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FISCAL IMPACT REPORT

ORIGINAL DATE 01/24/12

SPONSOR Payne LAST UPDATED _____ HB _____

SHORT TITLE No Time Limit to Prosecute Certain Crimes SB 37

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY12 | FY13 | FY14 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|-----------------------|-----------------------|----------------------|------------------------------|------------------|
| Total | | \$33.9 - \$339.0 * | \$33.9 - \$339.0 * | | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

*** Amount is dependent on number of defendants convicted. The range assumes from one to 10 additional defendants convicted and sentenced to the Corrections Department.**

Relates to House Bill 31

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 New Mexico Corrections Department (NMCD)
 Public Defender Department (PDD)
 Attorney General's Office (AGO)
 New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

Senate Bill 37 amends Section 30-1-8 NMSA 1978 to exclude the time limit to prosecute murder in the first or second degree, voluntary or involuntary manslaughter, assisting suicide, homicide by vehicle and a first degree felony effective July 1, 2012.

FISCAL IMPLICATIONS

The Corrections Department reports a minimal to moderate increase to the inmate population and probation and parole caseloads. The department is unable to provide an estimate since it is unknown to it how many convictions would result each fiscal year. The average daily cost to the department to house and care for an inmate is \$92.89 or \$33.9 thousand per year. Additionally, the daily cost to supervise parolees or probationers is \$8.27.

The Public Defender Department cites Efficient Time Bars: A New Rationale for the Existence for Statutes of Limitations in Criminal Law, 31 J. Legal Stud. 99 (2002) in which Professor Listokin indicates “the cost of choosing an overly long statute of limitation are smaller than choosing a statute of limitation that is too short.” The PDD does not report any fiscal impact to it from changing the existing law.

SIGNIFICANT ISSUES

Every conviction and sentence to prison impacts the NMCD’s operating budget since it is responsible for care and support of inmates. If more women than men are convicted and sentenced under the proposed requirements, the department will have to increase the number of beds set aside at the men’s facility or may have to send them out of state. Additionally, a large spike in convictions and sentencing of males will push the population to rated capacity.

The Attorney General’s Office states that “[C]riminal statutes of limitations are to be liberally construed in favor of a defendant because their purpose ‘is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions.’” State v. Kerby, 2007 NMSC 14, at ¶13 (citing Toussie v. United States, 397 U.S. 112, at 114 (1970)). However, this does not bar the use of longer statutes of limitation or the elimination of statutes of limitation for certain crimes so long as the legislature clearly intends such an outcome. Therefore, the fact that this bill generally seeks to narrowly tailor its effect to specific crimes would likely shield that portion from negative judicial review. In contrast, such scrutiny may have an impact on the bill’s removal of the statute of limitations for all first degree felony offenses. For example, Trafficking a Controlled Substance can be charged as a first degree felony offense. The rationale for imposing no statute of limitations for a homicide offense would likely be much different for doing the same for a narcotics offense.

There is no language in SB37 tying an expanded or removed statute of limitations with any metric of diligence on the part of law enforcement in investigating crimes and concluding such investigations. Similarly, there is no language requiring diligence on the part of the prosecution in formally laying charges. Therefore, it is possible that cases may be indicted long after a law enforcement agency has concluded its investigation. This could give rise to allegations of pre-indictment delay violations. However, an aggrieved Defendant will still have to demonstrate actual prejudice on his part and tactical delay on the part of the prosecution.

Similarly, a Defendant indicted under an expanded or removed statute of limitations will likely complain of a speedy trial violation. However, the prevailing body of case law on speedy trial uses the initiation of the case (by indictment, information, etc.) as the start point for calculation of time, rather than the commission of the underlying offense.

PERFORMANCE IMPLICATIONS

The NMCD performance measures relating to assaults or timely release could be negatively impacted.

The Administrative Office of the Courts reports a potential impact to the district court performance measure “case disposed of as a percent of cases filed”.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HB31.

Somewhat duplicates SB37, and is a companion to HB44 which expands the period of incarceration for second degree murder to 25 years.

ALTERNATIVES

According to the AGO, an alternative would be to create more conditions that would equal the current version of the statute of limitations and provide a distinction between violent and non-violent first degree felony offenses and impose a statute of limitation of at least six years. Additionally, clear language could be included making the bill's applicability retroactive to cover any criminal act enumerated in the bill that is complete in its commission but not yet detected.

ABS/svb:amm