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SENATE BILL 91

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

TIMOTHY Z. JENNINGS

AN ACT

RELATING TO HEALTH; REQUIRING A PERSON FORMALLY CHARGED FOR ALLEGEDLY COMMITTING CRIMINAL SEXUAL PENETRATION TO UNDERGO A TEST TO IDENTIFY THE HUMAN IMMUNODEFICIENCY VIRUS; AMENDING AND ENACTING SECTIONS OF THE HUMAN IMMUNODEFICIENCY VIRUS TEST ACT.

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

Section 1. Section 24-2B-2 NMSA 1978 (being Laws 1989, Chapter 227, Section 2, as amended) is amended to read:

"24-2B-2. INFORMED CONSENT.--No person shall 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, ~~[or]~~ 24-2B-5.1 or 24-2B-5.2 NMSA 1978. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses and limitations

Underscored material = new
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1 and the meaning of its results. Consent need not be in writing
2 provided there is documentation in the medical record that the
3 test has been explained and the consent has been obtained. "

4 Section 2. A new section of the Human Immunodeficiency
5 Virus Test Act, Section 24-2B-5.2 NMSA 1978, is enacted to read:

6 "24-2B-5.2. [NEW MATERIAL] INFORMED CONSENT NOT
7 REQUIRED-- TESTING OF PERSONS FORMALLY CHARGED FOR ALLEGEDLY
8 COMMITTING CERTAIN CRIMINAL OFFENSES-- RESPONSIBILITY TO
9 ADMINISTER AND PAY FOR TEST. --

10 A. A test designed to identify the human
11 immunodeficiency virus or its antigen or antibody may be
12 performed, without his consent, on a person who is formally
13 charged for allegedly committing any state criminal offense:

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

16 (2) involving contact between the penis and
17 anus;

18 (3) involving contact between the mouth and
19 penis;

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

22 (5) involving contact between the mouth and
23 anus.

24 B. When consent to perform a test on an alleged
25 offender cannot be obtained pursuant to the provisions of

1 Section 24-2B-2 or 24-2B-3 NMSA 1978, the alleged victim of a
2 criminal offense described in Subsection A of this section may
3 petition the court to order that a test be performed on the
4 alleged offender. The petition and all proceedings in
5 connection therewith shall be under seal. When the alleged
6 victim of the criminal offense is a minor or incompetent, the
7 parent or legal guardian of the alleged victim may petition the
8 court to order that a test be performed on the alleged offender.
9 The court shall order and the test shall be administered to the
10 alleged offender within ten days after the petition is filed by
11 the victim, his parent or guardian. The results of the test
12 shall be disclosed only to the alleged offender and to the
13 alleged victim or the alleged victim's parent or legal guardian.
14 When the alleged offender has a positive test result, both the
15 alleged offender and the alleged victim shall be provided with
16 counseling, as described in Section 24-2B-4 NMSA 1978.

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

20 D. A prosecuting attorney may not introduce into
21 evidence in a criminal proceeding arising out of the alleged
22 offense the fact that a test was administered to the alleged
23 offender pursuant to the provisions of this section.

24 E. The administration of a test to an alleged
25 offender pursuant to the provisions of this section shall not

Underscored material = new
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1 preclude the subsequent administration of another test pursuant
2 to the provisions of Section 24-2B-5.1 NMSA 1978. "

3 Section 3. EFFECTIVE DATE. -- The effective date of the
4 provisions of this act is July 1, 1996.

1 FORTY- SECOND LEGI SLATURE
2 SECOND SESSI ON, 1996

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4
5 JANUARY 22, 1996

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7 Mr. Presi dent:

8
9 Your COMMI TTEES' COMMI TTEE, to whom has been referred

10
11 SENATE BILL 91

12
13 has had it under consideration and finds same to be GERMANE, PURSUANT
14 TO EXECUTIVE MESSAGE NUMBER FOUR, and thence referred to the
15 JUDI CI ARY COMMI TTEE.

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17 Respectfully submi tted,

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23 SENATOR MANNY M. ARAGON, Chai rman
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Underscored material = new
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Underscored material = new
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Adopted _____
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Not Adopted _____
(Chief Clerk)

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Date _____

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1 FORTY- SECOND LEGI SLATURE
2 SECOND SESSI ON, 1996
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5 February 2, 1996
6

7 Mr. President:
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9 Your JUDI CIARY COMMI TTEE, to whom has been referred
10

11 SENATE BILL 91
12

13 has had it under consideration and reports same with recommendation that
14 it DO NOT PASS, but that
15

16 SENATE JUDI CIARY COMMI TTEE SUBSTI TUTE FOR
17 SENATE BILL 91
18

19 DO PASS.
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21 Respectfully submi tted,
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25 _____
Janice D. Paster, Chair man

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Carraro, Cisneros, Sanchez, Vernon

Absent: None

S0091JU1

Underscored material = new
~~[bracketed material] = delete~~

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 91

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
1996

AN ACT

RELATING TO HEALTH; REQUIRING A PERSON FORMALLY CHARGED FOR
ALLEGEDLY COMMITTING CERTAIN CRIMINAL OFFENSES TO UNDERGO TESTS
TO IDENTIFY SEXUALLY TRANSMITTED DISEASES AND THE HUMAN
IMMUNODEFICIENCY VIRUS; PRESCRIBING PENALTIES FOR UNAUTHORIZED
DISCLOSURE OF TEST RESULTS; AMENDING AND ENACTING SECTIONS OF
THE NMSA 1978.

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

Section 1. A new Section 24-1-9.2 NMSA 1978 is enacted to
read:

"24-1-9.2. [NEW MATERIAL] SEXUALLY TRANSMITTED
DISEASES-- TESTING OF PERSONS FORMALLY CHARGED FOR ALLEGEDLY
COMMITTING CERTAIN CRIMINAL OFFENSES. --

A. A test designed to identify any sexually

1 transmitted disease may be performed on a person, upon the
2 filing of a complaint, information or an indictment alleging
3 that the person committed a state criminal offense:

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

6 (2) involving contact between the penis and anus;

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

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

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

12 B. If consent to perform a test on an alleged offender
13 cannot be obtained, the victim of the alleged criminal offense
14 described in Subsection A of this section may petition the
15 court, through the prosecuting office or personally, to order
16 that a test be performed on the alleged offender; provided that
17 the same test is first performed on the victim of the alleged
18 criminal offense. The test may be performed on the alleged
19 offender regardless of the result of the test performed on the
20 victim of the alleged criminal offense. If the victim of the
21 alleged criminal offense is a minor or incompetent, the parent
22 or legal guardian of the victim of the alleged criminal offense
23 may petition the court to order that a test be performed on the
24 alleged offender.

25 C. The court may issue an order based on a finding of

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

12 D. The results of the test shall be disclosed only to the
13 alleged offender and to the victim of the alleged criminal offense
14 or the victim's parent or legal guardian. When the victim of the
15 alleged criminal offense or the alleged offender has a positive
16 test result, both the alleged offender and the victim of the
17 alleged criminal offense shall be provided with counseling.

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

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

25 G. The administration of a test to an alleged offender

1 pursuant to the provisions of this section shall not preclude the
2 subsequent administration of another test pursuant to the
3 provisions of Section 24-1-9.1 NMSA 1978. "

4 Section 2. A new Section 24-1-9.3 NMSA 1978 is enacted to
5 read:

6 "24-1-9.3. [NEW MATERIAL] SEXUALLY TRANSMITTED DISEASES--
7 MANDATORY COUNSELING.--No positive test result for a sexually
8 transmitted disease shall be revealed to the person upon whom the
9 test was performed without the person performing the test or the
10 health facility at which the test was performed providing or
11 referring that person for individual counseling about:

- 12 A. the meaning of the test results;
- 13 B. the possible need for additional testing;
- 14 C. the availability of appropriate health care services,
15 including mental health care, social and support services; and
- 16 D. the benefits of locating and counseling any individual
17 by whom the infected person may have been exposed to
18 the sexually transmitted disease and any individual whom the
19 infected person may have exposed to the sexually transmitted
20 disease. "

21 Section 3. A new Section 24-1-9.4 NMSA 1978 is enacted to
22 read:

23 "24-1-9.4. [NEW MATERIAL] SEXUALLY TRANSMITTED DISEASES--
24 CONFIDENTIALITY.--Except as provided in Section 24-1-9.2 NMSA 1978,
25 no person or the person's agents or employees who require or

1 administer a test for sexually transmitted diseases shall disclose
2 the identity of any person upon whom a test is performed or the
3 result of such a test in a manner that permits identification of
4 the subject of the test, except to the following persons:

5 A. the subject of the test or the subject's legally
6 authorized representative, guardian or legal custodian;

7 B. any person designated in a legally effective release
8 of the test results executed prior to or after the test by the
9 subject of the test or the subject's legally authorized
10 representative;

11 C. an authorized agent, a credentialed or privileged phy-
12 sician or employee of a health facility or health care provider if
13 the health care facility or health care provider itself is autho-
14 rized to obtain the test results, the agent or employee provides
15 patient care or handles or processes specimens of body fluids or
16 tissues and the agent or employee has a need to know such informa-
17 tion;

18 D. the department of health and the centers for disease
19 control and prevention of the United States public health service
20 in accordance with reporting requirements for a diagnosed case of a
21 sexually transmitted disease;

22 E. a health facility or health care provider that
23 procures, processes, distributes or uses:

24 (1) a human body part from a deceased person, with
25 respect to medical information regarding that person;

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1 (2) semen for the purpose of artificial
2 insemination;

3 (3) blood or blood products for transfusion or
4 injection; or

5 (4) human body parts for transplant with respect to
6 medical information regarding the donor or recipient;

7 F. health facility staff committees or accreditation or
8 oversight review organizations that are conducting program
9 monitoring, program evaluation or service reviews, as long as any
10 identity remains confidential;

11 G. authorized medical or epidemiological researchers who
12 may not further disclose any identifying characteristics or
13 information; and

14 H. for purposes of application or reapplication for
15 insurance coverage, an insurer or reinsurer upon whose request the
16 test was performed."

17 Section 4. A new Section 24-1-9.5 NMSA 1978 is enacted to
18 read:

19 "24-1-9.5. [NEW MATERIAL] SEXUALLY TRANSMITTED DISEASES--
20 DISCLOSURE STATEMENT. --No person to whom the results of a test for
21 sexually transmitted diseases have been disclosed may disclose the
22 test results to another person, except as authorized in Sections
23 24-1-9.4 and 24-1-9.6 NMSA 1978. Whenever disclosure is made, it
24 shall be accompanied by a statement in writing that includes the
25 following or substantially similar language:

1 "This information has been disclosed to you from records whose
 2 confidentiality is protected by state law. State law prohibits you
 3 from making any further disclosure of such information without the
 4 specific written consent of the person to whom such information
 5 pertains, or as otherwise permitted by state law. A person who
 6 makes an unauthorized disclosure of this information is guilty of a
 7 petty misdemeanor and shall be sentenced to imprisonment in the
 8 county jail for a definite term not to exceed six months or the
 9 payment of a fine of not more than five hundred dollars (\$500), or
 10 both. ". "

11 Section 5. A new Section 24-1-9.6 NMSA 1978 is enacted to
 12 read:

13 "24-1-9.6. [NEW MATERIAL] SEXUALLY TRANSMITTED DISEASES--
 14 DISCLOSURE.--A victim of an alleged criminal offense who receives
 15 information pursuant to Section 24-1-9.2 NMSA 1978 may disclose the
 16 test results as is reasonably necessary to protect his health and
 17 safety or the health and safety of his family or sexual partner. "

18 Section 6. A new Section 24-1-9.7 NMSA 1978 is enacted to
 19 read:

20 "24-1-9.7. [NEW MATERIAL] PENALTY.--A person who makes an
 21 unauthorized disclosure of the results of a test designed to
 22 identify a sexually transmitted disease is guilty of a petty
 23 misdemeanor and shall be sentenced to imprisonment in the county
 24 jail for a definite term not to exceed six months or the payment of
 25 a fine of not more than five hundred dollars (\$500), or both. "

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1 Section 7. Section 24-2B-2 NMSA 1978 (being Laws 1989,
2 Chapter 227, Section 2, as amended) is amended to read:

3 "24-2B-2. INFORMED CONSENT.--No person shall perform a test
4 designed to identify the human immunodeficiency virus or its
5 antigen or antibody without first obtaining the informed consent of
6 the person upon whom the test is performed, except as provided in
7 Section 24-2B-5, [~~or~~] 24-2B-5.1 or 24-2B-5.2 NMSA 1978. Informed
8 consent shall be preceded by an explanation of the test, including
9 its purpose, potential uses and limitations and the meaning of its
10 results. Consent need not be in writing provided there is
11 documentation in the medical record that the test has been
12 explained and the consent has been obtained."

13 Section 8. A new section of the Human Immunodeficiency Virus
14 Test Act, Section 24-2B-5.2 NMSA 1978, is enacted to read:

15 "24-2B-5.2. [NEW MATERIAL] INFORMED CONSENT NOT
16 REQUIRED-- TESTING OF PERSONS FORMALLY CHARGED FOR ALLEGEDLY
17 COMMITTING CERTAIN CRIMINAL OFFENSES-- RESPONSIBILITY TO ADMINISTER
18 AND PAY FOR TEST.--

19 A. A test designed to identify the human immunodeficiency
20 virus or its antigen or antibody may be performed, without his
21 consent, on a person upon the filing of a complaint, information or
22 an indictment alleging that the person committed a state criminal
23 offense:

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

- 1 (2) involving contact between the penis and anus;
2 (3) involving contact between the mouth and penis;
3 (4) involving contact between the mouth and vulva;

4 or

- 5 (5) involving contact between the mouth and anus.

6 B. If consent to perform a test on an alleged offender
7 cannot be obtained pursuant to the provisions of Section 24-2B-2 or
8 24-2B-3 NMSA 1978, the victim of the alleged criminal offense
9 described in Subsection A of this section may petition the court,
10 through the prosecuting office or personally, to order that a test
11 be performed on the alleged offender; provided that the same test
12 is first performed on the victim of the alleged criminal offense.
13 The test may be performed on the alleged offender regardless of the
14 result of the test performed on the victim of the alleged offense.
15 If the victim of the alleged criminal offense is a minor or
16 incompetent, the parent or legal guardian of the victim of the
17 alleged criminal offense may petition the court to order that a
18 test be performed on the alleged offender.

19 C. The court may issue an order based on a finding of
20 good cause after a hearing at which both the victim of the alleged
21 criminal offense and the alleged offender have the right to be
22 present. During the hearing, only affidavits, counter affidavits
23 and medical reports regarding the facts that support or rebut the
24 issuance of an order shall be admissible. The hearing shall be
25 conducted within seventy-two hours after the victim of the alleged

1 criminal offense petitions the court for the order. The petition
2 and all proceedings in connection therewith shall be under seal.
3 The court shall issue the order and the test shall be administered
4 to the alleged offender within ten days after the petition is filed
5 by the victim of the alleged offense, his parent or guardian.

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

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

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

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

23 H. The administration of a test to an alleged offender
24 pursuant to the provisions of this section shall not preclude the
25 subsequent administration of another test pursuant to the

1 provisions of Section 24-2B-5.1 NMSA 1978. "

2 Section 9. Section 24-2B-7 NMSA 1978 (being Laws 1989,
3 Chapter 227, Section 7) is amended to read:

4 "24-2B-7. DISCLOSURE STATEMENT. --No person to whom the
5 results of a test have been disclosed may disclose the test results
6 to another person except as authorized by the Human
7 Immunodeficiency Virus Test Act. Whenever disclosure is made
8 pursuant to that act, it shall be accompanied by a statement in
9 writing ~~[which]~~ that includes the following or substantially
10 similar language: "This information has been disclosed to you from
11 records whose confidentiality is protected by state law. State law
12 prohibits you from making any further disclosure of such
13 information without the specific written consent of the person to
14 whom such information pertains, or as otherwise permitted by state
15 law. A person who makes an unauthorized disclosure of this
16 information is guilty of a petty misdemeanor and shall be sentenced
17 to imprisonment in the county jail for a definite term not to
18 exceed six months or the payment of a fine of not more than five
19 hundred dollars (\$500), or both."

20 Section 10. Section 24-2B-8 NMSA 1978 (being Laws 1989, Chap-
21 ter 227, Section 8) is amended to read:

22 "24-2B-8. [SELF] DISCLOSURE. --Nothing in the Human
23 Immunodeficiency Virus Test Act shall be construed to prevent a
24 person who has been tested from disclosing in any way to any other
25 person his own test results. Any victim of an alleged criminal

. 111181.3

1 offense who receives information pursuant to Section 24-2B-5.2 NMSA
2 1978 may disclose the test results as is reasonably necessary to
3 protect his health and safety or the health and safety of his
4 family or sexual partner."

5 Section 11. A new section of the Human Immunodeficiency Virus
6 Test Act, Section 24-2B-9 NMSA 1978, is enacted to read:

7 "24-2B-9. [NEW MATERIAL] PENALTY. --A person who makes an
8 unauthorized disclosure of the results of a test designed to
9 identify the human immunodeficiency virus or its antigen or
10 antibody is guilty of a petty misdemeanor and shall be sentenced to
11 imprisonment in the county jail for a definite term not to exceed
12 six months or the payment of a fine of not more than five hundred
13 dollars (\$500), or both."

14 Section 12. EFFECTIVE DATE. --The effective date of the
15 provisions of this act is July 1, 1996.

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FORTY- SECOND LEGI SLATURE
SECOND SESSI ON, 1996

February 2, 1996

Mr. President:

Your JUDI CIARY COMMI TTEE, to whom has been referred

SENATE BILL 91

has had it under consideration and reports same with recommendation
that it DO NOT PASS, but that

SENATE JUDI CIARY COMMI TTEE SUBSTI TUTE FOR
SENATE BILL 91

DO PASS.

Respectfully submit ted,

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SJC/SB 91

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Janice D. Paster, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Carraro, Cisneros, Sanchez, Vernon

Absent: None

S0091JU1

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 91

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
1996

AN ACT

RELATING TO HEALTH; REQUIRING A PERSON FORMALLY CHARGED FOR
ALLEGEDLY COMMITTING CERTAIN CRIMINAL OFFENSES TO UNDERGO TESTS
TO IDENTIFY SEXUALLY TRANSMITTED DISEASES AND THE HUMAN
IMMUNODEFICIENCY VIRUS; PRESCRIBING PENALTIES FOR UNAUTHORIZED
DISCLOSURE OF TEST RESULTS; AMENDING AND ENACTING SECTIONS OF
THE NMSA 1978.

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

Section 1. A new Section 24-1-9.2 NMSA 1978 is enacted to
read:

"24-1-9.2. [NEW MATERIAL] SEXUALLY TRANSMITTED
DISEASES-- TESTING OF PERSONS FORMALLY CHARGED FOR ALLEGEDLY
COMMITTING CERTAIN CRIMINAL OFFENSES. --

A. A test designed to identify any sexually

1 transmitted disease may be performed on a person, upon the
2 filing of a complaint, information or an indictment alleging
3 that the person committed a state criminal offense:

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

6 (2) involving contact between the penis and anus;

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

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

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

12 B. If consent to perform a test on an alleged offender
13 cannot be obtained, the victim of the alleged criminal offense
14 described in Subsection A of this section may petition the
15 court, through the prosecuting office or personally, to order
16 that a test be performed on the alleged offender; provided that
17 the same test is first performed on the victim of the alleged
18 criminal offense. The test may be performed on the alleged
19 offender regardless of the result of the test performed on the
20 victim of the alleged criminal offense. If the victim of the
21 alleged criminal offense is a minor or incompetent, the parent
22 or legal guardian of the victim of the alleged criminal offense
23 may petition the court to order that a test be performed on the
24 alleged offender.

25 C. The court may issue an order based on a finding of

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

12 D. The results of the test shall be disclosed only to the
13 alleged offender and to the victim of the alleged criminal offense
14 or the victim's parent or legal guardian. When the victim of the
15 alleged criminal offense or the alleged offender has a positive
16 test result, both the alleged offender and the victim of the
17 alleged criminal offense shall be provided with counseling.

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

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

25 G. The administration of a test to an alleged offender

1 pursuant to the provisions of this section shall not preclude the
2 subsequent administration of another test pursuant to the
3 provisions of Section 24-1-9.1 NMSA 1978. "

4 Section 2. A new Section 24-1-9.3 NMSA 1978 is enacted to
5 read:

6 "24-1-9.3. [NEW MATERIAL] SEXUALLY TRANSMITTED DISEASES--
7 MANDATORY COUNSELING.--No positive test result for a sexually
8 transmitted disease shall be revealed to the person upon whom the
9 test was performed without the person performing the test or the
10 health facility at which the test was performed providing or
11 referring that person for individual counseling about:

- 12 A. the meaning of the test results;
- 13 B. the possible need for additional testing;
- 14 C. the availability of appropriate health care services,
15 including mental health care, social and support services; and
- 16 D. the benefits of locating and counseling any individual
17 by whom the infected person may have been exposed to
18 the sexually transmitted disease and any individual whom the
19 infected person may have exposed to the sexually transmitted
20 disease. "

21 Section 3. A new Section 24-1-9.4 NMSA 1978 is enacted to
22 read:

23 "24-1-9.4. [NEW MATERIAL] SEXUALLY TRANSMITTED DISEASES--
24 CONFIDENTIALITY.--Except as provided in Section 24-1-9.2 NMSA 1978,
25 no person or the person's agents or employees who require or

1 administer a test for sexually transmitted diseases shall disclose
2 the identity of any person upon whom a test is performed or the
3 result of such a test in a manner that permits identification of
4 the subject of the test, except to the following persons:

5 A. the subject of the test or the subject's legally
6 authorized representative, guardian or legal custodian;

7 B. any person designated in a legally effective release
8 of the test results executed prior to or after the test by the
9 subject of the test or the subject's legally authorized
10 representative;

11 C. an authorized agent, a credentialed or privileged phy-
12 sician or employee of a health facility or health care provider if
13 the health care facility or health care provider itself is autho-
14 rized to obtain the test results, the agent or employee provides
15 patient care or handles or processes specimens of body fluids or
16 tissues and the agent or employee has a need to know such informa-
17 tion;

18 D. the department of health and the centers for disease
19 control and prevention of the United States public health service
20 in accordance with reporting requirements for a diagnosed case of a
21 sexually transmitted disease;

22 E. a health facility or health care provider that
23 procures, processes, distributes or uses:

24 (1) a human body part from a deceased person, with
25 respect to medical information regarding that person;

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1 (2) semen for the purpose of artificial
2 insemination;

3 (3) blood or blood products for transfusion or
4 injection; or

5 (4) human body parts for transplant with respect to
6 medical information regarding the donor or recipient;

7 F. health facility staff committees or accreditation or
8 oversight review organizations that are conducting program
9 monitoring, program evaluation or service reviews, as long as any
10 identity remains confidential;

11 G. authorized medical or epidemiological researchers who
12 may not further disclose any identifying characteristics or
13 information; and

14 H. for purposes of application or reapplication for
15 insurance coverage, an insurer or reinsurer upon whose request the
16 test was performed."

17 Section 4. A new Section 24-1-9.5 NMSA 1978 is enacted to
18 read:

19 "24-1-9.5. [NEW MATERIAL] SEXUALLY TRANSMITTED DISEASES--
20 DISCLOSURE STATEMENT. --No person to whom the results of a test for
21 sexually transmitted diseases have been disclosed may disclose the
22 test results to another person, except as authorized in Sections
23 24-1-9.4 and 24-1-9.6 NMSA 1978. Whenever disclosure is made, it
24 shall be accompanied by a statement in writing that includes the
25 following or substantially similar language:

1 "This information has been disclosed to you from records whose
 2 confidentiality is protected by state law. State law prohibits you
 3 from making any further disclosure of such information without the
 4 specific written consent of the person to whom such information
 5 pertains, or as otherwise permitted by state law. A person who
 6 makes an unauthorized disclosure of this information is guilty of a
 7 petty misdemeanor and shall be sentenced to imprisonment in the
 8 county jail for a definite term not to exceed six months or the
 9 payment of a fine of not more than five hundred dollars (\$500), or
 10 both. ". "

11 Section 5. A new Section 24-1-9.6 NMSA 1978 is enacted to
 12 read:

13 "24-1-9.6. [NEW MATERIAL] SEXUALLY TRANSMITTED DISEASES--
 14 DISCLOSURE.--A victim of an alleged criminal offense who receives
 15 information pursuant to Section 24-1-9.2 NMSA 1978 may disclose the
 16 test results as is reasonably necessary to protect his health and
 17 safety or the health and safety of his family or sexual partner. "

18 Section 6. A new Section 24-1-9.7 NMSA 1978 is enacted to
 19 read:

20 "24-1-9.7. [NEW MATERIAL] PENALTY.--A person who makes an
 21 unauthorized disclosure of the results of a test designed to
 22 identify a sexually transmitted disease is guilty of a petty
 23 misdemeanor and shall be sentenced to imprisonment in the county
 24 jail for a definite term not to exceed six months or the payment of
 25 a fine of not more than five hundred dollars (\$500), or both. "

1 Section 7. Section 24-2B-2 NMSA 1978 (being Laws 1989,
2 Chapter 227, Section 2, as amended) is amended to read:

3 "24-2B-2. INFORMED CONSENT.--No person shall perform a test
4 designed to identify the human immunodeficiency virus or its
5 antigen or antibody without first obtaining the informed consent of
6 the person upon whom the test is performed, except as provided in
7 Section 24-2B-5, [~~or~~] 24-2B-5.1 or 24-2B-5.2 NMSA 1978. Informed
8 consent shall be preceded by an explanation of the test, including
9 its purpose, potential uses and limitations and the meaning of its
10 results. Consent need not be in writing provided there is
11 documentation in the medical record that the test has been
12 explained and the consent has been obtained."

13 Section 8. A new section of the Human Immunodeficiency Virus
14 Test Act, Section 24-2B-5.2 NMSA 1978, is enacted to read:

15 "24-2B-5.2. [NEW MATERIAL] INFORMED CONSENT NOT
16 REQUIRED-- TESTING OF PERSONS FORMALLY CHARGED FOR ALLEGEDLY
17 COMMITTING CERTAIN CRIMINAL OFFENSES-- RESPONSIBILITY TO ADMINISTER
18 AND PAY FOR TEST.--

19 A. A test designed to identify the human immunodeficiency
20 virus or its antigen or antibody may be performed, without his
21 consent, on a person upon the filing of a complaint, information or
22 an indictment alleging that the person committed a state criminal
23 offense:

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

- 1 (2) involving contact between the penis and anus;
2 (3) involving contact between the mouth and penis;
3 (4) involving contact between the mouth and vulva;

4 or

- 5 (5) involving contact between the mouth and anus.

6 B. If consent to perform a test on an alleged offender
7 cannot be obtained pursuant to the provisions of Section 24-2B-2 or
8 24-2B-3 NMSA 1978, the victim of the alleged criminal offense
9 described in Subsection A of this section may petition the court,
10 through the prosecuting office or personally, to order that a test
11 be performed on the alleged offender; provided that the same test
12 is first performed on the victim of the alleged criminal offense.
13 The test may be performed on the alleged offender regardless of the
14 result of the test performed on the victim of the alleged offense.
15 If the victim of the alleged criminal offense is a minor or
16 incompetent, the parent or legal guardian of the victim of the
17 alleged criminal offense may petition the court to order that a
18 test be performed on the alleged offender.

19 C. The court may issue an order based on a finding of
20 good cause after a hearing at which both the victim of the alleged
21 criminal offense and the alleged offender have the right to be
22 present. During the hearing, only affidavits, counter affidavits
23 and medical reports regarding the facts that support or rebut the
24 issuance of an order shall be admissible. The hearing shall be
25 conducted within seventy-two hours after the victim of the alleged

1 criminal offense petitions the court for the order. The petition
2 and all proceedings in connection therewith shall be under seal.
3 The court shall issue the order and the test shall be administered
4 to the alleged offender within ten days after the petition is filed
5 by the victim of the alleged offense, his parent or guardian.

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

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

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

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

23 H. The administration of a test to an alleged offender
24 pursuant to the provisions of this section shall not preclude the
25 subsequent administration of another test pursuant to the

1 provisions of Section 24-2B-5.1 NMSA 1978. "

2 Section 9. Section 24-2B-7 NMSA 1978 (being Laws 1989,
3 Chapter 227, Section 7) is amended to read:

4 "24-2B-7. DISCLOSURE STATEMENT. --No person to whom the
5 results of a test have been disclosed may disclose the test results
6 to another person except as authorized by the Human
7 Immunodeficiency Virus Test Act. Whenever disclosure is made
8 pursuant to that act, it shall be accompanied by a statement in
9 writing ~~[which]~~ that includes the following or substantially
10 similar language: "This information has been disclosed to you from
11 records whose confidentiality is protected by state law. State law
12 prohibits you from making any further disclosure of such
13 information without the specific written consent of the person to
14 whom such information pertains, or as otherwise permitted by state
15 law. A person who makes an unauthorized disclosure of this
16 information is guilty of a petty misdemeanor and shall be sentenced
17 to imprisonment in the county jail for a definite term not to
18 exceed six months or the payment of a fine of not more than five
19 hundred dollars (\$500), or both."

20 Section 10. Section 24-2B-8 NMSA 1978 (being Laws 1989, Chap-
21 ter 227, Section 8) is amended to read:

22 "24-2B-8. [SELF] DISCLOSURE. --Nothing in the Human
23 Immunodeficiency Virus Test Act shall be construed to prevent a
24 person who has been tested from disclosing in any way to any other
25 person his own test results. Any victim of an alleged criminal

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1 offense who receives information pursuant to Section 24-2B-5.2 NMSA
2 1978 may disclose the test results as is reasonably necessary to
3 protect his health and safety or the health and safety of his
4 family or sexual partner."

5 Section 11. A new section of the Human Immunodeficiency Virus
6 Test Act, Section 24-2B-9 NMSA 1978, is enacted to read:

7 "24-2B-9. [NEW MATERIAL] PENALTY. --A person who makes an
8 unauthorized disclosure of the results of a test designed to
9 identify the human immunodeficiency virus or its antigen or
10 antibody is guilty of a petty misdemeanor and shall be sentenced to
11 imprisonment in the county jail for a definite term not to exceed
12 six months or the payment of a fine of not more than five hundred
13 dollars (\$500), or both."

14 Section 12. EFFECTIVE DATE. --The effective date of the
15 provisions of this act is July 1, 1996.

State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

February 12, 1996

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 91

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Cisco McSorley, Chairman

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

SJC/SB 91

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Alwin, Gubbels, Sanchez, R. G.

Absent: None

S0091JC1

Underscored material = new
~~[bracketed material] = delete~~