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FISCAL IMPACT REPORT

SPONSOR Taylor ORIGINAL DATE 02/03/10
LAST UPDATED _____ HB 193
SHORT TITLE Change Statute Of Limitations For Rape SB _____
ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$1.0-\$5.0			Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

Department of Public Safety (DPS)

Public Defender Department (PDD)

Sentencing Commission (SC)

SUMMARY

Synopsis of Bill

House Bill 193 amends existing statute, Section 30-1-9.2 NMSA 1978. The bill provides that the statute of limitations for commencing prosecution for criminal sexual penetration shall begin to run anew after a subsequent violation is committed.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

The AODA states that this bill will make a desirable change in law that will address the situation in which a serial rapist commits crimes over a long period of time, but is not apprehended until

years later. Currently, if there is no DNA evidence from the earlier rapes, it is possible that the statute of limitations will expire before the offender can be identified and charged.

The SC notes that New Mexico has a mature DNA database, developed pursuant to the provisions of the DNA Identification Act. HB 193 addresses instances when a serial rapist continues to commit criminal sexual penetration offenses. The bill will extend the period of time for investigation by law enforcement until the DNA evidence can be matched with a suspect.

The PDD provided the following:

The import of the language stating "if a defendant commits more than one violation of the criminal sexual penetration statute" is not clear. It could be understood to refer to the situation where an individual is convicted of one criminal sexual penetration offense, and then it is later discovered, perhaps through newly evidence although this is not clear to have allegedly committed an earlier offense.

This language could also be read to apply to the situation where multiple violations of Sections 30-9-11 arise out of the same incident where convictions have not yet been obtained.

There is at present no statute of limitations for a capital felony or a first degree violent felony and prosecution for these crimes may commence at any time after the occurrence of the crime. See NMSA 1978, § 30-1-8.

ADMINISTRATIVE IMPLICATIONS

Agencies affected by this bill can handle the provisions of this bill with existing staff as part of ongoing responsibilities.

TECHNICAL ISSUES

The DPS notes in tolling the statute of limitations for multiple violations of criminal sexual penetration the language of HB 193 refers to time beginning to run after each subsequent violation is committed by a defendant. Because the defendant is not adjudged to have committed a violation until a decision has been rendered at the close of prosecution, the language of the bill should refer to alleged violations.

The AODA suggests in the first line of the added subsection (B) to change wording from "if a defendant commits more than one violation..." to "if a defendant is charged with more than one violation..." The word "commits" can be argued to have a legal meaning equating with a finding of guilt. It will be cleaner to use the term "charged with" or "alleged to have committed".

In addition, the AODA suggests changing the two uses of the word "violation" at the end of the new language to "offense", so that the amendment will read: "If a defendant is charged with more than one violation of section 30-9-11 NMSA 1978, the applicable time period for commencing prosecution pursuant to Section 30-1-8 NMSA 1978 for a prior offense shall begin to run anew after each subsequent offense is committed."