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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/24/13

SPONSOR Hall LAST UPDATED \_\_\_\_\_ HB 126

SHORT TITLE Statute of Limitations for Certain Crimes SB \_\_\_\_\_

ANALYST Jorgensen

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$35.9 - \$359.0 *	\$35.9 - \$359.0 *		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 HB 31 and HB 117

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Public Defender Department (PDD)

Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of Bill

House Bill 126 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, 2013.

### 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 \$98.25 or \$35.9 thousand per year. Additionally, the daily cost to supervise parolees or probationers is \$8.27.

The fiscal impact in the above table is a range based on from one to 10 individuals being incarcerated per year as a result of the passage of this legislation.

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.

Nonetheless, in determining what an appropriate statute of limitations may be for any particular crime the guiding principles should be 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. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity. *Toussie v. U.S.*, 397 U.S. 112, 114-115, 90 S.Ct. 858, 860 (1970).

The Attorney General’s Office stated in its 2012 response to Senate Bill 37, which is identical to House Bill 126, 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.

The DPS has stated that significant advances have been made in forensic science, technology, investigative techniques and training, allowing old and/or cold cases to be pursued and eventually solved. Homicide crimes especially are sometimes long term investigations or are labeled “cold” until new leads and/or information are presented or gathered. Law enforcement often solves these cases years after the initial incident.