

NEW MEXICO

2023 Legislative Session

1. HB31 – Effective June 16, 2023 name changes no longer need to be published. No more public “outing” of trans and non-binary individuals.
2. HB207 – Adds gender identity and gender to Human Rights Act. Protects trans kids in schools and elders in nursing homes.
3. SB13 – Prevents foreign jurisdictions (Texas!) from prosecuting NM doctors or others who assist in gender affirming or reproductive healthcare. Includes the Governor will not cooperate in extraditing individuals charged in another state or jurisdiction.
4. HB7 – Protects access to reproductive and gender affirming care everywhere in New Mexico.

Case Law

1. *Soon v. Kammann*: Twins were born to a lesbian couple during their marriage. The child was conceived via artificial insemination. Soon states the marital presumption is overcome because Kammann is not biologically related and did not “consent” to the insemination as required to establish parentage under the Uniform Parentage Act. (UPA). Trial judge agreed with Soon stating 1) the presumption was rebutted because Kammann was not biologically or genetically related to the children and 2) since Kammann did not consent in writing to the particular procedure which “resulted in the birth of” the twins (the parties had made multiple attempts to conceive) she was not a parent of the children. The Appellate Court held:
 - a. A parentage presumption cannot be rebutted on the basis of genetics in the absence of admissible results of genetic testing. The NM UPA states testing can

be done a) by agreement of the parties or b) pursuant to Court order. The Court stated the court has the ability to deny a genetic test if the Court determines by “clear and convincing evidence that (1) the conduct of the mother or the presumed parent estops that party from denying parentage; and (2) it would be inequitable to disprove the presumed parent’s relationship with the child. *See* § 40-11A-608(A), (D) NMSA.”

- b. New Mexico law is not so restrictive as to require a consent to specific procedures. The statute says consent must be given “before the placement of the eggs, sperm or embryos.” § 40-11A-704(A) NMSA. The statute provides for specific withdrawal of consent (§ 40-11A-706(B) NMSA) implying the consent extends for some time. Further the UPA focuses on the “intent” of the parties, not the “timing” of consent.
- c. The case was remanded to the District Court, but Soon appealed to the Supreme Court of New Mexico. Certiorari was granted on October 5, 2022 – Briefing was completed January 3, 2023. Two of the Supreme Court Justices have recused themselves from hearing the case, leaving a panel of three.