

To: Judge Grohs, Megan Ring and Donna Skinner-Reed

From: Susan Fisch

Re: HB 16-1027 (C.R.S. § 18-6.5-103.5 Video-taped Depositions of At-Risk Adult Victims/Witnesses)

This memo is a follow-up to our meeting on July 15th. At that meeting we discussed alternatives we could propose to the entire committee regarding amending Rule 15 to address this statute. The committee members did not have a lot of feedback for us. There were a couple of committee members who were in favor of adding the statutory language to Rule 15. After our discussion, I think we have the following options:

1. Not make any changes to Rule 15. If a party wants to request a deposition of an At-Risk Adult Victim/Witness, they would have to follow the requirements of the statute. The subcommittee was concerned about a number of issues that would need to be addressed if we amended the rule. These issues include:
  - a. The rule allows either party to request a deposition, the statute only allows the prosecution to make the request.
  - b. The rule requires the requesting party to submit an affidavit to support the taking of the deposition, the statute does not.
  - c. The time limits in the rule and the statute are different.
  - d. The Court is required to grant the request pursuant to statute but not required to do so pursuant to the rule.

Additionally, we were concerned that if we added a section for depositions of At-Risk Adult Victims/Witnesses, we would need to address three other statutes that apply to depositions. These statutes have different requirements. The following statutes would apply:

§ 18-6-401.3- Depositions of Victims of Child Abuse (less than 15). This statute still contains language that was removed from § 18-6.5-103.5 regarding making preliminary findings of unavailability at trial.

§ 18-3-413- Depositions of Sex Assault Victims (less than 15). Same as above.

§ 13-25-136- Use of Video Depositions at Trial. Not only does this statute include the requirement of a preliminary finding of unavailability but it also requires the prosecution to show a substantial risk of harm or intimidation to a witness.

2. We could amend parts of the rule. We might want to address the following:
  - a. Time required to request a deposition and when the deposition is held.
  - b. Changing the rule to require all depositions to be preserved by video imaging.
  - c. Refer to the statutes as the procedure to request a deposition in at risk adult/victim, child abuse victim and sex assault on a child victim.
  
3. We could propose adding subsections to the rule addressing each statute.
  
4. We could add a separate Rule 15.1 to address the four statutes and leave Rule 15 intact and unchanged.

Hopefully, this summarizes what we talked about so we can start a discussion about what to propose to the committee.