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SENATE BILL 408

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

David M. Gallegos

AN ACT

RELATING TO HUMAN RIGHTS; GRANTING ALL RESIDENTS OF THE STATE  
THE RIGHT OF BODILY INTEGRITY; PROHIBITING PUBLIC OR PRIVATE  
DISCRIMINATION; REQUIRING INFORMED CONSENT; LIMITING MEDICAL  
INTERVENTIONS WHEN A PERSON ASSERTS THE RIGHT TO BODILY  
INTEGRITY; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 24-1-2 NMSA 1978 (being Laws 1973,  
Chapter 359, Section 2, as amended) is amended to read:

"24-1-2. DEFINITIONS.--As used in the Public Health Act:

A. "condition of public health importance" means an  
infection, a disease, a syndrome, a symptom, an injury or other  
threat that is identifiable on an individual or community level  
and can reasonably be expected to lead to adverse health  
effects in the community;

1           B. "crisis triage center" means a health facility  
2 that:

3                   (1) is licensed by the department of health;  
4 and

5                   (2) provides stabilization of behavioral  
6 health crises and may include residential and nonresidential  
7 stabilization;

8           C. "department" means:

9                   (1) the department of health; or

10                   (2) the children, youth and families

11 department as to child care centers, residential treatment  
12 centers that serve persons up to twenty-one years of age,  
13 community mental health centers that serve only persons up to  
14 twenty-one years of age, day treatment centers that serve  
15 persons up to twenty-one years of age, shelter care homes and  
16 those outpatient facilities that are also community-based  
17 behavioral health facilities serving only persons up to twenty-  
18 one years of age;

19           D. "director" means the secretary;

20           E. "health care provider" means an individual  
21 licensed to provide health care in the ordinary course of  
22 business, except as otherwise defined in the Public Health Act;

23           F. "health facility" means a public hospital,  
24 profit or nonprofit private hospital, general or special  
25 hospital, outpatient facility, crisis triage center,

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1 freestanding birth center, adult daycare facility, nursing  
2 home, intermediate care facility, assisted living facility,  
3 boarding home not under the control of an institution of higher  
4 learning, child care center, shelter care home, diagnostic and  
5 treatment center, rehabilitation center, infirmary, community  
6 mental health center that serves both children and adults or  
7 adults only, residential treatment center that serves persons  
8 up to twenty-one years of age, community mental health center  
9 that serves only persons up to twenty-one years of age and day  
10 treatment center that serves persons up to twenty-one years of  
11 age or a health service organization operating as a  
12 freestanding hospice or a home health agency. The designation  
13 of these entities as health facilities is only for the purposes  
14 of definition in the Public Health Act and does not imply that  
15 a freestanding hospice or a home health agency is considered a  
16 health facility for the purposes of other provisions of state  
17 or federal laws. "Health facility" also includes those  
18 facilities that, by federal regulation, must be licensed by the  
19 state to obtain or maintain full or partial, permanent or  
20 temporary federal funding. It does not include the offices and  
21 treatment rooms of licensed private practitioners;

22 G. "medical intervention" means medical treatment,  
23 testing or screening that involves:

24 (1) puncturing or incising a person's skin;

25 (2) removing bodily fluids, tissues or genetic

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1 material from a person's body; or

2 (3) inserting a foreign substance into a  
3 person's body;

4 H. "right of bodily integrity" means a person's  
5 right to accept or reject a medical intervention free from any  
6 threat or compulsion; provided that "person" includes minors  
7 and adults under guardianship for whom the right to accept or  
8 reject a medical intervention shall be made by the parent or  
9 legal guardian;

10 ~~[G.]~~ I. "screening" means a preliminary procedure,  
11 including a test or examination, that:

12 (1) may require further investigation; and  
13 (2) can identify ~~[individuals]~~ persons with  
14 unrecognized health risk factors or asymptomatic disease  
15 conditions in populations;

16 ~~[H.]~~ J. "secretary" means:

17 (1) the secretary of health; or  
18 (2) the secretary of early childhood education  
19 and care, the secretary of children, youth and families or the  
20 secretary of human services, as applicable, as to child care  
21 centers, residential treatment centers that serve persons up to  
22 twenty-one years of age, community mental health centers that  
23 serve only persons up to twenty-one years of age, day treatment  
24 centers that serve persons up to twenty-one years of age,  
25 shelter care homes and those outpatient facilities that are

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1 also community-based behavioral health facilities serving only  
2 persons up to twenty-one years of age; and

3 ~~[F.]~~ K. "test" means any diagnostic or  
4 investigative analysis or medical procedure that determines the  
5 presence of, absence of or exposure to a condition of public  
6 health importance or its precursor in an individual."

7 **SECTION 2.** Section 24-1-3 NMSA 1978 (being Laws 1973,  
8 Chapter 359, Section 3, as amended) is amended to read:

9 "24-1-3. POWERS AND AUTHORITY OF DEPARTMENT.--Except as  
10 it relates to a person's assertion of the right of bodily  
11 integrity, the department has authority to:

12 A. receive such grants, subsidies, donations,  
13 allotments or bequests as may be offered to the state by the  
14 federal government or any department thereof or by any public  
15 or private foundation or individuals;

16 B. supervise the health and hygiene of the people  
17 of the state and identify ways to evaluate and address  
18 community health problems;

19 C. investigate, control and abate the causes of  
20 disease, especially epidemics, sources of mortality and other  
21 conditions of public health;

22 D. establish, maintain and enforce isolation and  
23 quarantine;

24 E. close any public place and forbid gatherings of  
25 people when necessary for the protection of the public health;

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1 F. respond to public health emergencies and assist  
2 communities in recovery;

3 G. establish programs and adopt rules to prevent  
4 infant mortality, birth defects and morbidity;

5 H. prescribe the duties of public health nurses and  
6 school nurses;

7 I. provide educational programs and disseminate  
8 information on public health;

9 J. maintain and enforce rules for the licensure of  
10 health facilities;

11 K. ensure the quality and accessibility of health  
12 care services and the provision of health care when health care  
13 is otherwise unavailable;

14 L. ensure a competent public health workforce;

15 M. bring action in court for the enforcement of  
16 health laws and rules and orders issued by the department;

17 N. enter into agreements with other states to carry  
18 out the powers and duties of the department;

19 O. cooperate and enter into contracts or agreements  
20 with the federal government or any other person to carry out  
21 the powers and duties of the department;

22 P. cooperate and enter into contracts or agreements  
23 with Native American nations, tribes and pueblos and off-  
24 reservation groups to coordinate the provision of essential  
25 public health services and functions;

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1 Q. maintain and enforce rules for the control of  
2 conditions of public health importance;

3 R. maintain and enforce rules for immunization  
4 against conditions of public health importance;

5 S. maintain and enforce such rules as may be  
6 necessary to carry out the provisions of the Public Health Act  
7 and to publish the rules;

8 T. supervise state public health activities,  
9 operate a dental public health program and operate state  
10 laboratories for the investigation of public health matters;

11 U. sue and, with the consent of the legislature, be  
12 sued;

13 V. regulate the practice of midwifery;

14 W. administer legislation enacted pursuant to Title  
15 6 of the Public Health Service Act, as amended and  
16 supplemented;

17 X. inspect such premises or vehicles as necessary  
18 to ascertain the existence or nonexistence of conditions  
19 dangerous to public health or safety;

20 Y. request and inspect, while maintaining federal  
21 and state confidentiality requirements, copies of:

22 (1) medical and clinical records reasonably  
23 required for the department's quality assurance and quality  
24 improvement activities; and

25 (2) all medical and clinical records

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1 pertaining to the individual whose death is the subject of  
2 inquiry by the department's mortality review activities; and

3 Z. do all other things necessary to carry out its  
4 duties."

5 SECTION 3. Section 24-1-9.1 NMSA 1978 (being Laws 1993,  
6 Chapter 341, Section 4, as amended) is amended to read:

7 "24-1-9.1. SEXUALLY TRANSMITTED INFECTIONS--TESTING OF  
8 PERSONS CONVICTED OF CERTAIN CRIMINAL OFFENSES.--

9 A. A test designed to identify any sexually  
10 transmitted infection may be performed on an offender convicted  
11 pursuant to state law of any criminal offense:

12 (1) involving contact between the penis and  
13 the vulva;

14 (2) involving contact between the penis and  
15 anus;

16 (3) involving contact between the mouth and  
17 penis;

18 (4) involving contact between the mouth and  
19 vulva;

20 (5) involving contact between the mouth and  
21 anus; or

22 (6) when the court determines from the facts  
23 of the case that there was a transmission or likelihood of  
24 transmission of bodily fluids from the offender to the victim  
25 of the criminal offense.

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1           B. When consent to perform a test on an offender  
2 cannot be obtained because the offender asserts the right of  
3 bodily integrity or asserts another reason, the victim of a  
4 criminal offense described in Subsection A of this section may  
5 petition the court to order that a test be performed on the  
6 offender. When the victim of the criminal offense is a minor  
7 or incompetent, the parent or legal guardian of the victim may  
8 petition the court to order that a test be performed on the  
9 offender. The court shall order and the test shall be  
10 administered to the offender within ten days after the petition  
11 is filed by the victim or the victim's parent or guardian.  
12 Except for disclosures made pursuant to Section 24-1-7 NMSA  
13 1978, the results of the test shall be disclosed only to the  
14 offender and to the victim or the victim's parent or legal  
15 guardian."

16           SECTION 4. Section 24-1-9.2 NMSA 1978 (being Laws 1996,  
17 Chapter 80, Section 1, as amended) is amended to read:

18           "24-1-9.2. SEXUALLY TRANSMITTED INFECTIONS--TESTING OF  
19 PERSONS FORMALLY CHARGED FOR ALLEGEDLY COMMITTING CERTAIN  
20 CRIMINAL OFFENSES.--

21           A. A test designed to identify any sexually  
22 transmitted infection may be performed on a person, upon the  
23 filing of a complaint, information or an indictment alleging  
24 that the person committed a state criminal offense:

25           (1) involving contact between the penis and

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1 the vulva;

2 (2) involving contact between the penis and  
3 anus;

4 (3) involving contact between the mouth and  
5 penis;

6 (4) involving contact between the mouth and  
7 vulva; or

8 (5) involving contact between the mouth and  
9 anus.

10 B. If consent to perform a test on an alleged  
11 offender cannot be obtained because the offender asserts the  
12 right of bodily integrity or asserts another reason, the victim  
13 of the alleged criminal offense described in Subsection A of  
14 this section may petition the court, through the prosecuting  
15 office or personally, to order that a test be performed on the  
16 alleged offender; provided that the same test is first  
17 performed on the victim of the alleged criminal offense. The  
18 test may be performed on the alleged offender regardless of the  
19 result of the test performed on the victim of the alleged  
20 criminal offense. If the victim of the alleged criminal  
21 offense is a minor or incompetent, the parent or legal guardian  
22 of the victim of the alleged criminal offense may petition the  
23 court to order that a test be performed on the alleged  
24 offender.

25 C. The court may issue an order based on a finding

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1 of good cause after a hearing at which both the victim of the  
2 alleged criminal offense and the alleged offender have the  
3 right to be present. During the hearing, only affidavits,  
4 counter affidavits and medical reports regarding the facts that  
5 support or rebut the issuance of an order shall be admissible.  
6 The hearing shall be conducted within seventy-two hours after  
7 the victim petitions the court for the order. The petition and  
8 all proceedings in connection therewith shall be under seal.  
9 The court shall issue an order and the test shall be  
10 administered to the alleged offender within ten days after the  
11 petition is filed by the victim of the alleged criminal offense  
12 or the victim's parent or legal guardian.

13 D. Except for disclosures made pursuant to Section  
14 24-1-7 NMSA 1978, the results of the test shall be disclosed  
15 only to the alleged offender and to the victim of the alleged  
16 criminal offense or the victim's parent or legal guardian.  
17 When the victim of the alleged criminal offense or the alleged  
18 offender has a positive test result, both the alleged offender  
19 and the victim of the alleged criminal offense shall be  
20 provided with counseling.

21 E. A prosecuting attorney may not use in a criminal  
22 proceeding arising out of the alleged criminal offense the fact  
23 that a test was administered to the alleged offender or the  
24 results of the test.

25 F. The provisions of this section shall not affect

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1 the rights and remedies available to the victim of the alleged  
2 criminal offense and the alleged offender in any civil action.

3 G. The administration of a test to an alleged  
4 offender pursuant to the provisions of this section shall not  
5 preclude the subsequent administration of another test pursuant  
6 to the provisions of Section 24-1-9.1 NMSA 1978."

7 SECTION 5. Section 24-1-10 NMSA 1978 (being Laws 1973,  
8 Chapter 359, Section 10) is amended to read:

9 "24-1-10. PREGNANCY--SEROLOGICAL TEST FOR SYPHILIS.--

10 A. Every physician examining a pregnant woman for  
11 conditions relating to her pregnancy during the period of  
12 gestation or at delivery or both shall take or cause to be  
13 taken a sample of blood of [~~such~~] that woman at the time of  
14 first examination unless the pregnant woman objects to the  
15 taking of the sample and asserts her right of bodily integrity.

16 B. All such blood samples shall be submitted to the  
17 state public health laboratory for a standard serological test  
18 for syphilis.

19 C. The standard serological test shall be a test  
20 for syphilis approved by the director [~~of the department~~].  
21 Such serological tests shall be made on request without charge  
22 by the department."

23 SECTION 6. Section 24-1-12 NMSA 1978 (being Laws 1973,  
24 Chapter 359, Section 12, as amended) is amended to read:

25 "24-1-12. HEALTH CERTIFICATES--FILING.--

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1           A. Except as otherwise provided in this subsection,  
2 any person who operates or is employed in a health facility  
3 shall upon becoming employed or engaged in such occupation  
4 present to the employer or, if self-employed, file at the place  
5 of business a health certificate from a licensed physician  
6 stating the person is free from communicable diseases in a  
7 transmissible state dangerous to the public health as defined  
8 by ~~[regulation]~~ rule of the ~~[health services]~~ division ~~[of the~~  
9 ~~health and environment department]~~. The certificate shall be  
10 obtained not more than ninety days prior to the date of  
11 employment. A person may refuse to be tested by asserting the  
12 right of bodily integrity.

13           B. All certificates shall be kept on file and be  
14 subject to inspection by the licensing authority."

15           SECTION 7. Section 24-1-15 NMSA 1978 (being Laws 1973,  
16 Chapter 359, Section 15, as amended) is amended to read:

17           "24-1-15. ISOLATION--QUARANTINE--PROTOCOL.--

18           A. If the secretary or a representative of the  
19 department has knowledge that a person is infected with or  
20 reasonably believes that a person is infected with or exposed  
21 to a threatening communicable disease and the person has  
22 refused voluntary treatment or testing because the person  
23 asserted the right of bodily integrity or has asserted some  
24 other right of refusal for treatment, testing, evaluation,  
25 detention or observation, the secretary or the secretary's

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1     designee shall petition the court for an order to isolate or  
2     quarantine the person until the person is no longer a threat to  
3     the public health or until the person voluntarily complies with  
4     treatment and contagion precautions.

5             B. The secretary or ~~[a representative of the~~  
6     ~~department whom the secretary designates]~~ the secretary's  
7     designee may, by public health order, temporarily isolate or  
8     quarantine a person or group of persons if delay in isolating  
9     or quarantining would significantly jeopardize the secretary's  
10    ability to prevent or limit the transmission to others of a  
11    threatening communicable disease. The public health order  
12    shall expire at the end of twenty-four hours from the time of  
13    the commencement of the isolation or quarantine. The secretary  
14    may petition for a court order that authorizes the continued  
15    isolation or quarantine of the person or group of persons. In  
16    the petition, the secretary shall present facts used to support  
17    the need to have issued the public health order to isolate or  
18    quarantine.

19             C. Whether or not a public health order to isolate  
20    or quarantine was previously issued, a petition for a court  
21    order shall be made under oath or shall be accompanied by a  
22    sworn affidavit setting out specific facts showing the basis  
23    upon which isolation or quarantine is justified, including  
24    whether a person to be isolated or quarantined:

25                     (1) is infected with, reasonably believed to

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1 be infected with or exposed to a threatening communicable  
2 disease; and

3 (2) poses a substantial likelihood of  
4 transmission of the threatening communicable disease to others  
5 because of inadequate separation from others.

6 D. Upon the filing of a petition, the court shall:

7 (1) immediately grant ex parte a court order  
8 to isolate or quarantine the affected person if there is  
9 probable cause from the specific facts shown by the affidavit  
10 or by the petition to give the judge reason to believe that the  
11 affected person poses a substantial threat to the public health  
12 and safety;

13 (2) cause the court order, notice of hearing  
14 and an advisement of the terms of the court order, including  
15 the affected person's rights to representation and re-petition  
16 for termination of a court order that removes and detains the  
17 affected person, to be immediately served on the affected  
18 person; and

19 (3) within five days after the granting of the  
20 court order, hold an evidentiary hearing to determine if the  
21 court shall continue the order.

22 E. A person held pursuant to a court order as set  
23 forth in Subsection D of this section shall be:

24 (1) entitled to representation by counsel at  
25 the evidentiary hearing and at all hearings ~~[thereafter]~~ after

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1 that hearing for the duration of the period of removal and  
2 detention; and

3 (2) permitted to communicate on any matter,  
4 including the person's isolation or quarantine, with other  
5 persons by telephone or other reasonably available means that  
6 do not expose other persons to the risk of infection, for the  
7 duration of the period of isolation or quarantine.

8 F. Counsel may be retained by the person held or  
9 shall be appointed by the court if the court determines that  
10 the person held cannot afford legal representation or if the  
11 court determines that appointment of counsel is required in the  
12 interest of justice.

13 G. At the evidentiary hearing, the court shall  
14 review the circumstances surrounding the court order and, if  
15 the petitioner can show by clear and convincing evidence that  
16 the person being held has asserted the right of bodily  
17 integrity or some other right to refuse and has not voluntarily  
18 complied or will not voluntarily comply with appropriate  
19 treatment and contagion precautions, the court may continue the  
20 isolation or quarantine. The court shall order regular review  
21 of the order to isolate or quarantine by providing the person  
22 being held with a subsequent hearing within thirty days of the  
23 court order's issuance and every thirty days thereafter. The  
24 court order to isolate or quarantine shall be terminated and  
25 the affected person shall be released if:

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1 (1) the person being held is certified by a  
2 public health official to pose no further risk to the public  
3 health;

4 (2) at a hearing, the petitioner, whose burden  
5 of proof continues under a clear and convincing standard, can  
6 no longer show that the person being held is infected with,  
7 reasonably believed to be infected with or exposed to a  
8 threatening communicable disease and that the affected person  
9 will not comply with appropriate treatment and contagion  
10 precautions voluntarily; or

11 (3) exceptional circumstances exist warranting  
12 the termination of the court order.

13 H. The provisions of this section do not permit the  
14 forcible administration of medications. A person isolated or  
15 quarantined pursuant to this section has the right to refuse to  
16 participate in medical treatment, testing, physical or mental  
17 examination, vaccination, specimen collection or preventive  
18 treatment.

19 I. A person who is isolated or quarantined pursuant  
20 to a court order may petition the court to contest the order or  
21 the conditions of isolation or quarantine at any time prior to  
22 the expiration of the order. If a petition is filed, the court  
23 shall hold a hearing within five days after the date of filing.  
24 The filing of a petition for a hearing pursuant to this  
25 subsection does not stay a court order for isolation or

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1 quarantine. At the hearing, the secretary shall offer clear  
2 and convincing evidence that:

3 (1) the isolation or quarantine is warranted;  
4 or

5 (2) the conditions of isolation or quarantine  
6 are compliant with the provisions of this section.

7 J. When isolating or quarantining an affected  
8 person, the secretary shall ensure that:

9 (1) isolation or quarantine is the least  
10 restrictive means necessary to protect against the spread to  
11 others of a communicable disease or a potentially threatening  
12 communicable disease and may include confinement to the  
13 affected person's private home, if practicable, or if not  
14 practicable, to a private or public premises;

15 (2) an isolated person is confined separately  
16 from a quarantined person;

17 (3) the health status of an isolated or  
18 quarantined person is monitored regularly to determine whether  
19 continued isolation or quarantine is required;

20 (4) if a quarantined person becomes infected  
21 or is reasonably believed to be infected with the threatening  
22 communicable disease subsequent to quarantine, that affected  
23 person shall be promptly isolated;

24 (5) the needs of a person isolated or  
25 quarantined are addressed in a systematic and orderly manner,

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1 including the provision of adequate food, clothing, shelter,  
2 sanitation and comfort;

3 (6) there are methods of communication  
4 available to a person placed in isolation or quarantine to  
5 enable communication with family members, household members,  
6 legal representatives, advocates, the media and any licensed  
7 health care provider;

8 (7) an area of isolation or quarantine is  
9 maintained in a manner that minimizes the likelihood of further  
10 transmission of infection or other injury to other persons who  
11 are isolated or quarantined; and

12 (8) to the extent possible, cultural and  
13 religious beliefs shall be respected in addressing the needs of  
14 affected persons and in establishing and maintaining an area of  
15 isolation or quarantine.

16 K. A person shall not enter an area of isolation or  
17 quarantine except as authorized by the department. To protect  
18 the public health, the department may isolate or quarantine any  
19 person who has entered, with or without the secretary's  
20 authorization, into an area of isolation or quarantine.

21 L. Court proceedings shall be on the record and be  
22 closed to the general public. The records shall be sealed from  
23 public inspection.

24 M. A person who in good faith reports another  
25 person infected with a threatening communicable disease shall

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1 not be held liable for civil damages as a result of the report;  
2 provided that the person reported as being infected with a  
3 threatening communicable disease shall have the right to sue  
4 for damages sustained as a result of negligent or intentional  
5 reporting of inaccurate information or the disclosure of  
6 information to an unauthorized person.

7 N. During the period of isolation or quarantine, an  
8 employer shall not discharge from employment a person who is  
9 placed in isolation or quarantine pursuant to this section.

10 O. The secretary, after consultation with the state  
11 medical investigator, the secretary of public safety, the  
12 director and the chair of the board of funeral services, may  
13 implement and enforce measures that are reasonable and  
14 necessary to respond to a threatening communicable disease and  
15 provide for the safe disposal of human remains.

16 P. For purposes of this section:

17 (1) "area of isolation or quarantine" means  
18 the physical environs that the department designates as the  
19 area within which to restrict access as required to prevent  
20 transmission of a threatening communicable disease;

21 (2) "court" means:

22 (a) the district court of the judicial  
23 district where the person who is alleged to be infected with a  
24 threatening communicable disease resides or is found; or

25 (b) in the event that a district court

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1 cannot adequately provide services, a district court that the  
2 New Mexico supreme court designates;

3 (3) "isolate" means to physically separate for  
4 possible medical care a person who is infected or who is  
5 reasonably believed to be infected with a threatening  
6 communicable disease or potentially threatening communicable  
7 disease;

8 (4) "public health official" means the  
9 secretary, a regional health officer, the director of the  
10 public health division of the department, a chief medical  
11 officer or a representative of the department designated by the  
12 secretary to carry out the duties provided in this section;

13 (5) "quarantine" means the precautionary  
14 physical separation of a person who has or may have been  
15 exposed to a threatening communicable disease or a potentially  
16 threatening communicable disease and who does not show a sign  
17 or symptom of a threatening communicable disease from persons  
18 who are not quarantined to protect against the transmission of  
19 the disease to persons who are not quarantined; and

20 (6) "threatening communicable disease" means a  
21 disease that causes death or great bodily harm, passes from one  
22 person to another and for which there is no means by which the  
23 public reasonably can avoid the risk of contracting the  
24 disease."

25 SECTION 8. Section 24-1-15.1 NMSA 1978 (being Laws 2009,  
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1 Chapter 174, Section 1, as amended) is amended to read:

2 "24-1-15.1. PROTOCOL FOR MANAGEMENT OF ACTIVE  
3 TUBERCULOSIS.--

4 A. When a physician or other person knows that a  
5 person has, or is reasonably believed to be infected with,  
6 active tuberculosis, the physician or other person shall  
7 promptly notify the department.

8 B. Upon receiving notification that a person has or  
9 is reasonably believed to have active tuberculosis, the  
10 department shall prescribe the person a treatment plan meeting  
11 the department's therapeutic specifications for the infectious  
12 form of tuberculosis. A person who is infected or is suspected  
13 of being infected with active tuberculosis may assert the right  
14 of bodily integrity; however, the treatment plan shall include  
15 a notice to the person that failure to comply with the  
16 treatment plan will result in immediate initiation of court  
17 action to ensure compliance, as set forth in this section.

18 C. The secretary, or [~~a representative of the~~  
19 ~~department whom the secretary designates~~] the secretary's  
20 designee, may by public health order temporarily isolate a  
21 person or group of persons if delay in isolating the person or  
22 group would significantly jeopardize the secretary's ability to  
23 prevent or limit the transmission of tuberculosis to others.  
24 The public health order shall expire at the end of twenty-four  
25 hours from the time of the commencement of isolation. The

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1 secretary may petition for a court order that authorizes the  
2 continued isolation. In the petition, the secretary shall  
3 present facts used to support the need to have issued the  
4 public health order to isolate.

5 D. Whether or not a public health order was issued  
6 pursuant to Subsection C of this section, when the department  
7 has knowledge that a person who has active tuberculosis has  
8 failed to comply with the department's treatment plan as  
9 described in Subsection B of this section, the department shall  
10 petition for a court order for the person who has active  
11 tuberculosis to comply with whichever of the following courses  
12 of action the department deems appropriate:

- 13 (1) a program of directly observed therapy;
- 14 (2) isolation; or
- 15 (3) directly observed therapy and isolation.

16 E. A petition for a court order shall be made under  
17 oath or shall be accompanied by a sworn affidavit setting out  
18 specific facts showing the basis upon which isolation is  
19 justified, including whether the person to be isolated:

- 20 (1) has active tuberculosis or presents a  
21 substantial likelihood of having active tuberculosis based on  
22 credible medical evidence;
- 23 (2) after being advised of the condition and  
24 the risks posed thereby, has failed to comply with the  
25 department's treatment plan; and

1 (3) poses a substantial likelihood of  
2 transmission of tuberculosis to others because the person is  
3 actively infectious or poses a risk of relapse or development  
4 of a therapy-resistant strain of tuberculosis.

5 F. Upon the filing of a petition for a court order,  
6 the court shall:

7 (1) in cases where there is probable cause  
8 established by the petition to give the judge reason to believe  
9 that the person who has been alleged to have active  
10 tuberculosis poses a substantial threat to the public health  
11 and safety because the person is actively infectious, or poses  
12 a risk of relapse or development of a therapy-resistant strain  
13 of tuberculosis because of a history of noncompliance,  
14 immediately grant ex parte a court order to:

15 (a) administer a program of directly  
16 observed therapy;

17 (b) isolate the person and administer a  
18 program of directly observed therapy; or

19 (c) isolate the person, if the person  
20 refuses a program of directly observed therapy;

21 (2) cause the court order, notice of hearing  
22 and an advisement of the terms of the court order, including  
23 the rights of the person alleged to have active tuberculosis to  
24 representation and re-petition for termination of a court  
25 order, to be immediately served on the person alleged to have



1 active tuberculosis; and

2 (3) within five days after the granting of the  
3 court order, hold an evidentiary hearing to determine if the  
4 court shall continue the court order.

5 G. A person held pursuant to a court order as set  
6 forth in Subsection F of this section shall be:

7 (1) entitled to representation by counsel at  
8 the evidentiary hearing and at all hearings thereafter for the  
9 duration of the period of isolation or program of directly  
10 observed therapy; and

11 (2) permitted to communicate on any matter,  
12 including the person's isolation or program of directly  
13 observed therapy, with persons by telephone or other reasonably  
14 available means that do not expose other persons to the risk of  
15 infection, for the duration of the period of isolation or  
16 program of directly observed therapy.

17 H. Counsel may be retained by the person under the  
18 court order or shall be appointed by the court if the court  
19 determines that the person held cannot afford legal  
20 representation or if the court determines that appointment of  
21 counsel is required in the interest of justice.

22 I. At the evidentiary hearing, the court shall  
23 review the circumstances surrounding the court order, and, if  
24 the petitioner can show by clear and convincing evidence that  
25 the person being held has asserted the right of bodily

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1 integrity and has not complied or will not comply with  
2 appropriate treatment and contagion precautions as the  
3 department deems necessary, the court shall continue the court  
4 order for the person who has active tuberculosis until  
5 completion of therapy, as deemed by the department. The court  
6 shall order regular review of the order by providing the person  
7 under a court order with a subsequent hearing within ninety  
8 days of the court order's issuance and every ninety days  
9 thereafter. The court order shall be terminated and the person  
10 shall be released if:

11 (1) at a hearing, the petitioner has not met  
12 its burden of showing by clear and convincing proof that the  
13 person under a court order has not completed therapy; or

14 (2) exceptional circumstances exist warranting  
15 the termination of the court order.

16 J. The provisions of this section do not permit the  
17 forcible administration of medications.

18 K. A person isolated pursuant to this section has  
19 the right to refuse any medical treatment, physical or mental  
20 examination, treatment program or invasive specimen collection.  
21 A person who has been directed by the secretary to submit to  
22 medical procedures and protocols because the person has active  
23 tuberculosis and refuses to submit to the procedures and  
24 protocols may be subject to continued isolation pursuant to  
25 this section.

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1           L. A person who is isolated pursuant to a court  
2 order may petition the court to contest the order or the  
3 conditions of isolation at any time prior to the expiration of  
4 the court order. If a petition is filed, the court shall hold  
5 a hearing within five business days after the date of filing.  
6 At a hearing pursuant to a petition to contest, the secretary  
7 shall offer:

- 8                   (1) clear and convincing evidence that the
- 9 isolation is warranted; or
- 10                   (2) proof that the conditions of isolation are
- 11 compliant with the provisions of this section.

12           M. When isolating a person or group of persons, the  
13 secretary shall ensure that:

- 14                   (1) isolation is imposed by the least
- 15 restrictive means necessary to protect against the spread of
- 16 tuberculosis to others and may include confinement to the
- 17 isolated person's private home, if practicable, or, if not
- 18 practicable, a private or public premises;
- 19                   (2) the health status of an isolated person is
- 20 monitored regularly to determine if continued isolation is
- 21 required;
- 22                   (3) the needs of a person isolated are
- 23 addressed in a systematic and orderly manner, including the
- 24 provision of adequate food, clothing, shelter, sanitation and
- 25 comfort;

1 (4) there are methods of communication  
2 available to a person placed in isolation to enable  
3 communication with family members, household members, legal  
4 representatives, advocates, the media and any licensed health  
5 care provider;

6 (5) the premises used for isolation are  
7 maintained in a manner that minimizes the likelihood of further  
8 transmission of infection or other injury to other persons who  
9 are isolated; and

10 (6) to the extent possible, cultural and  
11 religious beliefs shall be respected in addressing the needs of  
12 persons and establishing and maintaining isolation premises.

13 N. The proceedings of any hearing held pursuant to  
14 this section shall be recorded stenographically, electronically  
15 or mechanically or by other appropriate means. The proceedings  
16 shall be closed to the general public and the records shall be  
17 sealed from public inspection.

18 O. A person who in good faith reports that another  
19 person has active tuberculosis shall not be held liable for  
20 civil damages as a result of the report; provided that the  
21 person reported as having active tuberculosis shall have the  
22 right to sue for damages sustained as a result of negligent or  
23 intentional reporting of inaccurate information or the  
24 disclosure of information to an unauthorized person.

25 P. During the period of isolation, an employer

1 shall not discharge from employment a person who is placed in  
2 isolation pursuant to this section.

3 Q. For purposes of this section:

4 (1) "active tuberculosis" means a disease  
5 caused by mycobacterium tuberculosis or other members of the  
6 mycobacterium tuberculosis complex family that has been  
7 determined, through current clinical, bacteriological or  
8 radiographic evidence, or whichever diagnostic procedures the  
9 department deems appropriate, to be present in a person who has  
10 not completed an appropriate course of antituberculosis  
11 medication, regardless of the state of communicability of the  
12 disease. A person with active tuberculosis includes a person  
13 with:

14 (a) tuberculosis that is resistant to  
15 the prescribed treatment plan;

16 (b) infectious tuberculosis or who  
17 presents a substantial likelihood of having infectious  
18 tuberculosis based on credible medical evidence;

19 (c) noninfectious tuberculosis who is at  
20 high risk of developing an infectious form of tuberculosis; and

21 (d) pulmonary or extrapulmonary  
22 tuberculosis;

23 (2) "completion of therapy" means completion  
24 of the prescribed therapy, as determined by the department  
25 based upon published national consensus tuberculosis treatment

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1 guidelines;

2 (3) "court" means the district court of the  
3 judicial district where the person who is alleged to have  
4 active tuberculosis resides or is found or a district court  
5 designated by the New Mexico supreme court;

6 (4) "department" means the department of  
7 health or a person designated by the secretary of health to  
8 carry out the duties provided in this section;

9 (5) "directly observed therapy" means a  
10 methodology for promoting patient adherence in which a health  
11 care provider or trained designee witnesses the patient ingest  
12 each dose of medication until the completion of prescribed  
13 therapy for tuberculosis; and

14 (6) "isolation" means:

15 (a) home isolation;

16 (b) home isolation with electronic  
17 monitoring;

18 (c) isolation in a hospital or other  
19 health care facility negative pressure room where appropriate  
20 security measures are undertaken to prevent the transmission of  
21 tuberculosis; or

22 (d) isolation in a prison or detention  
23 center negative pressure room with an appropriate level of  
24 medical care."

25 SECTION 9. Section 24-1-15.3 NMSA 1978 (being Laws 2017,  
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underscored material = new  
[bracketed material] = delete

1 Chapter 87, Section 19) is amended to read:

2 "24-1-15.3. CONDITIONS OF PUBLIC HEALTH IMPORTANCE--  
3 TESTING--SCREENING.--

4 A. The department shall establish testing and  
5 screening procedures and programs to identify conditions of  
6 public health importance among [~~individuals~~] individual persons  
7 or among the general population of the state. The department  
8 shall:

9 (1) prior to testing or screening, explain to  
10 the [~~individual~~] person the nature, scope, purposes, benefits,  
11 risks and possible outcomes of the test or screening, except as  
12 otherwise provided pursuant to this section or by state law;

13 (2) have a valid and reliable test for the  
14 condition of public health importance;

15 (3) when administering a test or screening,  
16 identify a condition of public health importance that poses a  
17 threat to [~~an individual's~~] the person's or the public's health  
18 and that may be avoided, cured, alleviated or made less  
19 contagious through safe and effective treatment, modifications  
20 in individual behavior or public health interventions; and

21 (4) fully inform the [~~individual~~] person of  
22 the [~~individual's~~] person's results, the meaning of the  
23 results, the possible need for additional testing and the  
24 availability of appropriate health care services, including  
25 mental health care and social and support services. If

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1 appropriate, the department shall provide counseling or inform  
2 the ~~[individual]~~ person where such counseling services are  
3 available.

4 B. A person has the right to assert the right of  
5 bodily integrity.

6 ~~[B.]~~ C. The department may petition for the  
7 issuance of a court order to require testing or medical  
8 examination of ~~[any individual]~~ a person who has or may have  
9 been exposed to a condition of public health importance that  
10 poses a significant risk or threat to the ~~[individual]~~ person  
11 or others or to the public's health, in accordance with  
12 procedures established by department rules."

13 **SECTION 10.** Section 24-1-38 NMSA 1978 (being Laws 2017,  
14 Chapter 51, Section 1) is amended to read:

15 "24-1-38. HOSPITALS--REQUIREMENT TO OFFER INFLUENZA AND  
16 PNEUMOCOCCAL IMMUNIZATIONS.--Each year between October 1 and  
17 March 1 and in accordance with the latest recommendations of  
18 the advisory committee on immunization practices of the federal  
19 centers for disease control and prevention, each hospital  
20 licensed by the department of health shall offer, prior to  
21 discharge, immunizations against the influenza virus and  
22 pneumococcal disease to all inpatients sixty-five years of age  
23 and older unless contraindicated for a patient and contingent  
24 upon the availability of the vaccine. A patient may assert the  
25 right of bodily integrity."

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1           SECTION 11. Section 24-2B-2 NMSA 1978 (being Laws 1989,  
2 Chapter 227, Section 2, as amended) is amended to read:

3           "24-2B-2. INFORMED CONSENT.--[No]

4           A. As used in Chapter 24, Article 2B NMSA 1978:

5                   (1) "medical intervention" means medical  
6 treatment, testing or screening that involves:

7                           (a) puncturing or incising a person's  
8 skin;

9                           (b) removing bodily fluids, tissues or  
10 genetic material from a person's body; or

11                           (c) inserting a foreign substance into a  
12 person's body; and

13                   (2) "right of bodily integrity" means a  
14 person's right to accept or reject a medical intervention free  
15 from any threat or compulsion; provided that "person" includes  
16 minors and adults under guardianship for whom the right to  
17 accept or reject a medical intervention shall be made by the  
18 parent or legal guardian.

19           B. A person shall not perform a test designed to  
20 identify the human immunodeficiency virus or its antigen or  
21 antibody without first obtaining the informed consent of the  
22 person upon whom the test is performed [~~except as provided in~~  
23 ~~Section 24-2B-5, 24-2B-5.1, 24-2B-5.2 or 24-2B-5.3 NMSA 1978].~~  
24 Informed consent shall be preceded by an explanation of the  
25 test, including its purpose, potential uses and limitations and

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1 the meaning of its results. Consent need not be in writing if  
2 there is documentation in the medical record that the test has  
3 been explained and the consent has been obtained. The  
4 requirement for full pre-test counseling may be waived under  
5 the following circumstances:

6 [A.] (1) the performance of a prenatal test to  
7 determine if the human immunodeficiency virus or its antigen is  
8 present in a pregnant woman; provided that the woman, or her  
9 authorized representative, after having been informed of the  
10 option to decline the human immunodeficiency virus test, may  
11 choose not to have the human immunodeficiency virus test  
12 performed as a part of the routine prenatal testing if she or  
13 her authorized representative provides a written statement as  
14 follows:

"I am aware that a test to identify the human  
immunodeficiency virus or its antigen or antibody is  
a part of routine prenatal testing. However, I  
voluntarily and knowingly choose not to have the  
human immunodeficiency virus test performed.

\_\_\_\_\_  
(Name of patient or authorized representative)

\_\_\_\_\_  
(Signature and date)."; [or

24 B.] (2) when human immunodeficiency virus  
25 testing is part of routine medical care and the patient has

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1 consented; or

2 (3) when the person asserts the right of  
3 bodily integrity."

4 SECTION 12. Section 24-2B-5 NMSA 1978 (being Laws 1989,  
5 Chapter 227, Section 5, as amended) is amended to read:

6 "24-2B-5. INFORMED CONSENT NOT REQUIRED.--Informed  
7 consent for testing is not required and the provisions of  
8 Section 24-2B-2 NMSA 1978 do not apply for:

9 A. a health care provider or health facility  
10 performing a test on the donor or recipient when the health  
11 care provider or health facility procures, processes,  
12 distributes or uses a human body part, including tissue and  
13 blood or blood products, donated for a purpose specified under  
14 the Jonathan Spradling Revised Uniform Anatomical Gift Act or  
15 for transplant recipients or semen provided for the purpose of  
16 artificial insemination and the test is necessary to ensure  
17 medical acceptability of a recipient or the gift or semen for  
18 the purposes intended;

19 B. the performance of a test in bona fide medical  
20 emergencies when the subject of the test is unable to grant or  
21 withhold consent and the test results are necessary for medical  
22 diagnostic purposes to provide appropriate emergency care or  
23 treatment, except that post-test counseling or referral for  
24 counseling shall nonetheless be required when the [individual]  
25 person is able to receive that post-test counseling. Necessary

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1 treatment shall not be withheld pending test results;

2 C. the performance of a test for the purpose of  
3 research if the testing is performed in a manner by which the  
4 identity of the test subject is not known and may not be  
5 retrieved by the researcher, and only if the test subject has  
6 given written informed consent even if the consent is not  
7 shared with the researcher; or

8 D. the performance of a test done in a setting  
9 where the identity of the test subject is not known, such as in  
10 public health testing programs and sexually transmitted disease  
11 clinics, and only if the test subject has given written  
12 informed consent even if the consent is not shared with the  
13 researcher."

14 SECTION 13. Section 24-2B-5.1 NMSA 1978 (being Laws 1993,  
15 Chapter 107, Section 3, as amended) is amended to read:

16 "24-2B-5.1. INFORMED CONSENT [~~NOT REQUIRED~~]-TESTING OF  
17 PERSONS CONVICTED OF CERTAIN CRIMINAL OFFENSES--RESPONSIBILITY  
18 TO ADMINISTER AND PAY FOR TEST.--

19 A. A test designed to identify the human  
20 immunodeficiency virus or its antigen or antibody may be  
21 performed [~~without the offender's consent~~] on an offender  
22 convicted pursuant to state law of any criminal offense:

23 (1) involving contact between the penis and  
24 vulva;

25 (2) involving contact between the penis and

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1 anus;

2 (3) involving contact between the mouth and  
3 penis;

4 (4) involving contact between the mouth and  
5 vulva;

6 (5) involving contact between the mouth and  
7 anus; or

8 (6) when the court determines from the facts  
9 of the case that there was a transmission or likelihood of  
10 transmission of blood, semen or vaginal secretions from the  
11 offender to the victim.

12 B. If consent to perform a test on an offender  
13 cannot be obtained pursuant to the provisions of Section  
14 24-2B-2 or 24-2B-3 NMSA 1978, the district attorney or other  
15 prosecutorial authority shall, upon the request of the victim  
16 of a criminal offense described in Subsection A of this  
17 section, petition the court to order that a test be performed  
18 on the offender not later than forty-eight hours from the date  
19 of the court order. If the victim of the criminal offense is a  
20 minor or incompetent, the parent or legal guardian of the  
21 victim may request the district attorney or other prosecutorial  
22 authority to petition the court to order that a test be  
23 performed on the offender. The petition and all proceedings in  
24 connection with the petition shall be under seal. The results  
25 of the test shall be disclosed as soon as practicable and only

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1 to the offender and to the victim or the victim's parent or  
2 legal guardian. If the offender has a positive test result,  
3 both the offender and victim shall be provided with counseling,  
4 as described in Section 24-2B-4 NMSA 1978.

5 C. If the offender is sentenced to imprisonment in  
6 a state corrections facility, the court's order shall direct  
7 the department of health to be responsible for the  
8 administration of and payment for the test and the lawful  
9 distribution of the test results.

10 D. If the offender is convicted of a misdemeanor or  
11 petty misdemeanor offense or is convicted of a felony offense  
12 that is suspended or deferred, the court's order shall direct  
13 the department of health to be responsible for the  
14 administration of and payment for the test and the lawful  
15 distribution of the test results.

16 E. If the offender is a minor adjudicated as a  
17 delinquent child pursuant to the provisions of the Children's  
18 Code and the court transfers legal custody of the minor to the  
19 children, youth and families department, the court's order  
20 shall direct the children, youth and families department to be  
21 responsible for the administration of and payment for the test  
22 and the lawful distribution of the test results.

23 F. If the offender is a minor adjudicated as a  
24 delinquent child pursuant to the provisions of the Children's  
25 Code and the court does not transfer legal custody of the minor

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1 to the children, youth and families department, the court's  
2 order shall direct the department of health to be responsible  
3 for the administration of and payment for the test and the  
4 lawful distribution of the test results."

5 SECTION 14. Section 24-2B-5.2 NMSA 1978 (being Laws 1996,  
6 Chapter 80, Section 8, as amended) is amended to read:

7 "24-2B-5.2. INFORMED CONSENT [~~NOT REQUIRED~~]-TESTING OF  
8 PERSONS FORMALLY CHARGED FOR ALLEGEDLY COMMITTING CERTAIN  
9 CRIMINAL OFFENSES--RESPONSIBILITY TO ADMINISTER AND PAY FOR  
10 TEST.--

11 A. A test designed to identify the human  
12 immunodeficiency virus or its antigen or antibody may be  
13 performed [~~without the person's consent~~] on a person upon the  
14 filing of a complaint, information or an indictment alleging  
15 that the person committed a state criminal offense:

- 16 (1) involving contact between the penis and  
17 vulva;
- 18 (2) involving contact between the penis and  
19 anus;
- 20 (3) involving contact between the mouth and  
21 penis;
- 22 (4) involving contact between the mouth and  
23 vulva; or
- 24 (5) involving contact between the mouth and  
25 anus.

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1           B. If consent to perform a test on an alleged  
2 offender cannot be obtained pursuant to the provisions of  
3 Section 24-2B-2 or 24-2B-3 NMSA 1978, the district attorney or  
4 other prosecutorial authority shall, upon the request of the  
5 victim of the alleged criminal offense described in Subsection  
6 A of this section, petition the court to order that a test be  
7 performed on the alleged offender not later than forty-eight  
8 hours from the date of the court order; provided that the same  
9 test is first performed on the victim of the alleged criminal  
10 offense. If the victim of the alleged criminal offense is a  
11 minor or incompetent, the parent or legal guardian of the  
12 victim of the alleged criminal offense may request the district  
13 attorney or other prosecutorial authority to petition the court  
14 to order that a test be performed on the alleged offender. The  
15 test may be performed on the alleged offender regardless of the  
16 result of the test performed on the victim of the alleged  
17 offense.

18           C. The court may issue an order based on a finding  
19 of good cause after a hearing at which both the victim of the  
20 alleged criminal offense and the alleged offender have the  
21 right to be present. During the hearing, only affidavits,  
22 counter affidavits and medical reports regarding the facts that  
23 support or rebut the issuance of an order shall be admissible.  
24 The hearing shall be conducted within seventy-two hours after  
25 the district attorney or other prosecutorial authority

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1 petitions the court for the order. The petition and all  
2 proceedings in connection therewith shall be under seal.

3 D. The results of the test shall be disclosed as  
4 soon as practicable and only to the alleged offender and to the  
5 victim of the alleged criminal offense or the victim's parent  
6 or legal guardian. When the victim of the alleged criminal  
7 offense or the alleged offender has a positive test result,  
8 both the alleged offender and the victim of the alleged  
9 criminal offense shall be provided with counseling, as  
10 described in Section 24-2B-4 NMSA 1978.

11 E. The court's order shall direct the department of  
12 health to be responsible for the administration of and payment  
13 for the test and the lawful distribution of the test results.

14 F. A prosecuting attorney may not use in a criminal  
15 proceeding arising out of the alleged criminal offense the fact  
16 that a test was administered to the alleged offender or the  
17 results of the test.

18 G. The provisions of this section shall not affect  
19 the rights and remedies available to the victim of the alleged  
20 criminal offense and alleged offender in any civil action.

21 H. The administration of a test to an alleged  
22 offender pursuant to the provisions of this section shall not  
23 preclude the subsequent administration of follow-up tests  
24 pursuant to the provisions of Section 24-2B-5.1 NMSA 1978."

25 SECTION 15. Section 24-2B-5.3 NMSA 1978 (being Laws 2000,  
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1 Chapter 36, Section 3) is amended to read:

2 "24-2B-5.3. INFORMED CONSENT [~~NOT REQUIRED~~]--TESTING OF  
3 PERSONS WHO ARE SOURCE INDIVIDUALS.--

4 A. As used in this section:

5 (1) "exposed individual" means a health care  
6 provider, first responder or other person, including an  
7 employee, volunteer or independent contracted agent of a health  
8 care provider or law enforcement agency, while acting within  
9 the scope of [~~his~~] the person's employment; or a person who,  
10 while receiving services from a health care provider, is  
11 significantly exposed to the blood or other potentially  
12 infectious material of another person, when the exposure is  
13 proximately the result of the activity of the exposed  
14 individual or receipt of health care services from the source  
15 individual;

16 (2) "significantly exposed" means direct  
17 contact with blood or other potentially infectious material of  
18 a source individual in a manner that is capable of transmitting  
19 the human immunodeficiency virus; and

20 (3) "source individual" means a person whose  
21 blood or other potentially infectious material may have been or  
22 has been the source of a significant exposure.

23 B. A test designed to identify the human  
24 immunodeficiency virus or its antigen or antibody may be  
25 performed [~~without the consent of a source individual~~] when an

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1 exposed individual is significantly exposed.

2 C. If consent to perform a test on a source  
3 individual cannot be obtained pursuant to the provisions of  
4 Section 24-2B-2 or 24-2B-3 NMSA 1978, the exposed individual  
5 may petition the court to order that a test be performed on the  
6 source individual; provided that the same test shall first be  
7 performed on the exposed individual. The test may be performed  
8 on the source individual regardless of the result of the test  
9 performed on the exposed individual. If the exposed individual  
10 is a minor or incompetent, the parent or guardian may petition  
11 the court to order that a test be performed on the source  
12 individual.

13 D. The court may issue an order based on a finding  
14 of good cause after a hearing at which both the source  
15 individual and the exposed individual have the right to be  
16 present. The hearing shall be conducted within seventy-two  
17 hours after the petition is filed. The petition and all  
18 proceedings in connection with the petition shall be under  
19 seal. The test shall be administered on the source individual  
20 within three days after the order for testing is entered.

21 E. The results of the test shall be disclosed only  
22 to the source individual and the exposed individual or the  
23 exposed individual's parent or guardian. When the source  
24 individual or the exposed individual has a positive test  
25 result, both shall be provided with counseling as provided in

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1 Section 24-2B-4 NMSA 1978."

2 SECTION 16. Section 24-3-1 NMSA 1978 (being Laws 1973,  
3 Chapter 300, Section 1, as amended) is amended to read:

4 "24-3-1. SICKLE CELL TRAIT AND SICKLE CELL ANEMIA--  
5 EDUCATION--DIAGNOSIS.--

6 A. As used in this section, "right of bodily  
7 integrity" means a person's right to accept or reject a medical  
8 intervention, including a diagnostic test, free from any threat  
9 or compulsion.

10 ~~[A.]~~ B. The public health ~~[services]~~ division of  
11 the department of health ~~[and environment department]~~ shall  
12 provide by ~~[regulation]~~ rule procedures to establish, maintain,  
13 promote and effectuate a program designed to educate the  
14 general public and public and private school students regarding  
15 the nature and inheritance of sickle cell trait and sickle cell  
16 anemia. The division shall consult and advise the ~~[state board~~  
17 ~~of]~~ public education department concerning development and use  
18 of informational and educational materials relating to sickle  
19 cell trait and sickle cell anemia.

20 ~~[B.]~~ C. The public health ~~[services]~~ division ~~[of~~  
21 ~~the health and environment department]~~ shall provide by  
22 ~~[regulation]~~ rule for diagnosis of sickle cell trait and sickle  
23 cell anemia. ~~[Regulations]~~ Rules shall provide for, among  
24 other things:

25 (1) the making available to all physicians by

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1 the ~~[health services]~~ division of current information  
2 concerning the nature, effects, diagnosis and treatment of  
3 sickle cell trait and sickle cell anemia;

4 (2) the testing of all school-age children who  
5 may be susceptible to sickle cell trait and sickle cell anemia,  
6 at least once as a part of the school health program, unless  
7 the parent or guardian of a school-age child has asserted the  
8 right of bodily integrity for the school-age child or has not  
9 given written informed consent for the test; and

10 (3) the making available, without cost to any  
11 person unable to afford the services of a physician, of tests  
12 to diagnose sickle cell trait and sickle cell anemia."

13 SECTION 17. Section 24-5-3 NMSA 1978 (being Laws 1959,  
14 Chapter 329, Section 3, as amended) is amended to read:

15 "24-5-3. EXEMPTION FROM IMMUNIZATION.--~~[A. Any]~~

16 A. As used in this section, "right of bodily  
17 integrity" means a person's right to accept or reject  
18 immunizations free from any threat or compulsion.

19 B. A minor child through ~~[his]~~ the child's parent  
20 or legal guardian may file with the health authority charged  
21 with the duty of enforcing the immunization laws:

22 (1) a certificate of a duly licensed physician  
23 stating that the physical condition of the child is such that  
24 immunization would seriously endanger the life or health of the  
25 child; ~~[or]~~

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1 (2) [~~affidavits~~] an affidavit or written  
2 affirmation from an officer of a recognized religious  
3 denomination that [~~such~~] the child's [~~parents or guardians are~~]  
4 parent or legal guardian is a bona fide [~~members~~] member of a  
5 denomination whose religious teaching requires reliance upon  
6 prayer or spiritual means alone for healing; [~~or~~]

7 (3) [~~affidavits~~] an affidavit or written  
8 affirmation from [~~his~~] the child's parent or legal guardian  
9 that [~~his~~] the parent's or legal guardian's religious beliefs,  
10 held either individually or jointly with others, do not permit  
11 the administration of vaccine or other immunizing agent; or

12 (4) that the parent or legal guardian asserts  
13 the right of bodily integrity for the child.

14 [~~B.~~] C. Upon filing and approval of such  
15 certificate, [~~affidavits~~] affidavit or affirmation, the child  
16 is exempt from the legal requirement of immunization for a  
17 period not to exceed nine months on the basis of any one  
18 certificate, [~~affidavits~~] affidavit or affirmation."

19 SECTION 18. Section 24-31-1 NMSA 1978 (being Laws 2014,  
20 Chapter 50, Section 5) is amended to read:

21 "24-31-1. EMERGENCY MEDICATION IN SCHOOLS--ALBUTEROL--  
22 EPINEPHRINE--RULES--RECOMMENDATIONS.--

23 A. As used in this section, "right of bodily  
24 integrity" means a person's right to accept or reject a medical  
25 intervention free from any threat or compulsion.

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1           ~~[A.]~~ B. By July 1, 2014, the department shall  
2 promulgate rules and make recommendations to each school  
3 district and governing body of a charter school for the  
4 prevention and treatment of respiratory distress and the  
5 administration of albuterol, or such other medication as the  
6 department deems appropriate, by a school nurse.

7           ~~[B.]~~ C. By July 1, 2014, the department shall  
8 promulgate rules and make recommendations to each school  
9 district and governing body of a charter school for the  
10 prevention and treatment of anaphylaxis occurring in schools  
11 and for the use of epinephrine, or such other medication as the  
12 department deems appropriate, by a person who has received  
13 training approved by the department and is authorized to  
14 administer epinephrine pursuant to the Emergency Medication in  
15 Schools Act. The rules shall address:

16                   (1) the provision or administration of  
17 epinephrine, or such other medication as the department deems  
18 appropriate, to a person reasonably believed to be having an  
19 anaphylactic reaction;

20                   (2) the requirement that one or more trained  
21 persons be available on school premises during operating hours  
22 to treat a person reasonably believed to be having an  
23 anaphylactic reaction;

24                   (3) the maintenance of a stock supply of  
25 standard-dose and pediatric-dose epinephrine auto-injectors, or

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1 such other medication as the department deems appropriate,  
2 pursuant to a standing order prescribed in the name of the  
3 public school or school district by a health care practitioner  
4 employed or authorized by the department;

5 (4) the storage of a stock supply of standard-  
6 dose and pediatric-dose epinephrine auto-injectors, or such  
7 other medication as the department deems appropriate, in a  
8 secure location that is unlocked and readily accessible to  
9 trained persons and stored pursuant to board of pharmacy  
10 [~~regulations~~] rules; and

11 (5) the disposal of expired emergency  
12 medication pursuant to board of pharmacy [~~regulations~~] rules or  
13 department rules.

14 [~~G.~~] D. A health care practitioner employed or  
15 authorized by the department may prescribe a stock supply of  
16 albuterol aerosol canisters and spacers or a stock supply of  
17 standard-dose and pediatric-dose epinephrine auto-injectors in  
18 the name of a public school or school district for use in  
19 accordance with the Emergency Medication in Schools Act.

20 [~~D.~~] E. A pharmacist may dispense a stock supply of  
21 albuterol aerosol canisters and spacers or a stock supply of  
22 standard-dose and pediatric-dose epinephrine auto-injectors  
23 pursuant to a standing order prescribed in accordance with this  
24 section.

25 [~~E.~~] F. A public school or school district may

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1 maintain a stock supply of albuterol aerosol canisters and  
2 spacers or a stock supply of standard-dose and pediatric-dose  
3 epinephrine auto-injectors for use in accordance with this  
4 section.

5 ~~[F-]~~ G. The department may obtain and receive  
6 grants, appropriations, gifts and donations from any source,  
7 including the acceptance of epinephrine and albuterol, or such  
8 other medication as the department deems appropriate, and  
9 albuterol spacers from a manufacturer or wholesaler of such  
10 medication in accordance with this section.

11 H. No medications shall be given to a person who  
12 has filed a written notification of the person's assertion of  
13 the right of bodily integrity."

14 SECTION 19. Section 28-1-2 NMSA 1978 (being Laws 1969,  
15 Chapter 196, Section 2, as amended) is amended to read:

16 "28-1-2. DEFINITIONS.--As used in the Human Rights Act:

17 A. "person" means ~~[one or more individuals]~~ a  
18 natural person, a partnership, association, organization,  
19 corporation, joint venture, legal representative, trustees,  
20 receivers or the state and all of its political subdivisions;

21 B. "employer" means ~~[any]~~ a person employing four  
22 or more persons and ~~[any]~~ a person acting for an employer;

23 C. "commission" means the human rights commission;

24 D. "director" or "bureau" means the human rights  
25 bureau of the labor relations division of the workforce

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1 solutions department;

2 E. "employee" means any person in the employ of an  
3 employer or an applicant for employment;

4 F. "labor organization" means ~~[any]~~ an organization  
5 that exists for the purpose in whole or in part of collective  
6 bargaining or of dealing with employers concerning grievances,  
7 terms or conditions of employment or of other mutual aid or  
8 protection in connection with employment;

9 G. "employment agency" means ~~[any]~~ a person  
10 regularly undertaking with or without compensation to procure  
11 opportunities to work or to procure, recruit or refer  
12 employees;

13 H. "public accommodation" means ~~[any]~~ an  
14 establishment that provides or offers its services, facilities,  
15 accommodations or goods to the public, but does not include a  
16 bona fide private club or other place or establishment that is  
17 by its nature and use distinctly private;

18 I. "housing accommodation" means ~~[any]~~ a building  
19 or portion of a building that is constructed or to be  
20 constructed ~~[which]~~ that is used or intended for use as the  
21 residence or sleeping place of ~~[any individual]~~ a person;

22 J. "real property" means lands, leaseholds or  
23 commercial or industrial buildings, whether constructed or to  
24 be constructed, offered for sale or rent and ~~[any]~~ land rented  
25 or leased for the use, parking or storage of house trailers;

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1 K. "secretary" means the secretary of workforce  
2 solutions;

3 L. "unlawful discriminatory practices" means those  
4 unlawful practices and acts specified in Section 28-1-7 NMSA  
5 1978;

6 M. "physical or mental handicap" means a physical  
7 or mental impairment that substantially limits one or more of a  
8 person's major life activities. A person is also considered to  
9 be physically or mentally handicapped if the person has a  
10 record of a physical or mental handicap or is regarded as  
11 having a physical or mental handicap;

12 N. "major life activities" means functions such as  
13 caring for one's self, performing manual tasks, walking,  
14 seeing, hearing, speaking, breathing, learning and working;

15 O. "applicant for employment" means a person  
16 applying for a position as an employee;

17 P. "sexual orientation" means heterosexuality,  
18 homosexuality or bisexuality, whether actual or perceived;

19 Q. "gender identity" means a person's self-  
20 perception, or perception of that person by another, of the  
21 person's identity as a male or female based upon the person's  
22 appearance, behavior or physical characteristics that are in  
23 accord with or opposed to the person's physical anatomy,  
24 chromosomal sex or sex at birth;

25 R. "reasonable accommodation" means modification or

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1 adaptation of the work environment, work schedule, work rules  
2 or job responsibilities, ~~[and]~~ which are reached through good  
3 faith efforts to explore less restrictive or less expensive  
4 alternatives to enable an employee to perform the essential  
5 functions of the job and that does not impose an undue hardship  
6 on the employer; ~~[and]~~

7 S. "undue hardship" means an accommodation  
8 requiring significant difficulty or expense when considered in  
9 light of the following factors:

10 (1) the nature and cost of the accommodation;

11 (2) the financial resources of the employer  
12 involved in the provision of the reasonable accommodation;

13 (3) the number of persons the employer  
14 employs;

15 (4) the effect of the accommodation on  
16 expenses and resources;

17 (5) the impact of the accommodation otherwise  
18 upon the employer's business;

19 (6) the overall financial resources of the  
20 employer;

21 (7) the overall size of the business of an  
22 employer with respect to the number, type and location of its  
23 facilities;

24 (8) the type of operation of the employer,  
25 including the composition, structure and functions of the

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1 workforce of the employer; or

2 (9) the geographic separateness or  
3 administrative or fiscal relationship to the employer of the  
4 employer's facilities;

5 T. "medical intervention" means any treatment,  
6 testing or screening that involves:

7 (1) puncturing or incising a person's skin;

8 (2) removing bodily fluids, tissues or genetic  
9 material from a person's body; or

10 (3) inserting a foreign substance into a  
11 person's body; and

12 U. "right of bodily integrity" means a person's  
13 right to accept or reject a medical intervention free from any  
14 threat or compulsion; provided that "person" includes minors  
15 and adults under guardianship for whom the right to accept or  
16 reject a medical intervention shall be made by the parent or  
17 legal guardian."

18 SECTION 20. A new section of the Human Rights Act is  
19 enacted to read:

20 "[NEW MATERIAL] RIGHT OF BODILY INTEGRITY--INFORMED  
21 CONSENT.--

22 A. Every person, whether a minor or an adult, has  
23 the right of bodily integrity and the freedom to assert that  
24 right.

25 B. At all times, including during a declared public

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1 health emergency, a person shall not be discriminated against  
2 or denied public accommodation, housing accommodation,  
3 employment, government services or any other services offered  
4 to the general public or otherwise penalized for the assertion  
5 of the right of bodily integrity, including:

6 (1) not receiving medical interventions,  
7 including vaccines or treatment for infectious viruses or  
8 bacteria;

9 (2) not providing samples of bodily fluids,  
10 bodily tissue or genetic material; and

11 (3) not providing proof of immunity to a  
12 specific contagious virus or proof of treatment for a  
13 contagious bacteria.

14 C. At all times, including during a declared public  
15 health emergency, written informed consent shall be received  
16 from a person prior to a medical intervention. The informed  
17 consent shall include notification of and consent to the  
18 ingredients and components of any foreign substances to be  
19 inserted into the person's body, the actions of these  
20 substances and the possible risks associated with the medical  
21 intervention."

22 SECTION 21. Section 28-1-7 NMSA 1978 (being Laws 1969,  
23 Chapter 196, Section 7, as amended) is amended to read:

24 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an  
25 unlawful discriminatory practice for:

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1           A. an employer, unless based on a bona fide  
2 occupational qualification or other statutory prohibition, to  
3 refuse to hire, to discharge, to promote or demote or to  
4 discriminate in matters of compensation, terms, conditions or  
5 privileges of employment against ~~[any]~~ a person otherwise  
6 qualified because of race, age, religion, color, national  
7 origin, ancestry, sex, sexual orientation, gender identity,  
8 pregnancy, childbirth or condition related to pregnancy or  
9 childbirth, physical or mental handicap ~~[or]~~, serious medical  
10 condition, right of bodily integrity or, if the employer has  
11 fifty or more employees, spousal affiliation; provided,  
12 however, that 29 U.S.C. Section 631(c)(1) and (2) shall apply  
13 to discrimination based on age;

14           B. a labor organization to exclude a person or to  
15 expel or otherwise discriminate against any of its members or  
16 against ~~[any]~~ an employer or employee because of race,  
17 religion, color, national origin, ancestry, sex, sexual  
18 orientation, gender identity, pregnancy, childbirth or  
19 condition related to pregnancy or childbirth, spousal  
20 affiliation, physical or mental handicap ~~[or]~~, serious medical  
21 condition or right of bodily integrity;

22           C. ~~[any]~~ an employer, labor organization or joint  
23 apprenticeship committee to refuse to admit or employ ~~[any]~~ a  
24 person in ~~[any]~~ a program established to provide an  
25 apprenticeship or other training or retraining because of race,

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1 religion, color, national origin, ancestry, sex, sexual  
2 orientation, gender identity, pregnancy, childbirth or  
3 condition related to pregnancy or childbirth, physical or  
4 mental handicap, ~~[or]~~ serious medical condition, right of  
5 bodily integrity or, if the employer has fifty or more  
6 employees, spousal affiliation;

7 D. ~~[any]~~ a person, employer, employment agency or  
8 labor organization to print or circulate or cause to be printed  
9 or circulated ~~[any]~~ a statement, advertisement or publication,  
10 to use ~~[any]~~ a form of application for employment or membership  
11 or to make ~~[any]~~ an inquiry regarding prospective membership or  
12 employment that expresses, directly or indirectly, ~~[any]~~ a  
13 limitation, specification or discrimination as to race, color,  
14 religion, national origin, ancestry, sex, sexual orientation,  
15 gender identity, pregnancy, childbirth or condition related to  
16 pregnancy or childbirth, physical or mental handicap, ~~[or]~~  
17 serious medical condition, right of bodily integrity or, if the  
18 employer has fifty or more employees, spousal affiliation,  
19 unless based on a bona fide occupational qualification;

20 E. an employment agency to refuse to list and  
21 properly classify for employment or refer a person for  
22 employment in a known available job, for which the person is  
23 otherwise qualified, because of race, religion, color, national  
24 origin, ancestry, sex, sexual orientation, gender identity,  
25 pregnancy, childbirth or condition related to pregnancy or

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1 childbirth, spousal affiliation, physical or mental handicap  
2 [~~or~~], serious medical condition, right of bodily integrity,  
3 unless based on a bona fide occupational qualification, or to  
4 comply with a request from an employer for referral of  
5 applicants for employment if the request indicates, either  
6 directly or indirectly, that the employer discriminates in  
7 employment on the basis of race, religion, color, national  
8 origin, ancestry, sex, sexual orientation, gender identity,  
9 pregnancy, childbirth or condition related to pregnancy or  
10 childbirth, spousal affiliation, physical or mental handicap,  
11 [~~or~~] serious medical condition or right of bodily integrity,  
12 unless based on a bona fide occupational qualification;

13 F. [~~any~~] a person in [~~any~~] a public accommodation  
14 to make a distinction, directly or indirectly, in offering or  
15 refusing to offer its services, facilities, accommodations or  
16 goods to any person because of race, religion, color, national  
17 origin, ancestry, sex, sexual orientation, gender identity,  
18 pregnancy, childbirth or condition related to pregnancy or  
19 childbirth, right of bodily integrity, spousal affiliation or  
20 physical or mental handicap; provided that the physical or  
21 mental handicap is unrelated to a person's ability to acquire  
22 or rent and maintain particular real property or housing  
23 accommodation;

24 G. [~~any~~] a person to:

25 (1) refuse to sell, rent, assign, lease or

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1 sublease or offer for sale, rental, lease, assignment or  
2 sublease [~~any~~] a housing accommodation or real property to  
3 [~~any~~] a person or to refuse to negotiate for the sale, rental,  
4 lease, assignment or sublease of [~~any~~] a housing accommodation  
5 or real property to [~~any~~] a person because of race, religion,  
6 color, national origin, ancestry, sex, sexual orientation,  
7 gender identity, pregnancy, childbirth or condition related to  
8 pregnancy or childbirth, spousal affiliation, right of bodily  
9 integrity or physical or mental handicap; provided that the  
10 physical or mental handicap is unrelated to a person's ability  
11 to acquire or rent and maintain particular real property or  
12 housing accommodation;

13 (2) discriminate against [~~any~~] a person in the  
14 terms, conditions or privileges of the sale, rental,  
15 assignment, lease or sublease of any housing accommodation or  
16 real property or in the provision of facilities or services in  
17 connection therewith because of race, religion, color, national  
18 origin, ancestry, sex, sexual orientation, gender identity,  
19 pregnancy, childbirth or condition related to pregnancy or  
20 childbirth, spousal affiliation, right of bodily integrity or  
21 physical or mental handicap; provided that the physical or  
22 mental handicap is unrelated to a person's ability to acquire  
23 or rent and maintain particular real property or housing  
24 accommodation; or

25 (3) print, circulate, display or mail or cause

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1 to be printed, circulated, displayed or mailed [~~any~~] a  
2 statement, advertisement, publication or sign or use [~~any~~] a  
3 form of application for the purchase, rental, lease, assignment  
4 or sublease of [~~any~~] a housing accommodation or real property  
5 or to make [~~any~~] a record or inquiry regarding the prospective  
6 purchase, rental, lease, assignment or sublease of [~~any~~] a  
7 housing accommodation or real property that expresses [~~any~~] a  
8 preference, limitation or discrimination as to race, religion,  
9 color, national origin, ancestry, sex, sexual orientation,  
10 gender identity, pregnancy, childbirth or condition related to  
11 pregnancy or childbirth, spousal affiliation, right of bodily  
12 integrity or physical or mental handicap; provided that the  
13 physical or mental handicap is unrelated to a person's ability  
14 to acquire or rent and maintain particular real property or  
15 housing accommodation;

16 H. [~~any~~] a person to whom application is made  
17 either for financial assistance for the acquisition,  
18 construction, rehabilitation, repair or maintenance of [~~any~~] a  
19 housing accommodation or real property or for [~~any~~] a type of  
20 consumer credit, including financial assistance for the  
21 acquisition of [~~any~~] a consumer good as defined by Section  
22 55-9-102 NMSA 1978, to:

23 (1) consider the race, religion, color,  
24 national origin, ancestry, sex, sexual orientation, gender  
25 identity, pregnancy, childbirth or condition related to

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1 pregnancy or childbirth, spousal affiliation, right of bodily  
2 integrity or physical or mental handicap of [~~any individual~~] a  
3 person in the granting, withholding, extending, modifying or  
4 renewing or in the fixing of the rates, terms, conditions or  
5 provisions of [~~any~~] financial assistance or in the extension of  
6 services in connection with the request for financial  
7 assistance; or

8 (2) use [~~any~~] a form of application for  
9 financial assistance or to make [~~any~~] a record or inquiry in  
10 connection with applications for financial assistance that  
11 expresses, directly or indirectly, [~~any~~] a limitation,  
12 specification or discrimination as to race, religion, color,  
13 national origin, ancestry, sex, sexual orientation, gender  
14 identity, pregnancy, childbirth or condition related to  
15 pregnancy or childbirth, spousal affiliation, right of bodily  
16 integrity or physical or mental handicap;

17 I. [~~any~~] a person or employer to:

18 (1) aid, abet, incite, compel or coerce the  
19 doing of any unlawful discriminatory practice or to attempt to  
20 do so;

21 (2) engage in [~~any~~] a form of threats,  
22 reprisal or discrimination against any person who has opposed  
23 any unlawful discriminatory practice or has filed a complaint,  
24 testified or participated in any proceeding under the Human  
25 Rights Act; or

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1 (3) willfully obstruct or prevent ~~[any]~~ a  
2 person from complying with the provisions of the Human Rights  
3 Act or to resist, prevent, impede or interfere with the  
4 commission or ~~[any of]~~ its members, staff or representatives in  
5 the performance of their duties under the Human Rights Act;

6 J. ~~[any]~~ an employer to refuse or fail to  
7 accommodate a person's physical or mental handicap, ~~[or]~~  
8 serious medical condition or right of bodily integrity, unless  
9 such accommodation is unreasonable or an undue hardship;

10 K. ~~[any]~~ a employer to refuse or fail to make  
11 reasonable accommodation for an employee or job applicant with  
12 a need arising from pregnancy, childbirth or condition related  
13 to pregnancy or childbirth; or

14 L. ~~[any]~~ an employer to require an employee with a  
15 need arising from pregnancy, childbirth or condition related to  
16 pregnancy or childbirth to take paid or unpaid leave if another  
17 reasonable accommodation can be provided unless the employee  
18 voluntarily requests to be placed on leave or the employee is  
19 placed on leave pursuant to federal law."

20 SECTION 22. Section 29-16-3 NMSA 1978 (being Laws 1997,  
21 Chapter 105, Section 3, as amended) is amended to read:

22 "29-16-3. DEFINITIONS.--As used in the DNA Identification  
23 Act:

24 A. "administrative center" means the part of a law  
25 enforcement agency crime laboratory that participates in the

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1 national DNA index system and that administers and operates the  
2 DNA identification system;

3 B. "CODIS" means the federal bureau of  
4 investigation's national DNA index system for storage and  
5 exchange of DNA records submitted by forensic DNA laboratories;

6 C. "covered offender" means any person:

7 (1) convicted of a felony offense as an adult  
8 pursuant to state, federal or military law;

9 (2) convicted as an adult pursuant to youthful  
10 offender or serious youthful offender proceedings under the  
11 Children's Code or pursuant to comparable or equivalent  
12 proceedings under state, federal or military law; or

13 (3) required to register as a sex offender  
14 pursuant to the provisions of the Sex Offender Registration and  
15 Notification Act;

16 D. "department" means the department of public  
17 safety;

18 E. "DNA" means deoxyribonucleic acid as the basis  
19 of human heredity;

20 F. "DNA identification system" means the DNA  
21 identification system established pursuant to the DNA  
22 Identification Act;

23 G. "DNA oversight committee" means the DNA  
24 identification system oversight committee;

25 H. "DNA records" means the results of DNA testing

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1 and related information;

2 I. "DNA testing" means a forensic DNA analysis that  
3 includes restriction fragment length polymorphism, polymerase  
4 chain reaction or other valid methods of DNA typing performed  
5 to obtain identification characteristics of samples;

6 J. "fund" means the DNA identification system fund;

7 K. "missing persons DNA identification system"  
8 means the missing persons DNA identification system established  
9 by the DNA Identification Act;

10 L. "right of bodily integrity" means a person's  
11 right to accept or reject DNA testing free from any threat or  
12 compulsion;

13 [~~E.~~] M. "sample" means a sample of biological  
14 material sufficient for DNA testing; and

15 [~~M.~~] N. "sex offender DNA identification system"  
16 means the sex offender DNA identification system established by  
17 the DNA Identification Act."

18 SECTION 23. Section 29-16-4 NMSA 1978 (being Laws 1997,  
19 Chapter 105, Section 4, as amended) is amended to read:

20 "29-16-4. ADMINISTRATIVE CENTER--POWERS AND DUTIES--  
21 HEAD--LOCATION--WRITTEN AGREEMENT.--

22 A. The administrative center shall:

23 (1) establish and administer the DNA  
24 identification system. The DNA identification system shall  
25 provide for collection, storage, DNA testing, maintenance and

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1 comparison of samples and DNA records for forensic and  
2 humanitarian purposes. Those purposes shall include generation  
3 of investigative leads, statistical analysis of DNA profiles  
4 and identification of missing persons and unidentified human  
5 remains. Procedures used for DNA testing shall be compatible  
6 with the procedures the federal bureau of investigation has  
7 specified, including comparable test procedures, laboratory  
8 equipment, supplies and computer software. Procedures used  
9 shall meet or exceed the provisions of the federal DNA  
10 Identification Act of 1994 regarding minimum standards for  
11 state participation in CODIS, including minimum standards for  
12 the acceptance, security and dissemination of DNA records;

13 (2) coordinate sample collection activities;

14 (3) perform or contract for DNA testing;

15 (4) serve as a repository for samples and DNA  
16 records;

17 (5) act as liaison with the federal bureau of  
18 investigation for purposes of CODIS;

19 (6) adopt rules and procedures governing:

20 (a) sample collection;

21 (b) DNA testing;

22 (c) the DNA identification system and  
23 DNA records;

24 (d) the acceptance, security and  
25 dissemination of DNA records; ~~[and]~~

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1 (e) communication between local, state  
2 and federal law enforcement agencies, the corrections  
3 department and local jails and detention facilities in order to  
4 minimize duplicate sample collections from the same individual;  
5 and

6 (f) written notifications by persons who  
7 refuse DNA testing by asserting their rights of bodily  
8 integrity;

9 (7) provide training to jail and detention  
10 facility personnel who are required to collect samples pursuant  
11 to Section 29-3-10 NMSA 1978;

12 (8) be reimbursed for, pursuant to the DNA  
13 Identification Act, the costs of sample collection and DNA  
14 testing of samples taken for the purposes of the identification  
15 of missing persons and unidentified human remains;

16 (9) establish and administer the missing  
17 persons DNA identification system as a part of the DNA  
18 identification system; and

19 (10) establish and administer the sex offender  
20 DNA identification system as part of the DNA identification  
21 system.

22 B. The chief of the law enforcement agency where  
23 the administrative center is located shall select the head of  
24 the administrative center with the approval of six members of  
25 the DNA oversight committee. The head of the administrative

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1 center shall manage the operations of the administrative center  
2 and shall have the education and experience to meet or exceed  
3 the requirements for a technical leader or a CODIS  
4 administrator pursuant to the federal bureau of investigation's  
5 quality assurance standards.

6 C. The administrative center shall be located at  
7 the crime laboratory of the law enforcement agency for the  
8 largest municipality in a class A county having a population of  
9 more than five hundred thousand at the most recent federal  
10 decennial census. If a relocation of the administrative center  
11 is required for continued compliance with the provisions of the  
12 DNA Identification Act, the DNA oversight committee shall  
13 designate any future locations of the administrative center  
14 upon approval of six voting members of the committee.

15 D. The DNA oversight committee shall enter into a  
16 written agreement with the law enforcement agency where the  
17 administrative center is located and may designate the attorney  
18 general to enter into the agreement on its behalf and with its  
19 approval."

20 SECTION 24. Section 29-16-5 NMSA 1978 (being Laws 1997,  
21 Chapter 105, Section 5, as amended) is amended to read:

22 "29-16-5. DNA OVERSIGHT COMMITTEE--CREATED--POWERS AND  
23 DUTIES.--

24 A. The "DNA identification system oversight  
25 committee" is created. The DNA oversight committee shall be

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1 composed of nine voting members as follows:

2 (1) a scientific representative from the  
3 department crime laboratory appointed by the secretary of  
4 public safety;

5 (2) a scientific representative from the crime  
6 laboratory of the police department for the largest  
7 municipality in a class A county having a population of more  
8 than two hundred fifty thousand at the most recent federal  
9 decennial census;

10 (3) the secretary of corrections or the  
11 secretary's designated representative;

12 (4) the state medical investigator or the  
13 investigator's designated representative;

14 (5) the attorney general or the attorney  
15 general's designated representative;

16 (6) the president of the district attorneys'  
17 association or the president's designated representative;

18 (7) the chief public defender or the chief  
19 public defender's designated representative;

20 (8) the president of the New Mexico criminal  
21 defense lawyers association or the president's designated  
22 representative; and

23 (9) the head of the administrative center or  
24 the head's designated representative.

25 B. The DNA oversight committee shall adopt rules

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1 and procedures regarding the administration and operation of  
2 the DNA identification system.

3 C. The administrative center shall review and make  
4 recommendations to the DNA oversight committee regarding rules  
5 and procedures for the administration and operation of the DNA  
6 identification system, including written notifications by  
7 persons who refuse DNA testing by asserting their rights of  
8 bodily integrity.

9 D. The DNA oversight committee shall oversee the  
10 establishment and administration of the missing persons DNA  
11 identification system as part of the DNA identification system.

12 E. The DNA oversight committee shall adopt rules  
13 and procedures regarding the administration and operation of  
14 the missing persons DNA identification system as part of the  
15 DNA identification system.

16 F. The DNA oversight committee shall oversee the  
17 establishment and administration of the sex offender DNA  
18 identification system as part of the DNA identification system,  
19 including the written notifications of persons asserting their  
20 rights of bodily integrity.

21 G. The DNA oversight committee shall adopt rules  
22 and procedures regarding the administration and operation of  
23 the sex offender DNA identification system as part of the DNA  
24 identification system, including the written notifications of  
25 persons asserting their rights of bodily integrity.

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1           H. The DNA oversight committee shall designate and  
2 approve the location of the administrative center as provided  
3 in Section 29-16-4 NMSA 1978.

4           I. The DNA oversight committee may award grants and  
5 loans pursuant to Section 29-16-13 NMSA 1978."

6           **SECTION 25.** Section 29-16-7 NMSA 1978 (being Laws 1997,  
7 Chapter 105, Section 7, as amended) is amended to read:

8           "29-16-7. PROCEDURES FOR COLLECTION OF SAMPLES.--

9           A. The collection of samples pursuant to the  
10 provisions of Section 29-16-6 NMSA 1978 shall be conducted in a  
11 medically approved manner in accordance with rules and  
12 procedures adopted by the DNA oversight committee.

13           B. A person who collects samples shall be trained  
14 in procedures that meet the requirements and standards  
15 specified in Subsection A of this section.

16           C. A person authorized to collect samples and [his]  
17 the person's employer shall be immune from liability in any  
18 civil or criminal action with regard to the collection of  
19 samples, if the collection is performed without negligence.  
20 This subsection shall not be deemed to create any additional  
21 liability or waive any immunity of public employees under the  
22 Tort Claims Act.

23           D. Samples shall be stored in accordance with rules  
24 and procedures adopted by the administrative center.

25           E. DNA testing shall be performed by the

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1 administrative center or a contract facility it may designate.

2 F. DNA records and samples shall be securely  
3 classified and stored by the administrative center.

4 G. DNA samples and testing shall not be employed if  
5 a person has filed a written notification of the person's right  
6 of bodily integrity."

7 SECTION 26. A new section of Chapter 66, Article 8 NMSA  
8 1978 is enacted to read:

9 "[NEW MATERIAL] REFUSAL OF BLOOD TEST FOR DRIVING UNDER  
10 THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--RIGHT OF BODILY  
11 INTEGRITY--NONDISCRIMINATION.--

12 A. As used in this section, "right of bodily  
13 integrity" means a person's right to accept or reject a medical  
14 intervention, including testing or screening that involves  
15 puncturing or incising a person's skin or the removal of bodily  
16 fluids, tissues or genetic material from the person's body,  
17 free from any threat or compulsion.

18 B. A person arrested for driving under the  
19 influence of intoxicating liquor or drugs may assert the right  
20 of bodily integrity and refuse a blood alcohol test.

21 C. The department, law enforcement officers or any  
22 other person shall not discriminate against a person for  
23 exercising the right of bodily integrity."

24 SECTION 27. EMERGENCY.--It is necessary for the public  
25 peace, health and safety that this act take effect immediately.

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