

Harm to Who? Self and/or Others ***Senate Bill 166 (2025 Regular Session)***

Courts, Correction & Justice Interim Committee

October 15, 2025

Santa Fe, New Mexico

Sen. Joseph Cervantes, Chair

Rep. Christine Chandler, Vice-Chair

Presented by: Sen. Antonio “Moe” Maestas

SB-166 Legislative History

- Introduced by Sen. Antonio Maestas in 2025
- Holly Agajanian, Chief General Counsel to Governor Michelle Lujan Grisham of New Mexico
- Senate Judiciary Committee: 9 - 0
- Senate Floor: 39 - 0 (3 excused)
- House Health & Human Services Committee - *Tabled*

Chapter 43 – Commitment Procedures

Article 1 NMSA 1978

Mental Health and Developmental Disabilities Code

43-1-3. Definitions. **Mental Health and Developmental Disabilities Code**

43-1B-2. Definitions. **Assisted Outpatient**

ARTICLE 1 - Mental Health and Developmental Disabilities

- 43-1-1. Mental condition of criminal defendants; evaluation; treatment.
- 43-1-2. Short title.
- 43-1-3. Definitions.
- 43-1-4. Legal representation of clients.
- 43-1-5. Competence.
- 43-1-6. Personal rights of residential clients.
- 43-1-7. Right to treatment.
- 43-1-8. Right to habilitation.
- 43-1-9. Individualized treatment or habilitation plans.
- 43-1-10. Emergency mental health evaluation and care.
- 43-1-11. Commitment of adults for thirty-day period.
- 43-1-12. Extended commitment of adults.
- 43-1-13. Involuntary commitment of developmentally disabled adults to residential care.
- 43-1-14. Voluntary admission to residential treatment or habilitation.
- 43-1-15. Consent to treatment; adult clients.
- 43-1-15.1. Crisis triage centers; admission or treatment.
- 43-1-16 to 43-1-18. Repealed.
- 43-1-19. Disclosure of information.
- 43-1-20. Special commissioner.
- 43-1-21. Convalescent status; rehospitalization.
- 43-1-22. Transportation.
- 43-1-23. Violation of clients' rights.
- 43-1-24. Appeals; court of appeals.
- 43-1-25. Cost of care.

Assisted Outpatient Treatment Act

Sections 1 through 14 [43-1B-1 to 43-1B-14 NMSA 1978]

ARTICLE 1B

- 43-1B-1. Short title.
- 43-1B-2. Definitions.
- 43-1B-3. Assisted outpatient treatment; criteria.
- 43-1B-4. Petition to the court.
- 43-1B-5. Qualified protective order.
- 43-1B-6. Hearing; examination by a qualified professional.
- 43-1B-7. Written proposed treatment plan.
- 43-1B-8. Disposition.
- 43-1B-9. Expeditious appeal.
- 43-1B-10. Effect of determination that respondent is in need of assisted outpatient treatment.
- 43-1B-11. Applications for continued periods of treatment.
- 43-1B-12. Application to stay, vacate, modify or enforce an order.
- 43-1B-13. Failure to comply with assisted outpatient treatment.
- 43-1B-14. Sequestration and confidentiality of records.

Who Can Petition the Court

§43-1b-4 (B) NMSA 1978

- §43-1B-4. Petition to the court.
- B. A petition for an order authorizing assisted outpatient treatment may be filed only by the following persons:
 - (1) a person eighteen years of age or older who resides with the respondent;
 - (2) the parent or spouse of the respondent;
 - (3) the sibling or child of the respondent; provided that the sibling or child is eighteen years of age or older;
 - (4) the director of a hospital where the respondent is hospitalized;
 - (5) the director of a public or charitable organization or agency or a home where the respondent resides and that provides mental health services to the respondent;
 - (6) a qualified professional who either supervises the treatment of or treats the respondent for a mental disorder or has supervised or treated the respondent for a mental disorder within the past forty-eight months;
 - (7) a surrogate decision-maker; or
 - (8) a district attorney or the attorney general.

Assisted Outpatient Treatment Criteria

§ 43-1B-3. Assisted outpatient treatment; Criteria.

A person may be ordered to participate in assisted outpatient treatment if the court finds by clear and convincing evidence that the person:

- A. is eighteen years of age or older and is a resident of a participating municipality or county;
- B. has a primary diagnosis of a mental disorder;
- C. has demonstrated a history of lack of compliance with treatment for a mental disorder that has:
(1, 2 & 3)
- D. is unwilling or unlikely, as a result of a mental disorder, to participate voluntarily in outpatient treatment that would enable the person to live safely in the community without court supervision;
- E. is in need of assisted outpatient treatment as the least restrictive appropriate alternative to prevent a relapse or deterioration likely to result in serious harm to self or likely to result in serious harm to others; and
- F. will likely benefit from, and the person's best interests will be served by, receiving assisted outpatient treatment.

What is Assisted Outpatient Treatment (AOT)

§43-1B-2(D) - **Assisted outpatient treatment may include:**

- (1) medication;
- (2) periodic blood tests or urinalysis to determine compliance with prescribed medications;
- (3) individual or group therapy;
- (4) day or partial-day programming activities;
- (5) educational and vocational training or activities;
- (6) alcohol and substance abuse treatment and counseling;
- (7) periodic blood tests or urinalysis for the presence of alcohol or illegal drugs for a patient with a history of alcohol or substance abuse;
- (8) supervision of living arrangements; and
- (9) any other services prescribed to treat the patient's mental disorder and to assist the patient in living and functioning in the community, or to attempt to prevent a deterioration of the patient's mental or physical condition;

Harm to Self

CURRENT LAW

- "likelihood of serious harm to oneself" means that it is more likely than not that in the near future the person will attempt to commit suicide or will cause serious bodily harm to the person's self by violent or other self-destructive means, including grave passive neglect;

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- "harm to self" means that:
- (1) the person's recent behavior demonstrates that the person lacks the capacity to satisfy the person's need for nourishment, personal or medical care, shelter or self-protection and safety and that it is more likely than not that the lack of capacity will result in death, serious bodily injury or serious physical or mental debilitation in the near future if treatment is not ordered; and
- (2) it is more likely than not that the person will suffer serious physical debilitation in the near future unless adequate treatment is provided pursuant to the Mental Health and Developmental Disabilities Code

Reason for the "Harm to Self" change

- Provides much-needed clarity about what a danger to self actually means. Instead of noting a concern about someone inflicting "great bodily harm" before someone is a danger to himself, this new definition clarifies that a lack of capacity to provide for nourishment, medical care, safety, etc. are accepted indicators for the imminent risk suffered by the individual.

Harm to Others

CURRENT LAW

- "likelihood of serious harm to others" means that it is more likely than not that in the near future a
- person will inflict serious, unjustified bodily harm on another person or commit a criminal sexual offense, as evidenced by behavior causing, attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from the person;

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- "harm to others" means that within the recent past, the person has inflicted or attempted to inflict serious
- bodily harm on another or has acted in such a way as to create a substantial risk of serious bodily harm to another and it is more likely than not that the conduct will be repeated in the near future;

Reason for the "Harm to Others" change:

- New definition clarifies how to assess dangerousness, namely by looking at actual, recent conduct instead of a "more likely than not ... in the near future" standard which is too nebulous. It also changes the metric to say that there is a serious risk of serious bodily harm as opposed to "will inflict serious, unjustified bodily harm...or commit a criminal sexual offense."

Rights a Person Has In the System

- Right to **prompt written and oral notice** of the reasons for detention/commitment and the consequences.
- Right to **counsel** and to **communicate with an attorney** and their own mental-health professional.
- Right to **a hearing** (within 7 days for emergency admissions) and to **present evidence and cross-examine** witnesses.
- Right to an **independent mental-health evaluation** (the client can bring an expert) and a **complete record** of proceedings.
- Right to **trial by jury** for an extended commitment (if requested).
- Right to **appeal / expeditious appeal**, and to file **habeas corpus**.
 - Right to **reexamination** of an extended commitment (by client or certain family members/friends) after statutory intervals.