

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR BALDERAS
ATTORNEY GENERAL

July 3, 2020

Governor Michelle Lujan Grisham
490 Old Santa Fe Tr., Room 400
Santa Fe, NM 87501

Dear Governor Lujan Grisham,

This letter memorializes recent conversations between our offices regarding enforcement of the most recent public health orders, particularly with respect to the newly instituted face covering mandate. As has been discussed, our office has analyzed the issue and agrees that the orders have the full force of law and are enforceable by state and local law enforcement.

As you are aware, the issue of the validity of public health orders and their constitutionality has been litigated in federal court and in New Mexico state courts, including the New Mexico Supreme Court. These courts have consistently found that the New Mexico Legislature has given you and the Secretary of the Department of Public Health broad authority to issue public health orders and emergency responses to the COVID-19 pandemic. *See* NMSA1978, Section 24-1-3; and Section 12-10A-1 to -19. This includes the most recently issued orders that mandate public health measures to prevent the spread of disease, including now the issuance of a face covering mandate.

Further, we have discussed the enforceability of the public health orders, and how both state and local law enforcement can enforce the orders. Pursuant to Section 24-1-21, “any person violating any of the provisions of . . . any order . . . adopted pursuant to the provisions of the Public Health Act is guilty of a petty misdemeanor and shall be punished by a fine not to exceed one hundred dollars (\$100) or imprisonment in the county jail for a definite term not to exceed six months or both such fine and imprisonment in the discretion of the court.” Since the face covering mandate is promulgated pursuant to this section, among other provisions of law, any certified law enforcement officer in the State of New Mexico may enforce the failure to comply with this provision.

The Legislature has made clear that violation of a public health order, promulgated pursuant to the Public Health Act, is criminally sanctionable, and we encourage public health officials and all law enforcement to work in unison to protect public health and safety. Thank you for your leadership in this very difficult time, and please do not hesitate to call on my office for any additional clarification on this matter.

Respectfully,

A handwritten signature in blue ink, appearing to read "Hector Balderas", with a stylized flourish at the end.

Hector Balderas
Attorney General