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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/2022

SPONSOR Rehm LAST UPDATED \_\_\_\_\_ HB 140

SHORT TITLE No 2<sup>nd</sup> Degree Murder Prosecution Time Limit SB \_\_\_\_\_

ANALYST Rabin

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)<sup>1</sup>

	FY24	FY31	FY38	15 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$23.4	\$187.6	\$260.0	\$2,587.3	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with House Bill 79  
Relates to House Bill 25

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Public Defender Department (PDD)  
Attorney General’s Office (NMAG)  
Sentencing Commission (NMSC)  
Corrections Department (NMCD)  
Crime Victims Reparation Commission (CVRC)  
Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of Bill

House Bill 140 abolishes the statute of limitations for second-degree murder, which is currently six years.

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<sup>1</sup> Because time served for second-degree murder is so long (on average, just over 11 years), the full fiscal impacts of this bill will not be felt for several years. This table provides an estimated impact over 15 years to more effectively convey the actual costs of the proposal. Additional details and a table with cost impacts for each year between FY24 and FY38 is included in Fiscal Implications.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

### **FISCAL IMPLICATIONS**

Incarceration drives costs in the criminal justice system, so the primary fiscal implications examined in this analysis relate to changes in the number of individuals in prison and the length of time served in prison that might result from this bill. The creation of any new crime, expansion of a crime's scope or statute of limitations, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and long-term costs to the general fund. In addition to the potential of new crimes to send more individuals to prison, increased sentence lengths decrease releases relative to the rate of admissions, pushing the overall prison population higher. The Corrections Department reports the average cost to incarcerate a single inmate in FY21 was \$49.6 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$23.4 thousand per inmate per year across all facilities. This bill will likely increase the length of time offenders spend incarcerated and may slightly increase the number of offenders admitted to prison.

Eliminating the statute of limitations for second-degree murder is unlikely to impact many cases, as very few homicide cases (of any degree) are solved outside the current statute of limitations (six years). After examining all New Mexico State Police (NMSP) homicide cases initiated between 2006 and 2016, the Department of Public Safety (DPS) reported no arrests were made more than five years after the incident date, with the majority of arrests occurring within two years of the incident. DPS reported no NMSP homicide cases that were not charged because they exceeded the statute of limitations, and estimated no more than one to two cases statewide would be impacted by this change.

Assuming the expansion of the statute of limitations will result in one additional individual being admitted to prison each year and based on average actual time served for individuals released from prison in FY21 whose highest charge was second-degree homicide (4,047 days), this analysis estimates this change will result in increased costs of \$260 thousand per offender. These additional costs will begin to be realized in FY24 (accounting for time for adjudication prior to admission to prison), increasing over the following 11 years (as more individuals are admitted for and serve longer sentences for the crimes addressed by the bill), and leveling out at \$260 thousand in FY35 (as offenders begin to be released from prison) and future fiscal years.

HB140 expands the second-degree murder cases eligible for adjudication and incarceration in prison by abolishing the statute of limitations for this crime. This will potentially result in an additional offender serving a prison term of 4,047 days (just over 11 years). As a result, the fiscal impact of one additional offender being imprisoned for second-degree murder in FY24 extends over that entire term at an estimated cost of \$23.4 thousand per year, until that individual is released in FY35. An additional offender admitted in FY25 impacts costs between FY25 and FY36. Costs continue to rise for each year until offenders admitted in FY24 begin to leave prison in FY35, after which it is assumed admissions and releases net out, resulting in a steady increased population as a result of this change. The timing of these fiscal impacts is outlined in the table below.

**15-Year Fiscal Impact of  
Abolishing the Statute of  
Limitations for 2nd Degree  
Murder, as Proposed by HB140**

Fiscal Year	Total Fiscal Impact
2024	\$23.4
2025	\$46.9
2026	\$70.3
2027	\$93.8
2028	\$117.2
2029	\$140.7
2030	\$164.1
2031	\$187.6
2032	\$211.0
2033	\$234.5
2034	\$257.9
2035*	\$260.0
2036	\$260.0
2037	\$260.0
2038	\$260.0
<b>15-Year Fiscal Impact:</b>	<b>\$2,587.3</b>

\*In FY35, impacted offenders begin leaving prison, resulting in steady ongoing costs.

Source: LFC analysis of NMSC data

Additional system costs beyond incarceration, such as additional costs to the judicial branch for increased trials, are not included in this analysis.

**SIGNIFICANT ISSUES**

Research shows the certainty of being caught is a more powerful deterrent to crime than severity of punishment, and prioritizing solving crimes and securing convictions, particularly for serious offenses, could be much more impactful. In New Mexico, however, punishment has grown less certain as crime has increased, with fewer violent crimes solved and more violent felony cases dismissed. LFC’s evaluation team has found in the 2<sup>nd</sup> Judicial District (Bernalillo County) specifically, neither arrests, convictions, nor prison admissions have tracked fluctuations in felony crime, and in 2020, when felonies began to rise, accountability for those crimes fell. Improving policing and increasing cooperation and coordination among criminal

justice partners could help increase the certainty of punishment for the most violent offenses and provide a stronger deterrent to serious crime than severe penalties. Incarceration (and length of incarceration) has also been shown to have a criminogenic effect, meaning time in jail or prison may make people more likely to commit crimes in the future.

DPS states New Mexico is the only state in the country with a statute of limitations for second-degree murder. NMSC also notes many states have no time limitations for prosecuting homicide cases.

The Public Defender Department raises the following concerns:

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. The elimination of the statute of limitations may be felt particularly by defendants charged as accessories to second-degree murder, who did not actually commit the murder but are alleged to have been involved in some way. It is impossible to predict how many new cases would be charged under this proposed bill, but it could result in an increase in work for the Law Offices of the Public Defender.

One issue is that any resulting charges would be older and “colder” than cases charged within the existing time limits, and, because older, delayed cases tend to have issues as to the collection of evidence which has gone “cold,” resolution of such cases by plea agreements could be less likely, thus resulting in more cases going to trial, requiring more attorney work time as well as more court resources. Additionally, many such cases—those charged under the specified statutes as first or second degree felonies--will need to be handled by higher-paid, more experienced attorneys. But the number of such cases charged, and thereby, the cost to the LOPD, is impossible to predict. If more of these higher-penalty trials result, LOPD and the DAs will need to hire more trial attorneys with greater experience, and this will also require more investigators, experts and court resources.

AOC notes:

HB 140 does not contain a requirement that the prosecution act diligently in bringing charges against a defendant for those crimes for which there is no statute of limitation. 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.

In its analysis of a 2017 bill that also proposed to remove the statute of limitations for second-degree murder, the Attorney General’s Office noted the following potential issues:

An issue may arise regarding the retroactivity of these new time periods if the act is passed. In *State v. Morales*, 2010-NMSC-026, 148 N.M. 305, the Court considered the defendant’s claim that the new unlimited SOL on first-degree murder, which replaced the older SOL of 15 years for capital felonies and first-degree violent felonies, could not be applied to him because he committed his crime before the effective date of the new SOL. The Court disagreed, primarily because the original SOL had not yet run on his crime. The Court held that the statutory amendment applied to the defendant because prosecution for his crime was not time barred at the time of the effective date of the statutory amendment. Thus, “[b]ecause a defendant does not have a vested interest in an unexpired statute of limitation, a legislative amendment extending or abolishing the limitation period does not impair vested rights, require new obligations, impose new duties, or affix new disabilities to past transactions.” *Morales*, 2010-NMSC-026, ¶ 11.

However, the result will likely be different if the original SOL has already expired. The Court specifically distinguished *Kerby* on this ground in *Morales* – “In *Kerby*, the applicable statute of limitations had expired and, therefore, the defendant’s right to be free from criminal prosecution had fully vested. Under these circumstances, the statute of limitations defense is a substantive right and subsequent statutory amendments cannot be “applied to revive [the] previously time-barred prosecution.” *Morales*, 2010-NMSC-026, ¶ 17.

**CONFLICT, RELATIONSHIP**

HB140 conflicts in language, if not intent, with House Bill 79. HB79 abolishes the statute of limitation for second-degree murder by amending Subsection I of Section 30-1-8 NMSA 1978, while HB140 accomplishes the same purpose by amending Subsections A and I (and amends Subsection I with slightly different language than HB79).

HB140 relates to House Bill 25, which abolishes the statute of limitations for second-degree murder in the same manner as HB140.

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