

HOUSE FLOOR SUBSTITUTE FOR
HOUSE BILLS 468 & 174

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

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-time
21 basis in a private or public school in New Mexico, including
22 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;

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 registration 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.

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 registration 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 and a
24 complete set of the sex offender's fingerprints; and

25 (2) a description of any tattoos, scars or
other distinguishing features on the sex offender's body that
would assist in identifying the sex offender.

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

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

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

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

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

I. A sex offender who willfully fails to comply
with the registration requirements set forth in this section

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

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

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

15 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
 16 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION
 17 IN THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

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

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

underscored material = new
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1 a sex offender. If the department of public safety receives
2 information regarding a sex offender from a governmental
3 entity other than a county sheriff, the department shall send
4 that information to the county sheriff for the county in
5 which the sex offender resides.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 [~~5~~] (6) solicitation to commit criminal
 25 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

 [~~6~~] (7) attempt to commit any of the sex

1 offenses set forth in Paragraphs (1) through [~~4~~] (5) of
2 this subsection, as provided in Section 30-28-1 NMSA 1978.

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

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

8 "29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING
9 CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY
10 NOTIFICATION--INTERNET WEB SITE.--

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

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

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

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

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

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

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

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

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

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

16 (4) secretary of public safety.

17 C. [~~All requests for registration information~~
 18 ~~regarding a sex offender described in Subsection A of this~~
 19 ~~section are subject to the provisions of the Inspection of~~
 20 ~~Public Records Act.] Upon receiving a request for
 21 registration information regarding sex offenders described in
 22 Subsection A of this section, the county sheriff, chief
 23 municipal law enforcement officer, district attorney or
 24 secretary of public safety shall provide that registration
 25 information, with the exception of a sex offender's social
security number, within a reasonable period of time, and no
later than seven days after receiving the request.~~

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1 D. Within seven days of receiving registration
2 information from a sex offender described in Subsection A of
3 this section, the county sheriff shall contact every licensed
4 daycare center, elementary school, middle school and high
5 school within a one-mile radius of the sex offender's
6 residence and provide them with the sex offender's
7 registration information, with the exception of the sex
8 offender's social security number.

9 E. The department of public safety may establish
10 and manage an internet web site that provides the public with
11 registration information regarding sex offenders described in
12 Subsection A of this section. The registration information
13 provided to the public pursuant to this subsection shall not
14 include a sex offender's social security number or a sex
15 offender's place of employment, unless the sex offender's
16 employment requires him to have direct contact with
17 children."

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

20 "29-11A-7. NOTICE TO SEX OFFENDERS OF DUTY TO
21 REGISTER.--

22 A. A court shall provide a sex offender convicted
23 in that court with written notice of his duty to register
24 pursuant to the provisions of the Sex Offender Registration
25 and Notification Act. The written notice shall be included
in judgment and sentence forms provided to the sex offender.
The written notice shall inform the sex offender that he is

1 required:

2 (1) to register with the county sheriff for
 3 the county in which the sex offender will reside, pursuant to
 4 the provisions of the Sex Offender Registration and
 5 Notification Act;

6 (2) to report subsequent changes of address
 7 pursuant to the provisions of the Sex Offender Registration
 8 and Notification Act;

9 (3) to notify the county sheriff of the
 10 county he resides in if the sex offender intends to move to
 11 another state and that the sex offender is required to
 12 register in the other state, pursuant to the provisions of
 13 the Sex Offender Registration and Notification Act; and

14 (4) to read and sign a form that indicates
 15 that the sex offender has received the written notice and
 16 that a responsible court official, designated by the chief
 17 judge for that judicial district, has explained the written
 18 notice to the sex offender.

19 B. The corrections department, at the time of
 20 release of a sex offender in the department's custody, shall
 21 provide a written [~~notification~~] notice to the sex offender
 22 of his duty to register, pursuant to the provisions of the
 23 Sex Offender Registration and Notification Act. The written
 24 notice shall inform the sex offender that he is required:

25 (1) to register with the county sheriff for
the county in which the sex offender will reside, pursuant to
the provisions of the Sex Offender Registration and

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1 Notification Act;

2 (2) to report subsequent changes of address
3 pursuant to the provisions of the Sex Offender Registration
4 and Notification Act;

5 (3) to notify the county sheriff of the
6 county he resides in if the sex offender intends to move to
7 another state and that the sex offender is required to
8 register in the other state, pursuant to the provisions of
9 the Sex Offender Registration and Notification Act; and

10 (4) to read and sign a form that indicates
11 that the sex offender has received the written notice and
12 that a responsible corrections department official,
13 designated by the secretary of corrections, has explained the
14 written notice to the sex offender.

15 C. A court or the corrections department shall
16 also provide written notification regarding a sex offender's
17 release to the sheriff of the county in which the sex
18 offender is released and to the department of public safety.

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

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

"[NEW MATERIAL] PROCEDURES WHEN A SEX OFFENDER MOVES

1 FROM NEW MEXICO TO ANOTHER STATE.--

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

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

7 (2) provide the county sheriff with a
8 written notice that identifies the state to which the sex
9 offender is moving.

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

25 C. A sex offender who willfully fails to comply
with the requirements set forth in this section is guilty of
a misdemeanor and shall be punished by imprisonment for a

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1 definite term less than one year or a fine of not more than
2 one thousand dollars (\$1,000) or both."

3 Section 7. REPEAL.--Laws 1999, Chapter 19, Section 11
4 is repealed.

5 Section 8. SEVERABILITY.--If any part or application of
6 the Sex Offender Registration and Notification Act is held
7 invalid, the remainder or its application to other situations
8 or persons shall not be affected.

9 Section 9. APPLICABILITY.--The provisions of this 2000
10 version of the Sex Offender Registration and Notification Act
11 apply to:

12 A. persons convicted of a sex offense on or after
13 July 1, 1995; and

14 B. persons convicted of a sex offense prior to
15 July 1, 1995 and who, on July 1, 1995, were incarcerated, on
16 probation or on parole.

17 Section 10. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2000.