

LFC Requester: \_\_\_\_\_

**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**      X   **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_

**Date** January 31, 2024

**Bill No:** S.B. 255-280

**Sponsor:** Mark Moores  
**Short Title:** Crime of Student Athlete Harassment

**Agency Name and Code Number:** 280 – Law Offices of the Public Defender

**Person Writing:** MJ Edge

**Phone:** 505-395-2890    **Email:** matthew.edge@lopnm.us

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: SB 255 would create a new offense of directing threats of a nature to cause substantial emotional distress to a student athlete related to their performance of an intercollegiate sport with intent to place the athlete or their family in reasonable fear for their safety. The offense would be a misdemeanor for a first violation, and a fourth-degree felony for a second or subsequent felony. The sentence would include mandatory completion of a court-ordered course of professional counseling.

#### **FISCAL IMPLICATIONS**

The impact on LOPD workloads from any change in law can be difficult to determine. The conduct the bill targets is already proscribed by various New Mexico statutes. *See, e.g.,* § 30-3A-2 NMSA (1997) (harassment); § 30-20-12 NMSA (use of telephone to terrify, intimidate, threaten, harass, annoy or offend); § 30-20-16 NMSA (2022) (bomb scares and shooting threats unlawful); § 30-20-18 NMSA (1986) (interference with athletic event). However, this conduct is also described more broadly than current law. *See Significant Issues*. Thus, some cases under this proposed law might have already been charged under existing statutes but Reviewer does not have any data to indicate how many times the specific conduct described occurs, and cannot predict how many cases would be handled by LOPD.

A case involving a violation of SB 255 could require more resources than a case under the existing statutes because of the mandatory counseling provision, which would require courts to continue to supervise defendants for compliance, even when the sentences do not include probation. If probation is not separately imposed, it is unclear what sanctions courts could use for defendants who fail to comply with counseling. Under SB 255, unsatisfactory discharge would not be an option for failing to complete counseling because it is part of the punishment, not a condition of probation. The supervising court would likely have to resort to its contempt powers to force compliance, requiring additional litigation and incarceration. These additional proceedings could create an additional burden on LOPD, DAs, and the courts. Additionally, the bill does not address the cost of counseling for indigent defendants.

Unless a high number of cases were charged, LOPD could likely absorb a modest number of cases under its existing budget.

#### **SIGNIFICANT ISSUES**

The conduct the bill targets is already proscribed by various New Mexico statutes. *See, e.g.,* §

30-3A-2 NMSA (1997) (harassment); § 30-20-12 NMSA (use of telephone to terrify, intimidate, threaten, harass, annoy or offend); § 30-20-16 NMSA (2022) (bomb scares and shooting threats unlawful); § 30-20-18 NMSA (1986) (interference with athletic event). Any conduct that would violate SB 255 would constitute a violation of one or more of these offenses. Conduct that would not violate any of these existing statutes would almost certainly not violate SB 255. However, crimes like assault require fear of an *immediate battery* or other cognizable harm beyond “emotional distress” more generally associated with civil tort liability.

As in other areas of criminal law, it is important to maintain a distinction between civil and criminal remedies for theoretical dangers. *See, e.g. State v. Chavez*, 2009-NMSC-035, ¶¶ 12-16, 26, 146 N.M. 434 (prosecutors must distinguish between civil and criminal laws addressing child endangerment so that criminal sanctions for child abuse fall on “the far end of [the] spectrum” and are “reserved for the most serious occurrences.”); *see also State v. Juan*, 2010-NMSC-041, ¶ 25, 148 N.M. 717 (noting that criminal punishment is reserved for the most extreme cases of child abuse).

The conduct addressed by SB 255 might be better addressed without the involvement of the criminal justice system. Many instances could be dealt with by imposing sanctions on offending parties under an educational institution’s code of conduct. *See Avalos v. The Bd. of Regents of New Mexico State University*, 2017-NMCA-082, 406 P.3d 551. Additionally, aggrieved student athletes could seek redress in civil court by bringing torts for intentional and negligent infliction of emotional distress. *See Baldonado v. El Paso Natural Gas Company*, 2008-NMSC-005, 143 N.M. 288 (noting the existence of these torts in New Mexico).

## **PERFORMANCE IMPLICATIONS**

As noted, enforcing the mandatory counseling provision could present practical and resource challenges.

## **ADMINISTRATIVE IMPLICATIONS**

None noted.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None noted.

## **TECHNICAL ISSUES**

Analyst is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill, analyst is unaware if it has been drawn pursuant to a special message of the Governor, and it was not vetoed following the previous regular session.

## **OTHER SUBSTANTIVE ISSUES**

None noted.

## **ALTERNATIVES**

Status quo. Harassing conduct continues to be prosecuted under existing statutes. In addition to

the criminal justice system, victims of harassment have resort under civil remedies.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo. Harassing conduct continues to be prosecuted under existing statutes. In addition to the criminal justice system, victims of harassment have resort to civil remedies.

### **AMENDMENTS**