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# FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_  
**ORIGINAL DATE** 1/30/2025

**SPONSOR** Maestas

**BILL**  
**NUMBER** Senate Bill 149

**SHORT TITLE** Crime of Cyberbullying

**ANALYST** Valdez

## ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
County Jails	No fiscal impact	At least \$19.2	At least \$19.2	At least \$38.4	Recurring	General Fund
NMCD	No fiscal impact	No fiscal impact	At least \$28.2	At least \$28.2	Recurring	General Fund
<b>Total</b>	<b>No fiscal impact</b>	<b>At least \$19.2</b>	<b>At least \$47.4</b>	<b>At least \$66.6</b>	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 10 and Senate Bill 148

### Sources of Information

LFC Files

Agency Analysis Received From  
 New Mexico Attorney General (NMAG)  
 New Mexico Sentencing Commission (NMSC)  
 Children, Youth and Families Department (CYFD)  
 Department of Public Safety (DPS)  
 New Mexico Higher Education Department (NMHED)

Agency Analysis was Solicited but Not Received From  
 Public Education Department (PED)  
 Administrative Office of the Courts (AOC)  
 Healthcare Authority (HCA)

## SUMMARY

### Synopsis of Senate Bill 149

Senate Bill 149 (SB149) creates the crime of cyberbullying. The crime is defined as communicating with a student with reckless disregard that the communication will:

- Place the student in reasonable fear of physical harm,
- Harm the student’s physical or mental health,
- Interfere with their academic performance,
- or Interfere with the student's ability to participate in or benefit from school activities.

Those guilty of cyberbullying are subject to punishment depending on the extent of the harm they have caused. The most minor offenders are guilty of a misdemeanor offense, while those causing physical or great psychological harm, great physical harm, or death are subject to fourth, third, or second-degree felonies.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## **FISCAL IMPLICATIONS**

SB149 creates the crime of cyberbullying. The crime may be charged as a misdemeanor, or enhanced to a fourth-, third-, or second-degree felony depending on the severity of the harm. Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have moderate fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. LFC estimates a marginal cost (the cost per additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. SB149 is anticipated to increase the number of incarcerated individuals.

Based on the marginal cost of each additional inmate in New Mexico's jail system, each offender sentenced to jail for this crime could increase costs by approximately \$9,600 to \$19.2 thousand to counties. The maximum punishment proposed in this bill for a second-degree felony is punishable by up to nine years in prison. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY24 was \$56.7 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$28.2 thousand per year across all facilities.

As more people are admitted to prison, costs increase. Costs continue to rise each year until offenders admitted in the first year the change takes effect begin to leave prison. For purposes of this calculator, costs ramp up over the term of the average change in time served (for a new crime, the entirety of the average projected time served), with the first year of admissions expected to exit prison after the average change in time served.

It is difficult to estimate how many individuals will be charged, convicted, or sent to jail or prison with a new crime. Without additional information, this analysis assumes at least one person will be incarcerated in county jails and state correctional facilities each year for cyberbullying. To account for time to adjudication, state correctional facility costs are not anticipated to be incurred until one year after the bill takes effect, in FY27; however, county jail costs and a minimal cost may apply in FY26 for individuals detained for some period before adjudication. This analysis estimates SB149 will increase annual incarceration costs by at least \$28.2 thousand to the state in FY27 and at least \$56.4 thousand in FY28.

Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials or to law enforcement to investigate and arrest individuals for the new crimes under SB149, are not included in this analysis but could be moderate.

## SIGNIFICANT ISSUES

The New Mexico Sentencing Commission (NMSC) and New Mexico Attorney General (NMAG) point out that cyberbullying is defined in Section 2 of the Safe Schools for All Students Act (Section 22-35-1 NMSA 1978 *et seq.*). They note that the act includes a more precise definition of cyberbullying as “any bullying that takes place through electronic communication,” with electronic communication defined as “a communication transmitted by means of an electronic device, including a telephone, cellular phone, computer, electronic tablet, pager or video or audio recording.” The existing act defers to local school boards to develop policies to handle bullying, including cyberbullying. The agency suggests the new law’s definition should be consistent with this existing law.

NMSC further points out that SB149 may overlap with existing law penalizing harassment, as well as a law against the use of a telephone to terrorize a victim. The harassment law is covered in Section 30-3A-2:

- A. Harassment consists of knowingly pursuing a pattern of conduct that is intended to annoy, seriously alarm or terrorize another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress.
- B. Whoever commits harassment is guilty of a misdemeanor.

Section 30-20-12 NMSA 1978 covers the use of a telephone to terrify, intimidate, threaten, harass, annoy or offend, with the penalty of a misdemeanor, unless the person has previously been convicted of such offense or of an offense under the laws of another state or of the United States which would have been an offense under this section if committed in this state, in which case such person is guilty of a fourth degree felony. Given that telephones constitute electronic communication, passing SB149 would create a conflict in New Mexico statute.

In addition, NMSC points out that SB149 could come into conflict with Section 30-37A-1, concerning unauthorized distribution of sensitive images, which includes intent to harass in its elements. The statute states:

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:

- (1) with the intent to:
  - (a) harass, humiliate or intimidate that person;
  - (b) incite another to harass, humiliate or intimidate that person;
  - (c) cause that person to reasonably fear for that person's own or family members' safety;
  - (d) cause that person to suffer unwanted physical contact or injury; or
  - (e) cause that person to suffer substantial emotional distress; and
- (2) where the conduct is such that it would cause a reasonable person to suffer substantial emotional distress.

The penalty is a misdemeanor; upon a second or subsequent conviction, the offender is guilty of a fourth-degree felony. Section 30-37A-1 would thus also conflict with the provisions of SB149.

The New Mexico Higher Education Department (HED) notes:

“A Pew Research Center report on teens and cyberbullying in 2022 found that forty six percent (46%) of teens aged 13 to 17 reported ever experiencing cyberbullying (<https://www.pewresearch.org/internet/2022/12/15/teens-and-cyberbullying-2022>). That same report shares that only eighteen percent (18%) of the teen respondents felt that elected officials were doing an excellent or good job in addressing online harassment. According to the Cyberbullying Research Center, "all states have various criminal laws that might apply to bullying behaviors," but not all states expressly include electronic forms of harassment (<http://cyberbullying.org/bullying-laws>), and they list New Mexico as one of the states that does not have criminal sanctions specifically for cyberbullying. While some New Mexico laws may support victims of and penalize instigators of cyberbullying, SB149 looks to provide direct penalties for cyberbullying for the students identified in the bill.”

Further, HED points out that while SB149 focuses on K-12 students as potential victims, the law may deter cyberbullying in those students preventing them from ever having to deal with the impacts on learning in socialization they may have otherwise experienced as higher education students. However, focusing on K-12 victims leaves out higher education students who may suffer from cyberbullying.

NMAG notes that they “may obtain prosecutorial authority over violations of this new crime should such prosecution be declined by the local county with original prosecutorial jurisdiction.”

The Children, Youth and Families Department (CYFD) states that they “should partner with schools informally, training and assisting victims under the age of 18 to receive services. CYFD providers should look into programming for juvenile offenders.”

The Department of Public Safety states that New Mexico law has not kept up with technological advances. As a result, law enforcement may face challenges enforcing cyberbullying. SB149 would provide an enforceable statute which would help streamline investigations and prosecutions.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

This bill relates to Senate Bill 10 and Senate Bill 148, both of which create the Anti-Hazing Act in statute, providing a definition of hazing, establishing criminal penalties for hazing, and including other requirements. While hazing and cyberbullying are different acts, anti-hazing legislation could overlap with cyberbullying.

## **TECHNICAL ISSUES**

HED points out a potential contradiction in the first paragraph of Section 1.A. The bill says that cyberbullying can occur, “in writing or electronically.” Text “in writing” may refer to text on paper or some other non-electronic medium. This seems contrary to the definition of cyberbullying. HED suggests clarifying that language to delineate the purview of the new law.