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FISCAL IMPACT REPORT

SPONSOR Rehm ORIGINAL DATE 2/4/21
LAST UPDATED _____ HB 62
SHORT TITLE Prosecution Time Limit For Certain Crimes SB _____
ANALYST Dick-Peddie

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
LOPD Operating Budget	\$0.0	\$899.0	\$899.0	\$1,798.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
Administrative Office of the District Attorneys (AODA)
Crime Victims Reparation Commission (CVRC)
New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

House Bill 62 proposes to amend NMSA 1978, Section 30-1-8, which sets forth the time limitations for commencing a criminal prosecution. HB62 adds murder in the second degree to the list of offenses for which there is no time limitation for commencing prosecution; adds first degree felony trafficking controlled substances to the list of offenses with a six year time limitation; provides that the crime of conspiracy will have the same statute of limitations as the highest crime with which the conspiracy is associated; and provides that the crime of tampering with evidence will have the same statute of limitations as the highest crime with which the tampering is associated.

The effective date of HB62 is July 1, 2021.

FISCAL IMPLICATIONS

AOC states that in addition to the marginal cost associated with publishing and distributing new statutes, the fiscal impact of HB62 on the judicial branch would be proportional to additional prosecutions of the crimes covered by the bill that would be encouraged by unlimited, or expanded, statutes of limitations. AOC also notes that the expanded statute of limitations could result in dated, or “stale” evidence that requires more careful vetting by judges and defense parties, which in turn results in lengthier, more complex trials and appeals that require a greater commitment of the judicial branch’s fiscal and administrative resources.

PDD similarly notes that the provisions of HB62 would significantly increase the potential for criminal charges that would have not been viable due to the expiration of statutory time limits. The resulting charges would be older and “colder” than cases charged within the existing time limits. Because older, delayed cases tend to have issues as to the collection of evidence which has gone “cold,” resolution of those cases by plea agreements would 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.

PDD states that number of such cases charged and the resulting cost to PDD is impossible to predict. If more of these higher-penalty trials result, defense and prosecution agencies will need to hire more trial attorneys with greater experience, in addition to more investigators, experts and court resources. A Public Defender Department’s Assistant Trial Attorney’s mid-point salary including benefits is \$102,187.62 in Albuquerque/Santa Fe and \$109,362.24 in the outlying areas (due to salary Differential required to maintain qualified employees) and average support staff (secretarial, investigator and social worker) costs per attorney would total \$77,113.01.

Barring some other way to reduce indigent defense workload, any increase in the number of prosecutions would result in a need for an increase in indigent defense funding. The additional operating budget impact table reflects the cost of five indigent defense attorneys (without the rural pay differential) and associated staff at the Public Defender Department, though it is difficult to accurately project how many additional attorneys would be required if HB 62 were enacted.

In an agency response to a nearly identical bill proposed in 2019 (HB 104), the Corrections Department noted that the legislation could reasonably lead to a “minimal to moderate” number of new convictions, and therefore new incarcerated individuals. The Corrections Department reports the average cost to incarcerate a single inmate in FY20 was \$44.8 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 \$23.3 thousand per inmate per year across all facilities. This bill will likely increase the number of individuals incarcerated and increase the time they spend incarcerated, but it is difficult to determine how many individuals would be charged or convicted of the expanded statute of limitations in the bill.

SIGNIFICANT ISSUES

A 2017 report from the Congressional Research Service, *Statute of Limitation in Federal Cases: An Overview*, provides useful context for why statutes of limitations exist, and in what context those statutes are extended. According to the report, the purpose of such limitations in criminal

cases is “to ensure the prompt prosecution of criminal charges and thereby spare the accused of the burden of having to defend against stale charges after memories may have faded or evidence is lost.” At the federal level, there is no statute of limitations for crimes punishable by death, certain federal crimes of terrorism, or for certain federal sex offenses. Several states have adopted unlimited statutes of limitations similar to those proposed by HB62 to enable the prosecution of cases that were only able to be tried with new DNA technology, or other extenuating circumstances.

The report notes that for most other federal crimes, prosecution must begin within five years of the commitment of the offense. The bill’s proposal to include felony tracking of a controlled substance among crimes with a six year statute of limitations would surpass the federal standard of five years.

Additionally, AOC notes that HB62 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 limitations. Excluding standards of diligence is problematic when considering that evidence brought forth in these cases is more likely to have deteriorated with the passage of time. AOC continues, “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.”

PERFORMANCE IMPLICATIONS

Currently, district attorneys, public defenders, and courts all measure timely justice, a key element of a functioning judicial system, in some way or another, whether that be time to disposition or age of active pending cases. Enacting HB62 would likely increase time to disposition for all justice partners for newly eligible cases.

TECHNICAL ISSUES

Both NMAG and AODA noted the bill includes confusing language contrary to the perceived intent of the legislation. NMAG states:

The wording of the bill is ambiguous and may not sufficiently accomplish this purpose. It states that the statute of limitations “for a second degree felony, except for murder in the second degree, and for trafficking controlled substances that amounts to a first degree felony pursuant to Section 31-30-20 NMSA 1978, [is] within six years from the time the crime was committed[.]” The proposed statute appears to *exclude* second degree murder from this time limitation, yet *include* first degree trafficking. However, the current wording could be read to *exclude* both. A separate subsection to clarify might be appropriate.