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| LFC Requester: | Klundt, Kelly |
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**AGENCY BILL ANALYSIS
2014 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 February 6, 2014
Bill No: HB186-305 Feb 7

Sponsor: Rep. William "Bill" R. Rehm **Reviewing** Attorney General's Office
Short Time Limitations for **Person Writing** Michael P. Sanchez, AAG
Title: Conspiracy, Tampering **Phone:** 575-827-6000 **Email** mpsanchez@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 |
|---------------|------|------------------------------|------------------|
| FY14 | FY15 | | |
| | | | |
| | | | |

(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 |
|-------------------|------|------|---------------------------------|------------------|
| FY14 | FY15 | FY16 | | |
| | | | | |
| | | | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY14 | FY15 | FY16 | 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 of HJC Substitute:

If enacted, HJC/HB 186 would amend Section 30-1-8, NMSA 1978, to clarify the statute of limitations section of the Criminal Code to indicate that there is no limitations period for murder in the second degree. The bill would also amend the limitations period for the crimes of conspiracy and tampering with evidence to make them match the degree of the underlying felony (first, second, etc.) related to the conspiracy or evidence tampering. This will have the effect of generally extending the current time limits for commencing prosecutions of conspiracy and tampering.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

Enactment of HJC/HB 186 would generally increase the limitations period for the crimes of tampering with evidence and conspiracy, and remove the limitations period for second-degree murder. If enacted, this bill will allow more prosecutions, with additional costs associated with prosecution and incarceration resulting from those prosecutions. Any fiscal impact on law enforcement agencies, prosecutors, defense attorneys and the judiciary would be proportional to the number of additional cases resulting from enforcement of this law and any additional prosecutions for specific crimes that would not otherwise be brought if barred by existing time limitations.

SIGNIFICANT LEGAL ISSUES

The ultimate effect of the bill is to: (1) remove the limitations period for murder in the second degree; and (2) to generally increase the limitation periods for the crimes of conspiracy and tampering with evidence. See **Table A** and **Table B** for projected time limit effects.

Presently, the crime of conspiracy is a second degree felony when the highest crime conspired to be committed is a capital or first degree felony; a third degree felony when the highest crime conspired to be committed is a second degree felony; and a fourth degree felony when the highest crime conspired to be committed is a third or fourth degree felony.

Presently, the crime of tampering with evidence is a third degree felony when the highest crime for which the tampering occurred is a capital, first or second degree felony; a fourth degree felony when the highest crime for which the tampering occurred is a third or fourth degree felony or indeterminate; and a petty misdemeanor when the highest crime for which the tampering occurred is a misdemeanor or petty misdemeanor.

The statute of limitations for second, third and fourth degree felonies are respectively six, five and five years. Section 30-1-8 also sets special time limits for some specific crimes, such as identity theft.

TABLE A – Conspiracy Comparison Chart

| CRIME | CURRENT LIMIT | HB186 LIMIT |
|--|---------------|---------------|
| Conspiracy to Commit a Capital Offense | 6 years | No Time Limit |
| Conspiracy to Commit First Degree Violent Felony | 6 years | No Time Limit |
| Conspiracy to Commit Second Degree Felony | 5 years | 6 years |
| Conspiracy to Commit Third Degree Felony | 5 years | 5 years |
| Conspiracy to Commit Fourth Degree Felony | 5 years | 5 years |

TABLE B – Tampering With Evidence Comparison Chart

| CRIME | CURRENT LIMIT | HB186 LIMIT |
|---|---------------|---------------|
| Tamper (Highest Crime Capital or First Degree Violent Felony) | 5 years | No Time Limit |
| Tamper (Highest Crime Second Degree Felony) | 5 years | 6 years |
| Tamper (Highest Crime Third Degree Felony) | 5 years | 5 years |
| Tamper (Highest Crime Fourth Degree Felony) | 5 years | 5 years |
| Tamper (Highest Crime Misdemeanor) | 1 year | 2 years |
| Tamper (Highest Crime Petty Misdemeanor) | 1 year | 1 year |
| Tamper (Highest Crime Indeterminate Level) | 5 years | Indeterminate |

Tampering with Evidence is a fourth degree felony if the highest crime for which tampering with evidence is committed is "indeterminate." Making the time limit for tampering the same as the highest level crime will cause confusion where the highest level crime is "indeterminate." For example, in *State v. Jackson*, 2010-NMSC-032, 148 N.M. 452, 237 P.3d 754, the defendant's attempt to conceal evidence of a potential probation violation by providing a false urine sample was held to fall within the parameters of the tampering with evidence statute. The NM Supreme Court held the State need not allege any underlying crime to seek a conviction for tampering with evidence.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

N/A

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

N/A

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

N/A

TECHNICAL ISSUES OR DRAFTING ERROR

When Section 30-1-8 sets a special time limit for a specific crime, it generally identifies that crime by its statutory citation. HJC/HB 186 contains special provisions for “conspiracy” and “tampering with evidence,” but does not give statutory citations for these crimes. However, multiple New Mexico statutes refer to conspiracy, including: Sec. 1-20-15, NMSA 1978 - Conspiracy to Violate Election Code; Sec. 3-8-79, NMSA 1978 - Conspiracy to Violate Municipal Election Code; Sec. 20-12-16, NMSA 1978 - Conspiracy to Violate Code of Military Justice; Sec. 30-28-1, NMSA 1978 – Conspiracy; and, Sec. 57-1-1, NMSA 1978 - Conspiracy in Restraint of Trade or Commerce

Unless HJC/HB 186's special provisions are intended to apply to all “conspiracy” and “tampering” crimes, this could cause confusion. If HJC/HB 186's special provisions are intended to cover all “conspiracy” and “tampering” crimes, there may be disagreement over whether a particular crime falls within the category of a “conspiracy” or “tampering” crime.

Tampering with Evidence is a fourth degree felony if the highest crime for which tampering with evidence is committed is “indeterminate.” Making the time limit for tampering the same as the highest level crime will cause confusion where the highest level crime is “indeterminate.” For example, in *State v. Jackson*, 2010-NMSC-032, 148 N.M. 452, 237 P.3d 754, the defendant's attempt to conceal evidence of a potential probation violation by providing a false urine sample was held to fall within the parameters of the tampering with evidence statute. The NM Supreme Court held the state need not allege any underlying crime to seek a conviction for tampering with evidence.

OTHER SUBSTANTIVE LEGAL ISSUES

In 1997, Section 30-1-8 was amended to break first-degree felonies into two categories: 1) violent first-degree felonies and, by implication, 2) non-violent first-degree felonies. Prior to 1997, both violent and non-violent first-degree felonies were required to be prosecuted within fifteen years. Since 1997, violent first-degree felonies have no statutory time limitation, while non-violent first-degree felonies, not being specifically provided for, may be argued to fall under Section 30-1-8, Paragraph F. Paragraph F states that where a limitation is not otherwise provided for, the time limitation is three (3) years. Thus, it could be argued by a criminal defendant that the Legislature, by referring specifically to first-degree “violent” felonies, has thereby reduced the statute of limitations for first-degree non-violent felonies to three years.

Several offenses declared by the Legislature to be first degree felonies might possibly be classified as “non-violent,” depending upon the individual facts of the case, including:

- 1) § 30-6A-4, N.M.S.A. 1978, Sexual exploitation of children by prostitution
- 2) § 30-22-7, N.M.S.A. 1978, Unlawful rescue (from prison)
- 3) § 30-31-20, N.M.S.A. 1978, Trafficking controlled substances (2nd Offense)
- 4) § 30-31-21, N.M.S.A. 1978, Distribution of Controlled substances to a minor
- 5) § 30-31-22, N.M.S.A. 1978, Controlled or counterfeit substances; distribution prohibited

In interpreting whether the Legislature intended to distinguish between violent and non-violent first-degree felonies, a Court may be persuaded by the Legislature's treatment of prison inmates' eligibility for earned meritorious deductions. Such deductions are based, in part, upon whether the inmate was convicted of a nonviolent offense or a serious violent offense. See, Sec. 33-2-34, NMSA 1978. Having made a distinction between violent and non-violent for purposes of awarding good-time to prison inmates, a reviewing Court may decide the Legislature similarly intended to make such a distinction with regard to time limits for prosecuting crimes.

ALTERNATIVES TO ENACTING THIS BILL

If HJC/HB 186 is not enacted, the status quo will remain in effect.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If HJC/HB 186 is not enacted, the status quo will remain in effect.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

N/A