

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/28/11

SPONSOR HJC LAST UPDATED _____ HB 28/HJCS

SHORT TITLE Statute of Limitations for Certain Sex Crimes SB _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NFI	\$1.5-\$55.0 \$15.0-\$550.0	\$1.5-\$55.0 \$15.0- \$550.0	\$3.0-\$110.0 \$30.0- \$1,100.0	Recurring	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)
 Attorney General's Office (AGO)
 Public Defender Department (PDD)
 Parole Board (PB)
 Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute for House Bill 28 enlarges the statute of limitations for prior offenses of criminal sexual penetrations ("CSPs") by providing that the limitation period for a prior offense begins to run anew upon the commission of any subsequent CSP by the same offender.

FISCAL IMPLICATIONS

Costs to implement the bill are dependent on the number of cases charged. Consequently, it is difficult to estimate the fiscal impact. The costs shown in the table above were derived partly on data provided by AOC and partly on information provided by AODA. Costs include those incurred for judicial time and expenses incurred and preparation, hearing and trial time and expenses for both DAs and PDs. The lesser costs suggest a rapid resolution to a case while the

higher figure indicates the use of expert witnesses and the case actually being tried. Assuming ten additional cases per year, the costs are increased tenfold: from \$15,000 to \$550,000. Further, although NMCD reports the anticipated impact as minimal to moderate, reflecting increased costs of incarceration and parole matters arising from a successful prosecution of prior offenses (which would be even greater in light of the nature of the sex offender population covered by this bill, who frequently serve some or all of their parole terms in prison because they cannot obtain a parole plan as required by law), those costs would not be incurred until after the three fiscal years covered in the table and are therefore not included in the ranges set out there.

SIGNIFICANT ISSUES

The AGO comments that the committee substitute addresses initial concerns with the original bill, as to when the statute of limitations began to run anew. Under the substitute, the AGO believes the triggering event is clearly defined as being the commission of each subsequent offense.

The PDD, however, still expresses concern over lack of clarity, citing this example:

If a defendant is charged with two counts of CSP (one count for Victim A and one count for Victim B) in the same charging document and the count pertaining to Victim B occurred 15 years ago, well past the statute of limitations, does this proposed bill apply to both counts and revive the count for Victim B, which is otherwise barred by the statute of limitations?

More specifically, the PDD maintains there is no way to determine given the current language if the ongoing conduct must be specific to a particular victim or whether the time limitation could begin anew after each offense involving multiple victims.

On a separate issue, NMCD advises that if numerous bills creating new felony crimes or expanding existing crimes such as this one are enacted and result in an increase in convictions and incarcerations, NMCD will eventually reach its rated capacity for its prison population. Should that occur, the State will have three options: house inmates out of state, consider early release of inmates in accordance with the Corrections Population Control Act or other applicable state law, or expand existing or build more prisons. NMCD also notes that sex offenders are difficult to place in the community and often end up serving parole in prison because of difficulties obtaining the required approval of a parole plan by the Parole Board. Those who do obtain approval and are paroled to communities receive a higher level of supervision by parole officers in order to better protect public safety.

PERFORMANCE IMPLICATIONS

Increases in prosecutions and judicial caseloads may be anticipated by extending the limitations period. Because the courts participate in performance-based budgeting, the measures of district courts as to cases disposed of as a percent of cases filed, and the percent change in case filings by case type may be impacted by any such increase.

NMCD reports this bill will negatively impact its ability to perform prison-related and probation/parole supervision services with current levels of staffing if the bill results in more than just a few additional convictions. See Significant Issues section above.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AGO notes that individuals who have committed a subsequent CSP would not be subject to prosecution for a prior CSP if the limitations period has already run on that offense.

MD/mew