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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Moores</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>2/12/24</u>
<b>SHORT TITLE</b> <u>Crime of Student Athlete Harassment</u>	<b>BILL NUMBER</b> <u>Senate Bill 255</u>
	<b>ANALYST</b> <u>Daly</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD		At least \$26.6	At least \$26.6	At least \$53.2	Recurring	General Fund
County Jails		At least \$38.4	At least \$38.4	At least \$76.8	Recurring	County General Fund

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

Relates to HB151, HB225, HB296, and SB55.

### Sources of Information

LFC Files

#### Agency Analysis Received From

Administrative Offices of the Courts (AOC)  
 Higher Education Department (HED)  
 Law Offices of the Public Defender (LOPD)  
 New Mexico Attorney General (NMAG)  
 New Mexico Corrections Department (NMCD)  
 University of New Mexico (UNM)

## SUMMARY

### Synopsis of Senate Bill 255

Senate Bill 255 creates the new crime of student athlete harassment. That new offense occurs when threats of violence or harm of a nature that would cause a reasonable person to suffer substantial emotional distress are directed to a student athlete related to the athlete’s performance in an intercollegiate sport with intent to place the athlete or the athlete’s family in reasonable fear for their safety. “Student athlete” includes an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in an intercollegiate sport.

A first offense is classified as a misdemeanor. A second or subsequent offense is a fourth degree felony. Additionally, a person convicted of student athlete harassment must participate in and

complete a program of professional counseling at the person’s own expense.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

## FISCAL IMPLICATIONS

This bill creates new crimes. 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 significant 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. NMCD reports the average cost to incarcerate a single inmate in FY22 was \$54.9 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 \$26.6 the LFC estimates a marginal cost (the cost per each additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. SB255 is anticipated to increase the number of incarcerated individuals and increase the time they spend incarcerated.

Without additional available data, this analysis assumes the new crime of student athlete harassment will result in at least two additional people being admitted to county jail for the student athlete harassment misdemeanor each year and at least one person being admitted to NMCD facilities for the second subsequent fourth degree felony student athlete harassment offense. This analysis estimates SB255 will increase annual incarceration costs by at least \$26.6 to the state, which costs remain constant over the next two years. The impact on counties is estimated to be \$38.4 thousand per year, which cost also remains constant over the next two years. However, as NMCD notes, because this new crime overlaps with other existing offenses such as harassment and stalking, there may not be a substantial increased burden on its operating costs.

## SIGNIFICANT ISSUES

*Crime of Student Athlete Harassment.* All responding agencies first point out that other existing laws criminalize the behavior targeted in SB255. As NMAG explains:

Section 30-3A-2 already penalizes the harassment of another person as a misdemeanor. Harassment is defined as “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.” NMSA 1978, Section 30-3A-2(A). SB 255 takes much of the language used in Section 30-3A-2 but includes some language analogous to NMSA 30-3-9.1(B), Assault upon a Sports Official, namely the requirement of threat of violence or harm is similar to that in Section 30-3-9.1(B)(2), “threat or menacing conduct that causes the sports official...to reasonably believe that he is in danger of receiving an immediate battery.”

LOPD cites, in addition to harassment, existing criminal statutes for use of a telephone to terrify, intimidate, threaten, harass, annoy or offend, bomb scares and shooting threats, and interference

with a sporting event. See Sections 30-20-12, 30-20-16, 30-20-18, NMSA 1978. Similarly, NMAG notes that in SB255:

The scope of potentially criminalized behavior is very broad. As SB255 does not explicitly require the concern for an immediate battery or require the threat to be at a sporting event, it would include harassment via social and other media. These actions, should they rise to the level of threat considered in SB255, would already be criminalized under the assault and harassment sections of the Criminal Code.

Additionally, NMAG suggests the language of SB255 could be more closely tailored to the type of behavior already criminalized against sports officials under Section 30-3-9.1(B)(2) NMSA 1978, which appears to be similar to the type of activity SB255 attempts to criminalize beyond what is already declared unlawful under the harassment statute.

The definition of “student athlete” also includes an individual who is currently or may in the future become eligible to engage in an intercollegiate sport. Read broadly, one who may in the future become eligible could encompass almost any student attending a school that participates in an intercollegiate sport. However, since one element of the new crime is that the harassment be related to a student athlete’s performance in an intercollegiate sport, there may be an internal inconsistency between the definition of student athlete in the bill and this particular element of the offense.

HED, however, believes SB255 provides clearer legal grounds for prosecuting harassment targeting student athletes.

*Penalty.* In addition to any sentence imposed for commission of this misdemeanor or any subsequent fourth degree felony, a person convicted of an offense under SB255 must participate in and complete a program of professional counseling. As the LOPD comments, this would require:

Courts to continue to supervise defendants for compliance, even when the sentences do not include probation. If probation is not separately imposed, it is unclear what sanctions courts could use for defendants who fail to comply with counseling. Under S255, unsatisfactory discharge would not be an option for failing to complete counseling because it is part of the punishment, not a condition of probation. The supervising court would likely have to resort to its contempt powers to force compliance.

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

This bill is related to HB225 and SB55, both of which criminalize hazing activities, which could include student athletes. Both of those bills also include training, reporting or educational requirements. In addition, this bill may overlap with HB151, governing affirmative consent policies at post-secondary educational institutions.

## **OTHER SUBSTANTIVE ISSUES**

UNM’s Police Department reports:

In May of 2023 it was reported that the National Collegiate Athletics Association (NCAA) was advocating for the introduction of new laws to prevent student-athletes from “harassment or coercive behavior” by sport bettors. Basically, the NCAA was engaging

with “lawmakers in states where sports betting has not been legalized to lobby for the inclusion of anti-harassment provisions into sports betting legislation”.

AOC also reports that studies show that between 40 to 50 percent of athletes have experienced some form of abuse. It appears, though, that the abuse they are reporting comes from coaches, team doctors and trainers, and teammates. It notes that the harassment SB 255 is contemplating may come from those outside a sports organization, including fans. Similarly, according to AOC, studies show that approximately 60 percent to 75 percent of youth athletes experience some form of emotional abuse, ranging from mild harassment to severe maltreatment from their coaches.

HED points out that SB255 only addresses the harassment of a collegiate athlete. It does not address harassment of a high school athlete, or other students in a higher education or even K-12 setting.

## **ALTERNATIVES**

LOPD suggests the conduct which is the subject of this bill might be better addressed through sanctions imposed under a state educational institution’s code of conduct. Or an aggrieved student athlete could bring an action in civil court for the tort of intentional or negligent infliction of emotional distress.

## **AMENDMENTS**

NMAG suggests the phrase “immediate family” be defined, pointing out there are a number of definitions with slight variations throughout state law. See, for instance, the definition in the statute outlawing threatening a judge at Section 30-3-19(C) NMSA 1978; that in the Missing Persons Information and Reporting Act at Section 29-15-2(F) NMSA 1978; that in statutes governing conflicts of interests for charter school board members at Section 22-8B-5.2(D) NMSA 1978; or that in the Procurement Code at Section 13-1-62 NMSA 1978.

MD/rl/ne