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

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

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

C. "department" means:

(1) the department of health; or

(2) the children, youth and families department as to child care centers, residential treatment centers that serve persons up to twenty-one years of age, community mental health centers that serve only persons up to twenty-one years of age, day treatment centers that serve persons up to twenty-one years of age, shelter care homes and those outpatient facilities that are also community-based behavioral health facilities serving only persons up to twenty-one years of age;

D. "director" means the secretary;

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

F. "health facility" means a public hospital, profit or nonprofit private hospital, general or special hospital, outpatient facility, crisis triage center,
freestanding birth center, adult daycare facility, nursing home, intermediate care facility, assisted living facility, boarding home not under the control of an institution of higher learning, child care center, shelter care home, diagnostic and treatment center, rehabilitation center, infirmary, community mental health center that serves both children and adults or adults only, residential treatment center that serves persons up to twenty-one years of age, community mental health center that serves only persons up to twenty-one years of age and day treatment center that serves persons up to twenty-one years of age or a health service organization operating as a freestanding hospice or a home health agency. The designation of these entities as health facilities is only for the purposes of definition in the Public Health Act and does not imply that a freestanding hospice or a home health agency is considered a health facility for the purposes of other provisions of state or federal laws. "Health facility" also includes those facilities that, by federal regulation, must be licensed by the state to obtain or maintain full or partial, permanent or temporary federal funding. It does not include the offices and treatment rooms of licensed private practitioners;

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

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

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

(3) inserting a foreign substance into a

person's body;

H. "right of bodily integrity" means a person's

right to accept or reject a medical intervention free from any

threat or compulsion; provided that "person" includes minors

and adults under guardianship for whom the right to accept or

reject a medical intervention shall be made by the parent or

legal guardian;

[G.] I. "screening" means a preliminary procedure,

including a test or examination, that:

(1) may require further investigation; and

(2) can identify [individuals] persons with

unrecognized health risk factors or asymptomatic disease

conditions in populations;

[H.] J. "secretary" means:

(1) the secretary of health; or

(2) the secretary of early childhood education

and care, the secretary of children, youth and families or the

secretary of human services, as applicable, as to child care

centers, residential treatment centers that serve persons up to

twenty-one years of age, community mental health centers that

serve only persons up to twenty-one years of age, day treatment

centers that serve persons up to twenty-one years of age,

shelter care homes and those outpatient facilities that are

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

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

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

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

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

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

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

D. establish, maintain and enforce isolation and quarantine;

E. close any public place and forbid gatherings of people when necessary for the protection of the public health;
F. respond to public health emergencies and assist communities in recovery;

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

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

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

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

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

L. ensure a competent public health workforce;

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

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

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

P. cooperate and enter into contracts or agreements with Native American nations, tribes and pueblos and off-reservation groups to coordinate the provision of essential public health services and functions;
Q. maintain and enforce rules for the control of conditions of public health importance;
R. maintain and enforce rules for immunization against conditions of public health importance;
S. maintain and enforce such rules as may be necessary to carry out the provisions of the Public Health Act and to publish the rules;
T. supervise state public health activities, operate a dental public health program and operate state laboratories for the investigation of public health matters;
U. sue and, with the consent of the legislature, be sued;
V. regulate the practice of midwifery;
W. administer legislation enacted pursuant to Title 6 of the Public Health Service Act, as amended and supplemented;
X. inspect such premises or vehicles as necessary to ascertain the existence or nonexistence of conditions dangerous to public health or safety;
Y. request and inspect, while maintaining federal and state confidentiality requirements, copies of:
   (1) medical and clinical records reasonably required for the department's quality assurance and quality improvement activities; and
   (2) all medical and clinical records
pertaining to the individual whose death is the subject of
inquiry by the department's mortality review activities; and

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

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

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

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

(1) involving contact between the penis and
the vulva;
(2) involving contact between the penis and
anus;
(3) involving contact between the mouth and
penis;
(4) involving contact between the mouth and
vulva;
(5) involving contact between the mouth and
anus; or
(6) when the court determines from the facts
of the case that there was a transmission or likelihood of
transmission of bodily fluids from the offender to the victim
of the criminal offense.

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

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

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

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

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

(2) involving contact between the penis and anus;

(3) involving contact between the mouth and penis;

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

(5) involving contact between the mouth and anus.

B. If consent to perform a test on an alleged offender cannot be obtained because the offender asserts the right of bodily integrity or asserts another reason, the victim of the alleged criminal offense described in Subsection A of this section may petition the court, through the prosecuting office or personally, to order that a test be performed on the alleged offender; provided that the same test is first performed on the victim of the alleged criminal offense. The test may be performed on the alleged offender regardless of the result of the test performed on the victim of the alleged criminal offense. If the victim of the alleged criminal offense is a minor or incompetent, the parent or legal guardian of the victim of the alleged criminal offense may petition the court to order that a test be performed on the alleged offender.

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

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

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

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

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

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

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

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

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

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

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

"24-1-12. HEALTH CERTIFICATES--FILING.--
A. Except as otherwise provided in this subsection, any person who operates or is employed in a health facility shall upon becoming employed or engaged in such occupation present to the employer or, if self-employed, file at the place of business a health certificate from a licensed physician stating the person is free from communicable diseases in a transmissible state dangerous to the public health as defined by [regulation] rule of the [health services] division [of the health and environment department]. The certificate shall be obtained not more than ninety days prior to the date of employment. A person may refuse to be tested by asserting the right of bodily integrity.

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

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

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

A. If the secretary or a representative of the department has knowledge that a person is infected with or reasonably believes that a person is infected with or exposed to a threatening communicable disease and the person has refused voluntary treatment or testing because the person asserted the right of bodily integrity or has asserted some other right of refusal for treatment, testing, evaluation, detention or observation, the secretary or the secretary's
designee shall petition the court for an order to isolate or quarantine the person until the person is no longer a threat to the public health or until the person voluntarily complies with treatment and contagion precautions.

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

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

(1) is infected with, reasonably believed to
be infected with or exposed to a threatening communicable
disease; and

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

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

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

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

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

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

(1) entitled to representation by counsel at
the evidentiary hearing and at all hearings thereafter.
that hearing for the duration of the period of removal and
detention; and

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

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

G. At the evidentiary hearing, the court shall
review the circumstances surrounding the court order and, if
the petitioner can show by clear and convincing evidence that
the person being held has asserted the right of bodily
integrity or some other right to refuse and has not voluntarily
complied or will not voluntarily comply with appropriate
treatment and contagion precautions, the court may continue the
isolation or quarantine. The court shall order regular review
of the order to isolate or quarantine by providing the person
being held with a subsequent hearing within thirty days of the
court order's issuance and every thirty days thereafter. The
court order to isolate or quarantine shall be terminated and
the affected person shall be released if:
(1) the person being held is certified by a public health official to pose no further risk to the public health;

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

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

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

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

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

(1) the isolation or quarantine is warranted;

or

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

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

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

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

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

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

(5) the needs of a person isolated or quarantined are addressed in a systematic and orderly manner,
including the provision of adequate food, clothing, shelter, sanitation and comfort;

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

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

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

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

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

M. A person who in good faith reports another person infected with a threatening communicable disease shall
not be held liable for civil damages as a result of the report; provided that the person reported as being infected with a threatening communicable disease shall have the right to sue for damages sustained as a result of negligent or intentional reporting of inaccurate information or the disclosure of information to an unauthorized person.

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

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

P. For purposes of this section:

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

(2) "court" means:

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

(b) in the event that a district court
cannot adequately provide services, a district court that the New Mexico supreme court designates;

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

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

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

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

SECTION 8. Section 24-1-15.1 NMSA 1978 (being Laws 2009, .219562.2

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Chapter 174, Section 1, as amended) is amended to read:

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

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

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

C. The secretary, or [a representative of the department whom the secretary designates] the secretary's designee, may by public health order temporarily isolate a person or group of persons if delay in isolating the person or group would significantly jeopardize the secretary's ability to prevent or limit the transmission of tuberculosis to others. The public health order shall expire at the end of twenty-four hours from the time of the commencement of isolation. The
secretary may petition for a court order that authorizes the continued isolation. In the petition, the secretary shall present facts used to support the need to have issued the public health order to isolate.

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

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

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

(1) has active tuberculosis or presents a substantial likelihood of having active tuberculosis based on credible medical evidence;
(2) after being advised of the condition and the risks posed thereby, has failed to comply with the department's treatment plan; and
(3) poses a substantial likelihood of transmission of tuberculosis to others because the person is actively infectious or poses a risk of relapse or development of a therapy-resistant strain of tuberculosis.

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

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

(a) administer a program of directly observed therapy;

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

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

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

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

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

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

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

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

I. At the evidentiary hearing, the court shall review the circumstances surrounding the court order, and, if the petitioner can show by clear and convincing evidence that the person being held has asserted the right of bodily
integrity and has not complied or will not comply with appropriate treatment and contagion precautions as the department deems necessary, the court shall continue the court order for the person who has active tuberculosis until completion of therapy, as deemed by the department. The court shall order regular review of the order by providing the person under a court order with a subsequent hearing within ninety days of the court order's issuance and every ninety days thereafter. The court order shall be terminated and the person shall be released if:

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

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

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

K. A person isolated pursuant to this section has the right to refuse any medical treatment, physical or mental examination, treatment program or invasive specimen collection. A person who has been directed by the secretary to submit to medical procedures and protocols because the person has active tuberculosis and refuses to submit to the procedures and protocols may be subject to continued isolation pursuant to this section.
L. A person who is isolated pursuant to a court order may petition the court to contest the order or the conditions of isolation at any time prior to the expiration of the court order. If a petition is filed, the court shall hold a hearing within five business days after the date of filing. At a hearing pursuant to a petition to contest, the secretary shall offer:

(1) clear and convincing evidence that the isolation is warranted; or

(2) proof that the conditions of isolation are compliant with the provisions of this section.

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

(1) isolation is imposed by the least restrictive means necessary to protect against the spread of tuberculosis to others and may include confinement to the isolated person's private home, if practicable, or, if not practicable, a private or public premises;

(2) the health status of an isolated person is monitored regularly to determine if continued isolation is required;

(3) the needs of a person isolated are addressed in a systematic and orderly manner, including the provision of adequate food, clothing, shelter, sanitation and comfort;
(4) there are methods of communication available to a person placed in isolation to enable communication with family members, household members, legal representatives, advocates, the media and any licensed health care provider;

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

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

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

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

P. During the period of isolation, an employer
shall not discharge from employment a person who is placed in
isolation pursuant to this section.

Q. For purposes of this section:

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

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

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

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

(d) pulmonary or extrapulmonary
tuberculosis;

(2) "completion of therapy" means completion
of the prescribed therapy, as determined by the department
based upon published national consensus tuberculosis treatment.
guidelines;

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

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

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

(6) "isolation" means:

(a) home isolation;

(b) home isolation with electronic monitoring;

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

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

SECTION 9. Section 24-1-15.3 NMSA 1978 (being Laws 2017, .219562.2
Chapter 87, Section 19) is amended to read:

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

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

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

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

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

(4) fully inform the [individual] person of the [individual's] person's results, the meaning of the results, the possible need for additional testing and the availability of appropriate health care services, including mental health care and social and support services. If
appropriate, the department shall provide counseling or inform
the [individual] person where such counseling services are
available.

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

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

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

"24-1-38. HOSPITALS--REQUIREMENT TO OFFER INFLUENZA AND
PNEUMOCOCCAL IMMUNIZATIONS.--Each year between October 1 and
March 1 and in accordance with the latest recommendations of
the advisory committee on immunization practices of the federal
centers for disease control and prevention, each hospital
licensed by the department of health shall offer, prior to
discharge, immunizations against the influenza virus and
pneumococcal disease to all inpatients sixty-five years of age
and older unless contraindicated for a patient and contingent
upon the availability of the vaccine. A patient may assert the
right of bodily integrity."
SECTION 11.  Section 24-2B-2 NMSA 1978 (being Laws 1989, Chapter 227, Section 2, as amended) is amended to read:

"24-2B-2.  INFORMED CONSENT.--[Ne]  

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

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

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

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

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

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

B.  A person shall not perform a test designed to identify the human immunodeficiency virus or its antigen or antibody without first obtaining the informed consent of the person upon whom the test is performed [except as provided in Section 24-2B-5, 24-2B-5.1, 24-2B-5.2 or 24-2B-5.3 NMSA 1978]. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses and limitations and
the meaning of its results. Consent need not be in writing if there is documentation in the medical record that the test has been explained and the consent has been obtained. The requirement for full pre-test counseling may be waived under the following circumstances:

[A.](1) the performance of a prenatal test to determine if the human immunodeficiency virus or its antigen is present in a pregnant woman; provided that the woman, or her authorized representative, after having been informed of the option to decline the human immunodeficiency virus test, may choose not to have the human immunodeficiency virus test performed as a part of the routine prenatal testing if she or her authorized representative provides a written statement as 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)."; [B.](2) when human immunodeficiency virus testing is part of routine medical care and the patient has
consented; or

(3) when the person asserts the right of

bodily integrity."

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

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

A. a health care provider or health facility performing a test on the donor or recipient when the health care provider or health facility procures, processes, distributes or uses a human body part, including tissue and blood or blood products, donated for a purpose specified under the [individual] person is able to receive that post-test counseling. Necessary
treatment shall not be withheld pending test results;

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

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

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

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

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

(1) involving contact between the penis and vulva;

(2) involving contact between the penis and
anus;

(3) involving contact between the mouth and penis;

(4) involving contact between the mouth and vulva;

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

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

B. If consent to perform a test on an offender cannot be obtained pursuant to the provisions of Section 24-2B-2 or 24-2B-3 NMSA 1978, the district attorney or other prosecutorial authority shall, upon the request of the victim of a criminal offense described in Subsection A of this section, petition the court to order that a test be performed on the offender not later than forty-eight hours from the date of the court order. If the victim of the criminal offense is a minor or incompetent, the parent or legal guardian of the victim may request the district attorney or other prosecutorial authority to petition the court to order that a test be performed on the offender. The petition and all proceedings in connection with the petition shall be under seal. The results of the test shall be disclosed as soon as practicable and only
to the offender and to the victim or the victim's parent or legal guardian. If the offender has a positive test result, both the offender and victim shall be provided with counseling, as described in Section 24-2B-4 NMSA 1978.

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

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

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

F. If the offender is a minor adjudicated as a delinquent child pursuant to the provisions of the Children's Code and the court does not transfer legal custody of the minor
to the children, youth and families department, the court's
order shall direct the department of health to be responsible
for the administration of and payment for the test and the
lawful distribution of the test results."

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

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

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

(1) involving contact between the penis and
vulva;

(2) involving contact between the penis and
anus;

(3) involving contact between the mouth and
penis;

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

(5) involving contact between the mouth and
anus.
B. If consent to perform a test on an alleged offender cannot be obtained pursuant to the provisions of Section 24-2B-2 or 24-2B-3 NMSA 1978, the district attorney or other prosecutorial authority shall, upon the request of the victim of the alleged criminal offense described in Subsection A of this section, petition the court to order that a test be performed on the alleged offender not later than forty-eight hours from the date of the court order; provided that the same test is first performed on the victim of the alleged criminal offense. If the victim of the alleged criminal offense is a minor or incompetent, the parent or legal guardian of the victim of the alleged criminal offense may request the district attorney or other prosecutorial authority to petition the court to order that a test be performed on the alleged offender. The test may be performed on the alleged offender regardless of the result of the test performed on the victim of the alleged offense.

C. The court may issue an order based on a finding of good cause after a hearing at which both the victim of the alleged criminal offense and the alleged offender have the right to be present. During the hearing, only affidavits, counter affidavits and medical reports regarding the facts that support or rebut the issuance of an order shall be admissible. The hearing shall be conducted within seventy-two hours after the district attorney or other prosecutorial authority
petitions the court for the order. The petition and all proceedings in connection therewith shall be under seal.

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

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

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

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

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

SECTION 15. Section 24-2B-5.3 NMSA 1978 (being Laws 2000, .219562.2
Chapter 36, Section 3) is amended to read:

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

A. As used in this section:

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

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

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

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

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exposed individual is significantly exposed.

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

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

E. The results of the test shall be disclosed only to the source individual and the exposed individual or the exposed individual's parent or guardian. When the source individual or the exposed individual has a positive test result, both shall be provided with counseling as provided in .219562.2
Section 24-2B-4 NMSA 1978."

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

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

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

[...]

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

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

(1) the making available to all physicians by...
the [health services] division of current information concerning the nature, effects, diagnosis and treatment of sickle cell trait and sickle cell anemia;

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

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

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

"24-5-3. EXEMPTION FROM IMMUNIZATION.--[A. Any] A. As used in this section, "right of bodily integrity" means a person's right to accept or reject immunizations free from any threat or compulsion.

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

(1) a certificate of a duly licensed physician stating that the physical condition of the child is such that immunization would seriously endanger the life or health of the child; [or]
(2) [affidavits] an affidavit or written affirmation from an officer of a recognized religious denomination that [such the child's [parents or guardians are] parent or legal guardian is a bona fide [members] member of a denomination whose religious teaching requires reliance upon prayer or spiritual means alone for healing; [or]

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

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

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

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

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

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

.219562.2
[A.] B. By July 1, 2014, the department shall promulgate rules and make recommendations to each school district and governing body of a charter school for the prevention and treatment of respiratory distress and the administration of albuterol, or such other medication as the department deems appropriate, by a school nurse.

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

1. the provision or administration of epinephrine, or such other medication as the department deems appropriate, to a person reasonably believed to be having an anaphylactic reaction;

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

3. the maintenance of a stock supply of standard-dose and pediatric-dose epinephrine auto-injectors, or
such other medication as the department deems appropriate,
pursuant to a standing order prescribed in the name of the
public school or school district by a health care practitioner
employed or authorized by the department;

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

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

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

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

[F.] A public school or school district may
maintain a stock supply of albuterol aerosol canisters and
spacers or a stock supply of standard-dose and pediatric-dose
epinephrine auto-injectors for use in accordance with this
section.

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

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

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

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

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

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

C. "commission" means the human rights commission;

D. "director" or "bureau" means the human rights
bureau of the labor relations division of the workforce
solutions department;

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

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

G. "employment agency" means any a person
regularly undertaking with or without compensation to procure
opportunities to work or to procure, recruit or refer
employees;

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

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

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

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

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

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

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

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

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

R. "reasonable accommodation" means modification or
adaptation of the work environment, work schedule, work rules
or job responsibilities, [and] which are reached through good
faith efforts to explore less restrictive or less expensive
alternatives to enable an employee to perform the essential
functions of the job and that does not impose an undue hardship
on the employer; [and]

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

(1) the nature and cost of the accommodation;
(2) the financial resources of the employer
involved in the provision of the reasonable accommodation;
(3) the number of persons the employer
employs;
(4) the effect of the accommodation on
expenses and resources;
(5) the impact of the accommodation otherwise
upon the employer's business;
(6) the overall financial resources of the
employer;
(7) the overall size of the business of an
employer with respect to the number, type and location of its
facilities;
(8) the type of operation of the employer,
including the composition, structure and functions of the
workforce of the employer; or

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

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

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

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

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

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

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

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

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

B. At all times, including during a declared public
health emergency, a person shall not be discriminated against
or denied public accommodation, housing accommodation,
employment, government services or any other services offered
to the general public or otherwise penalized for the assertion
of the right of bodily integrity, including:

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

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

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

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

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

"28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an
unlawful discriminatory practice for:
A. an employer, unless based on a bona fide occupational qualification or other statutory prohibition, to refuse to hire, to discharge, to promote or demote or to discriminate in matters of compensation, terms, conditions or privileges of employment against any a person otherwise qualified because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, physical or mental handicap or, if the employer has fifty or more employees, spousal affiliation; provided, however, that 29 U.S.C. Section 631(c)(1) and (2) shall apply to discrimination based on age;

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

C. any an employer, labor organization or joint apprenticeship committee to refuse to admit or employ a person in a program established to provide an apprenticeship or other training or retraining because of race,
religion, color, national origin, ancestry, sex, sexual orientation, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, physical or mental handicap, [or] serious medical condition, right of bodily integrity or, if the employer has fifty or more employees, spousal affiliation;

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

E. an employment agency to refuse to list and properly classify for employment or refer a person for employment in a known available job, for which the person is otherwise qualified, because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, pregnancy, childbirth or condition related to pregnancy or condition related to pregnancy or
childbirth, spousal affiliation, physical or mental handicap
[or], serious medical condition, right of bodily integrity,
unless based on a bona fide occupational qualification, or to
comply with a request from an employer for referral of
applicants for employment if the request indicates, either
directly or indirectly, that the employer discriminates in
employment on the basis of race, religion, color, national
origin, ancestry, sex, sexual orientation, gender identity,
pregnancy, childbirth or condition related to pregnancy or
childbirth, spousal affiliation, physical or mental handicap,
[or] serious medical condition or right of bodily integrity,
unless based on a bona fide occupational qualification;

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

G. [any] a person to:

(1) refuse to sell, rent, assign, lease or
sublease or offer for sale, rental, lease, assignment or
sublease [any] a housing accommodation or real property to
[any] a person or to refuse to negotiate for the sale, rental,
lease, assignment or sublease of [any] a housing accommodation
or real property to [any] a person because of race, religion,
color, national origin, ancestry, sex, sexual orientation,
gender identity, pregnancy, childbirth or condition related to
pregnancy or childbirth, spousal affiliation, right of bodily
integrity or physical or mental handicap; provided that the
physical or mental handicap is unrelated to a person's ability
to acquire or rent and maintain particular real property or
housing accommodation;

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

(3) print, circulate, display or mail or cause
to be printed, circulated, displayed or mailed [any] a statement, advertisement, publication or sign or use [any] a form of application for the purchase, rental, lease, assignment or sublease of [any] a housing accommodation or real property or to make [any] a record or inquiry regarding the prospective purchase, rental, lease, assignment or sublease of [any] a housing accommodation or real property that expresses [any] a preference, limitation or discrimination as to race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, right of bodily integrity or physical or mental handicap; provided that the physical or mental handicap is unrelated to a person's ability to acquire or rent and maintain particular real property or housing accommodation;

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

(1) consider the race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, pregnancy, childbirth or condition related to
pregnancy or childbirth, spousal affiliation, right of bodily integrity or physical or mental handicap of [any individual] a person in the granting, withholding, extending, modifying or renewing or in the fixing of the rates, terms, conditions or provisions of [any] financial assistance or in the extension of services in connection with the request for financial assistance; or

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

I. [any] a person or employer to:

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

(2) engage in [any] a form of threats, reprisal or discrimination against any person who has opposed any unlawful discriminatory practice or has filed a complaint, testified or participated in any proceeding under the Human Rights Act; or
(3) willfully obstruct or prevent [any] a person from complying with the provisions of the Human Rights Act or to resist, prevent, impede or interfere with the commission or [any of] its members, staff or representatives in the performance of their duties under the Human Rights Act;

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

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

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

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

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

A. "administrative center" means the part of a law enforcement agency crime laboratory that participates in the .219562.2
national DNA index system and that administers and operates the DNA identification system;

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

C. "covered offender" means any person:
   (1) convicted of a felony offense as an adult pursuant to state, federal or military law;
   (2) convicted as an adult pursuant to youthful offender or serious youthful offender proceedings under the Children's Code or pursuant to comparable or equivalent proceedings under state, federal or military law; or
   (3) required to register as a sex offender pursuant to the provisions of the Sex Offender Registration and Notification Act;

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

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

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

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

H. "DNA records" means the results of DNA testing.
and related information;

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

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

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

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

[M] "sample" means a sample of biological material sufficient for DNA testing; and

[N] "sex offender DNA identification system" means the sex offender DNA identification system established by the DNA Identification Act."

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

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

A. The administrative center shall:

(1) establish and administer the DNA identification system. The DNA identification system shall provide for collection, storage, DNA testing, maintenance and
comparison of samples and DNA records for forensic and humanitarian purposes. Those purposes shall include generation of investigative leads, statistical analysis of DNA profiles and identification of missing persons and unidentified human remains. Procedures used for DNA testing shall be compatible with the procedures the federal bureau of investigation has specified, including comparable test procedures, laboratory equipment, supplies and computer software. Procedures used shall meet or exceed the provisions of the federal DNA Identification Act of 1994 regarding minimum standards for state participation in CODIS, including minimum standards for the acceptance, security and dissemination of DNA records;

   (2) coordinate sample collection activities;
   (3) perform or contract for DNA testing;
   (4) serve as a repository for samples and DNA records;

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

   (6) adopt rules and procedures governing:
       (a) sample collection;
       (b) DNA testing;
       (c) the DNA identification system and DNA records;
       (d) the acceptance, security and dissemination of DNA records;[and]
(e) communication between local, state and federal law enforcement agencies, the corrections department and local jails and detention facilities in order to minimize duplicate sample collections from the same individual; and

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

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

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

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

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

B. The chief of the law enforcement agency where the administrative center is located shall select the head of the administrative center with the approval of six members of the DNA oversight committee. The head of the administrative
center shall manage the operations of the administrative center and shall have the education and experience to meet or exceed the requirements for a technical leader or a CODIS administrator pursuant to the federal bureau of investigation's quality assurance standards.

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

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

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

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

A. The "DNA identification system oversight committee" is created. The DNA oversight committee shall be
composed of nine voting members as follows:

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

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

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

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

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

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

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

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

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

B. The DNA oversight committee shall adopt rules
and procedures regarding the administration and operation of
the DNA identification system.

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

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

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

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

G. The DNA oversight committee shall adopt rules
and procedures regarding the administration and operation of
the sex offender DNA identification system as part of the DNA
identification system, including the written notifications of
persons asserting their rights of bodily integrity.
H. The DNA oversight committee shall designate and
approve the location of the administrative center as provided
in Section 29-16-4 NMSA 1978.

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

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

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

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

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

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

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

E. DNA testing shall be performed by the

administrative center or a contract facility it may designate.  

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

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

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

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

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

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

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

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

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