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FISCAL IMPACT REPORT

ORIGINAL DATE 01/24/13

SPONSOR O'Neill LAST UPDATED _____ HB _____

SHORT TITLE Recording of Confidential Conversations SB 127

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	Minimal	Minimal	Minimal	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

Senate Bill 127 adds a definition section to the crime of Interference with Communications (Section 30-12-1 NMSA 1978) which describes a confidential message, communication or report. In the definition a party to the message, communication or report must have a reasonable expectation that it will be confined to the parties. It then amends Section B3 to limit the crime to when only a confidential message, communication, or report is reported, interrupted, taken or copied without the consent of all parties. Under the current law, it is a violation if any message, communication or report is read, interrupted, taken or copied without the consent of a sender or the intended recipient.

SIGNIFICANT ISSUES

The PDD has noted that the proposed changes would *no longer* require the consent of *either* party to record a communication where the parties lacked a “reasonable expectation” that the communication will be confidential. The current statute requires the consent of either the “sender or receiver.” As a consequence, if SB 127 is enacted, third parties would not require any permission to record communications that are not within the definition of “confidential communications.”

OTHER SUBSTANTIVE ISSUES

The broad and functional definition of “confidential message, communication or report” will require judicial interpretation in the context of specific cases. However, the fact that other States, such as California, use similar language and have cases construing that language will provide some guidance. *See e.g., Flanagan v. Flanagan*, 41 P.3d 575, 576-77, 578-82 (Cal. 2002).

NCJ/svb