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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/12/09

SPONSOR Eichenberg LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Electronic Stalking & Child Communication SB 494

ANALYST Wilson

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

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Indeterminate See Below	Indeterminate See Below	Indeterminate See Below	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB 400  
Relates to HB 433

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Bernalillo County Metropolitan Court (BCMC)  
Corrections Department (CD)  
Department of Public Safety (DPS)  
Public Defender Department (PDD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 494 amends the Harassment and Stalking Act to expand the crime of misdemeanor harassment to include a pattern of conduct including an electronic communication device. Electronic communication device is defined as a computer, internet device, portable media player, video recorder, digital camera, fax machine, telephone, cellular telephone, pager, audio equipment or any other device that can produce an electronically generated image, message or signal.

The bill also elevates the crime of stalking from a misdemeanor to a fourth degree felony for a first offense, and for a second and subsequent offense from a fourth degree felony to a third degree felony. It also allows the court to order a person convicted of stalking to stay from a victim or victim's household member and to avoid electronic communication with the victim or his or her household member for up to ten years.

The crime of stalking is also committed whenever a person causes a third party to pursue a pattern of conduct constituting stalking, and the incarceration of a pursuing a pattern of conduct constituting stalking is not a bar to prosecution. Finally, it is not necessary in a stalking prosecution for the prosecutor to prove that the person was able to carry out any threats or implied. The bill also increases the penalty for aggravated stalking from a fourth degree felony to a third degree felony for a first offense, and from a third degree felony to a second degree felony for second or subsequent offense.

The bill will also add the crime of criminal sexual communication with a child as a sex offense under the Sex Offender Registration and Notification Act. Persons convicted of this crime will have to comply with the registration and notification requirements of the Act.

### **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

BCMC stated that the bill will potentially make it easier for law enforcement to charge an individual with harassment or stalking and thus result in an increase in the number of defendants that proceed to trial. The extent of the increased caseload – if any – and its potential fiscal impact are inestimable at this time.

CD noted that the bill creates, expands the criminal penalties of stalking and harassment. The additional felony convictions resulting from this bill will be minimal to moderate, and will increase the CD's costs by leading to minimal to moderate increases to the inmate population and probation/parole caseloads. The bill seems unlikely to lead to a substantial number of new convictions, or to result in a substantial increase in the CD's inmate population. However, it is always difficult to predict or estimate the ultimate effect of any new crime bill with any certainty, especially when it comes to estimating the number of illegal aliens present in this country at any given time.

### **SIGNIFICANT ISSUES**

The PDD provided the following:

A potential defendant could challenge that this statute, as it applies to stalking through means of electronic communications such as text messaging, does not provide him with fair warning as to the nature of the proscribed conduct and is thus unconstitutionally vague.

In order to make a showing that a statute is vague, the party challenging the statute must show that an ordinary person exercising ordinary common sense will not be able to sufficiently understand and comply with its provisions.

A potential defendant could argue that when using electronic communications, he or she is not apprised of the proscribed conduct under this statute as opposed to a situation where physical stalking is taking place.

While the statute defines stalking with an electronic communication device as communicating in a manner that will cause a reasonable person to feel threatened and intimidated or fear for the person's safety or the safety of a household member, it is still not clear as to how an electronic communication can convey this proscribed conduct since societal norms for electronic communication and face to face physical communication are quite different.

Furthermore, this amendment seeks to add a provision which does not require proof that an individual was able to carry out any threats made or implied. This makes the proscribed conduct infinitely vaguer under the statute.

### **ADMINISTRATIVE IMPLICATIONS**

The affected agencies should be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities

### **DUPLICATION/ RELATIONSHIP**

SB 494 duplicates HB 400 and is related to HB 433. SB 494 requires convictions for criminal sexual communications with a child to be included in the sex offender registry. HB 433 requires a person's electronic identity to be included in the same registry. The two bills together will not only require the conviction to be public record, but also require information identifying the convicted person in the electronic communication context.

DW/svb