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FISCAL IMPACT REPORT

SPONSOR Ivey-Soto **ORIGINAL DATE** 2/9/2015 **LAST UPDATED** 2/24/2015 **HB** _____

SHORT TITLE No Prisoners with Some Communication Devices **SB** 314/aSPAC

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

This bill is similar to Section 30-22-14 NMSA 1978

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorney (AODA)

Public Defender’s Department (PDD)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 314 changes the crime of possession of an electronic communication device by a prisoner to a misdemeanor instead of a felony as originally proposed. The amendment would also allow for an exception for assistive communication devices for inmates with hearing or communication disabilities. The SPAC amendment also clarifies that “electronic communication device” means any device designed to “transmit and receive” signals and communications.

Synopsis of Original Bill

Senate Bill 314 adds “electronic communication device” to the definition in Section 30-22-16 NMSA 1978 of the crime of possession of a deadly weapon or explosive by a prisoner in lawful custody. The bill defines “electronic communication device” as “any type of instrument, device, machine or equipment that is designed to transmit and receive telephonic, electronic, digital, cellular, satellite or radio signals or communications or any part or component of such instrument, device, machine or equipment.” However, this definition excludes “a device that is

authorized by the warden to be in the possession of the prisoner.”

FISCAL IMPLICATIONS

This bill should not have an additional fiscal impact on the New Mexico Corrections department as it is substantially similar to Section 30-22-14 NMSA 1978 (Bringing contraband into places of imprisonment). The main differences between current statute and the proposed bill is that bringing contraband into a prison is currently a third degree felony while bringing contraband into a county or municipal jail is a fourth degree felony.

SIGNIFICANT ISSUES

Presumably the definition of electronic communication device encompasses only prisoners and does not appear to include any visitors or corrections staff who may have played a role in a prisoner being in possession. The criminal acts of those non-prisoner persons were addressed under the contraband provisions of Section 30-22-14 to include these devices and including added requirements of intentional concealment or use of the device in a prohibited manner or transfer to a prisoner.

With regard to that part of the SPAC amendment that clarifies that the electronic communication device is a device designed to “transmit and receive” signals or communication, SB 40 contains the original SB 314 definition defining an electronic communication device as one that is designed to “transmit or receive.” It is possible to imagine a device that is designed to solely transmit a signal or communication, or to solely receive a signal or communication. Under the SPAC amendment to SB 314, there is a question whether such a device would fit within the amended bill’s definition of “electronic communication device” as a device designed to “transmit and receive.”

TECHNICAL ISSUES

Differences between Section 30-22-14 NMSA 1978 and the proposed legislation may need to be reconciled.

EC/bb