

**NOTE:** As provided in LFC policy, this report is intended only for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used for other purposes.

The most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR: Gorham DATE TYPED: 3/3/03 HB \_\_\_\_\_

SHORT TITLE: Criminal Sexual Penetration Time Limitations SB 470 / a SFL#1

ANALYST: Maloy

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB 547.

### SOURCES OF INFORMATION

Responses Received From  
 Administrative Offices of the Courts  
 Office of the Attorney General  
 Corrections Department

### SUMMARY

#### Synopsis of SFL Amendment

The Senate Floor Amendment to Senate Bill 470 are stylistic language changes.

#### Synopsis of Original Bill

Senate Bill 470 tolls the statute of limitations for an alleged second, third or fourth degree sexual penetration when DNA evidence is available and a suspect has not been identified.

With this bill, the applicable time period for commencing a prosecution does not begin to run until a DNA profile is matched with a suspect.

Significant Issues.

This Act only applies to an alleged second, third or fourth degree sexual penetration for which the applicable time period for commencing a prosecution has not expired as of July 1, 2003. Thus, there is no concern with it being applied retroactively.

**FISCAL IMPLICATIONS**

There are little direct costs associated with SB 470. There are, however, secondary costs that will inevitably arise out of the ever-advancing developments in technology and DNA in the law enforcement arena. These costs will need to be absorbed by law enforcement agencies and the courts as a routine price of operation and remaining current and effective.

**ADMINISTRATIVE IMPLICATIONS**

Criminals who are caught years later, whose DNA match DNA taken from victims of these crimes, can be brought to justice. This may result in an increase in the number of individuals brought to trial and convicted. This means a slight increase in FTE and budget expenditures for such agencies as the Courts, the District Attorneys Office, the Public Defenders Department, Correctional institutes and parole and probation offices.

Such prosecutions will likely be costly due to the fact that much of the evidence will have aged and the case may not be as easily built as when it was fresh.

**OTHER SUBSTANTIVE ISSUES**

1. Under current law, the statute of limitations for second-degree criminal sexual penetration (CSP) is 6 years from the time the crime was committed. See NMSA 1978, § 30-1-8(A) (1997).
2. Under current law, the statute of limitations for third- or fourth-degree CSP is 5 years from the time the crime was committed. See § 30-1-8(B).
3. Under SB 470, the current statute of limitations for first-degree CSP would remain unchanged; there is no provision in SB 470 for tolling this statute of limitations.
4. Under current law, Section 30-1-8(G), there is no statute of limitations for "a first degree violent felony"; tolling would not therefore be necessary for first-degree CSP if this offense would qualify as a "violent" felony. But not all instances of first-degree CSP would necessarily qualify as "violent" felonies for which there is no statute of limitations. First-degree CSP can be either (a) sexual penetration perpetrated on a child under 13 years of age, or (b) sexual penetration by the use of force or coercion that results in great bodily harm or great mental anguish to the victim. NMSA 1978, § 30-9-11(C) (2001).
5. Section 30-1-8(G) does not expressly state what the statute of limitations is for a first-degree nonviolent felony, nor does Section 30-1-8(G) provide that there is no statute of limitations for first-degree nonviolent felonies. Under SB 470 and the

current Section 30-1-8, it appears to be possible for a suspect to argue that the offense for which he is being prosecuted is a first-degree nonviolent felony, that Section 30-1-8(G) is therefore inapplicable (and it is not clear under Section 30-1-8(G) what the statute of limitations would then be), and that HB 547 is inapplicable to toll the time for first-degree CSP.

It may be helpful to prevent this confusion by changing SB 470 so that it would toll the statute of limitations for first-degree CSP in the event that a statute of limitations is set by law. For instance, a new subsection could be added to HB 547 to provide: "When DNA evidence is available and a suspect has not been identified, and when Section 30-1-8 NMSA 1978 sets a time limitation for commencing prosecution for an alleged violation of Subsection C of Section 30-9-11 NMSA 1978, the applicable time period for commencing prosecution shall not begin to run until a DNA profile is matched with a suspect." Section 2 of SB 470 should then also be changed to add "C" after "Subsection" and before "D, E or F."

**SJM/prr/sb:yr**