

LFC Requester:

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### AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

#### SECTION I: GENERAL INFORMATION

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** February 21, 2025

*Check all that apply:*

**Bill Number:** SB500

Original  Correction   
Amendment  Substitute

**Sponsor:** Sen. David M. Gallegos,  
Sen. Jay C. Block

**Agency Name and Code Number:** 305 – New Mexico  
Department of Justice

**Short Title:** Detransitioner Protection Act

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#### SECTION II: FISCAL IMPACT

##### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

##### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

##### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Relates to HB501 – HB501 seeks to require school employees to report if a student is experiencing “gender incongruence.”

Relates to HB559 – HB559 seeks to prohibit a court from considering a parent’s affirmation of the parent’s child’s gender identity for the purposes of custody.

Relates to HB466 – HB466 seeks to except unemancipated minors from protection under the Reproductive and Gender-Affirming Health Care Freedom Act.

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

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis: SB500 proposes enacting a new article, Article 36, of Chapter 24 (Health and Safety), comprised of nine sections relating to enacting the “Detransitioner Protection Act” (“DPA”).

**Section 1** of SB500 establishes that Article 36 of Chapter 24 may be cited as the DPA.

**Section 2** defines certain terms as used in the DPA, notably including definitions for “gender clinic” and “public body.” The terms defined in Section 2 also include department (of health) (DOH), detransition (“a temporary or permanent cessation or reversal of a transgender identification or gender transition, through social, legal or medical means”), detransition procedure, detransitioner, female, gender (the “psychological, behavioral, social and cultural aspects of being male or female”), gender dysphoria, gender incongruence, gender transition procedure, health care provider, informed notice, male, mental health professional, minor, parent, perceived gender, perceived sex, and sex.

**Section 3** prohibits gender transition procedures for minors, requires informed notice to a minor or minor’s parent that includes specified statements including that “[n]o reliable studies have shown that these treatments reduce the risk of suicide in children or adolescents with gender dysphoria,” establishes violations of the DPA should a healthcare provider fails to comply with Section A and establishes licensing discipline and a private right of action against said healthcare provider, requires a health care provider to give a parent access to their minor child’s medical records or information and provides a private cause of action to the parent for a health care provider’s failure to do so. Additionally, this section authorizes the attorney general or district attorney to investigate a potential violation of the DPA, seek production of documents through a civil investigative demand, and bring an action to enforce

the provisions of that act.

**Section 4** bars a health care provider from *prohibiting* mental health therapy to address a minor's inconsistency with perceived gender and sex and from *prohibiting* a parent from consenting or withholding consent to such mental health therapy.

**Section 5** mandates production of statistic reports of gender transition procedures prescribed or provided by the clinic, including specified categories of information. This section does prohibit the disclosure of personal information. This section also provides for penalties and subjects health care providers to discipline by appropriate licensing entities and their clinic a fine of up to \$250,000.00. Lastly, this section authorizes the attorney general and district attorney to enforce this provision similar to the enforcement scheme in Section 3.

**Section 6** mandates that a public body or gender clinic will agree to provide or pay for the performance of detransition procedures. This section also mandates insurance coverage for detransition procedures if the policy covers gender transition procedures, production of statistics related to the procedures in question, and enforcement of this provision similar to the enforcement schemes in Sections 3 and 5.

**Section 7** requires the DOH to provide for an expedited process to change sex, name, and pronouns back to their original designation.

**Section 8** creates strict and personal liability for all costs associated with a detransition procedure, for a health care provider or public body that provides a minor with a gender transition procedure, when the minor seeks to undergo detransitioning within twenty-five years after commencement of the gender transition procedure, as well as any physical, psychological, emotional, or physiological injury. The Section provides for a civil cause of action to the individual seeking detransition, with a twenty-five year statute of limitations from the date the individual becomes an adult, or within four years from the date that someone incurs the cost of a detransition procedure, with certain exceptions outlined in the bill. The cause of action may be for the actual cost of the procedure, declaratory or injunctive relief, pain and suffering, loss of income, punitive damages, various other identified and unidentified types of relief, and attorney fees and costs. This section prohibits contractual waivers of liability, and precludes Section 41-4-19 NMSA 1978 (capping liability in a tort action) from application to this section. This section also contains enforcement schemes similar to the enforcement schemes in Section 3, 5, and 7, but otherwise states that the rights and authorities of the attorney general, the state, or any agency, officer, or employee are not denied, impaired, or affected by the statute.

**Section 9** acts as a savings clause.

**Section 10** sets an effective date of July 1, 2025.

## **FISCAL IMPLICATIONS**

Various Sections grant the New Mexico Department of Justice (NMDOJ), by reference to the Attorney General, the authority to investigate, issue CIDs, and bring causes of action to enforce various provisions of the bill. The bill does not, however, provide for any additional resources or funds that may be required to effectuate the provisions.

Also, because the NMDOJ administratively prosecutes licensee violations for various medical

boards that would be implicated by SB500, the bill would likely increase the prosecutorial burden on the NMDOJ, but no additional appropriations have been included in the bill.

## SIGNIFICANT ISSUES

SB500 facially conflicts with the Reproductive and Gender-Affirming Health Care Freedom Act (NMSA 1978, §§ 24-34-1 to -5), which generally prohibits discrimination against a person based on that person's use of gender-affirming health care services. As SB500 prohibits or makes pursuing gender-affirming health care services impossible, nearly impossible, or subjects such providers to enormous liability, SB500 conflicts with this Act.

Additionally, SB500's establishment of licensing discipline, mandatory statistic reporting requirements, and establishment of private right of actions to enforce SB500 would likely have the effect of restricting medical care in a potentially discriminatory manner against transgender individuals. The Supreme Court has held that discrimination against transgender individuals may violate prohibitions against sex-based discrimination. *See Bostock v. Clayton Cty.*, 590 U.S. 644 (2020) (holding that employment discrimination against transgender individuals violated the prohibition against sex-based discrimination under Title VII of the Civil Rights Act of 1964). The statute may run afoul of the prohibition against sex-based discrimination under the Equal Protection Clause of the U.S. Constitution, though no federal court has yet held that discrimination against transgender individuals is unconstitutional on this basis.

SB500 is also likely to incur challenge under the New Mexico Constitution. The New Mexico Constitution states that "Equality of rights under law shall not be denied on account of the sex of any person." N.M. Const. art. II, § 18. The New Mexico Supreme Court has held that by adopting this language, the people of New Mexico intended to provide "something beyond that already afforded by the general language of the Equal Protection Clause." *N.M. Right to Choose/NARAL v. Johnson*, 1995-NMSC-005, ¶ 30, 126 N.M. 788, 975 P.2d 841. The New Mexico Supreme Court has held that, in examining gender-based classifications and discrimination, courts "must begin from the premise that such classifications are presumptively unconstitutional, and it is the [government's] burden to rebut this presumption" by a showing of a "compelling justification." *Id.* ¶ 36. Here, to survive a challenge to the constitutionality of this law, the state would have to show that there is a compelling justification for restricting provision of healthcare within the medical standard of care in a way that is not restricted for other types of medical care for minors.

Further, SB500 facially conflicts with the Uniform Licensing Act's ("ULA") prohibition for licensees to provide conversion therapy to minors. *See* NMSA 1978, § 61-1-3.3. SB500 mandates providing care that is in direct conflict with this provision.

Section 7 is titled "*Right to Legal Restoration*," implying that the changes set forth in that section on certain official documentation would be something that someone is *entitled* to, but it is unclear based on the current language whether the DOH would be required to provide for an expedited process to change sex, name, and pronouns back to their original designation as a matter of course or upon request. To the degree the section imposes a change as a matter of course, this may raise First Amendment challenges. "The First Amendment, applicable to the States through the Fourteenth Amendment, provides that 'Congress shall make no law ... abridging the freedom of speech.' The hallmark of the protection of free speech is to allow 'free trade in ideas' – even ideas that the overwhelming majority of people might find distasteful or discomforting." *Virginia v. Black*, 538 U.S. 343, 358 (2003) (internal citations omitted).

The bill establishes professional liability and private causes of action against health care providers for up to twenty-five years after a procedure is completed or longer, which is likely to discourage health care providers from coming to or staying in New Mexico. This is particularly problematic when we already struggle with keeping health care practitioners in our state.

## **PERFORMANCE IMPLICATIONS**

The bill proposes to authorize the attorney general or a district attorney to investigate, issue CIDs, and/or bring a civil action in district court for any violation of the Act, but does not require that the attorney general or a district attorney do so. To the extent the NMDOJ is expected to bring additional civil actions in district court for violations of the Act, no additional appropriations have been identified.

## **ADMINISTRATIVE IMPLICATIONS**

The NMDOJ administratively prosecutes licensee violations for various medical boards that would be implicated by SB500, including the Pharmacy Board and Psychology Board. As written, if enforceable, SB500 would likely increase the prosecutorial burden on the NMDOJ. Additionally, the enforcement schemes presented in SB500 would require further prosecutorial resource expenditures by the NMDOJ. Further, if enacted, SB500 would face challenge in court almost immediately, and the NMDOJ would certainly be a party to that proceeding.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB500 facially conflicts with the Reproductive and Gender-Affirming Health Care Freedom Act (NMSA1978, sections 24-34-1 to -5), as discussed in Significant Issues, above.

Relates to HB501 – HB501 seeks to require school employees to report if a student is experiencing “gender incongruence.”

Relates to HB559 – HB559 seeks to prohibit a court from considering a parent’s affirmation of the parent’s child’s gender identity for the purposes of custody.

## **TECHNICAL ISSUES**

None.

## **OTHER SUBSTANTIVE ISSUES**

None.

## **ALTERNATIVES**

None.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

## **AMENDMENTS**

None.