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FISCAL IMPACT REPORT

ORIGINAL DATE 01/24/13
LAST UPDATED 02/06/13 **HB** 117/aHJC

SPONSOR Rehm

SHORT TITLE Statute of Limitations For Certain Crimes **SB** _____

ANALYST Trowbridge

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimum to Moderate*	Minimum to Moderate*	Minimum to Moderate*	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Corrections Department (NMCD)
 Administrative Office of the Courts (AOC)
 Administrative Office of District Attorneys (AODA)
 Department of Public Safety (DPS)
 Public Defender Department (PDD)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 117 removes the brackets and line through “violent” on page 3, line 4.

Synopsis of Original Bill

House Bill 117 (HB 117) amends Section 30-1-8 NMSA 1978 to clarify the statute of limitations section of the Criminal Code to indicate that there is no limitations period for murder in the second degree or for any first degree felony (regardless of whether the felony is designated as “violent” or not). The New Mexico Corrections Department (NMCD) notes that murder in the first degree (the state’s only capitol felony) already has no limitations period, and this bill does not change that. The bill would also amend the limitations period for the crimes of conspiracy and tampering with evidence to make them match the degree of the underlying felony (first, second, etc.) related to the conspiracy or evidence tampering. According to the Association of

District Attorneys (AODA), this will have the effect of extending the current time limits for commencing prosecutions of conspiracy and tampering. Currently, the crime of conspiracy is a second degree felony when the crime conspired to be committed is a capital or first degree felony, is a third degree felony when the highest crime conspired to be committed is a second degree felony, and is a fourth degree felony when the conspired to crime is a third degree felony. Presently, the crime of tampering with evidence is generally a third degree felony when the tampering occurred in a capital, first or second degree felony; and is a fourth degree felony when the tampered with crime is a third or fourth degree felony. The statute of limitations for second, third and fourth degree felonies are respectively six, five and five years.

The AODA also notes that Section 30-1-8 also sets special time limits for some specific crimes, such as identity theft.

According to the Public Defender Department (PDD) the ultimate effect of the bill is to: (1) remove the limitations period for murder in the second degree, and to make it clear that all first degree felonies (not just “violent” ones) have no limitations period; and (2) to increase the limitation periods for the crimes of conspiracy and tampering with evidence from three years to either five or six years. The effective date of the change to the law is July 1, 2013.

FISCAL IMPLICATIONS

HB 117 does not contain an appropriation. NMCD states that the fiscal impact of HB 117 on NMCD is unknown. The bill generally increases the limitations period for the crimes of tampering with evidence and conspiracy, and removes the limitations period for second degree murder and for those first degree felonies which previously were not considered to be violent. However, it is difficult to know if this will result in more convictions for the covered crimes.

The classification of an inmate determines his or her custody level, and the incarceration cost varies based on the custody level and particular facility. The cost to incarcerate a male inmate ranges from an average of \$49,347 per year in a state owned/operated prison to \$31,239 per year in a contract/private prison (where primarily only level III or medium custody inmates are housed). The cost to house a female inmate at a privately owned/operated facility is \$33,258 per year. Because the capacities of medium and higher custody state owned prisons are essentially at capacity, any net increase in inmate population will likely have to be housed at a contract/private facility.

The cost per client in Probation and Parole for a standard supervision program is \$2,226.50 per year. The cost per client in Intensive Supervision programs is \$4,310.65 per year. The cost per client in Community Corrections is \$3,489.40 per year. The cost per client per year for female residential Community Corrections programs is \$33,280.70 and for males is \$21,728.45.

The Administrative Office of the Courts (AOC) indicates there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and additional commenced prosecutions for specific crimes that would not be brought if barred by existing time limitations. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The Administrative Office of District Attorneys (AODA) expects HB 117 will allow more prosecutions, with additional costs associated with prosecution and incarceration resulting from those prosecutions. The Public Defender Department notes that “cold case” prosecutions are exceedingly rare.

SIGNIFICANT ISSUES

According to the Public Defender Department (PDD) the ultimate effect of the bill is to: (1) remove the limitations period for murder in the second degree, and to make it clear that all first degree felonies (not just “violent” ones) have no limitations period; and (2) to increase the limitation periods for the crimes of conspiracy and tampering with evidence from three years to either five or six years.

NMCD maintains that if the bill is approved and ultimately results in substantially more convictions, it would increase NMCD’s prison population and probation/parole caseloads, and would impede the performance of prison-related and supervision-relates services at current levels of staff by requiring staff to do more work with more offenders.

PDD states that while it appears that most states have statutes of limitations providing that second degree murders must be charged in a certain period of years, this is not universally the case. Additionally, PDD indicates that while statutes of limitation for most crimes have been a feature of American criminal law since the early days of the Republic, their application has been far from universal (England appears to have no general statute of limitation to criminal actions) and the time limits for prosecution of given crimes vary widely across the various states. However, the passage of time almost inevitably results in the loss of evidence available for both the prosecution and the defense of criminal charges. The loss of physical evidence and the fading of memories can make it difficult to mount legitimate defenses to allegations which arise many years after an alleged event. Statutes of limitations are designed to limit the ability of the state to reach back in time and charge suspects for past alleged deeds, and to provide a sense of certainty for all parties.

PERFORMANCE IMPLICATIONS

NMCD expects the performance target for caseload per intensive supervision officer will remain the same as the maximum caseloads of these officers is set and controlled by statute. However, the target for standard supervision officers will not be met because they will have to potentially carry higher caseloads to handle any caseload increases caused by this bill.

The Administrative Office of the Courts (AOC) notes that the courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

The Administrative Office of District Attorneys (AODA) notes that putting second degree murder in the same category as first degree murder for purposes of the statute of limitations recognizes the seriousness of the crime of murder. Also, murder in the second degree is a lesser included offense of capital murder, differing in intent. From a prosecution/trial standpoint, it makes sense that the two crimes would have the same statute of limitations. AODA adds that

tying the statute of limitations for “conspiracy” and “tampering” crimes to the underlying crime also makes sense from a prosecution/trial standpoint.

RELATIONSHIP

House Bill 126 relates to HB 117.

TECHNICAL ISSUES

AODA states that when Section 30-1-8 sets a special time limit for a specific crime, it identifies that crime by its statutory citation. HB 117 contains special provisions for “conspiracy” and “tampering with evidence,” but does not give a statutory citation for those crimes. Unless HB 117’s special provisions are intended to apply to all “conspiracy” and “tampering” crimes, this could cause confusion. For example, there is the general statute for conspiracy to commit a felony (NMSA 1978, Section 30-28-2), and there are other specific “conspiracy” crimes, such as conspiracy to violate the Election Code (see NMSA 1978, Section 1-20-15). If HB 117’s special provisions are intended to cover all “conspiracy” and “tampering” crimes, there may be some argument over whether a particular crime falls within the category of a “conspiracy” crime or a “tampering” crime.

TT/bm:svb