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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 2/02/18  
**LAST UPDATED** 2/14/18     **HB** 224/aHCPAC

**SPONSOR** Baldonado

**SHORT TITLE** Inmates & Electronic Communication Devices     **SB** \_\_\_\_\_

**ANALYST** Sánchez

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

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate Increase see Fiscal Implications	Indeterminate Increase see Fiscal Implications	Indeterminate Increase see Fiscal Implications	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Administrative Office of the Courts (AOC)
- Public Defender Department (PDD)
- New Mexico Attorney General’s Office (NMAG)

### SUMMARY

#### Synopsis of HCPAC Amendment

House Consumer and Public Affairs Committee amendment to House Bill 224 adds “adaptive” when describing medical equipment that is not prohibited by the original bill.

#### Synopsis of Original Bill

The House Bill 224 proposes to amend Section 33-22-16 NMSA 1978 to make possession of electronic communication devices or recording devices by prisoners a fourth degree felony. The bill defines electronic communication or recording device consistent with Section 30-22-14 which prohibits knowingly bringing contraband in a prison facility. The prohibition does not extend to medical devices or equipment to aid prisoners or visitors.

## FISCAL IMPLICATIONS

Enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. According to the NMCD, the cost per day to house an inmate in state prison (public and private combined) in FY17 was an average of \$123 per day, or about \$44,779 per year. Increased length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions pushing the overall prison population higher. NMCD's general fund budget, not including supplemental appropriations, has grown by an average of two percent, and is 11 percent higher than FY14, closely mirroring the inmate population growth of 10 percent. The LFC reported in its FY19 budget recommendations that NMCD ended FY17 with a \$1 million budget surplus.

The cost to monitor offenders on a standard caseload is \$7.89 per offender per day, or \$2,879 per year. However, without an estimated average number of offenders being monitored whose offense is similar to the one in this bill, the cost to the NMCD Probation and Parole Division cannot be quantified.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

## SIGNIFICANT ISSUES

New Mexico's state prisons were more dangerous in FY16 than in the previous two years. There were 21 inmate-on-inmate assaults and 9 inmate-on-staff assaults resulting in serious injury, compared to an average 11 inmate-on-inmate assaults and 4 inmate-on-inmate assaults in FY14 and FY15. However, in FY17, inmate-on-staff and inmate-on-inmate assaults were down from the previous year. It is not clear what may have changed within the prison system to have caused the decrease.

Some of the violence in FY16 can be attributed to the department moving from a security and containment incarceration model to a rehabilitation model. The change allows for more congregate movement among inmates which can lead to violent clashes. The department has established the Predatory Behavior Management Program to help decrease violent occurrences and is working towards alternatives to incarceration for non-violent offenders to reduce overcrowding.

State prisons maintain high vacancy rates among correctional officers, 22 percent in December 2016, which could make enforcing this bill difficult. The department has experienced chronic vacancy rates among custody staff, resulting in high overtime costs and a dangerous prison environment. Unfilled vacancies lead to increased overtime costs because officers are forced to work additional hours to cover shift vacancies.

NMCD submits that deterring the use of cell phones by inmates in prison is important to protect prison and public safety. Inmates often use the cell phones to engage in drug trafficking and

other criminal and disruptive activity which endangers the safety and security of the prison and the community. Such activity includes, but is not limited to, using the cell phones to harass or intimidate victims and witnesses, conduct illegal business related to white collar crimes and gang related prison and street crimes, and to plan prison/jail escapes and disturbances. NMCD correctional staff have no way to monitor or record phone calls made from cell phones, so criminally deterring inmates from attempting to gain possession of cell phones in the first place is a reasonable and efficient way to try to prevent its inmates from improperly using cell phones for criminal activity. By criminalizing and deterring the possession of a cell phone or other communication device in prison, it is likely that these numbers will decrease and that staff and other inmates will be less likely to be injured or killed.

Government Computer News reports that correctional officials have used metal, radiofrequency and ferromagnetic detectors, body scanners and even dogs to sniff out the contraband devices on prisoners and vehicles. New Mexico has also purchased these detection devices for its prisons.

From the data (see table below) provided by NMCD, it appears that the number of cell phones found on inmates have been decreasing while the number brought in by visitors and staff have increased. Although there is no evidence that staff bringing cell phones into the prison had any intention to give them to inmates, it appears that the law making bringing cell phones into the prison a third degree felony is not working and that the equipment purchased to detect cell phones is not being used to its full potential.

**Number of Cell Phones Brought Into an New Mexico Prison by Year**

Year	Inmates	Staff	Visitors	Total
2014	8	6		14
2015	10	9		19
2016	6	7		13
2017	5	19	2	26

Source: NMCD

In 2010, Mississippi became the first state to implement a managed cellular access system at its state penitentiary at Parchman, where it was able to reduce both the number of intercepted transmissions and the number of confiscated phones inside the walls.

The theory of managed cellular access is simple: Install your own cellular base station, much like a femtocell that acts as a low-powered cell for homes and offices, and passes calls along to carriers. Authorized phones are whitelisted on the system and all others are blocked or redirected. Emergency calls to 911 are passed on to a public safety answering point without any approval needed. The challenge is to tune the system so that cell phones within the controlled facility connect to the managed cell rather than to a nearby public cell site, without allowing the signal to leak outside the facility and interfere with legitimate cell phone use.

The Federal Bureau of Prisons (BOP), meanwhile, has been experimenting with microjamming to prevent wireless communication. On January 17, 2018 working with the National Telecommunications and Information Administration (NTIA) and the FCC, the BOP tested the technology at the Federal Correctional Institution at Cumberland, Md., to see if it could prevent wireless communication by an inmate using a contraband device at the individual cell housing unit level without disrupting services in the surrounding area. As part of the January 17 test, NTIA evaluated the efficacy of the microjamming technology and whether it interfered with radio frequency communications. The BOP and NTIA will review the data and analysis results

from both BOP's and NTIA's testing and develop recommendations for strategic planning and possible acquisition.

### **PERFORMANCE IMPLICATIONS**

NMCD tracks the number of inmate-on-inmate and inmate-on-staff assaults.

### **ADMINISTRATIVE IMPLICATIONS**

NMCD states “each year, several inmates are found in possession of a cell phone in NMCD prisons.

### **OTHER SUBSTANTIVE ISSUES**

In 2010, the Federal government amended Section 18 USC 1791 to include “a phone or other device used by a user of commercial mobile services as defined in Section 332(d) of the Communication Act of 1934 in connection with such services” into the list of prohibited items an inmate in a federal prison can make, possess, obtain or attempt to obtain. Other states have also made possession of a cell phone by its inmates a crime, and there appears to be a nationwide concern about inmates getting hold of cell phones and other electronic devices while in prison.

Arizona, Florida, Nevada, New Jersey and Texas already have laws making it illegal for an inmate to be in possession of a cell phone. In 2017, Tennessee prosecutors sought to make cell phone possession by inmates a crime.

The Public Defender Department (PDD) offers that care should be taken in ensuring that all prisons, public and private, have similar rules in place so that devices prohibited or allowed in one prison are allowed in all prisons.

### **ALTERNATIVES**

Wait for the outcome of the BOP test in Maryland using jamming technology or consider the route Mississippi has taken. Both options will require funding.

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