

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Rehm ORIGINAL DATE 2/5/15
LAST UPDATED _____ HB 196

SHORT TITLE Time Limit for Prosecuting Certain Crimes SB _____

ANALYST Sánchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB172

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)

SUMMARY

Synopsis of Bill

House Bill 196 proposes to amend Section 30-1-8 NMSA 1978 to include the crime of conspiracy with the same time period as the crime conspired to be committed and the crime of tampering with evidence with the same time limits as the crime for which tampering with evidence was committed. It also adds murder in the second degree to the crimes

FISCAL IMPLICATIONS

Every conviction and sentence to prison impacts the NMCD's operating budget since it is responsible for care and support of inmates.

PDD states that cold cases are extremely rare.

SIGNIFICANT ISSUES

PPD 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.

According to AODA,

- HB 196 ties the statute of limitations for “conspiracy” and “tampering” to the statute of limitations applicable to the crime conspired to be committed, or the crime for which tampering is committed. But conspiracy and tampering may be associated with multiple crimes. For this reason, the basic statutes for conspiracy and tampering look to the highest underlying crime to determine the degree of the tampering or conspiracy offense. See Section 30-28-2 NMSA 1978 and Section 30-22-5 NMSA 1978. It would be helpful to use the same language in Section 30-1-8, so that the statute of limitations for conspiracy or tampering is linked to the highest crime conspired to be committed, or the highest crime for which tampering is committed.
- When Section 30-1-8 sets a special time limit for a specific crime, it identifies that crime by its statutory citation. HB 196 contains special provisions for “conspiracy” and “tampering with evidence,” but does not give statutory citations for those crimes. Unless HB 196’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 (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).

2. HB 196 amends the provision regarding crimes for which there is no statute of limitations.

Currently, only capital felonies and first degree violent felonies have no time limits on prosecution, and second degree murder has a six year statute of limitations. HB 196 deletes the word “violent” so that all first degree felonies fall into the category of offenses without time limits for prosecution. HB 196 also adds second degree murder to that category.

As currently written Section 30-1-8 does not provide any statute of limitation for first degree non-violent felonies, so it could be argued that first degree non-violent felonies fall into the “catch-all” provision that gives a three year statute of limitations to crimes for which a statute of limitation is not provided. See Section 30-1-8(H) (renumbered as Section 30-1-8(J) in HB 196). HB 196 clarifies that all first degree felonies, whether violent or non-violent, have no statute of limitations.

HB 196 adds second degree murder to that category, also. 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.

PERFORMANCE IMPLICATIONS

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.

There may also be some confusion over whether HB 196’s special provisions for “conspiracy” and “tampering with evidence” apply to all “conspiracy” and “tampering” crimes or just the general statutes for conspiracy and tampering. There may also be some confusion about what time limitation to apply when there are multiple crimes (with different statutes of limitation) underlying the conspiracy or the tampering with evidence.

CONFLICT

Conflicts with HB 172

TECHNICAL ISSUES

The AODA suggests the following amendments

To clarify that the six-year statute of limitations that applies to second degree felonies does not apply to second degree murder, amend Section 1 of HB 196 at page 1, lines 24-25, as follows:

“A. for a second degree felony, except for murder in the second degree, within six years from the time the crime was committed;”

To clarify that the statute of limitations for conspiracy and tampering with evidence is determined by the highest level associated crime, amend Section 1 of HB 196 at page 2, lines 7-12, as follows:

“E. for the crime of conspiracy, within the same time period as the highest crime conspired to be committed would be prosecuted;

F. for the crime of tampering with evidence, within the same time period as the highest crime for which the tampering with evidence was committed would be prosecuted;”