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FISCAL IMPACT REPORT

SPONSOR Steinborn **ORIGINAL DATE** 1/27/2020
LAST UPDATED 2/5/2020 **HB** _____

SHORT TITLE Crimes Against Children Time Limits **SB** 97/aSPAC

ANALYST Rabin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See fiscal implications				Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 36

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Public Defender Department (PDD)
 New Mexico Sentencing Commission (NMSC)
 Children, Youth and Families Department (CYFD)
 New Mexico Corrections Department (NMCD)
 Attorney General’s Office (NMAG)

No Response Received

Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs amendment to Senate Bill 97 adds language to Section 2 of the bill specifying the tolling provisions of Section 30-1-9.1 NMSA 1978 continue to apply to the crime of criminal sexual penetration under Section 30-9-11(G)(1) NMSA 1978. This amendment resolves the issue raised in the analysis of the original bill (under Synopsis, Significant Issues, and “Technical Issues”) in which the crime of criminal sexual penetration as defined under Section 30-9-11(G)(1) was both exempted from the revised statute of limitations established in Section 1 of the bill and the existing tolling provisions in current law, resulting in this crime being governed by the same five-year statute of limitations as all other fourth degree felonies, rather than a statute of limitations specifically aimed at crimes against minors. As a result of this

amendment, the statute of limitations governing for crimes defined under Section 30-9-11(G)(1) remains unchanged from status quo.

Synopsis of Original Bill

Senate Bill 97 changes the statutes of limitations for most criminal sexual penetration offenses against children (victims under age 18). Statutes of limitation establish deadlines for prosecution of offenses; prosecutions not commenced by the deadline are barred.

Section 1 of SB97 provides that prosecutions for criminal sexual penetration (30-9-11 NMSA 1978) for offenses against minors may commence at any time after the occurrence of the crime and until the alleged victim reaches age 30, after which prosecutions are barred. The bill provides that this revised statute of limitations does not apply to violent first degree felonies (for which there is no statute of limitations and prosecution may commence at any time after the occurrence of the crime) or to fourth degree criminal sexual penetration of a child between the ages of 13 and 16 by a perpetrator who is at least 18 years old, is at least four years older than the child, and is not the child's spouse, as defined in Section 30-9-11(G)(1) NMSA 1978.

Section 2 of SB97 also removes Section 30-9-11 NMSA 1978 from the tolling provisions of Section 30-1-9.1 NMSA 1978, which provide that the statute of limitations for crimes committed against children do not commence until the victim reaches age 18 or the crime is reported to law enforcement, whichever occurs first. This is consistent with the broadening of the statute of limitations for most crimes of criminal sexual penetration of a minor to age 30 in Section 1; however, because criminal sexual penetration as defined in Section 30-9-11(G)(1) NMSA 1978 is specifically exempted from the new statute of limitations established by Section 1, removing the entirety of Section 30-9-11 from the tolling provisions of Section 30-1-9.1 results in these crimes being governed by the same five-year statute of limitations as all other fourth degree felonies (Section 30-1-8 (B) NMSA 1978), rather than a statute of limitations specifically aimed at crimes against minors (see Significant Issues and Technical Issues, below).

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

Extending the statutes of limitation to the specified crimes may increase court, prosecutor and defense caseloads, the demand for crimes against children investigators, victim advocates, and administrative support to prosecute these cases. Additionally, the Administrative Office of the Courts (AOC) notes there will be a minimal administrative cost for updating, distributing, and documenting the statutory changes statewide.

The Public Defender Department (PDD) states that the proposed change significantly increases the potential for criminal charges that would have otherwise failed to be viable due to the expiration of statutory time limits, but it is not possible for the department to predict how many new cases would be charged. PDD also notes that because any charges resulting from this bill would be older than cases charged within the existing statutes of limitations, these cases are more likely to have evidence which has gone "cold" and are less likely to be resolved via plea agreements. As a result, more cases would likely go to trial, requiring more attorney work time and more court resources. The department also notes that many such cases would need to be

handled by higher-paid, more experienced attorneys for both the prosecution and the defense due to the complexity of these types of charges; these attorneys would likely have annual salaries ranging from about \$65 thousand to \$80 thousand. If the changes proposed by SB97 do increase higher-penalty trials, PDD anticipates both it and district attorneys' offices would need to higher more attorneys with greater experience and would require more investigators and experts.

The Corrections Department (NMCD) reports that the fiscal impact of this bill on the department is unknown, but the bill may increase the number of felony convictions due to the lengthened statute of limitations for these crimes. Depending on the classification and number of incarcerated individuals as a result of this bill, the bill will have largely varying costs on NMCD, but the department reports the average annual cost to incarcerate a single inmate is \$40,419 (including male and female inmates at both public and private facilities). Additionally, NMCD reports the average annual cost per client in Probation and Parole is \$3,566 (including community corrections programs, standard supervision, and intensive supervision programs for male and female offenders). In its analysis of a similar bill during the 2019 legislative session, NMCD noted that offenders placed on probation for the crimes covered by this bill seem likely to be immediately or eventually placed on standard supervision; at the time of that analysis, the annual cost per client for standard supervision was \$2,882.

The Sentencing Commission (NMSC) states that 468 felony sex abuse cases (across all victim ages) were filed in New Mexico in FY18, but it has no way to estimate how many more cases would be filed under the proposed changes in SB97. According to NMSC, a recent federally-funded report found less than 20 percent of reported child sexual abuse cases were prosecuted. Because cases filed under the new provisions of SB97 are likely to be reported significantly after the time of the alleged crime, NMSC anticipates few of these reports would result in prosecution.

SIGNIFICANT ISSUES

Section 1 of SB97 replaces the tiered statutes of limitation set out in 30-1-8 NMSA 1978 with a single deadline for prosecuting criminal sexual penetration of a minor. Current law establishes different statutes of limitation depending on the factual circumstances of the victim, the offender, and the nature of the offense. If enacted, the bill would permit prosecution of these specified crimes, regardless of the victim's or offender's circumstances or specific nature of the offense, at any time after commission of the alleged offense until the alleged victim turns 30.

Under current statute, the statutes of limitations for crimes of criminal sexual penetration of a child begin when the child reaches the age of 18 or when the crime is reported to law enforcement, whichever comes first, rather than beginning at the time the crime occurred, as most statutes of limitations do. This allows prosecution to begin up to the time the victim turns 23 (for third- and fourth-degree felonies) or 24 (for second-degree felonies) (there is no statute of limitations for violent first-degree felonies). SB97 would extend the maximum time to commence prosecution for almost all criminal sexual penetration crimes committed against minors until the victim turns 30.

Additionally, SB97 does not consider the time at which disclosure to law enforcement is made. Under current law, the time to commence prosecution for a crime committed against and reported by a child would begin at the time of that report, regardless of the age of the child when the report is made. Under SB97, a crime of criminal sexual penetration of a minor reported at any time after its occurrence may be prosecuted until the victim turns 30. The Children, Youth

and Families Department anticipates this would allow for more prosecutions of child sexual predators. The Attorney General's Office (NMAG) states this may better enable prosecutors to bring charges in cases of delayed disclosures.

SB97 does not contain a requirement that the prosecution act diligently in bringing charges against a defendant for those crimes for the crimes of sexual penetration of a minor. The general purpose of statutes of limitation is to make sure that convictions are based on evidence (including testimonial and scientific evidence) that has not deteriorated with time. Loss of evidence creates difficulties for the effective prosecution and defense of criminal cases. Convictions based on 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.

Significant Issues Resolved by SPAC Amendment:

As noted in the Synopsis, above, removing the entirety of Section 30-9-11 NMSA 1978 from the tolling provisions of Section 30-1-9.1 NMSA 1978 results in these crimes being governed by the same statute of limitations as all other fourth degree felonies (Section 30-1-8 (B) NMSA 1978). As a result, the crime of fourth degree criminal sexual penetration of a child between the ages of 13 and 16 by a perpetrator who is at least 18 years old, is at least four years older than the child, and is not the child's spouse, will have the same five-year statute of limitations as fourth-degree felonies committed against adults. (Fourth degree criminal sexual penetration excludes all criminal sexual penetration perpetrated through the use of force or coercion).

Under current law, the statute of limitations for this crime committed against a 13-year-old could be up to 10 years (five years until the child turns 18, if the crime is not reported before then, combined with a five-year statute of limitations for fourth degree felonies) or up to seven years if committed against a 16-year-old (two years until the child turns 18 combined with the standard five-year statute of limitations). Under SB97, this time would be reduced, and the statute of limitations for this crime committed against either victim would be five years. It does not appear that SB97 intends to lower the statute of limitations for this crime, and Section 2 of the bill could be easily amended to maintain the current statute of limitations (see Technical Issues, below).

PERFORMANCE IMPLICATIONS

SB97 may impact the performance of law enforcement, prosecutors, public defenders, courts, and corrections, as workloads may increase.

RELATIONSHIP

House Bill 36 proposes changes to statutes of limitations for second-degree murder and first-degree drug trafficking.

TECHNICAL ISSUES

NMAG notes that the term "child" is not defined in SB97, in Section 30-9-11 NMSA 1978, or in relevant definitions in Section 30-9-10 NMSA 1978, which may lead to issues in the interpretation of Subsection J of Section 1 of this bill. NMAG raises concerns that ambiguity in the definition of child may cause issues in prosecution. This problem could be resolved by

clarifying the age of the child in Subsection J (for example, after the word “child” on page 2, line 24, insert “under the age of eighteen”) or by adding a definition of child to Section 30-9-10.

Technical Issues Resolved by SPAC Amendment:

As noted in the Synopsis and Significant Issues sections, above, the current language of SB97 removes crimes under Section 30-9-11(G)(1) NMSA 1978 from the current tolling provisions that extend the statute of limitations for some crimes against minors, resulting in these crimes having the same statute of limitations as fourth-degree felonies committed against adults. If this is not the intention of the bill, the language of Section 2 on lines 9-14 of page 3 can be easily amended to ensure the existing statute of limitations for these types of crimes continues to apply as follows:

The applicable time period for commencing prosecution pursuant to Section 30-1-8 NMSA 1978 shall not commence to run for an alleged violation of Section 30-6-1 ~~30-9-11~~ or 30-9-13 NMSA 1978 or of Paragraph (1) of Subsection G of Section 30-9-11 NMSA 1978 until the victim attains the age of eighteen or the violation is reported to a law enforcement agency, whichever occurs first.

OTHER SUBSTANTIVE ISSUES

AOC has identified the following other substantive issues:

Statutes of limitation in criminal law require prosecutions be commenced within a specified number of years. Their primary purposes are: 1) to ensure that evidence, especially oral testimony based on memory, of the alleged crime is as fresh and reliable as possible; and 2) to provide a measure of assurance to law enforcement, the courts, and the parties to the alleged crime that prosecutions will be commenced on the basis of evidence that a finder of fact (particularly a jury) can credit as reliable because reasonably contemporaneous.

Extending statutes of limitation for sexual crimes against minors signals that the Legislature considers the specified types of crimes so heinous that they should be able to be prosecuted after an alleged victim reaches a maturity level sufficient to contact law enforcement. Extending statutes of limitations also signals the Legislature’s conclusion that certain crimes are so difficult to prosecute soon after the alleged actions that a longer time should be permitted for victims to seek redress from the courts.

AOC also notes that not extending the statute of limitations for crimes committed under Section 30-9-11(G)(1) NMSA 1978 (fourth degree criminal sexual penetration of a child between the ages of 13 and 16 by a perpetrator who is at least 18 years old, is at least four years older than the child, and is not the child’s spouse) signals the Legislature’s judgment that this distinctive offense poses sufficient problems of investigation and proof to require prosecutions be commenced reasonably soon after the alleged act.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

PDD notes that New Mexico’s current tolling provision is consistent with many other states. The

age at which the alleged victim is no longer considered a minor for purposes of tolling provisions varies from state to state but generally ranges from 15 to 21.

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