

The Legislature  
of the  
State of New Mexico

49th Legislature, 2nd Session

LAWS 2010

CHAPTER 26

HOUSE BILL 63

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Introduced by

REPRESENTATIVE JOHN A. HEATON

REPRESENTATIVE PATRICIA A. LUNDSTROM  
REPRESENTATIVE NICK L. SALAZAR  
REPRESENTATIVE ANTONIO LUJAN  
REPRESENTATIVE JACK E. THOMAS  
REPRESENTATIVE RAY BEGAYE  
REPRESENTATIVE GAIL CHASEY



# Chapter 26

## AN ACT

1  
2 RELATING TO HEALTH; REQUIRING A DISTRICT ATTORNEY TO PETITION  
3 FOR A HUMAN IMMUNODEFICIENCY VIRUS TEST ON A PERSON CHARGED  
4 WITH OR CONVICTED OF CERTAIN SEX OFFENSES UPON THE REQUEST OF  
5 THE VICTIM; PROVIDING THAT THE TEST BE PERFORMED WITHIN FORTY-  
6 EIGHT HOURS FROM THE DATE OF THE COURT ORDER.

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9 Section 1. Section 24-2B-5.1 NMSA 1978 (being Laws  
10 1993, Chapter 107, Section 3) is amended to read:

11 "24-2B-5.1. INFORMED CONSENT NOT REQUIRED--TESTING OF  
12 PERSONS CONVICTED OF CERTAIN CRIMINAL OFFENSES--RESPONSIBILITY  
13 TO ADMINISTER AND PAY FOR TEST.--

14 A. A test designed to identify the human  
15 immunodeficiency virus or its antigen or antibody may be  
16 performed, without the offender's consent, on an offender  
17 convicted pursuant to state law of any criminal offense:

18 (1) involving contact between the penis and  
19 vulva;

20 (2) involving contact between the penis and  
21 anus;

22 (3) involving contact between the mouth and  
23 penis;

24 (4) involving contact between the mouth and  
25 vulva;

1 (5) involving contact between the mouth and  
2 anus; or

3 (6) when the court determines from the facts  
4 of the case that there was a transmission or likelihood of  
5 transmission of blood, semen or vaginal secretions from the  
6 offender to the victim.

7 B. If consent to perform a test on an offender  
8 cannot be obtained pursuant to the provisions of Section  
9 24-2B-2 or 24-2B-3 NMSA 1978, the district attorney or other  
10 prosecutorial authority shall, upon the request of the victim  
11 of a criminal offense described in Subsection A of this  
12 section, petition the court to order that a test be performed  
13 on the offender not later than forty-eight hours from the date  
14 of the court order. If the victim of the criminal offense is  
15 a minor or incompetent, the parent or legal guardian of the  
16 victim may request the district attorney or other  
17 prosecutorial authority to petition the court to order that a  
18 test be performed on the offender. The petition and all  
19 proceedings in connection with the petition shall be under  
20 seal. The results of the test shall be disclosed as soon as  
21 practicable and only to the offender and to the victim or the  
22 victim's parent or legal guardian. If the offender has a  
23 positive test result, both the offender and victim shall be  
24 provided with counseling, as described in Section 24-2B-4 NMSA  
25 1978.

1           C. If the offender is sentenced to imprisonment in  
2 a state corrections facility, the court's order shall direct  
3 the department of health to be responsible for the  
4 administration of and payment for the test and the lawful  
5 distribution of the test results.

6           D. If the offender is convicted of a misdemeanor  
7 or petty misdemeanor offense or is convicted of a felony  
8 offense that is suspended or deferred, the court's order shall  
9 direct the department of health to be responsible for the  
10 administration of and payment for the test and the lawful  
11 distribution of the test results.

12           E. If the offender is a minor adjudicated as a  
13 delinquent child pursuant to the provisions of the Children's  
14 Code and the court transfers legal custody of the minor to the  
15 children, youth and families department, the court's order  
16 shall direct the children, youth and families department to be  
17 responsible for the administration of and payment for the test  
18 and the lawful distribution of the test results.

19           F. If the offender is a minor adjudicated as a  
20 delinquent child pursuant to the provisions of the Children's  
21 Code and the court does not transfer legal custody of the  
22 minor to the children, youth and families department, the  
23 court's order shall direct the department of health to be  
24 responsible for the administration of and payment for the test  
25 and the lawful distribution of the test results."

1           Section 2. Section 24-2B-5.2 NMSA 1978 (being Laws  
2 1996, Chapter 80, Section 8) is amended to read:

3           "24-2B-5.2. INFORMED CONSENT NOT REQUIRED--TESTING OF  
4 PERSONS FORMALLY CHARGED FOR ALLEGEDLY COMMITTING CERTAIN  
5 CRIMINAL OFFENSES--RESPONSIBILITY TO ADMINISTER AND PAY FOR  
6 TEST.--

7           A. A test designed to identify the human  
8 immunodeficiency virus or its antigen or antibody may be  
9 performed, without the person's consent, on a person upon the  
10 filing of a complaint, information or an indictment alleging  
11 that the person committed a state criminal offense:

12                   (1) involving contact between the penis and  
13 vulva;

14                   (2) involving contact between the penis and  
15 anus;

16                   (3) involving contact between the mouth and  
17 penis;

18                   (4) involving contact between the mouth and  
19 vulva; or

20                   (5) involving contact between the mouth and  
21 anus.

22           B. If consent to perform a test on an alleged  
23 offender cannot be obtained pursuant to the provisions of  
24 Section 24-2B-2 or 24-2B-3 NMSA 1978, the district attorney or  
25 other prosecutorial authority shall, upon the request of the

1 victim of the alleged criminal offense described in Subsection  
2 A of this section, petition the court to order that a test be  
3 performed on the alleged offender not later than forty-eight  
4 hours from the date of the court order; provided that the same  
5 test is first performed on the victim of the alleged criminal  
6 offense. If the victim of the alleged criminal offense is a  
7 minor or incompetent, the parent or legal guardian of the  
8 victim of the alleged criminal offense may request the  
9 district attorney or other prosecutorial authority to petition  
10 the court to order that a test be performed on the alleged  
11 offender. The test may be performed on the alleged offender  
12 regardless of the result of the test performed on the victim  
13 of the alleged offense.

14 C. The court may issue an order based on a finding  
15 of good cause after a hearing at which both the victim of the  
16 alleged criminal offense and the alleged offender have the  
17 right to be present. During the hearing, only affidavits,  
18 counter affidavits and medical reports regarding the facts  
19 that support or rebut the issuance of an order shall be  
20 admissible. The hearing shall be conducted within seventy-two  
21 hours after the district attorney or other prosecutorial  
22 authority petitions the court for the order. The petition and  
23 all proceedings in connection therewith shall be under seal.

24 D. The results of the test shall be disclosed as  
25 soon as practicable and only to the alleged offender and to

1 the victim of the alleged criminal offense or the victim's  
2 parent or legal guardian. When the victim of the alleged  
3 criminal offense or the alleged offender has a positive test  
4 result, both the alleged offender and the victim of the  
5 alleged criminal offense shall be provided with counseling, as  
6 described in Section 24-2B-4 NMSA 1978.

7 E. The court's order shall direct the department  
8 of health to be responsible for the administration of and  
9 payment for the test and the lawful distribution of the test  
10 results.


11 F. A prosecuting attorney may not use in a  
12 criminal proceeding arising out of the alleged criminal  
13 offense the fact that a test was administered to the alleged  
14 offender or the results of the test.

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

18 H. The administration of a test to an alleged  
19 offender pursuant to the provisions of this section shall not  
20 preclude the subsequent administration of follow-up tests  
21 pursuant to the provisions of Section 24-2B-5.1 NMSA 1978."



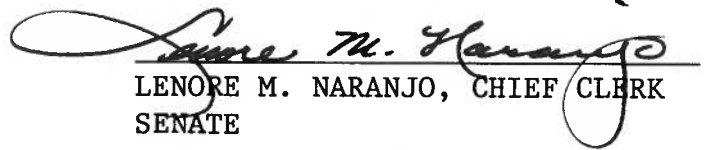
BEN LUJAN, SPEAKER  
HOUSE OF REPRESENTATIVES



STEPHEN R. ARIAS, CHIEF CLERK  
HOUSE OF REPRESENTATIVES



DIANE D. DENISH, PRESIDENT  
SENATE



LENORE M. NARANJO, CHIEF CLERK  
SENATE

Approved by me this 3rd day of March, 2010



BILL RICHARDSON, GOVERNOR  
STATE OF NEW MEXICO

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