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SENATE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Michael Padilla

AN ACT

RELATING TO COURTS; ALLOWING REMOTE TESTIMONY IN CERTAIN
CIRCUMSTANCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Victims of Crime Act is
enacted to read:

"~~[NEW MATERIAL]~~ REMOTE VIDEO TESTIMONY AND MEASURES TO
AMELIORATE TESTIMONY-INDUCED TRAUMA.--

A. Upon motion of a party or the trial court's own
motion, the court may permit a child or adjudicated
incapacitated adult to testify at a preliminary examination or
a criminal trial by remote video means if the court makes a
case-specific finding of necessity for the protection of the
witness's welfare that includes a finding that:

- (1) the child or adjudicated incapacitated

underscored material = new
~~[bracketed material] = delete~~

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1 adult, if required to testify in person, would be traumatized
2 by the presence of the defendant;

3 (2) the level of emotional distress the child
4 or adjudicated incapacitated adult would suffer from in-person
5 testimony is significant; and

6 (3) the trauma suffered from in-person
7 testimony would impair the child or adjudicated adult's ability
8 to communicate.

9 B. A finding of necessity may be made without a
10 psychological evaluation of the child or adjudicated
11 incapacitated adult. If the court deems a psychological
12 evaluation essential to the question of necessity, the court
13 shall order an independent evaluation by a court-appointed
14 qualified mental health professional; provided that if the
15 child or adjudicated incapacitated adult has already received a
16 psychological evaluation, the court shall rely solely on the
17 existing evaluation unless the examining mental health
18 professional is unavailable to appear in court or the existing
19 evaluation provides insufficient information upon which to make
20 a determination on the question of necessity. In making a
21 ruling pursuant to this section, the court shall consider that
22 psychological evaluations, in themselves may cause trauma to
23 the child or adjudicated adult and the court shall not consider
24 an independent psychological evaluation by an expert hired by a
25 party. This provision shall not be interpreted to limit the

.217901.2

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1 defendant's right to confront an examining mental health
2 professional or to hire an expert to review and testify about
3 any psychological evaluation relied upon by the court."

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