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## FISCAL IMPACT REPORT

**SPONSOR** Egolf **ORIGINAL DATE** 02/07/14  
**LAST UPDATED** \_\_\_\_\_ **HB** 238

**SHORT TITLE** Crime of Distributing Sensitive Images **SB** \_\_\_\_\_

**ANALYST** Jorgensen

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the District Attorneys (AODA)

New Mexico Corrections Department (NMCD)

Public Defender Department (PDD)

### SUMMARY

#### Synopsis of Bill

House Bill 238 creates a new crime, unauthorized distribution of sensitive images. Unauthorized distribution of sensitive images consists of distributing, publishing or otherwise making available by an electronic communications device or other means, sensitive images of a person, with or without information identifying that person, without that person’s consent and with the intent to (1) harass, humiliate or intimidate that person; (2) incite another to harass, humiliate or intimidate that person; (3) cause that person to reasonably fear for person’s own or family members’ safety; (4) cause that person to suffer unwanted physical contact or injury; and (5) cause that person to suffer substantial emotional distress. The bill broadly defines the term “electronic communications device” to include cell phones and other devices. It also broadly defines “sensitive images” to include photos and images of unclothed or partially clothed persons or likenesses that may reasonably be considered to be private, intimate or inappropriate for distribution or publication without that person’s consent.

A first time conviction constitutes a misdemeanor. Second or subsequent convictions constitute a fourth degree felony

## **FISCAL IMPLICATIONS**

The NMCD reports that because a first offense is a misdemeanor, persons convicted under this section would not be placed in NMCD custody an individual would have to be convicted of a second or subsequent before they would have an impact on the NMCD budget.

The AODA and PDD report that enactment would likely lead to new prosecutions for violations, but neither provided an estimate for additional cases originating as a result of enactment of HB 238.

## **SIGNIFICANT ISSUES**

The AODA notes:

The “and” in the list of intentions [page 2, line 7] that the defendant must have to make his conduct criminal means that HB 238 proscribes a very narrow category of conduct. It also will make it very difficult for the prosecution to prove the requisite intent. It would not be enough, for example, to prove that the defendant distributed sensitive images of the victim with the intent to humiliate the victim. The prosecutor would also have to prove that the defendant intended to incite others to harass, humiliate or intimidate the victim; intended to cause the victim to fear for his or her safety or the safety of family members; intended to cause the victim to suffer unwanted physical contact or injury; and intended to cause that person to suffer substantial emotional distress.

CJ/ds