

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 287 amends Section 30-20-12 NMSA 1978, regarding the use of telephone to harass, by adding text and social media to the statute.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

There are two issues with HB 287:

1) for text messages, a text is the use of a telephone, so it is not evident that the statute could not be used as written to cover harassing text messages.

2) for social media, there are many ways to access social media aside from using one's phone, for social media applications can generally be opened on one's personal computer. Including social media in this statute as a separate crime does not track with telephone and text messaging, as social media encompasses more than use of a telephone.

There are also potential conflicts with existing law. Cyberbullying is defined in Section 2 of the Safe Schools for All Students Act (Section 22-35-1 NMSA 1978 *et seq.*), in reference to bullying. That Act states that "cyberbullying" means any bullying that takes place through electronic communication," and "electronic communication" is 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." Additionally, the Safe Schools for All Students Act defers to local school boards to develop policies to handle bullying, including cyberbullying.

In addition, New Mexico has an existing law penalizing harassment, at Section 30-3A-2, as follows:

30-3A-2. Harassment; penalties.

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.

Additionally, Section 30-37A-1, concerning unauthorized distribution of sensitive images, 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 HB 287.

It is difficult to determine what the effect of passing HB 287 would be on the state's prison population, for while the base crime is a misdemeanor, there is an escalation to a fourth degree felony. The average per day cost to incarcerate someone in the state's prison system is \$155.63/day; this average includes private and public facilities.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS