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FISCAL IMPACT REPORT

SPONSOR: Wilson DATE TYPED: 2/18/01 HB 265
 SHORT TITLE: Protection of Mails Act SB _____
 ANALYST: Rael

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		Minimal		Recurring	GF

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Attorney General's Office (AGO)
 Department of Public Safety (DPS)
 Administrative Office of the Courts (AOC)
 Public Defender (PD)

SUMMARY

Synopsis of Bill

The Protection of Mails Act seeks to criminalize any intentional and unlawful behavior relating to the delivery and receipt of mail including the protection of mail receptacles.

FISCAL IMPLICATIONS

The AOC reports that it will cost the judicial information system \$400 for statewide printing and dissemination of new materials. The judicial system may be impacted by additional caseloads to the District Attorneys and the Public Defenders who are involved, and the bill will impact the judiciary, court staff, and costs of jury trials, all of which cannot be quantified.

ADMINISTRATIVE IMPLICATIONS

There is potential administrative impact on the New Mexico Department of Public Safety from passage of the proposed legislation. Currently, the New Mexico Department of Public Safety houses in its Law Enforcement Program the New Mexico State Police Division, the Motor Transportation Division and the Special Investigations Division. It is possible that the entities in the Law Enforcement Program will be impacted by passage of the proposed legislation requiring their enforcement of this legislation.

OTHER SUBSTANTIVE ISSUES

The Public Defender believes that this law would be preempted by federal mail tampering statutes and cites United States v. Roth, 354 U.S. 476 (1957). Obstruction of mails as included in Section 3 is addressed federally by 18 U.S.C. Sections 1701, 1702, entitled "Obstruction of Mails" and "Obstruction of Correspondence." Destruction of a letter box or the mail as included in Section 4 of this bill is addressed federally by 18 U.S.C. Sections 1703, 1705, entitled "Delay or Destruction of Mail or Newspapers" and "Destruction of Letter Boxes or Mail." Mail theft or receipt of stolen mail is address federally by 18 U.S.C. Section 1708, entitled "Theft or Receipt of Stolen Mail Matter Generally" et seq. The Public Defender believes that this law would lead to appeals.

Roth examined federal and California obscenity statutes as they applied to a mail-order business. The defendant argued that the federal law preempted the California statute. However, The United States Supreme Court found that state regulatory power was only preempted state regulatory power where the state regulation involved a *direct physical interference* with federal activities under the postal power or some *direct immediate burden* on the performance of postal functions. Because the states and the federal government often have concurrent jurisdiction over criminal prosecutions, a federal court is unlikely to find that this proposed law is preempted by federal statutes.

FAR/njw