

LFC Requester:

**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 Feb. 25, 2025

Bill No: SB 510-280

Sponsor: Sens. Sharer, Woods, Brantley, Thornton, & Paul
Short Title: Public Safety Changes (omnibus)
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 (passed in the HB 8 crime package, already requires evaluations for involuntary treatment & expanding criminal commitment and involuntary treatment); SB 74 & HB 86 (identical bills amending human trafficking & exploitation crimes); HB 107 & SB 95 (creating crimes for drug trafficking resulting in death); SB 166 (defining “harm” for competency and involuntary commitment purposes); HB 165, HB 381, HJR 9, HJR 14, & SB 196 (expanding pretrial detention); HB 134 & SB 326 (making same changes to juvenile procedures) SB 166~~

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: This bill was filed as an “omnibus” public safety bill would incorporate at least 10 previously filed 2025 bills (SB 74/HB 86 amending human trafficking; HB 107 amending drug trafficking laws; HB 4 amending criminal competency laws) and new provisions codifying current pretrial detention practices and creating the crime of operating a “stash house.”

However, the **SJC Substitute** for SB 510 (.232070.1) replaces all of the original bill content with a version of previously filed SB 166. The new version of the bill 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”).

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). The proposed definition under SB 510 is:

“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 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

(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.

The Code currently defines “harm to others” to mean “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 proposed definition under SB 510 is:

“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 afford shelter and their unhoused status places them at risk. Involuntary commitment is an improper response to poverty.

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 SB 510 version of these definitions avoids some concerns raised by SB 166 as filed and does a better job focusing on “recent” behavior as an indicator of future behavior. 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.

State Capacity

The expanded definition of harm in the proposed definition could 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 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). SB 510 lowers this standard by use of the term “more likely than not” (a preponderance of evidence standard) in definitions of self-harm, grave passive neglect, and harm to others.

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

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS