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FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/09
 LAST UPDATED 03/20/09

SPONSOR HJC HB CS/368/aSJC

SHORT TITLE Uniform Child Testimony by Alternative Methods Act SB _____

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Public Defender (PD)

Administrative Office of the District Attorney (AODA)

Department of Public Safety (DPS)

SUMMARY

Synopsis of Senate Judiciary Committee Amendments

The HJC amendment redefines “child witness”.

On page 8, line 14 the amendment strikes “judge” and inserts in lieu thereof “presiding officer”.

The amendment also changes the effective date of the provisions in the bill from January 1, 2010 to July 1, 2010.

Synopsis of Original Bill

House Judiciary Committee Substitute for House Bill 368 creates a method for the courts to determine if a child witness may testify in a criminal or non criminal proceeding by an alternative method.

The effective date of the provisions of this bill is January 1, 2010.

FISCAL IMPLICATIONS

Passage of this bill will have an indeterminate impact on the Public Defender department. The Public Defender carries a substantial caseload where alleged child victims assert allegations against adults. Therefore, a hearing to allow for alternative methods of testimony by a child would likely cause more fiscal costs to be incurred by the public defender and the courts as well as time spent.

SIGNIFICANT ISSUES

Child witnesses are particularly vulnerable to intimidation and testifying in court is often a traumatic experience for them. This is especially true if they are being asked to testify against family members, teachers or other authority figures. It is also especially true if they are being asked about sexual topics or other matters for which they have limited knowledge. In spite of the nature of the experience they all too often are the primary witness and are required to testify.

This bill allows for the judge, or presiding officer, to hold a hearing to discover what the affects of testifying will be on children under the age of sixteen. If the presiding officer finds that testifying would cause “serious emotional trauma that would substantially impair the child’s ability to communicate with the finder of fact,” in criminal cases; or if allowing alternate methods is in the best interest of the child in civil cases, then alternative methods of testifying would be permitted.

This bill addresses the rights of all the parties in the hearing including a criminal defendant’s right to confront witnesses. Because it addresses these concerns it may stand court challenge on these grounds.

According to the Public Defender, this bill will likely face a challenge from a potential criminal defendant who would be able to challenge this statute based on the Confrontation Clause of the Sixth Amendment of the United States Constitution. The Confrontation Clause of the Sixth Amendment states, "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. See *Coy v. Iowa*, 487 U.S. 1012 (1988) (Confrontation Clause provides criminal defendant 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

This bill in would occasionally require tribunals to hold special hearings as to the need for alternative methods of testimony. The additional burden would be minimal.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Children would continue to have to testify in open court.

CS/mt:svb