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HOUSE BILL 174

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY

Daniel R. Foley

AN ACT

RELATING TO LAW ENFORCEMENT; EXPANDING THE LIST OF OFFENSES THAT ARE SEX OFFENSES; INCREASING PENALTIES FOR SEX OFFENDERS WHO FAIL TO COMPLY WITH REGISTRATION REQUIREMENTS; INCREASING REGISTRATION REQUIREMENTS FOR SEX OFFENDERS; AUTHORIZING ACTIVE COMMUNITY NOTIFICATION OF LICENSED DAYCARE CENTERS AND SCHOOLS; PROVIDING THE DEPARTMENT OF PUBLIC SAFETY WITH AUTHORITY TO ESTABLISH AN INTERNET WEB SITE REGARDING CERTAIN SEX OFFENDERS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; REPEALING LAWS 1999, CHAPTER 19, SECTION 11 REGARDING APPLICABILITY OF THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT.

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

Section 1. Section 29-11A-3 NMSA 1978 (being Laws 1995, Chapter 106, Section 3, as amended) is amended to read:

"29-11A-3. DEFINITIONS.--As used in the Sex Offender

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1 Registration and Notification Act:

2 A. "sex offender" means a person eighteen years of
3 age or older who:

4 (1) ~~[who]~~ is a resident of New Mexico who is
5 convicted of a sex offense in New Mexico;

6 (2) ~~[who]~~ changes his residence to New
7 Mexico, when that person has been convicted of a sex offense
8 in another state pursuant to state, federal or military law;

9 (3) ~~[who]~~ is a resident of New Mexico who is
10 convicted of a sex offense pursuant to federal or military
11 law; or

12 (4) ~~[who]~~ is a resident of another state and
13 who has been convicted of a sex offense pursuant to state,
14 federal or military law, but who is ~~[employed in New Mexico
15 or attends school in New Mexico; and]~~:

16 (a) employed full time or part time in
17 New Mexico for a period of time exceeding fourteen days or
18 for an aggregate period of time exceeding thirty days during
19 any calendar year; or

20 (b) enrolled on a full-time or part-
21 time basis in a private or public school in New Mexico,
22 including a secondary school, a trade school, a professional
23 institution or an institution of higher education; and

24 B. "sex offense" means:

25 (1) criminal sexual penetration in the
first, second, third or fourth degree, as provided in Section
30-9-11 NMSA 1978;

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1 (2) criminal sexual contact in the fourth
2 degree, as provided in Section 30-9-12 NMSA 1978;

3 (3) criminal sexual contact of a minor in
4 the third or fourth degree, as provided in Section 30-9-13
5 NMSA 1978;

6 (4) sexual exploitation of children, as
7 provided in Subsection A, B or C of Section 30-6A-3 NMSA
8 1978;

9 (5) sexual exploitation of children by
10 prostitution, as provided in Section 30-6A-4 NMSA 1978;

11 (6) kidnapping, as provided in Section 30-4-
12 1 NMSA 1978, when the victim is less than eighteen years of
13 age and the offender is not a parent of the victim;

14 (7) false imprisonment, as provided in
15 Section 30-4-3 NMSA 1978, when the victim is less than
16 eighteen years of age and the offender is not a parent of the
17 victim;

18 [~~6~~] (8) solicitation to commit criminal
19 sexual contact of a minor in the third or fourth degree, as
20 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

21 [~~7~~] (9) attempt to commit any of the sex
22 offenses set forth in Paragraphs (1) through [~~5~~] (7) of
23 this subsection, as provided in Section 30-28-1 NMSA 1978."

24 Section 2. Section 29-11A-4 NMSA 1978 (being Laws 1995,
25 Chapter 106, Section 4, as amended) is amended to read:

"29-11A-4. REGISTRATION OF SEX OFFENDERS--INFORMATION
REQUIRED--CRIMINAL PENALTY FOR NONCOMPLIANCE.--

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1 A. A sex offender residing in this state shall
2 register with the county sheriff for the county in which the
3 sex offender resides.

4 B. A sex offender who is a current resident of New
5 Mexico shall register with the county sheriff no later than
6 ten days after being released from the custody of the
7 corrections department or being placed on probation or
8 parole. A sex offender who changes his residence to New
9 Mexico shall register with the county sheriff no later than
10 ten days after establishing residence in this state. When a
11 sex offender registers with the county sheriff, he shall
12 provide the following information:

- 13 (1) his legal name and any other names or
- 14 aliases that he is using or has used;
- 15 (2) his date of birth;
- 16 (3) his social security number;
- 17 (4) his current address;
- 18 (5) his place of employment;
- 19 (6) the sex offense for which he was
- 20 convicted; and
- 21 (7) the date and place of his sex offense
- 22 conviction.

23 C. A sex offender who is a resident of another
24 state but who is employed in New Mexico or attending school
25 in New Mexico shall register with the county sheriff for the
county in which the sex offender is working or attending
school.

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1 D. A sex offender who is a resident of another
2 state but who is employed in New Mexico or attending school
3 in New Mexico shall register with the county sheriff no later
4 than ten days after beginning work or school. When the sex
5 offender registers with the county sheriff, he shall provide
6 the following information:

7 (1) his legal name and any other names or
8 aliases that he is using or has used;

9 (2) his date of birth;

10 (3) his social security number;

11 (4) his current address in his state of
12 residence and, if applicable, the address of his place of
13 lodging in New Mexico while he is working or attending
14 school;

15 (5) his place of employment or the name of
16 the school he is attending;

17 (6) the sex offense for which he was
18 convicted; and

19 (7) the date and place of his sex offense
20 conviction.

21 E. When a sex offender registers with a county
22 sheriff, the sheriff shall obtain:

23 (1) a photograph of the sex offender, a DNA
24 sample and a complete set of the sex offender's fingerprints;
25 and

 (2) a description of any tattoos, scars or
other distinguishing features on the sex offender's body that

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1 would assist in identifying the sex offender.

2 F. When a sex offender who is registered changes
3 his residence within the same county, the sex offender shall
4 send written notice of his change of address to the county
5 sheriff no later than ten days after establishing his new
6 residence.

7 G. When a sex offender who is registered changes
8 his residence to a new county in New Mexico, the sex offender
9 shall register with the county sheriff of the new county no
10 later than ten days after establishing his new residence.
11 The sex offender shall also send written notice of the change
12 in residence to the county sheriff with whom he last
13 registered no later than ten days after establishing his new
14 residence.

15 H. Following his initial registration pursuant to
16 the provisions of this section:

17 (1) a sex offender required to register
18 pursuant to the provisions of Subsection D of Section 29-11A-
19 5 NMSA 1978 shall annually renew his registration with the
20 county sheriff prior to December 31 of each subsequent
21 calendar year for a period of twenty years; and

22 (2) a sex offender required to register
23 pursuant to the provisions of Subsection E of Section 29-11A-
24 5 NMSA 1978 shall annually renew his registration with the
25 county sheriff prior to December 31 of each subsequent
calendar year for a period of ten years.

I. A sex offender who [~~willfully~~] knowingly fails

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1 to comply with the registration requirements set forth in
2 this section is guilty of a [~~misdemeanor and shall be~~
3 ~~punished by imprisonment for a definite term less than one~~
4 ~~year or a fine of not more than one thousand dollars (\$1,000)~~
5 ~~or both~~] fourth degree felony and shall be sentenced pursuant
6 to the provisions of Section 31-18-15 NMSA 1978.

7 J. A sex offender who provides false information
8 when complying with the registration requirements set forth
9 in this section is guilty of a [~~misdemeanor and shall be~~
10 ~~punished by imprisonment for a definite term less than one~~
11 ~~year or a fine of not more than one thousand dollars (\$1,000)~~
12 ~~or both~~] fourth degree felony and shall be sentenced pursuant
13 to the provisions of Section 31-18-15 NMSA 1978."

14 Section 3. Section 29-11A-5 NMSA 1978 (being Laws 1995,
15 Chapter 106, Section 5, as amended) is amended to read:

16 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
17 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION
18 IN THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

19 A. A county sheriff shall maintain a local
20 registry of sex offenders in his jurisdiction required to
21 register pursuant to the provisions of the Sex Offender
22 Registration and Notification Act.

23 B. The county sheriff shall forward registration
24 information obtained from sex offenders to the department of
25 public safety. The initial registration information and any
new registration information subsequently obtained from a sex
offender shall be forwarded by the county sheriff no later

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1 than ten working days after the information is obtained from
2 a sex offender. If the department of public safety receives
3 information regarding a sex offender from a source other than
4 a county sheriff, the department shall send that information
5 to the county sheriff for the county in which the sex
6 offender resides.

7 C. The department of public safety shall maintain
8 a central registry of sex offenders required to register
9 pursuant to the provisions of the Sex Offender Registration
10 and Notification Act. The department shall participate in
11 the national sex offender registry administered by the United
12 States department of justice. The department shall send
13 conviction information and fingerprints for all sex offenders
14 registered in New Mexico to the national sex offender
15 registry administered by the United States department of
16 justice and to the federal bureau of investigation.

17 D. The department of public safety shall retain
18 registration information regarding sex offenders convicted
19 for the following sex offenses for a period of twenty years
20 following the sex offender's conviction, release from prison
21 or release from probation or parole, whichever occurs later:

- 22 (1) criminal sexual penetration in the first
- 23 or second degree, as provided in Section 30-9-11 NMSA 1978;
- 24 (2) criminal sexual contact of a minor in
- 25 the third degree, as provided in Section 30-9-13 NMSA 1978;
- (3) sexual exploitation of children, as
provided in Subsection A, B or C of Section 30-6A-3 NMSA

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1 1978; ~~[or]~~

2 (4) kidnapping, as provided in Section 30-4-
3 1 NMSA 1978, when the victim is less than eighteen years of
4 age and the offender is not a parent of the victim; or

5 ~~[+4]~~ (5) attempt to commit any of the sex
6 offenses set forth in Paragraphs (1) through ~~[+3]~~ (4) of
7 this subsection, as provided in Section 30-28-1 NMSA 1978.

8 E. The department of public safety shall retain
9 registration information regarding sex offenders convicted
10 for the following offenses for a period of ten years
11 following the sex offender's conviction, release from prison
12 or release from probation or parole, whichever occurs later:

13 (1) criminal sexual penetration in the third
14 or fourth degree, as provided in Section 30-9-11 NMSA 1978;

15 (2) criminal sexual contact in the fourth
16 degree, as provided in Section 30-9-12 NMSA 1978;

17 (3) criminal sexual contact of a minor in
18 the fourth degree, as provided in Section 30-9-13 NMSA 1978;

19 (4) sexual exploitation of children by
20 prostitution, as provided in Section 30-6A-4 NMSA 1978;

21 (5) false imprisonment, as provided in
22 Section 30-4-3 NMSA 1978, when the victim is less than
23 eighteen years of age and the offender is not a parent of the
24 victim;

25 ~~[+5]~~ (6) solicitation to commit criminal
sexual contact of a minor in the third or fourth degree, as
provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

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1 [~~6~~] (7) attempt to commit any of the sex
2 offenses set forth in Paragraphs (1) through [~~4~~] (5) of
3 this subsection, as provided in Section 30-28-1 NMSA 1978.

4 F. The department of public safety shall adopt
5 rules necessary to carry out the provisions of the Sex
6 Offender Registration and Notification Act."

7 Section 4. Section 29-11A-5.1 NMSA 1978 (being Laws
8 1999, Chapter 19, Section 8) is amended to read:

9 "29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING
10 CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY
11 NOTIFICATION--INTERNET WEB SITE.--

12 A. If a sex offender is convicted of one of the
13 following sex offenses, the county sheriff shall forward
14 registration information obtained from the sex offender to
15 the district attorney for the judicial district in which the
16 sex offender resides and, if the sex offender is a resident
17 of a municipality, the chief law enforcement officer for the
18 municipality in which the sex offender resides:

19 (1) criminal sexual penetration in the first
20 or second degree, as provided in Section 30-9-11 NMSA 1978;

21 (2) criminal sexual contact of a minor in
22 the third or fourth degree, as provided in Section 30-9-13
23 NMSA 1978;

24 (3) sexual exploitation of children, as
25 provided in Subsection A, B or C of Section 30-6A-3 NMSA
1978;

 (4) sexual exploitation of children by

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1 prostitution, as provided in Section 30-6A-4 NMSA 1978; or
2 (5) attempt to commit any of the sex
3 offenses set forth in Paragraphs (1) through (4) of this
4 subsection, as provided in Section 30-28-1 NMSA 1978.

5 B. A person who wants to obtain registration
6 information regarding [~~a sex offender~~] sex offenders
7 described in Subsection A of this section may request that
8 information from the:

9 (1) county sheriff for the county in which
10 the sex [~~offender resides~~] offenders reside;

11 (2) chief law enforcement officer for the
12 municipality in which the sex [~~offender resides~~] offenders
13 reside;

14 (3) district attorney for the judicial
15 district in which the sex [~~offender resides~~] offenders
16 reside; or

17 (4) secretary of public safety.

18 C. All requests for registration information
19 regarding a sex offender described in Subsection A of this
20 section are subject to the provisions of the Inspection of
21 Public Records Act.

22 D. Within forty-eight hours of receiving
23 registration information from a sex offender described in
24 Subsection A of this section, the county sheriff shall
25 contact every licensed daycare center, elementary school,
middle school and high school within a one-mile radius of the
sex offender's residence and provide them with the sex

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1 offender's registration information.

2 E. The department of public safety may establish
3 and manage an internet web site that provides the public with
4 registration information regarding sex offenders described in
5 Subsection A of this section."

6 Section 5. Section 29-11A-7 NMSA 1978 (being Laws 1995,
7 Chapter 106, Section 7, as amended) is amended to read:

8 "29-11A-7. NOTICE TO SEX OFFENDERS OF DUTY TO
9 REGISTER.--

10 A. A court shall provide a sex offender convicted
11 in that court with written notice of his duty to register
12 pursuant to the provisions of the Sex Offender Registration
13 and Notification Act. The written notice shall be included
14 in judgment and sentence forms provided to the sex offender.
15 The written notice shall inform the sex offender that he is
16 required:

17 (1) to register with the county sheriff for
18 the county in which the sex offender will reside, pursuant to
19 the provisions of the Sex Offender Registration and
20 Notification Act;

21 (2) to report subsequent changes of address
22 pursuant to the provisions of the Sex Offender Registration
23 and Notification Act;

24 (3) to notify the county sheriff of the
25 county he resides in if the sex offender intends to move to
another state and that the sex offender is required to
register in the other state, pursuant to the provisions of

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1 the Sex Offender Registration and Notification Act; and

2 (4) to read and sign a form that indicates
3 that the sex offender has received the written notice and
4 that a responsible court official has explained the written
5 notice to the sex offender.

6 B. The corrections department, at the time of
7 release of a sex offender in the department's custody, shall
8 provide a written ~~[notification]~~ notice to the sex offender
9 of his duty to register pursuant to the provisions of the Sex
10 Offender Registration and Notification Act. The written
11 notice shall inform the sex offender that he is required:

12 (1) to register with the county sheriff for
13 the county in which the sex offender will reside, pursuant to
14 the provisions of the Sex Offender Registration and
15 Notification Act;

16 (2) to report subsequent changes of address
17 pursuant to the provisions of the Sex Offender Registration
18 and Notification Act;

19 (3) to notify the county sheriff of the
20 county he resides in if the sex offender intends to move to
21 another state and that the sex offender is required to
22 register in the other state, pursuant to the provisions of
23 the Sex Offender Registration and Notification Act; and

24 (4) to read and sign a form that indicates
25 that the sex offender has received the written notice and
that a responsible corrections department official has
explained the written notice to the sex offender.

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1 C. A court or the corrections department shall
2 also provide written notification regarding a sex offender's
3 release to the sheriff of the county in which the sex
4 offender is released and to the department of public safety.

5 ~~[E.]~~ D. The department of public safety, at the
6 time it is notified by officials from another state that a
7 sex offender will be establishing residence in New Mexico,
8 shall provide written ~~[notification]~~ notice to the sex
9 offender of his duty to register pursuant to the provisions
10 of the Sex Offender Registration and Notification Act."

11 Section 6. Section 29-11A-8 NMSA 1978 (being Laws 1995,
12 Chapter 106, Section 8, as amended) is amended to read:

13 "29-11A-8. IMMUNITY.--

14 A. Nothing in the Sex Offender Registration and
15 Notification Act creates a cause of action on behalf of a
16 person against a public employer, public employee or public
17 agency responsible for enforcement of the provisions of that
18 act, so long as the public employer, public employee or
19 public agency complies with the provisions of that act.

20 B. Nothing in the Sex Offender Registration and
21 Notification Act creates a cause of action on behalf of a
22 person against the following individuals or entities, so long
23 as those individuals or entities comply with the provisions
24 of that act:

- 25 (1) elected or appointed public officials;
 (2) school administrators or school
employees; and

1 (3) individuals or entities acting upon
2 directions given to them by a law enforcement agency
3 responsible for enforcement of the Sex Offender Registration
4 and Notification Act."

5 Section 7. A new section of the Sex Offender
6 Registration and Notification Act is enacted to read:

7 "[NEW MATERIAL] PROCEDURES WHEN A SEX OFFENDER MOVES
8 FROM NEW MEXICO TO ANOTHER STATE.--

9 A. If a sex offender intends to move from New
10 Mexico to another state, no later than thirty days prior to
11 moving to the other state, he shall:

12 (1) notify the county sheriff of the county
13 he resides in that he is moving to the other state; and

14 (2) provide the county sheriff with a
15 written notice that identifies the state to which the sex
16 offender is moving.

17 B. Within five days of receiving a sex offender's
18 written notice of intent to move to another state, the county
19 sheriff shall transmit that information to the department of
20 public safety. Within five days of receiving that
21 information from a county sheriff, the department shall
22 contact the state agency responsible for registering sex
23 offenders in the state to which the sex offender is moving.
24 The department shall provide that state agency with
25 registration information regarding the sex offender. The
department shall also obtain information regarding
registration requirements for sex offenders in the state to

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which the sex offender is moving. The department shall provide the sex offender with written notification of the registration requirements in the state to which the sex offender is moving."

Section 8. REPEAL.--Laws 1999, Chapter 19, Section 11 is repealed.

Section 9. SEVERABILITY.--If any part or application of the Sex Offender Registration and Notification Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 10. APPLICABILITY.--The provisions of this 2000 version of the Sex Offender Registration and Notification Act apply to:

- A. persons convicted of a sex offense on or after July 1, 1995; or
- B. persons convicted of a sex offense prior to July 1, 1995 who are currently incarcerated, on probation or on parole.

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2000.