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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/18  
 LAST UPDATED 2/01/18

SPONSOR HCPACS HB 33 & 115/HCPACS

SHORT TITLE 2<sup>nd</sup> Degree Murder Time Limit SB \_\_\_\_\_

ANALYST Sánchez

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

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate Increase See Fiscal Implications	Indeterminate Increase See Fiscal Implications	Indeterminate Increase See Fiscal Implications	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to the General Appropriation Act

#### SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)

#### SUMMARY

##### Synopsis of Bill

House Bill 33 House Consumer and Public Affairs Committee Substitute for House Bills 33 and 115 proposes to amend Section 30-1-8 NMSA 1978 to exclude murder in the second degree from the time to prosecute a second degree felony and adding it to the section which includes a capital felony and a first degree violent felony. The time to prosecute murder in the second degree shall have no time limit in which to begin prosecution as it may occur any time after the occurrence.

The effective date of the provisions in this bill should it become law is July 1, 2018.

#### FISCAL IMPLICATIONS

The New Mexico Corrections Department (NMCD) reported in HB115, identical to this bill, that this bill could ultimately result in substantially more convictions, it could impact NMCD's prison population and probation/parole caseloads.

Enhanced sentences over time will increase the population of New Mexico's prisons and long-

term costs to the general fund. According to the NMCD, the cost per day to house an inmate in state prison (public and private combined) in FY17 was an average of \$123 per day, or about \$44,779 per year. Increased length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions pushing the overall prison population higher. NMCD's general fund budget, not including supplemental appropriations, has grown by an average of two percent, and is 11 percent higher than FY14, closely mirroring the inmate population growth of 10 percent. The LFC reported in its FY19 budget recommendations that NMCD ended FY17 with a \$1 million budget surplus.

The cost to monitor offenders on a standard caseload is \$7.89 per offender per day, or \$2,879 per year. However, without an estimated average number of offenders being monitored whose offense is similar to the one in this bill, the cost to the NMCD Probation and Parole Division cannot be quantified.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

The Public Defender Department (PDD) reports that cold cases are extremely rare and could probably absorb the costs if caseloads do not increase because of changes to other criminal laws.

The Administrative Office of the Courts (AOC) believes the impact to the court will be minimal.

## **SIGNIFICANT ISSUES**

AOC states in its response to House Bill 115, identical to this committee substitute, that the bill does not contain a requirement that law enforcement act diligently in investigating the specified crime and concluding investigation, nor does it require that the prosecution act diligently in bringing charges against a defendant for a crime for which there is no statute of limitations. The general purpose of statutes of limitation is to make sure that convictions occur only upon evidence that has not deteriorated with time. Convictions based upon stale or now unavailable testimonial evidence may be challenged as in violation of the Confrontation Clause of the Sixth Amendment to the U.S. Constitution and Section 14 of the New Mexico Constitution.

PDD agrees with AOC that over time evidence can be lost and memories can fade. For PDD, that can make mounting a legitimate defenses to allegations difficult.

## **OTHER SUBSTANTIVE ISSUES**

According to the New Mexico Sentencing Commission, many states do not have time limits within which to prosecute homicide cases.

ABS/al