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FISCAL IMPACT REPORT

ORIGINAL DATE 01/24/13
 LAST UPDATED 03/12/13

SPONSOR Rue HB 40/aSPAC/aSJC/aSfI#1/
 SHORT TITLE No Electronic Communications in Jails SB aHJC

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal (See Narrative)	Minimal (See Narrative)	Minimal (See Narrative)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Corrections Department (NMCD)
 Attorney General's Office (AGO)
 Administrative Office of the Courts (AOC)
 New Mexico Sentencing Commission (NMSC)
 Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to Senate Bill 40 strikes the Senate Public Affairs Committee amendment number two adding the following language back into the bill:

"Electronic communication or recording device" does not include a device that is or will be used by prison or jail personnel in the regular course of business or that is otherwise authorized by the warden."

Synopsis of SFI #1 Amendment

The Senate Floor #1 amendment to Senate Bill 40 adds to the definition of electronic communication device by excluding hearing aids, voice amplifiers, or other devices that aid prisoners and visitors who have hearing and speech deficiencies.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 40 as amended by the Senate Public Affairs Committee (SPAC) strikes the first SPAC amendment requiring the electronic device be "brought onto the grounds of the institution for the purpose of transfer to a prisoner" and replaces the SPAC amendment by requiring that the electronic device be "brought onto the grounds of the institution for the purpose of transfer to or use by a prisoner". The other two amendments by the Senate Judiciary Committee require that the person has to "knowingly and voluntarily" be carrying contraband onto the grounds of a penitentiary or jail.

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 40 clarifies that only electronic devices brought into jails or prisons for the purpose of transfer to a prisoner are contraband. It removes the exception included in the definition of "electronic communication or recording device" proposed in the original version of Senate Bill 40 that states "electronic communication or recording device" does not include such devices that are used or will be used by prison or jail personnel in the regular course of doing business or otherwise authorized by the warden. The exception is no longer necessary since the amendment on page 2, line 25 clarifies that contraband only includes such devices brought into the jail or prison for the purpose of transferring them to the a prisoner.

Synopsis of Original Bill

Senate Bill 40, if enacted, will add "electronic communication or recording device" to the list of contraband not to be brought into a correctional facility. The bill defines "electronic communication or recording device" as excluding "a device that is or will be used by prison or jail personnel in the regular course of business or that is otherwise authorized by the warden". Additionally the bill cleans up grammar, updates one internal statutory citation to comply with modern compilation, and replaces the name "commission" with "department" to reflect the change in designation for the NMCD. With "electronic communication or recording device" added to the list of items considered contraband it will now be a third degree felony to bring an electronic device into a prison and a fourth degree felony to bring an electronic device into a jail.

FISCAL IMPLICATIONS

The AOC states that "new laws or amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase". Further fiscal impact analysis was provided by the NMCD:

The fiscal impact of the bill on the NMCD is minimal since the number of new convictions would be small. The NMCD anticipates most first time offenders will receive probation in lieu of incarceration, meaning that the costs associated with this expanded crime would not include incarceration costs but only the less expensive probation supervision costs. The average cost to incarcerate an inmate ranges from an average of \$30 thousand per year to \$36 thousand per year. The cost per offender in Probation and Parole for a standard supervision program is \$2.6 thousand per year.

PERFORMANCE IMPLICATIONS

According to the AOC, Senate Bill 40 may have an impact on the following performance measures for the district courts'

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

According to the NMCD if Senate Bill 40 is not passed cell phones will likely cause more disturbances in prisons.

ADMINISTRATIVE IMPLICATIONS

In the past year, 17 employees were caught with cell phones in the NMCD prisons without advanced permission, violating the NMCD policy. Additionally, 9 cell phones were confiscated from inmates. It is reasonably assumed that the inmates got the cell phones from either a visitor or a correctional employee.

ALTERNATIVES

Both the AOC and AGO recommend allowing individuals to surrender devices upon entry into a prison or jail. The AOC does not recommend making simple possession in prison or jail a crime.

EC/svb:blm