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FISCAL IMPACT REPORT

ORIGINAL DATE 03/01/21

SPONSOR Gallegos LAST UPDATED _____ HB _____

SHORT TITLE Right to Bodily Integrity SB 408/ec

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Small increase or decrease	Recurring	General Fund			

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 232, Senate Bill 184

SOURCES OF INFORMATION

LFC Files

Responses Received From

Early Childhood Education and Care Department (ECECD)

No Response Received

Department of Health (DOH)

Human Services Department (HSD)

Developmental Disabilities Planning Council (DDPC)

SUMMARY

Synopsis of Bill

Senate Bill 408 establishes a “right of bodily integrity”, which individuals could use in many situations, enumerated in this bill, to refuse intrusions upon that right, including in those instances where procedures or testing are part of public health or law enforcement practice.

Section 1 of the bill amends the definitions section of Chapter 24-1 NMSA 1978 regarding health and safety, newly defining “medical intervention as medical treatment, testing, or screening that involves puncturing a person’s skin; collecting bodily fluids, tissues or genetic material; or inserting a substance into the body. “Right of bodily integrity” is given the meaning a person’s right to accept or reject any medical intervention, including a right of parents or guardians to make

a decision to invoke a right of bodily integrity on behalf of a child or adult under guardianship. “Department” variably means the Department of Health, the Children, Youth and Families Department, the Department of Human Services or the Early Childhood Education and Care Department, as indicated in any procedure discussed.

Reference to this right is then inserted into multiple locations within Chapter 24-1 to promulgate this right among persons in many situations:

Section of SB 408	Type of procedure to be accepted or rejected	Section amended
2	All of the 26 enumerated powers and responsibilities of the Department of Health.	24-1-3
3	Testing for sexually transmitted infections, except that a victim of a sexual offense may petition the court to enable the indicated test to be done on the convicted person.	24-1-9.1
4	Testing for sexually transmitted infections, except that a victim of a sexual offense may petition the court to enable the indicated test to be done on the person with a sexual offense.	24-1-9.2
5	Serological test for syphilis during pregnancy.	24-1-10
6	Testing for infectious diseases as part of employment	24-1-12
7	Those refusing to be tested for a communicable disease on the basis of an asserted right of bodily integrity can be subjected to quarantine or isolation as if they were known to be infected.	24-1-15
8	Persons suspected of having tuberculosis, though testing can be ordered by a court.	24-1-15.1
9	Other disorders/infections of public health importance	24-1-15.3
10	Patients being discharged from hospitals can refuse influenza or pneumococcal vaccine (does not make a change in current practice)	24-1-38
11	Testing for human immunodeficiency virus	24-2B-2
12	Modifies informed consent for research regarding human subjects’ and samples from them	24-2B-5
13	Requires consent for testing of persons convicted of sexual offenses	24-2B-5.1
14	Requires consent for testing of persons charged with sexual offenses	24-2B-5.2
15	Testing of possible sources of HIV	24-2B-5,3
16	Testing for sickle cell disease or trait	24-3-1
17	Immunization of any kind	24-5-3
18	Use of an emergency medication of any kind in schools	24-31-1
19	Definition section of the Human Rights Act; definitions of “medical intervention” and “right of bodily integrity” added as before.	28-1-2
20	Establishes right of bodily integrity, including during a public health emergency: e.g., to not provide samples of bodily fluids, to not receive medical interventions, to not provide proof of immunity. Informed consent required before an intervention.	New section of Human Rights Act, 28-1

21	Employers, employment agencies, public accommodations, renters and labor organizations cannot discriminate against employees or prospective employees based on their asserting the right of bodily integrity; this added to a list of other factors that cannot be considered, such as race, sex, and ethnic origin.	28-1-7
22	Amends the definition section of the DNA administration act, adding definition of “right of bodily integrity”	29-16-3
23	Subjects may assert right of bodily integrity so as not to provide DNA testing.	29-16-4
24	The DNA oversight committee must review written notifications to persons refusing DNA testing on the basis of asserting their right of bodily integrity, including when establishing a sex offender registry.	29-16-5
25	DNA sampling cannot be done a person who has submitted a written notification of right of bodily integrity.	29-16-7
26	Blood testing for alcohol or other drugs during driving. Refusal on the basis of asserted right of bodily integrity cannot be used against a person in law enforcement or court actions.	New, added to 66-8

This bill contains an emergency clause (Section 27 of the bill) and would become effective immediately upon signature by the governor.

FISCAL IMPLICATIONS

There is no appropriation included in Senate Bill 408. There would be certain costs to updating regulations and certain savings that would accrue from people asserting their “rights of bodily integrity” to refuse tests and procedures that might otherwise require governmental payment.

SIGNIFICANT ISSUES

The “right of bodily integrity” would, with passage of this bill, trump any public health or law enforcement concerns. As examples, persons charged with a crime such as sexual penetration could decline to provide a DNA sample for analysis; people claiming this right could refuse to be tested for an infectious disease that could be transmitted to others; inebriated drivers could refuse to provide a blood sample for analysis; unimmunized children could expose those who cannot be immunized to serious infections. An individual’s “right of bodily integrity” would win out over any consideration for the public’s well-being if the public’s well-being required the collection of samples from an individual.

Children are generally protected by law from certain decisions by their parents that go counter to their well-being. In the case of immunizations, parental religious beliefs already supersede public health law, if a parent states that their personal or group-held beliefs contradict the indicated immunization(s). In the case of blood transfusions for children of Jehovah’s Witnesses, most courts will grant permission for this procedure overstepping a parent’s objection if it will save the life of a child. If a child had a life-threatening allergic reaction to a peanut or a bee sting at school, and the parent had asserted a “right of bodily integrity” on behalf of the child, would the school nurse be required to forego giving the child an indicated and possibly life-saving injection of epinephrine?

As noted by ECECD, “By providing for exemptions from immunizations, testing, and other related issues, SB408 may significantly broaden the number of children who can be exempted from immunization and may increase the occurrence of vaccine-preventable disease outbreaks.”

CONFLICT, RELATIONSHIP

Conflicts with Senate Bill 184, on the prevention of congenital syphilis. Relates with Senate Bill 232, which would add another method of exempting children from immunizations.

LAC/sb