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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/28/11  
 SPONSOR HJC LAST UPDATED 03/09/11 HB 152/HJCS  
 SHORT TITLE Time Limit for Certain Crimes SB \_\_\_\_\_  
 ANALYST Aledo

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		*See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received on Original Bill

Attorney General's Office (AGO)

Public Defender Department (PDD)

New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of House Judiciary Substitute

House Judiciary Committee Substitute for House Bill 152 amends the statute of limitations section of the criminal code. The bill eliminates time limitations for prosecuting murder in the second degree and sets a ten year limitation periods for 1<sup>st</sup> degree felonies. This bill also extends the time limitation for prosecuting the crimes of conspiracy and tampering with evidence to coincide with the time limitation for the underlying crime.

### FISCAL IMPLICATIONS

According to New Mexico Corrections Department, the fiscal impact to NMCD is unknown.

- The bill increases the limitations period for the crimes of tampering with evidence and conspiracy, but reduces the limitations period for all first degree felonies not defined as violent felonies. This makes it too difficult to estimate if the bill will result in more prosecutions and convictions, fewer prosecutions and convictions, or ultimately no

change the number of prosecution and convictions. The classification of an inmate determines his or her custody level, and the incarceration cost varies based on the custody level and particular facility.

### **SIGNIFICANT ISSUES**

The Public Defender Department has concerns regarding unintended consequences from the bill removing the statute of limitations for tampering with evidence in cases involving an underlying “violent felony.”

According to PDD, “Tampering with evidence” consists of “destroying, changing, hiding, placing or fabricating any physical evidence with the intent to prevent apprehension, prosecution or conviction of any person or to throw suspicion of the commission of a crime upon another.” NMSA 1978, §§ 30-22-5. Under this statute, *anyone* who alters a crime scene (for example), at *any time*, is guilty of tampering provided they have the right mental intent. Unlike the other crimes contemplated in the amendment, tampering is not limited to offenders who have themselves committed violent felonies. Anyone who alters evidence of a past crime has committed the act necessary for conviction under the statute. Thus, anyone who owns property that was once associated with a crime should think twice before altering the property. The tampering statute also weighs heavily on the custodians of evidence, which includes of course law enforcement and, less obviously, medical facilities, historical repositories, etc. “Tampering with evidence” may be a crime that warrants retaining a statute of limitations on prosecutions owing to the broad reach of the statute.

### **PERFORMANCE IMPLICATIONS**

NMCD states that if the bill ultimately results in substantially more convictions, there would be an increase in the prison population and probation/parole caseloads, and would impede the performance of prison-related and supervision-related services at current levels of staff by requiring staff to do more work with more offenders.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

According to the Attorney General’s Office, House Bill 28 conflicts with House Bill 152. HB 28 only addresses sexual offenses committed pursuant to Section 30-9-11 NMSA 1978. HB 152 is more comprehensive. Under HB 152, sexual offenses committed pursuant to Section 30-9-11 NMSA would be an enumerated violent felony. Thus, there would be no time limitation for commencing a prosecution. HB 152 eliminates the significant legal issues with HB 28.

MCA/mew:bym