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**AGENCY BILL ANALYSIS
2026 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 X **Amendment**
Correction **Substitute**

Date March 12, 2025

Bill No: SB 3-280

Sponsor: <u>Antonio Maestas</u>	Agency Name and Code Number: <u>LOPD 280</u>
Short Title: <u>Harm to Self or Others Definition</u>	Person Writing <u>Kim Chavez Cook</u>
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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

Synopsis: SB 3 is similar to the SJC-Substitute for SB 166 presented during the 2025 Regular Session.

The bill proposes to expand the identical definitions of “harm to self” and “harm to others” in Sections 43-1-3 (Mental Health and Developmental Disabilities Code) and 43-1B-2 (Assisted Outpatient Treatment Act) NMSA 1978 (hereinafter, collectively, “Code”), shifting the definitions from those focused on distinctive harms described in criminal or tortious conduct descriptions to psychiatric terminology focused on more diagnostic determinations.

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).

SB 3 would amend this definition to:

“harm to self” means that:

(1) 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; or

(2) the person’s recent behavior:

(a) demonstrates that the person lacks the decisional 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 decisional capacity will result in death, serious bodily injury or serious physical or mental debilitation in the near future if treatment is not ordered; and

(b) makes it 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 would replace definition within Sections 43-1-3(N) & 43-1B-3(H):

“‘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.”

Although the bill does not amend any language in the criminal Mental Illness and Competency Code, involuntary commitment proceedings associated with a criminal prosecution are initiated when the Department of Health (DOH) “determines that the defendant presents a likelihood of **serious harm to self or others.**” NMSA 1978, 31-9-1.6 (2025) (emphasis added). It is unclear whether the definitions in this bill would apply to Section 31-9-1.6.

FISCAL IMPLICATIONS

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 or as a consideration entirely collateral to the criminal prosecution.

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. However, if these statutory definitions are used by DOH in its application of Section 31-9-1.6 for *criminal commitment* purposes, this bill may increase LOPD workload if more cases qualify for that outcome under the amended definition of harm to self or others. *See supra* § 31-9-1.6. Regardless of the any increase, in any case involving criminal commitment, LOPD counsel will spend significant time litigating the meaning of the proposed definitions.

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 the proposed definition of “harm to self,” a person would qualify to be *involuntary committed* if the person “**lacks the decisional 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 decisional capacity will result in death, serious bodily injury or serious physical or mental debilitation in the near future if treatment is not

ordered; and (b) makes it more likely than not that the person will suffer serious physical debilitation in the near future unless adequate treatment is provided”

Analyst notes that the entire subsection (b) appears redundant of the second clause in subsection (a).

It appears SB 3 would permit the government to force individuals to a “secure, locked facility” if they lack decisional capacity to acquire food, medical care, shelter, or safety. Analyst also questions the meaning – in application – of the phrase “decisional capacity.” It is an unfortunate reality of poverty that the options for acquiring food, medical care, shelter and safety, require navigating systems beyond the average person’s capacity to navigate. The definition provides little guidance for when the overwhelming challenges of poverty may impose a barrier to food, medical care, shelter, and safety.

While the second requirement that it is likely to result in death, serious injury, or debilitation provides some limitation on the sweeping “decisional capacity” prong, lack of food, medical care, shelter, and safety would appear to satisfy that prong necessarily, creating a circular or self-fulfilling limitation that is no limitation at all. The “harm to self” definition loses sight of the plain meaning of “harm to self” much less the current definition which requires a risk of “serious bodily harm ... by violent or other self-destructive means, including grave passive neglect.” To involuntarily commit someone to a secure locked facility, at least such a level of risk should be required.

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 3’s proposed expansion is concerning.

The proposed definitions are so broadly phrased as to permit sweeping discretion by DOH in determining when the definitions are satisfied, relying on subjective descriptors that risk including a wide range of symptoms of mental illness that may not warrant involuntary commitment. The definition of “harm to others” does a better job focusing on “recent” behavior as an indicator of future behavior. But overall, the definitions provide little line-drawing guarantees and create a risk of committing socially undesirable individuals with challenging behavioral health challenges who do not in fact present an imminent risk of serious harm to themselves or others.

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 dis-incentivize 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. 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 2024'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 efforts have been made to improve the infrastructure after the passage of 2025's SB 3, we have a long way to go.

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 proposed 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.

PERFORMANCE IMPLICATIONS

These definitions will likely impact determinations of dangerousness for criminal competency proceedings, and will increase the need to advise clients regarding the collateral risks of civil commitment, as discussed in the Fiscal Implications section above.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

Analyst is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill and analyst is unaware that it has been drawn pursuant to a special message of the Governor.

OTHER SUBSTANTIVE ISSUES

These definitions appear in the statutes governing *civil* involuntary treatment proceedings. However, the phrase "harm to self or others" appears in the criminal competency code in Section 31-9-1.6, the statute governing criminal commitment for defendants who cannot be restored to competency and remain "dangerous." The ultimate commitment determination is based on a judicial finding of "dangerousness" based on the commission of enumerated *crimes*. However, before the final determination, the proceedings are triggered by the terms defined by this bill.

Section 31-9-1.6 states: “If the department of health determines that the defendant presents a likelihood of **serious harm to self or others**,” it shall initiate criminal commitment proceedings. It does not specifically cross-reference the definitions at issue in this legislation, but as the assessment is delegated to DOH, it is a near certainty that DOH will rely on these definitions for that determination. Additionally, these definitions may well be used for determining dangerousness for commitments to restore competency under Section 31-9-1.2 and the -1.6 commitment determination.

If the Legislature does *not* intend for the definitions in Sections 43-1-3 and 43-1B-2 to have application in the criminal competency section, an affirmative statement in SB 3 would be helpful. Indeed, because the considerations for criminal and civil commitment are distinct, there is reason to rely on distinct assessments of potential harms and the civil definitions may justifiably be broader and more medically oriented, while the criminal considerations for “dangerousness” are understandably focused on the risk of harmful *criminal* behavior, not just abstracted risks of “harm.”

This bill analysis focuses on significant issues with applying the proposed definitions *in the criminal competency context*. Those issues would be resolved by a clear statement that these definitions apply *only* to involuntary treatment under Sections 43-1-3 and 43-1B-2, and *not* to criminal commitment determinations in Sections 31-9-1.2 and -1.6. With such distinction, the majority of this analysis’s concerns would be resolved.

ALTERNATIVES

In the proposed definition for “harm to self,” the bill describes in Section O(1), 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.” An attempted suicide is an inherently intentional act, but “causing serious bodily harm ... by self-destructive means” could include accidental conduct, including an accidental overdose. This definition could be strengthened by inserting an intent requirement, i.e., “will intentionally cause.”

Additionally, as noted above, the inclusion of (2)(b) is redundant and its inclusion makes the multi-part definition unnecessarily confusing. As a drafting matter, Analyst recommends simplifying the second alternative for “harm to self” as:

(2) the person’s recent behavior: ~~(a)~~ demonstrates that the person lacks the decisional 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 decisional capacity will result in death, serious bodily injury or serious physical or mental debilitation in the near future if treatment is not ordered; and ~~(b) makes it 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~~

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None noted.