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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Hemphill/Steinborn/Jaramillo/Lujan</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>3/17/23</u>
<b>SHORT TITLE</b> <u>Sex Crimes Prosecution Time Limits</u>	<b>BILL NUMBER</b> <u>Senate Bill 82</u>
	<b>ANALYST</b> <u>Daly</u>

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal			

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent version of this legislation.

Relates to

### Sources of Information

LFC Files

#### Responses Received From

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Department of Health (DOH)
- Department of Public Safety (DPS)
- Law Offices of the Public Defender (LOPD)
- New Mexico Attorney General (NMAG)
- New Mexico Corrections Department (NMCD)
- New Mexico Crime Victims Reparation Commission (NMCVRC)
- New Mexico Sentencing Commission (NMSC)

## SUMMARY

### Synopsis of Senate Bill 82

Senate Bill 82 removes the statute of limitations (the time in which a criminal prosecution may begin) entirely for criminal sexual penetration (CSP) of a minor in the second degree and criminal sexual contact (CSC) of a minor in the second degree. Existing law requires prosecution begin within six years of the offense.

SB82 extends the statute of limitations for criminal sexual penetration in the second degree when the victim is an adult to 15 years; under current law, it is six years.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have moderate fiscal impacts. Although this bill creates no new crimes, it extends the time in which a criminal prosecution can be commenced: for criminal sexual penetration of a minor and criminal sexual contact of a minor, the existing statute of limitations is six years; under the bill, there is no such limitation. In addition, this bill extends the statute of limitations for criminal sexual penetration in the second degree. By removing or extending the time in which prosecutions of these offenses may take place, the number of prosecutions followed by convictions and sentencing will likely increase the population of New Mexico's prisons, consequently increasing long-term costs to state general funds. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$54.9 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 \$26.6 thousand per year across all facilities. SB82 is anticipated to increase at least to some extent the number of persons incarcerated for these offenses.

## SIGNIFICANT ISSUES

In Section 1(J), SB82 removes the statute of limitations for the felony of CSP of a child under 18 years of age, "in violation of Subsection E of Section 30-9-11, NMSA 1978." As drafted, however, it is unclear whether this change applies only to Subsection(E) paragraph (1), which makes the offense "by the use of force or coercion on a child thirteen to eighteen years of age" second degree CSP, or if the intent of SB82 is to include the four other means by which second degree CSP can be committed if the victim is a child under 18, including by the use of force resulting in personal injury to the victim (paragraph 3); by the use of force or coercion when the perpetrator is aided or abetted by one or more persons (paragraph 4); in the commission of another felony (paragraph 5); or when the perpetrator is armed with a deadly weapon (paragraph 6).

Additionally, both the AODA and NMAG point out there already is a statute in effect that tolls the statute of limitations as to offenses against children until the child turns 18 or the violation is reported to a law enforcement agency and applies expressly to violations of Section 30-1-8 and 30-9-13, the two sections which are the subject of Subsection J of this bill. See Section 30-1-9.1, NMSA 1978. As a result, AODA suggests that that is the section of law that should be amended to remove the statute of limitations altogether. Alternatively, that statute could be amended to remove the references to the sections of law now addressed in SB82. NMAG also calls attention to another existing statute that the statute of limitations for second degree CSP does not begin to run until a DNA match is made if such evidence is available and there is no known suspect. See Section 30-1-9.2, NMSA 1978.

AODA explains the reasoning behind lengthy or no statute of limitations for prosecution of a sex offense involving a child:

It is a regular occurrence that minor victims of criminal sexual penetration and criminal sexual contact do not disclose the crimes until they are into adulthood. The changes proposed by SB82 allow more time to commence a prosecution once a person discloses that they were a victim of the crime as a minor. This is important in terms of the offender's accountability and for the healing of the victim.

Further, as LOPD and NMSC note, time limits for prosecution of a given crime vary widely across the various states. England, LOPD advises, appears to have no general statute of limitations to criminal actions. However, LOPD warns:

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.

Similarly, AOC comments that expanded statutes of limitations could result in dated or "stale" evidence, which requires more careful vetting by both courts and defendants, which leads to lengthier, more complex trials and appeals.

## **TECHNICAL ISSUES**

NMAG notes that in order to be consistent with statutory language in related sections, Section 1(K) might be amended to replace "adult" with "a person at least eighteen years of age or older."

## **OTHER SUBSTANTIVE ISSUES**

NMAG points out that other current statutes governing the time in which to bring a prosecution contains redundancies and renders parts meaningless. It cites Section 30-2-9, NMSA 1978, which tolls the running of the statute of limitations on first degree criminal sexual penetration of a child under NMSA 30-9-11(D), even though there is no limitation on prosecuting a first degree violent felony under Section 30-1-8(I), NMSA 1978. It goes on to note, however, that this "double coverage" has not seemed to interfere with the prosecution of first degree criminal sexual penetration against a minor in New Mexico courts.

AODA reports that it is well documented that the highest recidivism rate among criminal defendants are child molesters.

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