

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR

SENATE BILL 125

**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 REGISTRATION REQUIREMENTS FOR SEX OFFENDERS; AUTHORIZING ACTIVE COMMUNITY NOTIFICATION OF LICENSED DAYCARE CENTERS AND SCHOOLS; MANDATING THAT THE DEPARTMENT OF PUBLIC SAFETY 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 Registration and Notification Act:

A. "sex offender" means a person eighteen years of

1 age or older who:

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

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

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

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

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

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

22 B. "sex offense" means:

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

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

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

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

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

9 (6) kidnapping, as provided in Section 30-4-
10 1 NMSA 1978, when the victim is less than eighteen years of
11 age and the offender is not a parent of the victim;

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

16 [~~+6~~] (8) solicitation to commit criminal
17 sexual contact of a minor in the third or fourth degree, as
18 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

19 [~~+7~~] (9) attempt to commit any of the sex
20 offenses set forth in Paragraphs (1) through [~~+5~~] (7) of
21 this subsection, as provided in Section 30-28-1 NMSA 1978."

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

24 "29-11A-4. REGISTRATION OF SEX OFFENDERS--INFORMATION
25 REQUIRED--CRIMINAL PENALTY FOR NONCOMPLIANCE.--

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

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1 sex offender resides.

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

- 11 (1) his legal name and any other names or
12 aliases that he is using or has used;
13 (2) his date of birth;
14 (3) his social security number;
15 (4) his current address;
16 (5) his place of employment;
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 C. A sex offender who is a resident of another
22 state but who is employed in New Mexico or attending school
23 in New Mexico shall register with the county sheriff for the
24 county in which the sex offender is working or attending
25 school.

D. A sex offender who is a resident of another
state but who is employed in New Mexico or attending school

1 in New Mexico shall register with the county sheriff no later
2 than ten days after beginning work or school. When the sex
3 offender registers with the county sheriff, he shall provide
4 the following registration information:

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

7 (2) his date of birth;

8 (3) his social security number;

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

13 (5) his place of employment or the name of
14 the school he is attending;

15 (6) the sex offense for which he was
16 convicted; and

17 (7) the date and place of his sex offense
18 conviction.

19 E. When a sex offender registers with a county
20 sheriff, the sheriff shall obtain:

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

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

F. When a sex offender who is registered changes

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1 his residence within the same county, the sex offender shall
2 send written notice of his change of address to the county
3 sheriff no later than ten days after establishing his new
4 residence.

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

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

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

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

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

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

3 J. A sex offender who willfully provides false
4 information when complying with the registration requirements
5 set forth in this section is guilty of a misdemeanor and
6 shall be punished by imprisonment for a definite term less
7 than one year or a fine of not more than one thousand dollars
8 (\$1,000) or both."

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

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

14 A. A county sheriff shall maintain a local
15 registry of sex offenders in his jurisdiction required to
16 register pursuant to the provisions of the Sex Offender
17 Registration and Notification Act.

18 B. The county sheriff shall forward registration
19 information obtained from sex offenders to the department of
20 public safety. The initial registration information and any
21 new registration information subsequently obtained from a sex
22 offender shall be forwarded by the county sheriff no later
23 than ten working days after the information is obtained from
24 a sex offender. If the department of public safety receives
25 information regarding a sex offender from a governmental
entity other than a county sheriff, the department shall send
that information to the county sheriff for the county in

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1 which the sex offender resides.

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

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

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

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

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

24 (4) kidnapping, as provided in Section 30-4-
25 1 NMSA 1978, when the victim is less than eighteen years of
age and the offender is not a parent of the victim; or

~~(4)~~ (5) attempt to commit any of the sex

1 offenses set forth in Paragraphs (1) through [~~3~~] (4) of
 2 this subsection, as provided in Section 30-28-1 NMSA 1978.

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

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

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

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

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

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

20 [~~5~~] (6) solicitation to commit criminal
 21 sexual contact of a minor in the third or fourth degree, as
 22 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

23 [~~6~~] (7) attempt to commit any of the sex
 24 offenses set forth in Paragraphs (1) through [~~4~~] (5) of
 25 this subsection, as provided in Section 30-28-1 NMSA 1978.

F. The department of public safety shall adopt
 rules necessary to carry out the provisions of the Sex

1 Offender Registration and Notification Act."

2 Section 4. Section 29-11A-5.1 NMSA 1978 (being Laws
3 1999, Chapter 19, Section 8) is amended to read:

4 "29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING
5 CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY
6 NOTIFICATION--INTERNET WEB SITE.--

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

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

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

19 (3) sexual exploitation of children, as
20 provided in Subsection A, B or C of Section 30-6A-3 NMSA
21 1978;

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

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

B. A person who wants to obtain registration

1 information regarding [~~a sex offender~~] sex offenders
 2 described in Subsection A of this section may request that
 3 information from the:

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

6 (2) chief law enforcement officer for the
 7 municipality in which the sex [~~offender resides~~] offenders
 8 reside;

9 (3) district attorney for the judicial
 10 district in which the sex [~~offender resides~~] offenders
 11 reside; or

12 (4) secretary of public safety.

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

24 D. Within seven days of receiving registration
 25 information from a sex offender described in Subsection A of
this section, the county sheriff shall contact every licensed
daycare center, elementary school, middle school and high

1 school within a one-mile radius of the sex offender's
2 residence and provide them with the sex offender's
3 registration information, with the exception of the sex
4 offender's social security number.

5 E. The department of public safety shall establish
6 and manage an internet web site that provides the public with
7 registration information, with the exception of a sex
8 offender's social security number, regarding sex offenders
9 described in Subsection A of this section."

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

12 "29-11A-7. NOTICE TO SEX OFFENDERS OF DUTY TO
13 REGISTER.--

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

21 (1) to register with the county sheriff for
22 the county in which the sex offender will reside, pursuant to
23 the provisions of the Sex Offender Registration and
24 Notification Act;

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

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

6 (4) to read and sign a form that indicates
7 that the sex offender has received the written notice and
8 that a responsible court official, designated by the chief
9 judge for that judicial district, has explained the written
10 notice to the sex offender.

11 B. The corrections department, at the time of
12 release of a sex offender in the department's custody, shall
13 provide a written [~~notification~~] notice to the sex offender
14 of his duty to register, pursuant to the provisions of the
15 Sex Offender Registration and Notification Act. The written
16 notice shall inform the sex offender that he is 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

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 corrections department official,
5 designated by the secretary of corrections, has explained the
6 written notice to the sex offender.

7 C. A court or the corrections department shall
8 also provide written notification regarding a sex offender's
9 release to the sheriff of the county in which the sex
10 offender is released and to the department of public safety.

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

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

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

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

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

(2) provide the county sheriff with a
written notice that identifies the state to which the sex

1 offender is moving.

2 B. Within five days of receiving a sex offender's
3 written notice of intent to move to another state, the county
4 sheriff shall transmit that information to the department of
5 public safety. Within five days of receiving that
6 information from a county sheriff, the department shall
7 contact the state agency responsible for registering sex
8 offenders in the state to which the sex offender is moving.
9 The department shall provide that state agency with
10 registration information regarding the sex offender. The
11 department shall also obtain information regarding
12 registration requirements for sex offenders in the state to
13 which the sex offender is moving. The department shall
14 provide the sex offender with written notification of the
15 registration requirements in the state to which the sex
16 offender is moving.

17 C. A sex offender who willfully fails to comply
18 with the requirements set forth in this section is guilty of
19 a misdemeanor and shall be punished by imprisonment for a
20 definite term less than one year or a fine of not more than
21 one thousand dollars (\$1,000) or both."

22 Section 7. REPEAL.--Laws 1999, Chapter 19, Section 11
23 is repealed.

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

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

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

6 B. persons convicted of a sex offense prior to
7 July 1, 1995 and who, on July 1, 1995, were incarcerated, on
8 probation or on parole.

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

underscoring material = new
~~[bracketed material] = delete~~