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## FISCAL IMPACT REPORT

**SPONSOR** Candelaria & Lewis **ORIGINAL DATE** 01/24/14  
**LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_  
**SHORT TITLE** Prohibit Online Promotion Of Prostitution **SB** 79  
**ANALYST** Daly

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

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

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Administrative Office of the District Attorneys (AODA)  
Attorney General's Office (AGO)  
Department of Information Technology (DOIT)  
Department of Public Safety (DPS)  
New Mexico Corrections Department (NMCD)  
New Mexico Sentencing Commission (NMSC)  
Public Defender Department (PDD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 79 creates a new subsection to the provision of the Criminal Code defining the crime of promotion of prostitution (a fourth degree felony) to explicitly include the use of "electronic, virtual or online forum or an internet web site" to engage in any of the nine types of conduct listed in existing statute as mean of promoting prostitution.

The bill also adds a new subsection clarifying "a place where prostitution is practiced, encouraged or allowed" includes a computer, internet web site or any other virtual or online forum as well as a physical location.

The effective date of this bill is July 1, 2014.

## **FISCAL IMPLICATIONS**

PDD reports no impact, assuming a modest increase in prosecutions, the resulting litigation from which would be absorbed in its ordinary course of business. Other agencies report at most minimal impact.

## **SIGNIFICANT ISSUES**

AODA explains the basis for the amendments to the criminal statute defining the crime of promotion of prostitution:

A high profile case in Bernalillo County involving two university professors who operated an on-line forum connecting clients and prostitutes was dismissed in 2012 by the grand jury judge, and that ruling was affirmed by the NM Supreme Court. The district judge ruled that electronic promotion did not fall within the prohibition against “a place” where prostitution was practiced, encouraged or allowed, rejecting arguments by the prosecutors that a place on a computer hard drive promoting prostitution was virtually the same as a note placed on a bulletin board. This bill would specifically state a computer, internet website, or any other virtual or online forum is, in addition to a physical location, a place where prostitution is practiced, encouraged or allowed.

One potential issue noted by AODA involves the use by someone out of state using an electronic forum or a website to promote prostitution. Even if such use is directed at New Mexico persons, it raises a question of asserting jurisdiction in our state for prosecution of their offenses. Some operators may claim that their activities were not directed at anyone in New Mexico (or anywhere else where their conduct may be prohibited) and should be exempt from prosecution in New Mexico. Further, sophisticated computer users and forum and website operators are likely to disguise where their operations take place, or are sent from, to further complicate jurisdiction issues. The venue for prosecution of electronic promoting prostitution cases may also be an issue if the activities took place in one county but are aimed at another county or counties and are prosecuted there.

## **PERFORMANCE IMPLICATIONS**

DPS reports that there may be minimal performance implications for that agency, which likely would be felt in an increased need or ability to police various online forums, which currently may be beyond the reach of law enforcement.

NMCD believes this bill is unlikely to increase prison population or probation/parole cases, and will have no impact on ongoing operations.

The courts are participating in performance-based budgeting. This bill may impact district court measures in these areas: cases disposed of as a percent of cases filed; and percent change in case filings by case type.