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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/25/17

SPONSOR Rehm LAST UPDATED \_\_\_\_\_ HB 14

SHORT TITLE Time Limit for Crime Prosecution SB \_\_\_\_\_

ANALYST Sánchez

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>			Indeterminate Increase	Indeterminate Increase	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Bernalillo County Metropolitan Court (BCMC)  
 Administrative Office of the District Attorneys (AODA)  
 Public Defender Department (PDD)  
 Department of Public Safety (DPS)  
 Attorney General’s Office (AGO)  
 New Mexico Sentencing Commission (NMSC)  
 New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

House Bill 14 proposes to amend Section 30-1-8 NMSA 1978 regarding the statute of limitation for beginning a criminal prosecution. The time to prosecute a first degree felony trafficking controlled substance would be six years from the time the crime was committed and murder in the second degree would have no time limit to begin prosecution. It also includes the crime of conspiracy with the same time period as the crime conspired to be committed and the crime of tampering with evidence with the same time limits as the crime for which tampering with evidence was committed. HB 14 also adds first degree felony trafficking in controlled substances to the list of crimes with no time limitation.

The effective date of the bill is July 1, 2017

## FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC), the Administrative Office of the District Attorneys (AODA) and the Public Defender Department (PDD) state that HB14 may have minimal fiscal impact, however, an increase of these cases may require additional resources. Although it is difficult to accurately estimate the cost of increased trials because of this or similar legislation, it is important to note that the average salaries, benefits and other costs yearly, in thousands, for the district courts, district attorneys and public defenders are as follow:

- PDD: \$86.5
- District Attorneys: \$70.1
- District Courts: \$335.6

## SIGNIFICANT ISSUES

AOC points out that HB14 does not contain a requirement that the prosecution act diligently in bringing charges against a defendant for those crimes for which there is no statute of limitation (SOL). The general purpose of statutes of limitation is to make sure that convictions occur only upon evidence that has not deteriorated with time. Convictions based upon stale or now unavailable testimonial evidence may be challenged as in violation of the Confrontation Clause of the Sixth Amendment to the U.S. Constitution and Section 14 of the New Mexico Constitution.

The Attorney General’s Office (AGO) states that an issue may arise regarding the retroactivity of these new time periods if the act is passed and cites *State v. Morales*, 2010-NMSC-026, 148 N.M. 305, in which the Court considered the defendant’s claim that the new unlimited SOL on first-degree murder, which replaced the older SOL of 15 years for capital felonies and first-degree violent felonies, could not be applied to him because he committed his crime before the effective date of the new SOL. The Court disagreed, primarily because the original SOL had not yet run on his crime. The Court held that the statutory amendment applied to the defendant because prosecution for his crime was not time barred at the time of the effective date of the statutory amendment. Thus, “[b]ecause a defendant does not have a vested interest in an unexpired statute of limitation, a legislative amendment extending or abolishing the limitation period does not impair vested rights, require new obligations, impose new duties, or affix new disabilities to past transactions.” *Morales*, 2010- NMSC-026, ¶ 11.

However, the result will likely be different if the original SOL has already expired. The Court specifically distinguished *Kerby* on this ground in *Morales* – “In *Kerby*, the applicable statute of limitations had expired and, therefore, the defendant's right to be free from criminal prosecution had fully vested. Under these circumstances, the statute of limitations defense is a substantive right and subsequent statutory amendments cannot be “applied to revive [the] previously time-barred prosecution.” *Morales*, 2010-NMSC-026, ¶ 17.

## TECHNICAL ISSUES

The AGO points out that under § 30-22-5(B)(4), there is a provision defining the degree of tampering with evidence of “indeterminate” crimes when a degree cannot be assigned to the underlying crime. This may cause confusion when determining the SOL based on the “highest crime” if an indeterminate crime is the only crime on which the tampering charge is based.

## **House Bill 14 – Page 3**

The Department of Public Safety points out that an issue may arise regarding the retroactive application of these new time periods for those individuals who committed an applicable offense both prior to the bill having been enacted and prior to the statute of limitations having expired for their offense. This bill makes a first-degree felony trafficking controlled substance case subject to a six year statute of limitation; however, it is unclear at this time how this will impact other first-degree non-violent felony offenses that may be enacted.

### **OTHER SUBSTANTIVE ISSUES**

The New Mexico Sentencing Commission (NMSC) provided the “Statutes of Limitation in Federal Criminal Cases: An Overview by the Congressional Research Service, which outlines the statutes of limitation in each state. It is attached as Exhibit A.

The New Mexico Corrections Department (NMCD) suggests that the bill may have an impact on deterring criminal activity and the ultimate economic savings or benefits it could garner for the state.

AODA suggests that from a prosecution/trial standpoint, it makes sense that first degree murder and second degree murder be treated the same way for statute of limitations purposes, as it would be under HB 14.

ABS/jle



# Statutes of Limitation in Federal Criminal Cases: An Overview

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October 1, 2012

**Congressional Research Service**

7-5700

[www.crs.gov](http://www.crs.gov)

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## Appendix B. State Felony Statutes of Limitation

State	Felonies (Generally)	Various Exceptions (Not Exhaustive)
ALABAMA	3 years (Ala. Code §15-3-1)	Any time: (a) capital offense; (b) felony involving: - arson; forgery; drug trafficking; death or serious injury; use, attempted use, or threat to use violence; or counterfeiting; or (c) sex offense w/ victim <16 (Ala. Code §15-3-5)
ALASKA	5 years (Alaska Stat. §12.10.010)	(a) Any time: murder; kidnaping; class A, B, or unclassified felony sexual assault; felony sexual abuse of minor; various sexual offenses w/ a minor victim;  (b) 10 years: 1 <sup>st</sup> degree indecent exposure; manslaughter (Alaska Stat. §12.10.010)
ARIZONA	7 years (Ariz. Rev. Stat. Ann. §13-107)	Any time: attempted commission or commission of - homicide; class 2 felony sex offense or sexual exploitation of children; violent sexual assault; misuse of public money; felony falsification of public records (Ariz. Rev. Stat. Ann. §13-107)
ARKANSAS	(a) 6 years: Class Y or A crimes; (b) 3 years: Class B, C, D, or unclassified crimes (Ark. Code Ann. §5-1-109)	Any time: murder (Ark. Code Ann. §5-1-109)
CALIFORNIA	3 years (Cal. Penal Code §801 )	(a) Any time: crime punishable by death or life imprisonment; or embezzlement of public money  (b) 6 years: felony punishable by imprisonment for 8 years or more (Cal. Penal Code §§799, 800)
COLORADO	3 years (Colo. Rev. Stat. Ann. §16-5-401)	Any time: committing, attempting, conspiring to commit, or soliciting commit - murder, treason, kidnaping, forgery, or sex offenses against a child (Colo. Rev. Stat. Ann. §16-5-401)
CONNECTICUT	5 years (Conn. Gen. Stat. Ann. §54-193)	Any time: capital or class A felony; arson-murder; or 1 <sup>st</sup> degree escape (Conn. Gen. Stat. Ann. §54-193)
DELAWARE	5 years (Del. Code Ann. tit. 11 §205)	Any time: commit or attempt to commit murder, class A felony, or a sexual offense (Del. Code Ann. tit. 11 §205)

State	Felonies (Generally)	Various Exceptions (Not Exhaustive)
FLORIDA	3 years (Fla. Stat. Ann. §775.15)	(a) Any time: capital or life felony, felony resulting in death, or perjury in a capital case;  (b) 10 years: felony from use of destructive device resulting in injury;  (c) 4 years: 1 <sup>st</sup> degree felony, (Fla. Stat. Ann. §775.15)
GEORGIA	4 years (Ga. Code Ann. §17-3-1)	(a) Any time: murder;  (b) 15 years: rape;  (c) 7 years: other crimes punishable by death or life imprisonment; or felonies w/ victims <14 (Ga. Code Ann. §17-3-1)
HAWAII	3 years (Haw. Rev. Stat. §701-108)	(a) Any time: commit, attempt, conspire to commit, or solicit murder;  (b) 10 years: vehicular manslaughter;  (c) 6 years: class A felony (Haw. Rev. Stat. §701-108)
IDAHO	5 years (Idaho Code §19-402)	Any time: murder, voluntary manslaughter, rape, sexual abuse of a child, or terrorism (Idaho Code §19-401)
ILLINOIS	3 years (Ill. Comp. Stat. Ann. ch. 720 §5/3-5)	Any time: homicide, attempted murder, treason, arson, or forgery (Ill. Comp. Stat. Ann. ch.720 §5/3-5)
INDIANA	5 years (Ind. Code Ann. §35-41-4-2)	Any time: murder or a Class A felony (Ind. Code Ann. §35-41-4-2)
IOWA	3 years (Iowa Code Ann. §802.3)	(a) Any time: murder;  (b) 10 years: sexual abuse (Iowa Code Ann. §§802.1, 802.2, 802.3)
KANSAS	5 years (Kan. Stat. Ann. §21-5107)	Any time: murder, terrorism, use of weapons of mass destruction (Kan. Stat. Ann. §21-5107)
KENTUCKY	Any time (Ky. Rev. Stat. Ann. §500.050)	
LOUISIANA	4 years (La. Code Crim. P. art. 572)	(a) Any time: crime punishable by death or life imprisonment;  (b) 30 years: various sex crimes against minors;  (c) 6 years: felony punishable at hard labor) (La. Code Crim. P. arts. 571, 571.1, 572.)

State	Felonies (Generally)	Various Exceptions (Not Exhaustive)
MAINE	(a) 6 years: Class A, B, or C crime; (b) 3 years: Class C or D crime (Me. Rev. Stat. Ann. tit. 17-A §8)	Any time: murder, 1 <sup>st</sup> or 2d degree homicide, or various sexual offenses against a minor (Me. Rev. Stat. Ann. tit. 17-A §8)
MARYLAND	Any time subject to occasional individual statutory exceptions, e.g., computer crimes (3 years) (Md.Cts. & Jud. Proc. §5-601)	
MASSACHUSETTS	6 years (Mass. Gen. Laws Ann. ch. 277 §63)	(a) Any time: murder (b) 15 years: commit or conspire to commit rape or assault w/ intent to rape or murder; (c) 10 years: commit or conspire to commit robbery or assault w/ intent to rob (Mass. Gen. Laws Ann. ch. 277 §63)
MICHIGAN	6 years (Mich. Comp. Laws Ann. §767.24)	(a) Any time: murder, terrorism, or 1 <sup>st</sup> degree sexual conduct; (b) 10 years: kidnaping, extortion, conspiracy or assault w/ intent to murder (Mich. Comp. Laws Ann. §767.24)
MINNESOTA	3 years (Minn. Stat. Ann. §628.26)	Any time: crime resulting in death, kidnaping (Minn. Stat. Ann. §628.26)
MISSISSIPPI	2 years (Miss. Code Ann. §99-1-5)	Any time: murder, rape, kidnaping, arson, manslaughter, burglary, aggravated assault, forgery, counterfeiting, robbery, larceny, fraud, embezzlement, or various sexual offenses against minors (Miss. Code Ann. §99-1-5)
MISSOURI	3 years (Mo. Ann. Stat. §556.036)	Any time: murder, rape or a class A felony (Mo. Ann. Stat. §556.036)
MONTANA	5 years (Mont. Code Ann. §45-1-205)	(a) Any time: homicide (b) 10 years: sexual assault (Mont. Code Ann. §45-1-205)
NEBRASKA	3 years (Neb. Rev. Stat. §29-110)	Any time: treason, murder, arson, forgery or various sexual offenses (Neb. Rev. Stat. §29-110)
NEVADA	3 years (Nev. Rev. Stat. Ann. §171.085)	(a) Any time: murder, terrorism, rape; (b) 5 years: kidnaping, attempted murder; (c) 4 years: theft, arson, robbery, burglary, sexual assault, or forgery (Nev. Rev. Stat. Ann. §§171.080, 171.085)

State	Felonies (Generally)	Various Exceptions (Not Exhaustive)
NEW HAMPSHIRE	6 years (N.H. Rev. Stat. Ann. §625:8)	Any time: murder (N.H. Rev. Stat. Ann. §625:8)
NEW JERSEY	5 years (N.J. Stat. Ann. §2C:1-6)	(a) Any time: murder, manslaughter, sexual assault  (b) 10 years: environment offenses; (c) 7 years: bribery or certain other offenses involving misconduct in office (N.J. Stat. Ann. §2C:1-6)
NEW MEXICO	(a) 6 years: 2d degree felony; (b) 5 years: 3d or 4 <sup>th</sup> degree felony (N.M. Stat. Ann. §30-1-8)	Any time: capital or 1 <sup>st</sup> degree felony (N.M. Stat. Ann. §30-1-8)
NEW YORK	5 years (N.Y. Crim. P. Law §30.10)	Any time: class A felony or 1 <sup>st</sup> degree rape, sexual criminal act, or sexual conduct against a child (N.Y. Crim. P. Law §30.10)
NORTH CAROLINA	Any time (no statute)	
NORTH DAKOTA	3 years (N.D. Cent. Code §29-04-02)	Any time: murder (N.D. Cent. Code §29-04-01)
OHIO	6 years (Ohio Rev. Code Ann. §2901.13)	(a) Any time: murder;  (b) 20 years: commit, attempt, or aid and abet kidnaping, robbery, riot, manslaughter, sexual assault, burglary, or arson (Ohio Rev. Code Ann. §2901.13)
OKLAHOMA	3 years (Okla. Stat. Ann. tit. 22 §152)	(a) Any time: murder;  (b) 12 years: rape, sodomy, or certain other sexual offenses (Okla. Stat. Ann. tit. 22 §§151, 152)
OREGON	3 years (Ore. Rev. Stat. §131.125)	(a) Any time: commit, attempt, conspire to commit, or solicit murder;  (b) variable: various sexual offenses against minors;  (c) 6 years: arson (Ore. Rev. Stat. §131.125)
PENNSYLVANIA	2 years (Pa. Stat. Ann. tit. 42 §5552)	(a) Any time: commit, conspire to commit, or solicit murder; manslaughter; or aggravate assault of a police officer;  (b) 12 years: major sex offenses;  (c) 5 years: major offenses (Pa. Stat. Ann. tit. 42 §§5551, 5552)



State	Felonies (Generally)	Various Exceptions (Not Exhaustive)
RHODE ISLAND	3 years (R.I. Gen. Laws §12-12-17)	(a) Any time: treason, homicide, arson, burglary, counterfeiting, forgery, robbery, rape, assault, drug trafficking, or any other felony punishable by life imprisonment;  (b) 10 years: larceny, bribery, racketeering, perjury, or extortion (R.I. Gen. Laws §12-12-17)
SOUTH CAROLINA	Any time (no statute)	
SOUTH DAKOTA	7 years (S.D. Cod. Laws §23A-42-2)	Any time: Class A, B, or C felonies (S.D. Cod. Laws §23A-42-2)
TENNESSEE	(a) 15 years: Class A felony; (b) 8 years: Class B felony; (c) 4 years: Class C or D felony; (d) 2 years: Class E felony (Tenn. Code Ann. §40-2-101)	Any time: crime punishable by death or life imprisonment (Tenn. Code Ann. §40-2-101)
TEXAS	3 years (Tex. Code Crim. P. art. 12.01)	(a) Any time: murder, manslaughter, rape, certain human trafficking offenses, or various sexual offenses against minors;  (b) 10 years: forgery, embezzlement, arson (Tex. Code Crim. P. art. 12.01)
UTAH	4 years (Utah Code Ann. §76-1-302)	Any time: capital felony, murder, manslaughter, or kidnaping (Utah Code Ann. §76-1-301)
VERMONT	3 years (Vt. Stat. Ann. tit.13 §4501)	(a) Any time: rape, murder, arson(causing death), or kidnaping;  (b) 11 years: arson;  (c) 6 years: certain sexual offenses, grand larceny, robbery, burglary, embezzlement, forgery, bribery, false claims, fraud, or felony tax offenses (Vt. Stat. Ann. tit.13 §4501)
VIRGINIA	Any time (Va. Code §19.2-8)	
WASHINGTON	3 years (Wash. Rev. Code Ann. §9A.04.080)	(a) Any time: homicide;  (b) 10 years: arson, rape, or certain offenses involving misconduct in office;  (c) until the victim is 28 years of age: certain sexual offenses against minors (Wash. Rev. Code Ann. §9A.04.080)
WEST VIRGINIA	Any time (no statute)	

<b>State</b>	<b>Felonies (Generally)</b>	<b>Various Exceptions (Not Exhaustive)</b>
WISCONSIN	6 years (Wis. Stat. Ann. §939.74)	(a) Any time: 1 <sup>st</sup> degree murder, felony murder  (b) various times: certain sex offenses committed against a child (Wis. Stat. Ann. §939.74)
WYOMING	Any time (no statute)	

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