

LFC Requester: _____

**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. 16, 2018

Bill No: HB 33

Sponsor: William Rehm/Antonio Maestas

Agency Code: 264

Short Extend Time Limits for

Person Writing Gary Cade

Title: Prosecution

Phone: 505-507-7752 **Email** cadeabq@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		

(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						

(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: HB 33 would remove any limitation period to prosecute second degree murder, and make it the same as capital and first degree violent felonies which also have no time limits for commencement of prosecution. It would also make first degree felony trafficking of controlled substances subject to the same six-year limitation period which is now present for second degree felonies. Finally, it would set the same time limits for prosecution of conspiracy and tampering with evidence as the highest crime conspired to be committed or for which the tampering was committed.

FISCAL IMPLICATIONS

Unknown. Because of the extended deadlines for prosecution of the crimes listed above, it is possible that more pre-trial motions will be filed and more cases could be tried in those criminal cases since prevailing on the degree of the offense could be dispositive. More litigation could contribute to a need for more judges, prosecutors, public defenders and, perhaps, more resources involving the department of corrections.

SIGNIFICANT ISSUES

HB 33 would address an existing problem that if second degree murder is not charged within six years, then the statute of limitations is a complete defense. It's now possible that if first degree murder is charged outside that six year limit but a jury returns a verdict of second degree murder then charges could be dismissed after trial. Cf., *State v. Kerby*, 2007—NMSC—014 (The statute of limitations is jurisdictional and charges can be dismissed after trial, absent a knowing waiver of the limitation.)

The current statute does not define a “violent felony” but if it is recognized as such and is a first degree felony then it has no statute of limitations. See, Sec. 30-1-8(I), NMSA 1978. The Earned Meritorious Deduction Act (“EMDA”) lists certain crimes that it classifies as a “serious

violent felony,” including several which can be first degree felonies: kidnapping, criminal sexual penetration, and robbery. See, Sec. 33-2-34(L)(4)(e), (f), and (h), NMSA 1978.

Under the EMDA it is optional whether another potential first degree felony, abuse of child, is considered a serious violent felony. See, Sec. 33-2-34(4)(o)(9), NMSA 1978. See also, Sec. 30-6-1(E)—(H), NMSA 1978. It is unclear if some child abuse charges would now be considered a violent felony, especially if it is determined the abuse was negligent and not intentional. Cf., *State v. Gonzales*, 2011—NMCA—081 (To be convicted of child abuse defendant’s conduct must create substantial and foreseeable risk of harm to an identified or identifiable child within the zone of danger. Since the defendant did not know children were in the car she rear ended while driving drunk then her child abuse conviction based on negligence was set aside and re-trial on vehicular homicide charge barred.), aff’d., 2013—NMSC—016, and *State v. Melendrez*, 2014—NMCA—062 (Defendant who drove recklessly and struck group of children was properly convicted of child abuse because children outside his car were visible.)

HB 33 would double the statute of limitations for first degree felony trafficking of controlled substances to six years from the time the crime was committed, instead of the present three years limit. The Controlled Substances Act is not contained within the Criminal Code. *State v. Herrera*, 86 N.M. 224 (1974). If a crime is not listed in the code, the general provision applying to crimes outside the code applies. See, Sec. 30-1-8(H), NMSA 1978, *Robinson v. Short*, 93 N.M. 610 (1979). The bill would make no change to the statute of limitations applicable for some other first degree felony controlled substance charges: distribution to a minor—second (and subsequent) offenses, possession of more than 100 pounds of marijuana with intent to distribute or distribution within a drug-free school zone and distribution of other controlled substances or their analogs within a drug-free school zone—second (and subsequent) offenses. See, Sec. 30-31-21(B)(2) and Sec. 30-32-22(D)(1)(b) and 30-31-22(D)(2)(b), NMSA 1978.

HB 33 would extend the statute of limitations for conspiracy and tampering to match the statute of limitations to the same as, “...the highest crime conspired to be committed (and) the highest crime for which the tampering with evidence was committed.” Tampering charges are now classified as a third degree felony if the highest crime for which tampering was committed was a capital or first or second degree felony, a fourth degree felony if the highest crime for which tampering was committed was a third or fourth degree felony or indeterminate felony, and a petty misdemeanor if the highest crime for which tampering was committed was a misdemeanor or petty misdemeanor. Conspiracy charges are classified as a second degree felony if the highest crime conspired to be committed was a capital or first degree felony, as a third degree felony if the highest crime conspired to be committed was a second degree felony and as a fourth degree felony if the highest crime conspired to be committed was a third degree or fourth degree felony.

If adopted, the bill could increase the statute of limitations for tampering with evidence charges from three to six years now to there being no time limit for commencement of prosecution of capital, first degree violent felonies and second degree murder charges. The statute of limitations for conspiracy charges would be increased from as little as three years on some felonies and six years for conspiracy to commit a capital or first degree felony to no limits for a capital or first degree violent felony and second degree murder. As drafted, the bill would make no changes to the statute of limitations involving attempts to commit a felony. It would leave unchanged the limit of six years for attempting a capital or first degree felony, and the limit for prosecution of

attempted second degree murder would continue to be five years from the time the crime was committed.

HB 33 would not change the statute of limitations for other first degree crimes, including some involving children, e.g. sexual exploitation of a child under age 13 for prostitution, and human trafficking of a child under age 13. See, Sec. 30-6A-4(A), NMSA 1978 and Sec. 30-52-1(C), NMSA 1978. Defendants may argue that these are not violent felonies so time limit for commencement of these crimes is the default limit of three years. See, Sec. 30-1-8(H), NMSA 1978.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS