

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: March 11, 2025

Check all that apply:

Bill Number: SB 166/s

Original Correction
Amendment Substitute

Sponsor: Sen. Antonio Maestas

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: Harm to Self & Others Definition

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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 revenue 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:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

This bill amends NMSA 1978, § 43-1-3 (2024) and NMSA 1978, § 43-1B-2 (2020) to define “harm to self” and “harm to others” in the Mental Health and Development Disabilities Code (MHDDC) and the Assisted Outpatient Treatment Act (AOTA).

Section 1 amends Section 43-1-3 to replace in Subsections N and O, the definitions of “likelihood of serious harm to oneself” and “likelihood of serious harm to others.” The bill replaces these terms with “harm to oneself” and “harm to others” with their respective definitions.

The new definition of “harm to others” continues to rely on past behavior as the basis for determining whether there is a “reasonable probability” (rather than a “likelihood”) that such harm will be repeated. The new proposed definition continues to include actual harm and attempts or threats of harm as the basis (for determining reasonable probability) and adds actions creating a substantial risk of serious bodily harm to another *and* engaging in extreme destruction of property to those bases. **The committee substitute:** removes the addition of “engag[ing] in extreme destruction of property” from this revised definition.

The new definition of “harm to self” is expanded **from** a simple likelihood that someone would attempt to commit suicide or cause serious bodily self-harm by violent or other self-destructive means including passive neglect, **to** (1) being unable, without care, supervision, *and* the continued assistance of others, to exercise self-control, judgment, and discretion in the conduct of their daily responsibilities *and* social relations *or* to satisfy their need for nourishment, personal or medical care, shelter, or self-protection and safety; *and* (2) there is a “reasonable probability” of their suffering serious physical debilitation in the near future unless adequate treatment is provided. The 2nd part of this definition also states that 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 and judgment creates a prima facie inference that a person is unable to care for the person’s self.” **The committee substitute:** reworks the revised definition of “harm to self” to mean: “(1) the person’s recent behavior or behavioral history demonstrates that [they] lack[] the capacity to care for [their] own welfare or to satisfy [their] need for nourishment, personal or medical care, shelter[,] or self-protection and safety **and** that there is a reasonable probability of death, serious bodily

injury[,] or serious physical or mental debilitation if treatment is not ordered; **and** (2) there is a reasonable probability of the person suffering serious physical debilitation in the near future unless adequate treatment is provided pursuant to the [MHDDC].” It removes from the revised definition: “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 and judgment creates a prima facie inference that a person is unable to care for the person’s self.”

Section 2 amends Section 43-1B-2 to provide for the same replacement described above.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The committee substitute addresses and resolves most of the significant issues raised regarding the definition of “harm to self” in the original bill. However, as modified, the definition still requires both (1) that (a) a person’s behavior or behavioral history demonstrates an inability to essentially care for themselves and (b) that there is a reasonable probability of death or serious injury without treatment, **and** (2) that there is a reasonable probability of serious physical debilitation without treatment under the MHDDC. A court would likely interpret the use of “and” between (1) and (2) as requiring that all aspects of the definition be met to constitute “harm to self.” As there appears to be significant (though not complete) overlap between (1)(b) and (2), this may not create substantial issues; however, given that there are *some* differences between (1)(b) and (2), it is unclear whether this is intended.

As noted in the analysis for the original bill, the new definition no longer expressly includes a possibility of finding self-harm if an individual intends to commit suicide if the above requirements are not otherwise met.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

The committee substitute addresses and resolves the previously noted technical issue.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A