

LFC Requestor: Kelly Klundt

2024 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS

Section I: General

Chamber: Senate

Category: Bill

Number: 272

Type: Introduced

Date (of THIS analysis): 2/2/2024

Sponsor(s): Carrie Hamblen

Short Title: Sexual Orientation & Gender Orientation Data

Reviewing Agency: Agency 665 - Department of Health

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Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 24	FY 25		
\$0	\$0	n/a	n/a

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 24	FY 25	FY 26		
\$0	\$0	\$0	n/a	n/a

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 24	FY 25	FY 26	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	\$0	\$0	\$0	\$0	n/a	n/a

Section III: Relationship to other legislation

Duplicates: None.

Conflicts with: None.

Companion to: None.

Relates to: None.

Duplicates/Relates to an Appropriation in the General Appropriation Act: None.

Section IV: Narrative

1. BILL SUMMARY

a) Synopsis

Senate Bill 272 (SB272) would require executive departments and public bodies to collect demographic data pertaining to sexual orientation and gender identity.

While collecting demographic data directly or through a contractor, an executive department or public agency will be required to:

- a) Collect voluntary self-identification information pertaining to sexual orientation and gender identity pursuant to federal programs or surveys, or in accordance with Department of Health demographic data collection guidelines.
- b) Report the data collected and method used to the legislature and make data available to the public in accordance with state and federal law, except for personal identifying information.
- c) Not report data that would permit identification of individuals or would result in statistical unreliability.
- d) Limit the use of voluntarily provided data about sexual orientation and gender identify to demographic analysis, coordination of care, quality improvement of its services, conducting approved research, fulfilling reporting requirements, or guiding policy or funding decisions.

Is this an amendment or substitution? Yes No

Is there an emergency clause? Yes No

b) Significant Issues

Executive Order 2021-048 required that all executive departments begin collecting voluntary self-identification information pertaining to sexual orientation and gender identity as soon as practicable ([Executive Order 2021-048](#)). NMDOH already has datasets

that collect this information and has plans to add this information to other datasets. This bill would codify the collection of SOGI data in statute.

The systemic collection of voluntary self-identification information pertaining to sexual orientation and gender identity by executive departments and public bodies could increase the affected agencies' overall capacity to address health disparities in the population. Few executive departments currently collect such information and as a result, little is known about disparities and health outcomes regarding these personal characteristics. In the context of healthcare, collection of sexual orientation and gender identity information is critical to identifying specific health care needs, addressing health disparities, and ensuring the delivery of important health care services ([CDC, Collecting Sexual Orientation and Gender Identify Information](#)).

Federal surveys that ask respondents about their sexual orientation and gender identity have found that the lesbian, gay bisexual, or transgender (LGBT) community was hit harder by the economic impact of the COVID-19 pandemic, LGBT adults struggled more with mental health during the COVID-19 pandemic than non-LGBT adults, college students who identify as gender minorities have had more difficulty finding safe and stable housing, and the rate of violent crime victimization of lesbian or gay persons has been more than two times the rate for straight persons (Recommendations on the Best Practices for the [Collection of Sexual Orientation and Gender Identity Data on Federal Statistical Surveys, 2022, whitehouse.gov](#)).

Equality New Mexico (EQNM), which includes stakeholders from various agencies, has called for this bill; EQNM advocates for the rights and equality of LGB and TGNC people ([eqnm.org](#)).

SB272 would impact the Department of Health (NMDOH), Health Care Authority Department (HCAD), Children, Youth and Families Department (CYFD), Department of Public Safety, Corrections Department, Economic Development Department, Tourism Department, Workforce Solutions Department, Aging and Long-term Services Department, Public Education Department, Higher Education Department, and the Early Childhood Education and Care Department.

A near-identical bill was introduced in 2022 and 2023 but action was postponed indefinitely ([SB153](#); [SB370](#)).

2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?
 Yes No
- Is this proposal related to the NMDOH Strategic Plan? Yes No
 - Goal 1:** We expand equitable access to services for all New Mexicans
 - Goal 2:** We ensure safety in New Mexico healthcare environments
 - Goal 3:** We improve health status for all New Mexicans

Goal 4: We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?
 Yes No N/A
- If there is an appropriation, is it included in the LFC Budget Request?
 Yes No N/A
- Does this bill have a fiscal impact on NMDOH? Yes No

4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH? Yes No

NMDOH would be required to report population level data collected about sexual orientation and gender identity to the legislature, while adhering to federal and state law.

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

None.

6. TECHNICAL ISSUES

Are there technical issues with the bill? Yes No

SB272 does not specify any reporting frequency or other requirements. A standard definition of “statistical unreliability” is not provided, which may result in varied interpretation and reporting differences by executive agencies and public bodies. Additionally, requiring reporting of sexual and gender minority data while also requiring that data be statistically reliable may require collection of many observations that could be challenging to collect, especially when the number of persons identifying as a gender minority remain low.

7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written? Yes No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)? Yes No
- Does this bill conflict with federal grant requirements or associated regulations?
 Yes No
- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs? Yes No

None.

8. DISPARITIES ISSUES

Sexual and gender minorities experience health disparities that could be addressed better, in part through improved data collection. Health inequities and disparities that persist among sexual and gender minorities include frequent mental distress, depression, suicidal ideation,

binge drinking, and smoking ([Health and Disease among Transgender and Gender Non-Conforming Persons in New Mexico, 2019, nmhealth.org](#)). The few agencies that do collect data on sexual orientation do not always collect demographic data on gender identity and these should be analyzed separately.

- According to data collected by the New Mexico Department of Health, 7.2% of the adult population is Lesbian, Gay, or Bisexual (LGB) and 0.6% are transgender or nonbinary (TGNB) (New Mexico Behavioral Risk Factor Surveillance System, 2020-2022).
- Among NM youth, 16.2% of high school students were Lesbian, Gay, or Bisexual (LGB) and another 4.8% were questioning their sexual orientation. Among high school students, 5.8% were transgender, genderqueer, or genderfluid (New Mexico Youth Risk and Resiliency Survey, 2021).

Below are several key behavioral risk factors identified through the New Mexico Behavioral Risk Factor Surveillance System in which sexual minorities and gender minorities experience disparities compared to straight and cisgender individuals as a percentage of their respective overall populations:

Risk Factor	LGB (%)	Straight (%)	TGNB (%)	Cisgender (%)
Unemployed/Unable to Work	15.9	13.5	31.0	13.7
Binge Drinking	21.3	13.4	21.7	13.9
Current Smoking	18.8	14.4	24.7	14.7
Suicidal Ideation	18.3	5.3	16.0	6.1
Depression	42.5	17.6	35.4	19.1

Data Source: New Mexico Behavioral Risk Factor Surveillance System, 2020-2022

Below are several key behavioral risk factors identified through the New Mexico Youth Risk and Resiliency Survey in which sexual minorities and gender minorities (Lesbian, Gay or Bisexual (LGB); Transgender or Nonbinary (TGNB) experience disparities compared to straight and cisgender individuals as a percentage of their respective overall populations:

Risk Factor	LGB (%)	Straight (%)	TGNB (%)	Cisgender (%)
Binge drinking	10.0%	7.1%	7.4%	7.5%
Current cigarette smoking	5.8%	3.5%	9.6%	3.6%
Seriously considered suicide in the past year	41.9%	13.6%	50.8%	17.7%
Made a suicide attempt in the past year	22.7%	6.5%	30.9%	8.3%
Experienced persistent feelings of sadness or hopelessness	67.2%	37.1%	76.7%	42.0%

Data Source: New Mexico Youth Risk and Resiliency Survey, 2021

Violence victimization

Additionally, sexual and gender minorities are at an increased risk of victimization of sexual violence, gun violence and other violent crimes.

According to the U.S. Department of Justice, based on 2017-2020 population data from the National Crime Victimization Survey (NCVS), rates of violent victimization among self-identified lesbian, gay or bisexual persons 16 years of age or older (43.5 victimizations per 1,000 persons age 16 or older) were more than twice the rate than their straight counterparts

(19.0 per 1,000) ([Violent Victimization by Sexual Orientation and Gender Identity, 2017–2020](#)). Furthermore, the rate of violent victimization against transgender persons (51.5 victimizations per 1,000 persons aged 16 or older) was 2.5 times the rate among cisgender persons (20.5 per 1,000), and domestic violence was eight times as high among bisexual persons (32.3 victimizations per 1,000 persons aged 16 or older) and more than twice as high among lesbian or gay persons (10.3 per 1,000) as it was among straight persons (4.2 per 1,000).

Gun violence uniquely impacts transgender and gender non-conforming people. Since 2013, at least 233 trans and gender non-conforming people have been killed with a gun in the U.S.: approximately seven in ten (69.6%) of all identified fatalities. Guns were used in all police-involved killings, in more than 80% of killings by a friend or family member, and in over half (58.3%) of all killings by an intimate partner ([The Epidemic of Violence Against the Transgender and Gender Non-Conforming Community in the United States, 2023](#)).

In New Mexico, lesbian, gay, bisexual and gender non-conforming adults were 3.8 times more likely to have experienced sexual violence within their lifetime than straight adults (unpublished data, New Mexico Department of Health, New Mexico Behavioral Risk Factor Surveillance System, 2022).

SB272 would help NMDOH provide more complete data on demographics to better identify health disparities in the specific subpopulation of sexual and gender minorities. This would help NMDOH tailor programs to better meet the needs of sexual and gender minorities through a better understanding of the disparity issues experienced by this population.

9. HEALTH IMPACT(S)

SB272 could help to decrease the health disparities listed above by enabling agencies to better understand sexual and gender minority populations and direct programmatic goals to reducing the disparities in those minority populations. According to the Guide for Collecting Data on Sexual Orientation and Gender Identity from the LGBTQIA+ Health Education Center, collecting data on sexual orientation and gender identity allows health centers to learn about the populations they are serving, and to measure the access to care and the quality of care provided to people of all sexual orientations and gender identities ([Fenway Institute, 2022](#)). Executive departments and public bodies systemically responsible for collecting the data can use the information to serve the same function as race and ethnicity data in population health management by enabling these agencies to identify health disparities within the population. According to the Institute of Medicine, such data can shed light on the interaction between social and economic circumstances and health with enhanced demographic information from social and economic surveys that ultimately provide information on the context for health disparities experienced by sexual and gender minorities ([The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding, 2011, nap.nationalacademies.org](#)).

10. ALTERNATIVES

None.

11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

If Senate Bill 272 (SB272) is not enacted, executive departments and public bodies would not be required by statute to collect demographic data pertaining to sexual orientation and gender identity and these data would not be reported back to the NM Legislature. Should executive order 2021-048 be modified or rescinded there would be no ongoing requirement to collect or make this data available to the public.

12. AMENDMENTS

Under Section 1 (D)(2), “personal identifying information” should read “personally identifiable information (PII)”.