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FISCAL IMPACT REPORT

ORIGINAL DATE 2-19-099

SPONSOR HJC LAST UPDATED _____ HB 25/HJCS

SHORT TITLE Conspiracy Prosecution Time Limit SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Corrections Department (NMCD)*
 Administrative Office of the District Attorneys (AODA)*
 Public Defender Department (PDD)*
 Attorney General's Office (AGO)*

*Note: Responders listed above provided analysis on the original bill but not on the substitute, however their analysis remains relevant and is included below.

SUMMARY

Synopsis of HJC substitution

The House Judiciary Committee substitute for House Bill 25 amends the criminal prosecution statute of limitations to extend the limitations period for the crimes of conspiracy and tampering with evidence. For a capital felony or violent felony, no limitation period shall exist. For conspiracy, the limitations period is extended to the same time period as that for the crime conspired to be committed. For tampering with evidence, the limitations period is extended to the same time period as the crime for which the tampering with evidence was committed. It also clarifies the definition of "violent felony."

FISCAL IMPLICATIONS

The Corrections Department relates that a possible rise in its costs could occur if the bill were to add to its inmate population.

SIGNIFICANT ISSUES

The district attorneys point out that the bill corrects an error in time limits for commencing prosecution on first degree felonies. As it is currently written, “violent first degree felonies” have no statute of limitations; as to nonviolent first degree felonies, the statute is silent, leaving them to a catch-all of three years, while a second degree felony (a lesser crime) has a statute of limitations of six years, and a third degree felony (lesser yet) has a limitation of five years. The bill also gives active planning to commit a crime the same statute of limitations as a completed crime.

PERFORMANCE IMPLICATIONS

The Corrections Department contends that this bill would negatively impact its ability to perform prison-related and probation/parole supervision services (with current levels of staffing) if there were more than just a few additional convictions.

The portion dealing with the tampering statute, suggests PDD, might pose a problem. For example, a person could be charged with a first degree felony with no statute of limitations and fourth-degree felony with a five year statute of limitations. The evidence tampered with might relate to both crimes. This amendment does not provide the court with any guidance on how to resolve the conflict.

ADMINISTRATIVE IMPLICATIONS

Corrections Department also adds that if the bill passes and it substantially increases the inmate population or probation/parole caseloads, it would increase the workloads of current prison and probation/parole staff.

OTHER SUBSTANTIVE ISSUES

According to the AGO, HB25 provides specific language for the prosecution of conspiracy and tampering with evidence charges than the general provisions of Section 30-1-8 concerning the statute of limitations. HB25 is practical and offers assistance to law enforcement during an investigation and prosecutors. For example, charges of conspiracy may be discovered but a homicide investigation may be ongoing and the investigation not completed for some time after evidence of the conspiracy is revealed. Linking the conspiracy and/or tampering with evidence charges with the substantive, primary criminal offense is efficient and recognizes the difficulties that may occur when different statute of limitations may apply during a criminal investigation and prosecution that may involve multiple criminal offenses.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If not enacted the district attorneys note that a serious loophole will allow some of the most serious offenders to escape prosecution. Persons who plan serious crimes will have a better window of opportunity to avoid prosecution for their intentions.

EO/mt:mc