

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: January 30, 2025

Check all that apply:

Bill Number: SB 166

Original x 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,” which includes both the definition of “harm to oneself” and “harm to others,” respectively, and “likelihood,” with the definitions of just “harm to others” and harm to self.”

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 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.”

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

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The definition of “harm to self” may be overly complicated as written and, as such, may or may not have the intended effect. As written (but as more clearly depicted here with letters, numbers, bold, etc.), it appears that the new proposed definition of “harm to self” requires that someone is unable (as defined) to:

(A) (1) exercise self-control, judgment, **and** discretion in **both** (a) the conduct of their daily responsibilities **and** (b) social relations OR (2) satisfy their need for nourishment, personal or medical care, shelter, or self protection and safety; **and**

(B) (1) there is a reasonable probability that they will suffer *serious physical debilitation* in the *near future* unless treated **AND** (2) a person is prima facie unable to care for themselves when they exhibit behavior that is grossly irrational or inappropriate to a situation, displays actions evidencing an inability to control themselves, **or** displays severe impairment of insight and judgment.

The most obvious issue here is that what is indicated above as (B)(2) should be removed from (B) and either be its own separate section (perhaps (C)) or added to (A). This portion provides four ways to establish prima facie inability to care for self, and thus seems out-of-place in the provision discussing reasonable probability of future harm.

The other issue is that the requirements as set forth in the bill to find “harm to self” is confusing as written based on rules of grammar.

As to the first requirement that must be satisfied to meet the definition (what is contained in (A) above): (1) an inability to exercise **all three** of self-control, judgment, and discretion, as applied to **both** conduct of daily responsibilities and social relations, must be found to satisfy the first *option* of the first *part* (A) of the defined requirements. *Alternatively*, the second *option* of the first *part* (A) of the definition is (2) if someone is incapable of satisfying their need for nourishment, personal or medical care, shelter, *or* self-protection and safety. In other words, the first option seems to require a complete inability to function (A)(1) and the second option seems to require a simple inability to satisfy any one of certain needs (A)(2).

The second required *part* of the definition (what is contained in (B) above) (and omitting the portion that was not likely intended to form part of this second requirement – i.e., (B)(2)) requires that, *in addition* to either being fully incapable of functioning *or* fully incapable of satisfying any one of a number of identified needs, (1) there must also be a reasonable probability that the person will suffer serious physical debilitation in the near future. In other words, “harm to self” is *not* found if someone is fully incapable of taking care of themselves, but they are not likely to be *seriously disfigured* soon.

Finally, the new definition no longer includes a possibility of finding self-harm if an individual intends to commit suicide if the above requirements are not otherwise met. I.e., the new definition seems to be focused exclusively on inability to self-care, and not *intent* to cause self-harm or death.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

The new proposed definition of harm to self requires that someone is unable to care for themselves in the way defined if they are unable to do so without care, supervision, *and* the continued assistance of others. This language” “care, supervision[,], and the continued assistance of others not otherwise available” may be simply using a phrase of art, but could have the potential of precluding application of this definition when two out of the three of those listed requirements is satisfied.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

The language in both new definitions could be cleaned up to provide greater clarity with regard to what requirements are in fact intended to satisfy either definition.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A