



Talking Points on Senate Bill 36: ALLOW REMOTE COURT TESTIMONY

Regular Legislative Session 2021

Overview of Legislation: Senate Bill 36 offers courts the ability to allow children and adjudicated incapacitated adults to testify via remote means when the defendant's physical presence could result in secondary trauma.

The Issue:

- Testifying in person can be retraumatizing to the victim/witness.
- Children are often in too much fear of facing the offender in Court to testify in person. If the child does not testify, many serious crimes, including sexual abuse against children, go unprosecuted and allow offenders to go free.
- Parents or guardians must make difficult decisions between a child's wellbeing and the pursuit of justice.
- Making the situation even more difficult for the child is that they frequently have to testify against someone they may still love but who has hurt them.

NMCADV believes the current law must be reformed for the following reasons:

- Child victims of sexual and domestic violence who have already suffered the trauma of the original crime are being traumatized again by having to testify in open Court in front of their abuser.
- Many criminal cases fall apart because the child is too afraid to testify. Offenders often silence children through threats of violence against the child, a family member, or a family pet if they tell.
- The Federal Government and at least 44 states allow children to testify via closed-circuit video in criminal cases, and New Mexico is not one of them.
- The adverse effects on children can last well beyond their testifying. In one study of a group of children who testified in open Court against a group of children who did not, the

testifiers had more serious behavioral problems seven months later. In the same study, children who appeared more frightened of the defendant while testifying were less able to answer the prosecutors' questions; and later, after the cases were closed, they were more likely to say that testifying had affected them adversely.

- Current law allows for videotaped deposition, but it also requires that the defendant be present during the interview. This does not alleviate the trauma of being in the physical presence of the offender.
- In addition to children, many adult survivors of domestic violence have suffered traumatic brain injuries from repeated injuries to the head, including strangulation. This can result in behaviors or executive functioning deficits that complicate their ability to engage in the criminal justice process, often resulting in further trauma, stress, and frustration for the victim.

In answer to a possible anticipated objection regarding the Sixth Amendment Confrontation Clause that gives the defendant the right to confront the witnesses against him or her:

- The US Supreme Court has held that a defendant's Sixth Amendment right to confrontation need not always be in person. In *Maryland v Craig*,¹ ruled that child witnesses accusing a defendant of molestation can testify via videoconference without violating the Confrontation Clause when the trial court makes a specific finding that the child would be otherwise unable to communicate.

Goodman GS, Taub EP, Jones DP, England P, Port LK, Rudy L, Prado L. Testifying in Criminal Court: emotional effects on child sexual assault victims. *Monogr Soc Res Child Dev.* 1992;57(5):1-142; discussion 143-61. PMID: 1470193.