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HOUSE BILL 1183

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO HEALTH; PROVIDING FOR HUMAN IMMUNODEFICIENCY VIRUS TESTS ON ALLEGED SEX OFFENDERS UPON THE REQUEST OF THE VICTIM AND WITHIN FORTY-EIGHT HOURS OF THE FILING OF CHARGES.

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

Section 1. Section 24-2B-5.2 NMSA 1978 (being Laws 1996, Chapter 80, Section 8) 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 [his] the person's consent, on a person upon the filing of a complaint, information or an indictment

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1 alleging that the person committed a state criminal offense:

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

4 (2) involving contact between the penis and
5 anus;

6 (3) involving contact between the mouth and
7 penis;

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

10 (5) involving contact between the mouth and
11 anus.

12 B. If consent to perform a test on an alleged
13 offender cannot be obtained pursuant to the provisions of
14 Section 24-2B-2 or 24-2B-3 NMSA 1978, the district attorney or
15 other prosecutorial authority shall, upon the request of the
16 victim of the alleged criminal offense described in Subsection
17 A of this section, [may] petition the court [through the
18 prosecuting office or personally] to order that a test be
19 performed on the alleged offender within forty-eight hours of
20 the filing of an indictment or information alleging the
21 offense; provided that the same test is first performed on the
22 victim of the alleged criminal offense. The test may be
23 performed on the alleged offender regardless of the result of
24 the test performed on the victim of the alleged offense. If
25 the victim of the alleged criminal offense is a minor or

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1 incompetent, the parent or legal guardian of the victim of the
2 alleged criminal offense may [~~petition the court to order~~]
3 request that a test be performed on the alleged offender.

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

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

25 E. The court's order shall direct the department of

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1 health to be responsible for the administration of and payment
2 for the test and the lawful distribution of the test results.

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

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

10 H. The administration of a test to an alleged
11 offender pursuant to the provisions of this section shall not
12 preclude the subsequent administration of another test pursuant
13 to the provisions of Section 24-2B-5.1 NMSA 1978."