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SENATE BILL 36

**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

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

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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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