRA, which allows video depositions of certain minor victims of sexual offenses, applies only to children under 16. Without clear definitions, these issues could present significant litigation issues.