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FISCAL IMPACT REPORT

ORIGINAL DATE 2/16/15

SPONSOR Candelaria/Lewis **LAST UPDATED** _____ **HB** _____

SHORT TITLE Electronic Promotion of Prostitution **SB** 424

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- New Mexico Corrections Department (NMCD)
- Adult Parole Board (APB)
- Law Offices of the Public Defender (LOPD)
- Administrative Office of the District Attorney (AODA)
- Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

Senate Bill 424 would add new language to Section 30-9-4 NMSA 1978 explicitly prohibiting use of “an electronic, virtual or online forum or an internet web site” to engage in any of the nine types of conduct now listed as means to promote prostitution. It would add language that “...‘a place where prostitution is practiced, encourage or allowed’ means a physical location, a computer, an internet web site or any other virtual or online forum.”

FISCAL IMPLICATIONS

The bill could add to the workload of law enforcement officers, prosecutors and other participants in the criminal justice system who investigate and, if appropriate, prosecute a new, additional category of crimes involving promotion of prostitution if it is adopted. It is anticipated that the technical nature of the new crime category would require experts to investigate potential violations and testify if necessary.

NMCD stated that “the additional fourth degree felony convictions resulting from this bill would

increase the NMCD's costs at most only minimally. The bill seems unlikely to lead to a substantial number of new convictions, or to result in a substantial increase in the Department's inmate population or probation/parole caseloads."

The average cost to house an NMCD inmate in 2014 was \$100.83 per day or \$36.8 thousand annually. The cost to house inmates varies depending on custody level and whether the inmate is housed in a private or public facility. The average annual probation and parole cost is \$2,783 for standard supervision, \$2,563 for Intensive Supervision programs, \$27.4 thousand for women's residential treatment centers, and \$18.1 thousand for men's residential treatment centers.

SIGNIFICANT ISSUES

AODA provided the following:

The bill would address a gap in the current statute against promoting prostitution which was revealed when a district judge in Bernalillo county in 2012 ruled that the electronic promotion of prostitution did not fall within the statute. The judge rejected arguments by the prosecutors that a "place" where prostitution was promoted included an online electronic forum, web site or even the hard drive on a computer because none of those were a physical location. The bill would expressly provide that "a place where prostitution is practiced, encouraged or allowed" includes "a computer, an internet web site or any other virtual or online forum" in addition to a physical location.

If someone is out of state and using an electronic forum or a web site to promote prostitution, even if their communications are directed at people in New Mexico, it raises a question of asserting jurisdiction in our state for prosecution of offenses taking place outside of the state. Sophisticated computer users and forum and website operators are likely to disguise where their operations take place or originate to further complicate jurisdiction issues, as well complicate proving identity of the person(s) promoting prostitution by electronic means. Some operators might claim that their activities were not directed at anyone in New Mexico (or anywhere else their activities might be prohibited) and should be exempt from prosecution in New Mexico. Venue for prosecution of electronic promoting prostitution cases might also be an issue even if the activities took place in New Mexico but were directed from one county to persons in another county.

The bill states that in addition to a physical location, a "place" where prostitution is practiced, encouraged or allowed means "a computer, an internet web site or any virtual or online forum." It is conceivable that some communications promoting prostitution might be transmitted by telephone, especially since modern technology has made it easy to send messages using mobile phones to literally thousands of other mobile phone users. If so, that usage would arguably not be included in this bill. Adding, "or any other electronic device," after "computer" could encompass any cases where mobile phones were used to promote prostitution.

AOC stated that:

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.

EC/aml