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FISCAL IMPACT REPORT

ORIGINAL DATE 2/22/15

SPONSOR Maestas LAST UPDATED 3/12/15 HB 497/aHSCAC

SHORT TITLE Definition of Household Member in Several Acts SB _____

ANALYST A. Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NIF	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to HB 123, HB 462, HB 483, SB 134, SB 407, SB 408, SB 495, SB 513

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General’s Office (AGO)
 New Mexico Sentencing Commission (NMSC)
 Children, Youth and Families Department (CYFD)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

House Safety and Civil Affairs Committee amendment to House Bill 497 adds “child or an adult child” to the individuals for whom an officer has probably cause to believe has suffered assault or battery. It also leaves “child, stepchild, grandchild” to the definition of household member.

Synopsis of Original Bill

House Bill 497 proposes to reconcile the definition of household member in Section 30-3-11, 31-1-7 and 40-13-2.

FISCAL IMPLICATIONS

There may be costs to the district attorneys related to litigating the remaining ambiguities in the

definition sections, such as the removal of child, stepchild and grandchild from the definition of household member. Note: major assumptions underlying fiscal impact should be documented.

AOC reports minimal impact to the courts.

SIGNIFICANT ISSUES

According to the AGO, the removal of “family member, including a relative” from §31-1-7 may be interpreted to allow for domestic violence between siblings and other family members that are not specifically mentioned. This may be construed as adding a possible loophole.

The AOC reports that in removing “child” from the definition of “household member” within Section 31-1-7 NMSA 1978, the HB 497 amendment does not take into consideration a situation where a “child” is, for example, 19 years old and technically no longer a child, per se, but is a child to someone who has committed an assault or battery against that child, currently considered a household member. Similarly, in removing “child, stepchild, grandchild” from the definition of “household member” as used within the Family Violence Protection Act, HB 497 limits the application of an order of protection as it pertains to a child, stepchild or grandchild, no matter that child’s, stepchild’s or grandchild’s age, who would currently be considered a household member for purposes of granting an order of protection pursuant to Section 40-13-5 NMSA 1978.

AODA reports that the Family Violence Protection Act also includes “stepchild” and “grandchild.” Those references are removed by HB 497, so children, stepchildren and grandchildren do not come within the definition of “family member.” (The current definition of “household member” in the Crimes Against Household Members Act does not include child, stepchild or grandchild.) HB 497’s exclusion of children, stepchildren, and grandchildren from the definition of household member may be intentional, if it is felt that crimes against a child are addressed under other statutes, and that children do not need the protection provided by the Arrest Without Warrant provision of the Criminal Procedure Act because the child will be removed from the volatile situation pursuant to other statutes. But including children in the definition of household members serves other purposes. For example, under current law, if a person assaults a child, that is an assault on a household member, and a peace officer on the scene may make an immediate arrest without a warrant. But if the child is not treated as a “household member,” the peace officer will not be able to make an arrest, even though the aggressor may be a threat to other members of the household. And it is strange to remove protections for children under the Family Violence Protection Act, which defines “domestic abuse” to include harm or threatened harm to children. See Section 40-13-2 NMSA 1978.

PERFORMANCE IMPLICATIONS

This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 123, Family Violence Permanent No Contact Orders, amends the definition of household

member in Section 40-13-2 of the Family Violence Protection Act. The substitute bill for HB 123, however, does not amend Section 40-13-2.

HB 462, Domestic Disturbance Warrantless Arrests, amends Section 31-1-7 of the Criminal Procedure Act to move the current definition of household member into a new definitional subsection.

HB 483, Release on Own Recognizance for Some Crimes, amends the Crimes Against Household Members Act but does not amend the section of the act defining household member.

SB 134, Family Violence Permanent No Contact Orders, amends Section 40-13-2 of the Family Violence Protection Act, but does not amend the definition of household member. The committee substitute for SB134 does not amend Section 40-13-2 at all.

SB 407, Order of Protection Hearings, amends the Family Violence Protection Act, but does not amend the definition section.

SB 408, Domestic Violence Predominant Aggressor, amends Section 31-1-7 NSMA 1978 of the Criminal Procedure Act, including the definition of “household member.”

SB 495, Prohibit Firearm Possession by Some Offenders, amends provisions in the Family Violence Protection Act and the Crimes Against Household Members Act, but does not amend the definition sections of those acts.

SB 513, Domestic Violence Suffocation & Strangulation, amends Section 30-3-11 of the Crimes Against Household Members Act and Section 40-13-2 of the Family Violence Protection Act to add definitions of strangulation and suffocation, but does not amend the definition of household member.

TECHNICAL ISSUES

According to AODA, Section 30-3-11 of the Crimes Against Household Members Act defines “continuing personal relationship” as a dating or intimate relationship. Section 40-13-2 of the Family Violence Protection Act contains the same definition. But Section 31-1-7 of the Criminal Procedure Act does not define “continuing personal relationship,” although it also uses the term.

OTHER SUBSTANTIVE ISSUES

AODA points out that Section 30-3-11 of the Crimes Against Household Members Act defines “continuing personal relationship” as a dating or intimate relationship. Section 40-13-2 of the Family Violence Protection Act contains the same definition. But Section 31-1-7 of the Criminal Procedure Act does not define “continuing personal relationship,” although it also uses the term.

ABS/bb