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FISCAL IMPACT REPORT

SPONSOR Dixon/Reeb LAST UPDATED _____
ORIGINAL DATE 2/3/2025
BILL
SHORT TITLE Refusal of Certain Pretrial Statements NUMBER House Bill 204
ANALYST Hernandez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
PDD		At least \$880.0	At least \$880.0	\$1,760.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

Children, Youth, and Families Department (CYFD)

Administrative Office of the Courts (AOC)

Law Office of the Public Defender (LOPD)

Administrative Office of District Attorneys (AODA)

University of New Mexico (UNM)

Agency Declined to Respond

Office of Family Representation and Advocacy (OFRA)

SUMMARY

Synopsis of House Bill 204

House Bill 204 (HB204) amends the Victims of Crime Act to provide that children under the age of 18 cannot be compelled to give pretrial statements or interviews and adult victims have the right to refuse a pretrial statement or interview. If the adult victim declines to be interviewed, a party may petition the court for approval of written interrogatories, which are to be conducted by an individual trained in forensic interviews. When an adult victim consents to an interview, the prosecutor's office is required to notify the defendant of the time, place, and manner of the interview. The prosecutor, unless directed by the victim, may attend all interviews. Additionally, the bill requires that defendants only contact the victim through the prosecutor's office and that defendants may not comment on the victim's refusal to undergo an interview during trial.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

The Law Offices of the Public Defender (LOPD) suggests, because the bill applies to all victims, including family members, the costs would likely to be substantial:

[The bill] would likely result in more pretrial litigation in virtually every case involving one of these charges. This would increase the length of time cases are pending trial and significantly increase the complexity of pretrial investigations and litigation, decreasing the number of cases a given attorney or investigator could constitutionally handle. It also would prevent the factual inquiry that enables balanced plea bargaining and, in some cases, dismissal, resulting in more cases going to trial that are currently resolved more efficiently. This would result in a corresponding need for more attorneys, investigators, and support staff for [LOPD].

The Administrative Office of District Attorneys indicates, “HB204 does not establish who would pay for a forensic examiner. The cost of forensic examiner could impact the judiciary, prosecutor’s offices, or the Law Office of the Public Defenders’ budgets.”

While it is difficult to ascertain the cost of implementing HB204, LFC staff assumes LOPD would need to hire at least five new attorneys. The average cost of salary and benefits for an attorney with the Law Offices of the Public Defender is \$146 thousand. LOPD typically includes additional costs for support staff, office space, and other costs that increase the cost by almost \$150 thousand an attorney; however, there will be economies of scale. As such, beginning in FY26, the cost of implementing HB204 is estimated at no less than \$880 thousand a year.

SIGNIFICANT ISSUES

Provisions in HB204 raise constitutional concerns. From AOC:

The United States Constitution and the New Mexico Constitution both provide for the right of a defendant “to confront the witnesses against him.” This has been developed by case law to require any testimony that is to be admitted at trial must be presented or have been obtained when the defendant had the opportunity to cross-examine the witness. The bill as drafted may run contrary to this principle, absent live testimony from the witness at trial for the first time.

In the New Mexico case *State v. Orona*, the court held that the defense has a right to interview witnesses, but the ruling recognized some restriction or protections may be imposed. Further, the federal court in *United States v. Pinto* acknowledged the right of an adult witness to refuse an interview, although protections for child witnesses were not addressed.

AOC argues HB204 “provides an expansion of the rights afforded by our constitution” by granting witnesses more rights in the criminal justice process when they are alleged to be victims to a crime:

While HB204 grants witnesses more rights in the criminal justice process when they are alleged to be victims of crime, it may have the unintended consequence of limiting the ability for a defendant to conduct a thorough investigation of the charges during the discovery phase of a criminal case.

LOPD raises similar concerns, stating that the refusal provisions appear to hamper access to information sought by the defendant, who retains the presumption of innocence:

The primary function of “mounting a defense” is to test the accuracy and strength of the state’s evidence. Interviewing victims and witnesses is the primary way in which a defendant does this. Blocking access to this investigative tool *across the board and without limitation* would deprive a defendant of their due process right to present a defense. ...

As was recently found in Pennsylvania with respect to similar aspects of Marsy’s Law [California Victims' Bill of Rights Act of 2008], there are significant due process and confrontation issues in permitting victims the right to refuse interviews and in limiting defense access to critical discovery and impeachment material. ...

The ability to test an accusing victim’s memory and reliability, and other aspects of their credibility, requires getting a full version of their account before trial and comparing it to their trial testimony. The New Mexico Supreme Court recognized this long before any such statute was proposed. In 1979, *State v. Orona*, held that a “trial court’s order prohibiting defense counsel from interviewing the state’s main witnesses” deprived him of a fair trial. While the court recognized that defendants do not have an *absolute* right to pretrial interviews, it is unconstitutional when the effect is to “deprive defendant of his right to prepare a defense.” ... It requires a showing of prejudice to establish the violation, and *Orona* recognized that certain witnesses may require protective measures. However, the Court noted ‘the trial court could fashion some means to ensure that the witnesses will be protected from intimidation without unduly impairing defendant’s right to prepare a defense. However, in the absence of some demonstrable good cause, a trial court may not impose an absolute restriction on defense counsel’s access to the State’s prospective witnesses.’”

Additionally, the prohibition against a defendant contacting a witness except through the prosecution appears unconstitutional in that defendants have the right to represent themselves.

PERFORMANCE IMPLICATIONS

AOC notes that HB204 “may have an impact on the measures of the district courts in the following areas: cases disposed of as a percent of cases filed, percent change in case filings by case type, [and HB204 may] have an impact on the judiciary’s performance measures without the additional resources to comply with the bill.”

ADMINISTRATIVE IMPLICATIONS

AOC suggests the bill would likely result in additional hearings because of constitutional challenges and to establish whether interrogatories can be issued and the substance of the interrogatories.

OTHER SUBSTANTIVE ISSUES

AOC indicates:

A practical consideration is that no pretrial interviews will occur as a result of HB204, and this will result in an increase the number of jury trials. The bill also presents significant issues with respect to a defendant's right to a competent attorney. By placing a defendant's right to exculpatory evidence against a victim's right to refuse access to that evidence, HB204 increases the chances of possible mistakes, abuse, and wrongful convictions.

Moreover, AOC states:

In *League of Women Voters v. Boockvar*, No. 578 M.D. 2019 (Jan. 7, 2021), the court declared the proposed amendment to Article I of the Pennsylvania Constitution unconstitutional. The proposed amendment sought to mandate a number of new and independent rights to victims of crime, including the right to refuse to be interviewed. The court held that the proposed amendment will immediately, profoundly, and irreparably impact individuals who are accused of crimes, the criminal justice system as a whole, and most likely victims as well.

AEH/rl/hg/sgs