

LFC Requester:	
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**AGENCY BILL ANALYSIS
2018 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:
Original **Amendment**
Correction **Substitute**

Date Jan. 17, 2018
Bill No: HB115

Sponsor: Maestas & Youngblood
Short 2nd Degree Murder Time
Title: Limit

Agency Code: 264
Person Writing Gail MacQuesten
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

HB115 eliminates the statute of limitations for second degree murder.

HB115 amends NMSA 1978, Section 30-1-8(I), 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.) HB115 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.

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.

HB115 eliminates the statute of limitations for second degree murder. 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

HB115 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. HB115 amends the statute to include second degree murder in the category of crimes for which there is no statute of limitations.

PERFORMANCE IMPLICATIONS

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.

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.

AMENDMENTS

None proposed.