

LFC Requester:	
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**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

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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 March 12, 2025
Bill No: SB 166-280

Sponsor: Maestas
Short Title: Harm to Self or Others Definition

Agency Name and Code Number: LOPD 280
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **HB 4**
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This summary maintains the original analysis of the bill as introduced. Changes in the SJC-Substitute (.231784.3) are presented and discussed in underline below.

Synopsis: SB 166 proposes to expand the definitions of “harm to self” and “harm to others under Sections 43-1-3 (Mental Health and Developmental Disabilities Code) and 43-1B-2 (Assisted Outpatient Treatment Act) NMSA 1978 (hereinafter, generally, “Code”).

Harm to Self

The Code currently defines “harm to self” as “more likely than not that in the near future the person will attempt to commit suicide or will cause serious bodily harm to [. . .] self by violent or other self-destructive means, including grave passive neglect.” §§ 43-1-3(N) & 43-1B-2(I).

“Grave passive neglect” is currently defined as “failure to provide for basic personal or medical needs or for one’s own safety to such an extent that it is more likely than not that serious bodily harm will result in the near future.” *See* § 43-1-3(L). The proposed legislation does not modify this definition.

The proposed legislation as introduced would provide a more expansive definition of harm to self in Sections 43-1-3(O) & 43-1B-3(I), as follows:

“O. ‘harm to self’ means that:

“(1) a person is unable, without care, supervision and the continued assistance of others . . . to exercise self-control, judgment and discretion in the conduct of the person’s daily responsibilities and social relations **or** to satisfy the person’s need for nourishment, personal or medical care, shelter or self-protection and safety; and

“(2) there is a reasonable probability of the person suffering serious physical debilitation in the near future unless adequate treatment is provided.... A showing of behavior that is grossly irrational, actions that the person is unable to control, behavior that is grossly inappropriate to a situation or other evidence of severely impaired insight . . . creates a prima facie inference that a person is unable to care for oneself.” (Emphasis added.)

The SJC-Substitute would instead amend this definition to:

"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.

Harm to Others

The Code currently defines the "likelihood of serious harm to others" as "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."

The proposed legislation as introduced would substitute instead this definition within Sections 43-1-3(N) & 43-1B-3(H):

"harm to others" means that within the relevant past, the person had inflicted, attempted to inflict or threatened to inflict serious bodily harm on another or has engaged in extreme destruction of property and that there is a reasonable probability that the conduct will be repeated."

The SJC-Substitute would amend this definition to:

"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"

FISCAL IMPLICATIONS

Because involuntary commitment and assisted outpatient treatment proceedings are civil matters, little impact to the Law Offices of the Public Defender (LOPD) workload is envisioned. However, to the extent the proposed expanded definitions of harm could increase the likelihood of civil commitment collateral to any criminal case, the broader definition could require training and increased duties in advising clients during competency proceedings. It is notable that the number of LOPD cases closed (dismissed or criminally committed) due to incompetency is consistently 3% or less of LOPD cases. Additionally, if the definition were *also* applied to the definition of "dangerousness" used for *criminal* commitment purposes, this bill may increase LOPD workload in litigating criminal commitment if more cases qualify for that outcome under the amended definition of harm to self or others. *See* § 31-9-1.2(D) NMSA 1978 (defining "dangerous" as serious threat of inflicting great bodily harm on another).

While the LOPD would likely be able to absorb some additional workload under the proposed

law, any increase brought about by the cumulative effect of this and all other proposed criminal legislation would bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates. If the expanded definitions of harm increase persons entering involuntary treatment, such increase would undoubtedly fiscally impact the courts and NMDOH.

SIGNIFICANT ISSUES

Because of the use of the disjunctive “or” in Subsection (1) of the proposed definition of “harm to self,” a person would qualify to be *involuntary committed* if the person is unable “to exercise self-control, judgment and discretion in the conduct of the person’s daily responsibilities and social relations” along with “a showing of behavior that is grossly irrational, actions that the person is unable to control, behavior that is grossly inappropriate to a situation.” In other words, this bill would permit the government to force individuals to a “secure, locked facility” if they lack self-control and are grossly inappropriate. This dramatically loses sight of the plain meaning of “harm to self” much less the current definition which requires a risk of “serious bodily harm.”

NAMI, the National Alliance on Mental Illness, cautions against legislation that “expand[s] the role of the court system and involuntary treatment beyond what is necessary.” *NAMI 2023 State Legislation Issue Brief Series: Trends in Mental Health and Criminal Justice State Policy* at <https://www.nami.org/NAMI/media/NAMI-Media/PDFs/NAMI-2023StateLegBrief-01-CriminalJustice.pdf>. SB 166’s proposed expansion is concerning.

The SJC-Substitute largely addresses this particular concern by removing the option for commitment based solely on “inappropriate” social behaviors, and refocusing the definition on a risk of *physical* harm or well-being. The SJC-Substitute also does a better job focusing on “recent” behavior as an indicator of future behavior, where the original bill’s definitions allowed consideration of “the relevant past,” a phrase with no temporal limitation or legislative guidance. The bill similarly requires a risk of harm in the *near* future, focusing on imminence rather than an open-ended assessment of whether the harm might ever occur. The narrowing of both the backward and forward-looking aspects of the definition provide increased clarity and rationality.

Because of these changes, concerns outlined below are significantly reduced, but are included in this analysis as the context for evaluating the bill as a whole.

State Capacity

A practical concern is that imposing involuntary commitment and/or forced treatment based on the proposed expanded definitions of harm, even if their criminal case is dismissed, could disincentivize raising competency where the criminal sanction may actually be more desirable to some individuals. This may also present an ethical quandary for defense counsel who may not participate in the prosecution of an incompetent client, but who may believe that a negotiated criminal plea would be in their best interests if available commitment or forced treatment options would not.

Moreover, the expanded definition of harm in the proposed definition could significantly increase the number of people eligible for involuntary commitment or treatment. For instance, the proposed definition of “harm to self” includes an inability to provide for one’s medical care and shelter, outcomes which are consistent with not only serious mental illness, but economic status. As noted above, the proposed “harm to self” definition also bases an *prima facie* inference

that a person is unable to care for themselves on “grossly irrational” and “grossly inappropriate” behavior, subjective descriptors that risk including a wide range of symptoms of mental illness that may not warrant involuntary commitment. The proposed definition of “harm to others” includes serious property destruction as an indicator that commitment is warranted. If these expanded definitions significantly increase the number of committable persons, there is a concern that the state’s current facilities and infrastructure may not be able to accommodate the increased treatment needs.

This is not a theoretical concern. In the context of proposed community-based competency restoration programs, the LFC FIR to last year’s SB 16 notes New Mexico “lack[s] competency restoration programs across the state.... New Mexico is chronically underserved with treatment and service providers for those with behavioral health challenges.” [SB 16, LFC FIR pp. 3-4]

While expanded treatment options for New Mexicans is a laudable goal, proposed legislation should be tailored toward the least restrictive possible environment and should avoid unnecessary inclusion of criteria that, while defining undesirable or disruptive behaviors, does not rise to the level of actual dangerousness.

Constitutional concerns

Civil commitment “constitutes a significant deprivation of liberty.” *Addington v. Texas*, 441 U.S. 418, 425 (1979). Due process requires the state to justify confinement by a “clear and convincing” standard of proof. *United States v. Comstock*, 560 U.S. 126, 130 (2010). The current statutory definitions appear to reflect this standard by consistent use of the term “more likely than not” in definitions of self-harm, grave passive neglect, and harm to others.

In contrast, the proposed legislation requires only a “reasonable probability” of harm. This appears to lower the standard of required proof and could engender constitutional challenges.

PERFORMANCE IMPLICATIONS

None noted

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

May impact determinations of dangerous for competency proceedings as defined in existing law, and in proposed HB 4 (as incorporated into HB 8), as discussed.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None noted.