

LFC Requester:	Scott Sanchez
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 30 January 2025 *Check all that apply:*
Bill Number: SB 149 Original Correction
 Amendment Substitute

Sponsor: Maestas **Agency Name and Code** NM Sentencing Commission -- 354
Short Title: Crime of Cyberbullying **Number:** _____
Title: _____ **Person Writing** Douglas Carver
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB 149 creates the crime of cyberbullying in state law. Cyberbullying consists of a person communicating directly or indirectly, in writing or electronically, with a public school or private school student with reckless disregard that the communication may have the effect of: (1) placing the student in reasonable fear of physical harm; (2) causing a substantially detrimental effect on the student's physical or mental health; (3) substantially interfering with the student's academic performance; or (4) substantially interfering with the student's ability to participate in or benefit from the services, activities or privileges provided by a school.

The statute presents and escalation of penalties. Cyberbullying is a misdemeanor, unless some harm occurs. If the cyberbullying results in physical harm or great psychological harm is guilty of a fourth degree felony; if it results in great physical harm it is a third degree felony; if it results in death, it is a second degree felony.

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

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. The particulars of cyberbullying in SB 149 somewhat track those of bullying in that Act, though the Act has a more precise definition of bullying. That Act, however, 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.” It might be better for the language in the bill to better track the language in existing law.

Additionally, the Safe Schools for All Students Act defers to local school boards to develop policies to handle bullying, including cyberbullying. Outlined in Section 22-35-3(B), these policies include:

- (4) a list of consequences, including progressive discipline approaches that can result from an identified incident of bullying that are designed to:
 - (a) appropriately correct the bullying behavior;
 - (b) prevent another occurrence of bullying or retaliation;

- (c) protect the target of the bullying;
- (d) be flexible so that, in application, the consequences can be unique to the individual incident and varied in method and severity based on: 1) the nature of the incident; 2) the developmental age of the student who is bullying; and 3) any history of problem behavior from the student who is bullying; and
- (e) for cyberbullying incidents, use the least restrictive means necessary to address the interference with the student's ability to participate in or benefit from the services, activities or privileges provided by the school;

The criminalization of cyberbullying seems to be at cross purposes to the thrust of the Safe Schools for all Children Act. The approach taken in the Safe Schools for all Children Act is by far the most common across the nation.

It also would be unusual for New Mexico to have a crime against cyberbullying when we have not criminalized non-electronic bullying (despite repeated attempts to do so in past Legislative Sessions).

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, there are other statutes that seem to overlap with the area covered by SB 149. Section 30-20-12 NMSA 1978 covers the use of a telephone to terrify, intimidate, threaten, harass, annoy or offend, with the penalty of a misdemeanor, unless the person has previously been convicted of such offense or of an offense under the laws of another state or of the United States which would have been an offense under this section if committed in this state, in which case such person is guilty of a fourth degree felony. As using a telephone is communicating electronically, a conflict in our statutes would be present were SB 149 to pass.

More significantly, 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 SB 149.

Stopbullying.gov, a website managed by the U.S. Department of Health and Human Services, notes that the most common places where cyberbullying occurs are:

- Social Media, such as Facebook, Instagram, Snapchat, and Tik Tok;
- Text messaging and messaging apps on mobile or tablet devices;
- Instant messaging, direct messaging, and online chatting over the internet;
- Online forums, chat rooms, and message boards, such as Reddit;
- Email; and
- Online gaming communities.

It is difficult to determine what the effect of passing SB 149 would be on the state's prison population. 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