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FISCAL IMPACT REPORT

SPONSOR Steinborn **ORIGINAL DATE** 03/04/21
LAST UPDATED _____ **HB** _____
SHORT TITLE Child Sex Crime Statute of Limitations **SB** 310
ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications					

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with

HB56

HB 62

SOURCES OF INFORMATION

LFC Files

Responses Received From

Law Offices of the Public Defender (LOPD)

Administrative Office of the District Attorneys (AODA)

Administrative Office of the Courts (AOC)

Sentencing Commission (NMSC)

Corrections Department (NMCD)

Office of the Attorney General (NMAG)

Children, Youth & Families Department (CYFD)

SUMMARY

Synopsis of Bill

Senate Bill 310 amends Section 30-1-8 of the Criminal Code to establish two limitations period for prosecutions of certain sexual crimes against minors:

- for criminal sexual penetration of a minor under Section 30-9-11, a prosecution may commence at any time after the occurrence of the crime until the alleged victim reaches age 35. The limitations period does not apply to violent first degree felonies or to Section 30-9-11(G)(1) (fourth degree criminal sexual penetration of a child between the ages of 13

and 16 by a perpetrator who is at least 18 years old, is at least four years older than the child, and is not the child's spouse).

- for criminal sexual contact of a minor under Section 30-9-13, prosecution may commence at any time after the occurrence of the crime until the alleged victim reaches the age of 30.

SB310 also removes Sections 30-9-11 and 30-9-13 from coverage under Section 30-1-9.1, which provides that the limitations period for crimes committed against children does not commence until the victim reaches age 18 or the crime is reported to law enforcement, whichever occurs first.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

LOPD states that the longer limitations period proposed by the bill increases the potential for criminal prosecutions that would otherwise lapse under the current statutory time limits. It is impossible to predict how many new cases would be brought under this proposed bill, but any increase could result in corresponding increase in work for LOPD. According to LOPD, any charges resulting from the bill would be older and “colder” than cases charged within the existing time limits, and, because older, delayed cases create issues as to the collection of evidence, resolution of such cases by plea agreements would be less likely and result in more cases going to trial, requiring more attorney work time as well as more court resources. Additionally, LOPD states that many of the cases would 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.

AOC states that there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Additional fiscal impact on the judicial branch would be proportionate to application of this law authorizing new cases to be commenced that were previously barred by existing time limitations. It is also possible that increased challenges to stale or dated evidence could lead to longer trials and appeals that would require a larger commitment of the judicial branch's fiscal and administrative resources. In general, 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.

NMCD notes that the fiscal impact is difficult to estimate, as it will depend on the number of individuals who might be charged and convicted as a result of the longer limitations periods established by the bill. However, it is likely that the bill would increase the population of New Mexico's prisons and long-term costs to the general fund. According to NMSC, the average sentence length for 1st degree sex offenses is 3,100 days, and for 2nd degree offenses the average sentence length is 2,011 days. NMSC notes that there are wide variations in the sentence lengths in these cases. NMCD 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, LFC estimates a marginal cost (the cost per each additional inmate) of \$23.3 thousand per inmate per year across all facilities.

SIGNIFICANT ISSUES

Issue Raised in FIRs for Previous Bills

SB310 contains an issue that was raised in connection with similar bills introduced in 2019 (SB55) and the 2020 regular session (SB97). The issue led the governor to veto SB55.¹

Specifically, SB310 excepts Section 30-9-11(G)(1), which applies to fourth degree criminal sexual penetration, from the new limitations period applicable to crimes against a minor under Section 30-9-11. The evident purpose of the exception is to subject Section 30-9-11(G)(1) to the current five-year limitations period. However, the bill also amends Section 30-1-9.1, which tolls statutes of limitation for crimes against children until they turn 18, to exclude Section 30-9-11 and Section 30-9-13. By removing Section 30-9-11 in its entirety from the tolling provisions of Section 30-1-9.1, SB 310 removes the tolling provision for criminal sexual penetration crimes against children under Section 30-9-11(G)(1). As a result, Section 30-9-11(G)(1), which is excluded from the new extended statute for limitations for other criminal sexual penetration crimes against children, remains subject to the current limitations period, but prosecutions of the crimes described in that section are no longer tolled until the victim turns 18. This effectively means crimes under Section 30-9-11(G)(1) would have a shorter limitations period under SB310 than they do under current law.

If, as seems likely, it is not the intent of the bill to exclude Section 30-9-11(G)(1) from the tolling provisions of Section 30-1-9.1, the issue described above can be resolved by changing the language in Section 2, p. 3, lines 12-17 as follows:

The applicable time period for commencing prosecution pursuant to Section 30-1-8 NMSA 1978 shall not commence to run for an alleged violation of Section 30-6-1 ~~30-9-11 or 30-9-13~~ NMSA 1978 or of Paragraph (1) of Subsection G of Section 30-9-11 NMSA 1978 until the victim attains the age of eighteen or the violation is reported to a law enforcement agency, whichever occurs first.

Other Issues

AOC explains that statutes of limitation in criminal law require prosecutions be commenced within a specified number of years. Their primary purposes are: 1) to ensure that evidence, especially oral testimony based on memory, of the alleged crime is as fresh and reliable as possible; and 2) to provide a measure of assurance to law enforcement, the courts, and the parties to the alleged crime that prosecutions will be commenced on the basis of evidence that a finder of fact (particularly a jury) can credit as reliable because reasonably contemporaneous.

AOC believes that SB310's extension of the statutes of limitation for sexual crimes against minors signals that the Legislature considers the specified types of crimes so heinous that they should be able to be prosecuted after an alleged victim reaches a maturity level sufficient to contact law enforcement. Extending statutes of limitations also signals the Legislature's conclusion that certain crimes are so difficult to prosecute soon after the alleged actions that a longer time should be permitted for victims to seek redress from the courts.

¹ www.governor.state.nm.us/wp-content/uploads/2019/04/Senate_Message_38_Veto_SB_55.pdf

AODA states that it is a regular occurrence that minor victims of criminal sexual penetration and criminal sexual contact do not disclose the crimes until they are into adulthood. The changes proposed by SB310 allow more time to commence a prosecution once a person discloses that they were a victim of the crime as a minor. This is important in terms of the offender’s accountability and for the healing of the victim.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB310 conflicts with HB 56 & HB 62 which also amend Section 30-1-8 NMSA 1978.

OTHER SUBSTANTIVE ISSUES

AOC states that the general purpose of statutes of limitation is to make sure that convictions occur only upon evidence (testimonial, scientific) that has not deteriorated with time. Convictions based upon stale or now unavailable testimonial evidence may be challenged under the Confrontation Clause of the Sixth Amendment to the U.S. Constitution and Article II, Section 14 of the New Mexico Constitution.

LOPD notes that while statutes of limitation for most crimes have been a feature of American criminal law since the early days of the Republic, their application has been far from universal (for example, England appears to have no general statute of limitation to criminal actions) and the time limits for prosecution of given crimes vary widely across the various states. *See* Listokin, Efficient Time Bars: A New Rationale for the Existence of Statutes of Limitations in Criminal Law, 31 J. Legal Stud. 99 (2002).

According to NMSC, Child USA, an advocacy group that follows laws concerning sexual abuse of children in the country, gives New Mexico a ranking of 4 out of 5 for its criminal statute of limitations for child sexual abuse. (See *Child Sex Abuse Statutes of Limitation Reform from January 2002 to December 2019*, Chapter V. “Grading the States on Their Child Sex Abuse SOLs”, pp. 53-56.²

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² <https://static1.squarespace.com/static/5a120b962aeba581dd692cd4/t/5e05104880f81f1fddb013c5/1577390160706/2019+SOL+Report+2019.12.26.pdf>