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**AGENCY BILL ANALYSIS
2026 REGULAR SESSION**

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SECTION I: GENERAL INFORMATION

Check all that apply:

Original **Amendment** **X**
Correction **Substitute**

Date February 18, 2026
Bill No: SB 41- 280

Sponsor:	<u>Angel M. Charley, Jeff Steinborn, George K. Muñoz</u>	Agency Name and Code Number:	<u>280 Law Offices of the Public Defender [LOPD]</u>
Short Title:	<u>Statute of Limitation for Certain Sex Crimes</u>	Person Writing	<u>Kim Chavez Cook</u>
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Changes to the analysis in light of the SJC-Substitute, Senate Floor amendment, and HJC amendment are indicated with ~~strikethrough~~ removals and underlined additions below.

Synopsis:

Section 1 of SB 41 would amend NMSA 1978, Section 30-1-8 to provide for the removal of statutes of limitation for certain sex crimes. ~~(All Criminal Sexual Penetration adult/child; all Criminal Sexual Contact of a Minor; all Attempts or Conspiracy or Solicitation to commit those crimes.)~~ Currently, the statutes of limitation for these sex crimes ranges from 1-6 years from when the crime was committed, Specifically, the SJC-Substitute would remove the existing 6-year limitation period for second degree criminal sexual contact of a minor. The HJC amendment also would eliminate the time limit on prosecuting second-degree criminal sexual penetration (applicable to both minors and adult victims), reinstating its inclusion from the original bill.

The SJC-Substitute would also amend Section 30-1-9.1 tolling the limitation period for child victims to allow for delayed disclosures or reaching the age of majority (whichever occurs first) [and 30-1-9.2 tolling based on DNA testing resulting in a match]. (The Senate Floor amendment removes Section 3 of the SJC-Substitute which amended Section 30-1-9.2, so that provision is no longer part of the bill.)

Current law tolls the statute until disclosure or adulthood for all crimes against children under Section 30-9-11 criminal sexual penetration of a minor (“CSPM”) and 30-9-13 criminal sexual contact of a minor (“CSCM”). The SJC-Substitute struck tolling for CSCM offenses and limited tolling for penetration offenses to third- and fourth-degree felony versions of that crime. [The Senate Floor amendment reinstated tolling for all CSP offenses and third- and fourth-degree CSCM.] The HJC amendment struck the Senate Floor amendment and instead re-adds third- and fourth-degree CSCM to the tolling statute.

The proposed change would thus allow prosecution to commence any time after the occurrence of certain sex crimes. of second-degree CSCM and CSP, and would thus limit tolling to third- and fourth-degree CSCM and CSPM (since second-degree would have no limitation requiring tolling), with the existing 5-year statute of limitations once tolling ends.

The legislation’s effective date would be July 1, 2026.

FISCAL IMPLICATIONS

The proposed change significantly increases the prosecutorial reach for ~~criminal~~ second-degree CSCM and CSP charges that would have otherwise failed to be viable due to the expiration of statutory time limits. It is impossible to predict how many new cases would be charged under this proposed bill, but could result in an increase in work for the Law Offices of the Public Defender.

One issue is that any resulting charges would be older and “colder” than cases charged within the existing time limits, and, because older, delayed cases tend to have issues as to the collection of evidence which has gone “cold”, resolution of such 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 will need to be handled by higher-paid, more experienced attorneys. Defense attorneys handling cold cases are more likely to require the assistance of limited investigative staff and expert witness consultation.

Defense of such cases and hearings would likely be handled by mid-level felony capable LOPD criminal defense attorneys (Associate Trial Attorneys). Depending on the volume of cases in the geographic location there may be a significant recurring increase in needed FTEs for the office and contract counsel compensation. An Associate Trial Attorney’s mid-point salary including benefits is \$136,321.97 in Albuquerque/Santa Fe and \$144,811.26 in the outlying areas (due to necessary salary differential to maintain qualified employees). Recurring statewide operational costs per attorney would be \$12,909.00 with start-up costs of \$5,210.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$123,962.51.

A recent workload study by an independent organization and the American Bar Association concluded that New Mexico faces a critical shortage of public defense attorneys. The study concluded, “A very conservative analysis shows that based on average annual caseload, the state needs an additional 602 full-time attorneys – more than twice its current level - to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment.”

https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lsc-laid-moss-adams-nm-proj.pdf. Barring some other way to reduce indigent defense workload, any increase in the number of serious, complex felony prosecutions would bring a concomitant need for an increase in indigent defense funding in order to keep the LOPD’s workload crisis from spreading.

In addition to the impact on LOPD, courts, DAs, AGs, and NMCD could anticipate increased costs due to the increased reach of these statutes and the increased likelihood of trials and lengthy sentences.

SIGNIFICANT ISSUES

While the statutes of limitation have long been a fixture of American criminal law, their scope and duration have never been uniformed. Lengthening a statute of limitations often yields little practical benefit and may prove counterproductive. A Princeton analysis from the Journal of Legal Studies gives some insight regarding the suspension and extension of statutes of limitation:

For example, the recent trend of extending statute of limitations for sexual offenses against minors until after the victims reach adulthood may be wrongheaded. No one questions that the crimes are heinous. Nevertheless, the threat of additional punishments far off in the future does little to deter would-be molesters, who [statistics prove] heavily discount the additional punishments. Moreover, the right to a fair trial in these cases has often been compromised, as memories and evidence are often quite sketchy

See Y. Listokin, Efficient Time Bars: A New Rational for the Existence of Statutes of Limitations in Criminal Law, 31 J. Legal Stud. 99 (2002).

The erosion of time is not a neutral force. As years pass, exculpatory evidence is lost, records are destroyed, witnesses become unavailable, and memories fade or distort. These losses fall with particular severity on the accused, who bears the burden of reconstructing events long past to test the State's allegations. Limitation periods reflect the practical unfairness of requiring a defendant to answer a charge when, through no fault of his own, evidence necessary to his defense may have been lost.

Statutes of limitation, described by Blackstone as grounded in principles of "natural justice," counsels us against subjecting a person to accusation after so much time has passed that obtaining reliable evidence of innocence becomes inherently difficult. Removing limitations periods magnifies these dangers. It shifts the practical burden of delay onto the accused, who must defend against allegations unmoored from contemporaneous proof. It increased the likelihood that prosecution will proceed on incomplete or faulty records, undermining the ability to confront witnesses, impeach credibility, and present a coherent defense.

Trials held decades after crimes occur often leave juries to resolve a he-said/she-said by believing one person or another. Under the highest burden of proof in the legal system, a credibility battle is an unreliable way to test criminal allegations. The risk of incorrect outcomes in either direction grows with the passage of time. This is why we have statutes of limitations.

Statutes of limitation therefore serve not merely as procedural deadlines, but as substantive safeguards of fairness and due process. They restrain the State's power to revive stale or faulty claims, reduce the likelihood of wrongful convictions, and provide legal certainty grounded in the reliability of evidence rather than the passage of time alone.

PERFORMANCE IMPLICATIONS

See Fiscal Implications and Performance Implications, above.

ADMINISTRATIVE IMPLICATIONS

See Fiscal Implications and Performance Implications, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

Eliminating statutes of limitations, rather than addressing other tolling options that would apply only to appropriate cases, opens up the possibility of any allegation, whether founded or unfounded, from suddenly accusing someone of a crime occurring decades ago, with no procedural bar on prosecution. The Legislature could instead expand the tolling statutes to include more situations that delay the clock from starting to address common causes of delayed reporting, rather than opening the floodgates with a total elimination of the time limit.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

The HJC amendments remove Senate Floor amendments, and thus amend the SJC-Substitute directly.