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| LFC Requester: | Connor Jorgensen |
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**AGENCY BILL ANALYSIS
2013 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 X **Amendment**
Correction **Substitute**

Date 01/28/2013
Bill No: HB269--305

Sponsor: Rep. Thomas C. Taylor
Short NO TIME LIMIT FOR RAPE
Title: PROSECUTION

Reviewing Attorney General's Office
Person Writing Trevor A. Rigler, AAG
Phone: 5052229013 **Email** trigler@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|------------------------------|------------------|
| FY13 | FY14 | | |
| | | | |
| | | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------------|------------------|
| FY13 | FY14 | FY15 | | |
| | | | | |
| | | | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY13 | FY14 | FY15 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| Total | | | | | | |

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis:

HB 269, if enacted into law, would remove the statute of limitations for all variants of criminal sexual penetration.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

This bill could result in previously unactionable criminal matters being filed in courts of jurisdiction. It could also result in additional investigations and/or investigative tasks related to previously stale crimes.

SIGNIFICANT LEGAL ISSUES

The statute of limitations exists in part to impose some sense of finality on the “chargeability” of offenses. As time elapses, crimes can become stale in terms of their ability to be effectively prosecuted or defended.

The amount of charging time afforded each offense is generally proportionate to its seriousness. For example, a petty misdemeanor must be charged within a year of the offense while first degree murder carries no statute of limitations whatsoever.

Tolling provisions are based on cognizable factual scenarios. For example, sexual crimes committed against children may be charged many years after the commission of the crime as the crime may not be reported until the child reaches the age of majority.

The current bill does not provide a rationale for removing the statute of limitations from *all* forms of criminal sexual penetration (CSP). CSP takes many forms and can be committed in a variety of factual scenarios. Many acts of CSP are committed against adult victims who have the ability to report the crime and the knowledge of the identity of their attacker. Others require years of painstaking investigation and scientific analysis to develop a suspect. Removing the statute of limitations for the “easily reportable” offenses in the same legislative penstroke as the cases involving forensic investigation may not be justifiable given the overall purpose of imposing reasonable time limitations.

Additionally, as unindicted CSP cases rise along with the rest of the criminal dockets, removing the statute of limitations could be seen as encouraging delay. This could result in

additional pre-indictment delay litigation.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

None

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

None

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

HB 117 – “STATUTE OF LIMITATIONS FOR CERTAIN CRIMES” (William "Bill" R. Rehm), which would change the statute of limitations applying to tampering with evidence, conspiracy, and second degree murder.

HB 126 – “STATUTE OF LIMITATIONS FOR CERTAIN CRIMES” (Jimmie C. Hall), which would remove the statute of limitations for several variants of homicide and any first degree felony.

TECHNICAL ISSUES OR DRAFTING ERROR

None

OTHER SUBSTANTIVE LEGAL ISSUES

None

ALTERNATIVES TO ENACTING THIS BILL

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS NEEDED TO IMPROVE THIS BILL

Remove the current six-year statute of limitations for second degree variants of criminal sexual penetration perpetrated against adult victims (first degree variants presently have no statute of limitations and tolling provisions already apply to cases involving child victims) only.

Instead of removing the statute of limitations, creating tolling provisions which would require some triggering event to justify their application. For example, a DNA match on a previously stale case could be such a justification, where the match could not previously have been made owing to articulable factual circumstances. Another example could involve the inability of a victim to report the crime.