

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. 12, 2019
Bill No: HB104

Sponsor: William "Bill" R. Rehm
Short Title: No Statute of Limitation on 2nd Degree Murder

Agency Code: 264
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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	unknown	unknown	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

HB104 amends NMSA 1978, Section 30-1-8, Time Limitations for Commencing Prosecution, in four ways.

1. Second Degree Murder. HB104 amends subsection 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, the statute of limitations is 6 years.) HB104 also amends subsection A, which addresses the six year time limitation for second degree felonies, to clarify that it does not apply to second degree murder.
2. First Degree Felony Trafficking Controlled Substances. HB104 amends subsection A to add first degree felony trafficking controlled substances pursuant to Section 30-31-20 to the list of offenses with a six year time limitation. (Currently, as a non-violent first degree felony, this crime falls into the “catch all” provision, and has a three year statute of limitation.)
3. Conspiracy. HB104 adds new subsection E to provide that the crime of conspiracy will have the same statute of limitations as the highest crime with which the conspiracy is associated.
4. Tampering with Evidence. HB104 adds new subsection F to provide that the crime of tampering with evidence will have the same statute of limitations as the highest crime with which the tampering is 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.

HB104 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. Second Degree Murder.

HB104 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. HB104 amends the statute to include second degree murder in the category of crimes for which there is no statute of limitations.

2. First Degree Felony Trafficking Controlled Substances.

Currently, only capital felonies and first degree violent felonies have no time limits on prosecution. The current statute makes no provision for first degree non-violent felonies, which presumably fall under the “catch-all” provision in subsection H (renumbered to subsection J) that imposes a three year limit. That means that under the current statute, a non-violent first degree felony has a shorter time limit for prosecution than a fourth degree felony. HB104 puts first degree felony trafficking controlled substances into the same category as a second degree felony, with a six year statute of limitations.

3. 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.

HB104 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 highest crime with which they are associated. Currently, the conspiracy statute determines the degree of offense by looking at the highest crime conspired to be committed, and steps the degree down one level. So, if the highest crime conspired to be committed is a capital or first degree felony, the conspiracy is a second degree felony. The tampering statute has a similar structure, but in some cases the degree of the offense is not stepped down. For example, if the tampering is associated with a crime that is a third or fourth degree felony, the tampering offense is a fourth degree felony.

Providing that conspiracy and tampering will have the same statute of limitations as the highest crime with which they are associated will in many situations 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 HB104, 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 in intent or state of mind 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. Imposing a six year statute of limitations for first degree felony trafficking controlled substances.

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.

First degree felony trafficking controlled substances is an offense that falls into the “catch all” provision. HB104 increases the time for prosecuting that crime from three years to six years.

Note, however, that HB104 does not eliminate the gap in the existing statute, which contains no provision for first degree non-violent felonies. Those crimes will fall into the “catch-all” provision and be subject to a 3 year statute of limitations, unless the criminal statute itself contains its own statute of limitations. Addressing the issue on a piece-meal basis, by adding a statute of limitations into the criminal statute itself, or by adding the crime into Section 30-1-8 (as HB104 does), can create unnecessary confusion. An alternative approach would be to make all first degree non-violent felonies subject to the six year statute of limitations.

3. Linking the statutes of limitation for conspiracy and tampering to that carried by the

highest crime with which the conspiracy or tampering is associated.

Currently, the statute of limitation for conspiracy or tampering is usually shorter than the statute of limitation for the associated crime. This can present problems in trying cases. For example, there may be a situation in which trial can proceed on the underlying crime, but time has run out for prosecuting tampering with evidence associated with that crime. HB104 gives conspiracy and tampering the same statute of limitations as the highest crime with which it is associated.

ADMINISTRATIVE IMPLICATIONS

See Significant Issues and Performance Implications, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

The tampering with evidence statute, Section 30-22-5 NMSA 1978, includes the crime of tampering with evidence when the degree of the underlying crime is indeterminate. It specifies that tampering in that situation is a fourth degree felony. As such, the statute of limitations under current law would be five years. It is not clear whether HB104 would apply that statute of limitations. It could be argued that if the associated crime is “indeterminate,” it has no limitation provided for it, and that it falls into the “catch-all” provision of subsection H (re-numbered to subsection J), and has a three year statute of limitation.

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. First degree felony trafficking controlled substances will fall under the “catch-all” provision, and be subject to a three year statute of limitations. The statutes of limitation for conspiracy and tampering will generally be shorter than the statutes of limitation for the offense to which it is related.

AMENDMENTS

To avoid a potential gap in the statute by not addressing first degree non-violent felonies, amend subsection A as follows:

A. for a second degree felony, except for murder in the second degree, and for a first degree non-violent felony for which a limitation is not otherwise provided, and for first degree felony trafficking controlled substances pursuant to Section 30-31-20 NMSA 1978, within six years from the time the crime was committed;