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FISCAL IMPACT REPORT

SPONSOR HSCAC **ORIGINAL DATE** 2/22/15 **LAST UPDATED** _____ **HB** 172 & 196/HSCACS
SHORT TITLE No Limit on 2nd Degree Murder **SB** _____
ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Narrative					

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB196, HB408

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)
 Attorney General's Office (AGO)
 Children, Youth and Families Department (CYFD)
 New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Substitute Bill

House Safety and Civic Affairs Committee substitute for House Bills 172 and 196 proposes to amend and clarify the statute of limitations on murder in the second degree, conspiracy and tampering with evidence to coincide with the time limitation for the underlying crime. The bill proposes adding murder in the second degree and all first degree felonies to the list of crimes that have no limitation period.

FISCAL IMPLICATIONS

The AOC reports that 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 that would not be brought if barred by existing time limitations. It is also possible that increased challenges to stale or dated evidence could lead to longer trials and appeals that would require a larger distribution of the judiciary's fiscal and administrative resources. In general, 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.

According to AODA, since the HSCAC substitute for HB172 and HB196 extends or eliminates the statute of limitations for some crimes, the result from those changes may be more prosecutions and convictions, which will translate into increased costs to the state for litigation and incarceration.

SIGNIFICANT ISSUES

According to AOC, the HSCAC Substitute for HB 172 and HB 196 does not contain a requirement that law enforcement act diligently in investigating the specified crimes and concluding investigations, nor does it require that the prosecution act diligently in bringing charges against a defendant for those crimes for which there is no statute of limitations.

AOC cites the AODA analysis to HB 117 (also extending the time limitation for prosecuting the crimes of conspiracy and tampering with evidence to coincide with the time limitation for the underlying crime and doing away with the time limitation for prosecuting a first degree felony or second degree murder), introduced in 2013.

[Amending the limitations period for the crimes of conspiracy and tampering with evidence to make them match the degree of the underlying felony] 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.

AODA in its analysis points out that HB 172s would amend Section 30-1-8 to add special time limits for prosecuting "conspiracy" and "tampering with evidence," providing that these crimes will have the same statute of limitations as the highest crime with which they are associated. In many situations this will have the effect of extending the current time limits for commencing prosecutions of conspiracy and tampering. For example, under current law, conspiracy to commit murder is punished as a second degree felony (see Section 30-28-2 NMSA 1978), so the statute of limitations on conspiracy to commit murder is six years. Under HB 172s, conspiracy to commit murder will have the same time limit as the underlying crime of murder—and there is no time limit on commencing a prosecution for murder.

AODA continues 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. First degree murder requires a willful, deliberate and premeditated killing, a killing in the course of or attempt to commit any felony, or by an act greatly dangerous to the lives of others indicating a depraved mind regardless of human life. See Section 30-2-1(A) NMSA 1978. Second degree murder is defined as follows: “Unless he is acting upon sufficient provocation, upon a sudden quarrel or in the heat of passion, a person who kills another human being without lawful justification or excuse commits murder in the second degree if in performing the acts which cause the death he knows that such acts create a strong probability of death or great bodily harm to that individual or another.” Section 30-2-1(B) NMSA 1978. From a prosecution/trial standpoint, it makes sense that the two crimes would have the same statute of limitations. Because first degree murder and second degree murder currently have different time limits for prosecution, bringing a case after the six-year statute of limitations for second degree felonies means that the prosecution can only proceed on a theory of first degree murder. Including first degree felonies, instead of first degree “violent” felonies, in the list of crimes for which there is no statute of limitations closes a potential gap in the statute. Currently there is no provision governing first degree felonies that are not “violent.” Presumably they would fall into the catch-all provision of subsection H (renumbered as subsection J), which provides a three year statute of limitations. That would be a shorter statute of limitation than applies to third or fourth degree felonies.

PDD states that 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.

PDD also states 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. See Listokin, Efficient Time Bars: A New Rationale for the Existence of Statutes of Limitations in Criminal Law, 31 J. Legal Stud. 99 (2002). While he posits that appropriate time limits for prosecution do exist for various crimes, Professor Listokin posits “the costs of choosing an overly long statute of limitations are smaller than those of choosing a statute of limitations that is too short.” *Id.* at 112. Other authors have reviewed the field and made the case for abolishing *all* criminal statutes of limitations. See Robin & Anson, Is Time Running Out on Criminal Statutes of Limitations?, 47 Crim. Law. Bull. No. 1 (Winter 2011).

PERFORMANCE IMPLICATIONS

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

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 196 (Time Limit for Prosecuting Certain Crimes), HB408 (Preservation of DNA Evidence).

TECHNICAL ISSUES

The AOC suggests that to avoid the unintended inclusion of all “conspiracy” and “tampering” crimes, the inclusion of a statutory citation would be beneficial (i.e. Section 30-28-2 NMSA 1978, general conspiracy crime; Section 30-22-5 NMSA 1978, general tampering with evidence crime.) since there is no statutory citation for the crimes of “conspiracy” and “tampering with evidence.”

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. HSCAC substitute for HB 172 and 196 contains special provisions for “conspiracy” and “tampering with evidence,” but does not give statutory citations for those crimes. It is not clear whether HB 172s’ special provisions are intended to apply to all “conspiracy” and “tampering” crimes, or just the general statutes governing conspiracy and tampering. For example, there is the general statute for conspiracy to commit a felony (Section 30-28-2 NMSA 1978), and there are other specific “conspiracy” crimes, such as conspiracy to violate the Election Code (see Section 1-20-15 NMSA 1978).

OTHER SUBSTANTIVE ISSUES

AODA opines that tying the statute of limitations for conspiracy and tampering to the associated crime makes sense from a prosecution/trial standpoint. 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.

ABS/aml