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## FISCAL IMPACT REPORT

**BILL NUMBER:** Senate Bill 86

**SHORT TITLE:** Harassment By Telephone

**SPONSOR:** Sen. Brantley/Rep. Reeb

**LAST UPDATE:** \_\_\_\_\_      **ORIGINAL DATE:** 02/03/2026      **ANALYST:** Sanchez

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

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	No fiscal impact	At least \$27.2	At least \$27.2	At least \$54.4	Recurring	General Fund
Cost to Counties	No fiscal impact	At least \$19.2	At least \$19.2	At least \$38.4	Recurring	General Fund
Total	No fiscal impact	At least \$46.4	At least \$46.4	At least \$92.8	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Agency or Agencies Providing Analysis

Administrative Office of the Courts

Administrative Office of the District Attorneys

Law Offices of the Public Defender

Office of the Attorney General

New Mexico Sentencing Commission

Corrections Department

Department of Public Safety

### SUMMARY

#### Synopsis of Senate Bill 86

Senate Bill 86 (SB86) seeks to amend Section 30-20-12 NMSA 1978 (the Criminal Code), which currently defines and prohibits the use of a telephone with intent to terrify, intimidate, threaten, harass, annoy, or offend. The bill proposes to substantially broaden the scope of this offense by replacing references to “telephone” with “electronic communication,” thereby adapting the statute to contemporary modes of digital interaction. Under the proposed language, it would be unlawful for any person, with intent to terrify, intimidate, threaten, harass, annoy, or offend, to contact another person via electronic communication and use obscene, lewd, or profane language; suggest any lewd, criminal, or lascivious act; or issue threats of injury to a person or property. In addition to expanding the scope of communication covered by the statute, the bill

preserves the substantive elements of the existing offense while incorporating new definitions to improve clarity and ensure consistent enforcement.

Specifically, the bill defines “electronic communication” to include any wire line, cable, wireless, or cellular telephone call; a social media post; a text message; or an instant message or electronic mail. It also introduces a statutory definition of “social media” as an internet-based platform or website that enables users to create accounts, generate content, and interact with content created by others. These definitions aim to ensure that the law encompasses a broad and evolving array of digital communication platforms beyond traditional telephony. The bill also adds a provision allowing prosecution of the offense in either the jurisdiction where the communication originated or where it was received, addressing potential venue complications in electronic harassment cases.

Penalties remain consistent with current law: the offense is classified as a petty misdemeanor for a first violation, but is elevated to a fourth-degree felony if the offender has a prior conviction under the same section or an equivalent statute from another jurisdiction.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026.

## FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison or jail and the length of time served that might result from this bill could have moderate fiscal impacts. SB86 amends Section 30-20-12 NMSA 1978 to expand the existing crime of using a telephone to harass, threaten, or offend to include a broad range of electronic communications, such as text messages, emails, and social media posts. While the bill does not create a new offense or alter the existing penalty structure, the broadened statutory scope may result in more individuals being charged and convicted under the revised statute. To the extent that these changes lead to more prosecutions and convictions, particularly for repeat offenses that elevate the crime to a fourth-degree felony, SB86 could increase the number of individuals incarcerated and the time they spend in custody.

The New Mexico Corrections Department (NMCD) reports that the average cost to incarcerate a single inmate in FY25 was approximately \$61.5 thousand annually. However, due to the fixed costs associated with prison operations, the Legislative Finance Committee (LFC) estimates a marginal cost of \$27.2 thousand per additional inmate per year across all state facilities. For county jails, which would bear the cost of housing individuals convicted of misdemeanor offenses, LFC estimates a marginal cost of \$19.2 thousand per inmate per year, based on figures from the Metropolitan Detention Center.

Although Section 30-20-12 is not among the most frequently prosecuted statutes—with just 20 lead-offense case dispositions reported in FY25 and 95 percent resulting in dismissal—any increase in successful prosecutions, particularly for felony-level offenses, may drive long-term incarceration costs. Because SB86 does not mandate longer sentences but may expand the statute's applicability to new forms of communication, increased caseloads may be concentrated at the misdemeanor level, with the associated costs borne primarily by counties. However, felony convictions under the bill's repeat-offender provisions would impose costs on state correctional facilities. These costs may not materialize immediately but could grow over time depending on

enforcement trends and judicial interpretation of the statute's new language.

## SIGNIFICANT ISSUES

SB86 proposes statutory changes that may intersect with existing provisions in New Mexico law, raising potential questions about consistency and statutory overlap. For example, the bill's expansion of prohibited conduct to include electronic communications—defined to cover text messages, emails, instant messages, and social media posts—may duplicate elements already addressed under other statutes, such as the harassment statute at Section 30-3A-2 NMSA 1978 and the unauthorized distribution of sensitive images statute at Section 30-37A-1 NMSA 1978. These existing laws already address conduct involving electronic communications with the intent to harass or intimidate. The relationship between SB86 and these statutes may warrant clarification to avoid confusion about charging decisions, prosecutorial discretion, or double jeopardy.

Additionally, while the bill defines both “electronic communication” and “social media” with specific statutory language, it does not define the threshold for when repeated or offensive communication rises to a criminal level, nor does it include carve-outs for constitutionally protected speech. Although the offense requires intent to harass, annoy, or threaten, its enforcement may raise questions about the boundary between criminal conduct and First Amendment protections, particularly in digital spaces where communication norms and expectations differ from those of traditional phone use. Absent clear limiting language, there is a potential for inconsistent application or overbroad interpretation.

Furthermore, the bill establishes venue flexibility by permitting prosecution in either the jurisdiction where the communication originated or the jurisdiction where it was received. While this provision may facilitate law enforcement efforts in digital harassment cases, it may also raise logistical and legal complexities, especially in cross-county or interstate contexts. These venue provisions could influence where to initiate proceedings and may affect defendants' access to legal representation and due process, depending on where charges are ultimately filed.

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