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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: Date 1-8-16
Original **Amendment** **Bill No:** HB36
Correction **Substitute**

Sponsor: William "Bill" R. Rehm **Agency Code:** 264
Short Title: Time Limit for Prosecuting Certain Crimes **Person Writing:** Gail MacQuesten
Title: Certain Crimes **Phone:** 466-0532 **Emai:** gailmacquesten@q.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	minimal	minimal	minimal	unknown	recurring	general

(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

Synopsis:

HB36 amends NMSA 1978, Section 30-1-8, Time Limitations for Commencing Prosecution, in three ways.

HB36 amends Section 30-1-8(I) (renumbered as subsection K) to add murder in the second degree to the list of offenses for which there is no time limitation for commencing prosecution. (Currently, murder in the second degree, along with all other second degree felonies, has a six year statute of limitation.) HB36 also amends Section 30-1-8(A), which addresses the six year time limitation for second degree felonies, to clarify that it does not apply to second degree murder.

HB36 also amends Section 30-1-8(I) (renumbered as subsection K), to provide that there is no time limit for prosecuting a first degree felony. (Currently, the statute provides that there is no time limitation for commencing prosecution for a first degree violent felony. The statute as currently written contains no provision addressing first degree non-violent felonies.)

HB36 adds new subsections to Section 30-1-8 to provide that the crime of conspiracy and the crime of tampering with evidence will have the same statute of limitations as the crime with which they are associated.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

HB36 extends or eliminates the statute of limitations for some crimes. To the extent these changes result in more prosecutions and convictions, there will be increased costs to the state for litigation and incarceration.

SIGNIFICANT ISSUES

1. HB36 removes time limits for prosecuting second degree murder.

Under the current statute, first degree murder has no statute of limitations, while second degree murder has the same statute of limitations as any other second degree felony: six years. HB36 amends the statute to include second degree murder in the category of crimes for which there is no statute of limitations.

2. HB36 amends the provision regarding crimes for which there is no statute of limitations.

Currently, only capital felonies and first degree violent felonies have no time limits on prosecution. HB36 removes the distinction between violent and non-violent first degree felonies, and provides that all first degree felonies (whether violent or not) fall into the category of crimes which have no statute of limitations. As currently written, Section 30-1-8 contains no provision specifically addressing non-violent first degree felonies. Presumably they are covered by the catch-all provision which applies a three year statute of limitation.

3. HB36 extends the statute of limitations for some charges of conspiracy and tampering.

As currently written, Section 30-1-8 sets time limits for prosecuting most crimes based on the degree of the crime. For example, prosecution of a misdemeanor must begin within two years of the commission of the crime; prosecution of a third or fourth degree felony must begin within 5 years; and prosecution of a second degree felony must begin within six years.

HB36 would amend Section 30-1-8 to add special time limits for prosecuting “conspiracy” and “tampering with evidence,” providing that these crimes will have the same statute of limitations as the crime with which they are associated. In many situations this will have the effect of extending the current time limits for commencing prosecutions of conspiracy and tampering. The most significant time extension will be in murder cases. Under current law, conspiracy to commit murder is punished as a second degree felony (see NMSA 1978, Section 30-28-2), so the statute of limitations on conspiracy to commit murder is six years. Under HB36, conspiracy to commit murder will have the same time limit as the underlying crime of murder—and there is no time limit on commencing a prosecution for murder.

PERFORMANCE IMPLICATIONS

1. Removing the statute of limitations for second degree murder.

From a prosecution/trial standpoint, it makes sense that first degree murder and second degree murder be treated the same way for statute of limitations purposes.

Murder in the first degree is distinguished from second degree murder primarily by the intent or state of mind of the defendant. First degree murder requires a willful, deliberate and premeditated killing, a killing in the course of or attempt to commit any felony, or by an act greatly dangerous to the lives of others indicating a depraved mind regardless of human life. See NMSA 1978, Section 30-2-1(A). Second degree murder is defined as follows: “Unless he is acting upon sufficient provocation, upon a sudden quarrel or in the heat of passion, a person who kills another human being without lawful justification or excuse commits murder in the second degree if in performing the acts which cause the death he knows that such acts create a strong probability of death or great bodily harm to that individual or another.” NMSA 1978, Section 30-2-1(B). That difference is taken into account in sentencing. First degree murder is a capital

offense, punishable by life in prison or life in prison without the possibility of release or parole. Second degree murder carries a basic sentence of 15 years. In cases where the identity of the killer is not in dispute, the trial will often center on the killer's intent, and the issue is whether the killing was a first degree murder or a second degree murder.

The consequences of both crimes are serious: the death of a human being. Eliminating the statute of limitations for murder, whether it is first degree murder or second degree murder, recognizes the seriousness of the offense. The distinction between first and second degree murder is primarily a matter of the intent of the defendant, which may not become clear until trial when all the evidence is examined. Putting a six year time limit on prosecutions for second degree murder (but not first degree murder) will only eliminate murder trials in cases where more than six years have passed, and it is clear that the evidence would not support first degree murder. In many more cases, the trial will proceed in an all-or-nothing fashion: if the jury finds first degree murder, the defendant faces life in prison. But if the jury does not find first degree murder, there can be no conviction, and no penalty, because prosecution for second degree murder is time-barred. The distinction between first and second degree murder is better accounted for in sentencing, instead of legal time limits that absolutely bar prosecution.

2. Removing the statute of limitations for all first degree felonies.

Under the current statute, there is no time limit on prosecuting first degree violent felonies. But the statute is silent on the time limit for prosecuting first degree felonies that are not violent. If the statute creating the non-violent first degree felony does not provide a specific time limit for commencing prosecution, presumably the three-year catch-all provision of Section 30-1-8 would apply. As a result, a first degree non-violent felony has a shorter statute of limitations than a fourth degree felony.

By removing the distinction between first degree violent felonies and first degree non-violent felonies, HB 36 does away with the need to determine whether a particular first degree felony is "violent" or "non-violent," and removes the huge disparity between first degree non-violent felonies (with a three year statute of limitations) and first degree violent felonies (with no statute of limitations at all).

3. Extending the time limits for prosecuting conspiracy and tampering.

There are several issues that will arise with this change:

- HB36 ties the statute of limitations for "conspiracy" and "tampering" to the statute of limitations applicable to the crime conspired to be committed, or the crime for which tampering is committed. But a single conspiracy or tampering count may be associated with multiple crimes. For this reason, the basic statutes for conspiracy and tampering look to the highest underlying crime to determine the degree of the tampering or conspiracy offense. See NMSA 1978, Section 30-28-2 and NMSA 1978, Section 30-22-5. It would be helpful to use the same language in Section 30-1-8, so that the statute of limitations for conspiracy or tampering is linked to the highest crime conspired to be committed, or the highest crime for which tampering is committed.
- When Section 30-1-8 sets a special time limit for a specific crime, it identifies that crime by its statutory citation. HB36 contains special provisions for "conspiracy" and "tampering with evidence," but does not give statutory citations for those crimes. Unless

HB36's special provisions are intended to apply to all "conspiracy" and "tampering" crimes, this could cause confusion. For example, there is the general statute for conspiracy to commit a felony (NMSA 1978, Section 30-28-2), and there are other specific "conspiracy" crimes, such as conspiracy to violate the Election Code (see NMSA 1978, Section 1-20-15).

ADMINISTRATIVE IMPLICATIONS

See Significant Issues and Performance Implications, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

See Performance Implications, above.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Second degree murder will have a six year statute of limitations. The statutes of limitation for conspiracy and tampering will generally be shorter than the statute of limitations for the offense to which it is related. The statute of limitations for first degree non-violent felonies will be three years (unless a limitation is provided for outside of Section 30-1-8).

AMENDMENTS

To clarify that the statute of limitations for conspiracy and tampering with evidence is determined by the highest level associated crime, amend Section 1 of HB36 at page 2, lines 8-13, as follows:

"E. for the crime of conspiracy, within the same time period as the highest crime conspired to be committed would be prosecuted; F. for the crime of tampering with evidence, within the same time period as the highest crime for which the tampering with evidence was committed would be prosecuted;"