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HOUSE BILL 165

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Hector H. Balderas

FOR THE CORRECTIONS OVERSIGHT, COURTS AND JUSTICE COMMITTEE

AN ACT

RELATING TO SEX OFFENDER REGISTRATION; REVISING DEFINITIONS;
ADDING NEW OFFENSES TO REGISTRATION REQUIREMENTS; LENGTHENING
REGISTRATION PERIODS FOR CERTAIN OFFENDERS; REQUIRING
ADDITIONAL NOTIFICATION AND REGISTRATION INFORMATION; EXPANDING
NOTICE REQUIREMENTS TO SEX OFFENDERS; REQUIRING DNA SAMPLES;
ESTABLISHING THE SEX OFFENDER DNA IDENTIFICATION SYSTEM;
PREEMPTING SEX OFFENDER REGISTRATION AND NOTIFICATION.

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. "conviction" means a conviction in any court of
competent jurisdiction and includes a deferred sentence, but

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1 does not include a conditional discharge;

2 B. "institution of higher education" means a:

3 (1) private or public post-secondary
4 educational institution;

5 (2) trade school; or

6 (3) professional school;

7 C. "registration requirement" means any requirement
8 set forth in Section 29-11A-4 NMSA 1978 that requires a sex
9 offender to register, provide information, including a DNA
10 sample, renew, revise or change his registration information or
11 provide written notice or disclosure regarding his status as a
12 sex offender;

13 ~~[A.]~~ D. "sex offender" means a person [eighteen
14 years of age or older] who:

15 (1) is a resident of New Mexico who is
16 convicted of a sex offense in New Mexico;

17 (2) changes his residence to New Mexico, when
18 that person has been convicted of a sex offense in another
19 state pursuant to state, federal, tribal or military law;

20 (3) is a resident of New Mexico who is
21 convicted of a sex offense pursuant to federal, tribal or
22 military law; ~~[or]~~

23 (4) does not have an established residence in
24 New Mexico, but lives in a shelter, halfway house or
25 transitional living facility or stays in multiple locations in

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1 New Mexico and who has been convicted of a sex offense in New
2 Mexico or any other state pursuant to state, federal, tribal or
3 military law; or

4 [~~(4)~~] (5) is a resident of another state and
5 who has been convicted of a sex offense pursuant to state,
6 federal, tribal or military law, but who is:

7 (a) employed full time or part time in
8 New Mexico for a period of time exceeding fourteen days or for
9 an aggregate period of time exceeding thirty days during any
10 calendar year, including any employment or vocation, whether
11 financially compensated, volunteered or for the purpose of
12 government or educational benefit; or

13 (b) enrolled on a full-time or part-time
14 basis in a private or public school or an institution of higher
15 education in New Mexico [~~including a secondary school, a trade~~
16 ~~school, a professional institution or an institution of higher~~
17 ~~education~~]; and

18 [~~B.~~] E. "sex offense" means:

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

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

24 (3) criminal sexual contact of a minor in the
25 second, third or fourth degree, as provided in Section

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1 30-9-13 NMSA 1978;

2 (4) sexual exploitation of children, as
3 provided in Section 30-6A-3 NMSA 1978;

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

6 (6) kidnapping, as provided in Section
7 30-4-1 NMSA 1978, when the victim is less than eighteen years
8 of age and the offender is not a parent of the victim;

9 (7) false imprisonment, as provided in Section
10 30-4-3 NMSA 1978, when the victim is less than eighteen years
11 of age and the offender is not a parent of the victim;

12 (8) aggravated indecent exposure, as provided
13 in Section 30-9-14.3 NMSA 1978;

14 (9) enticement of child, as provided in
15 Section 30-9-1 NMSA 1978;

16 (10) incest, as provided in Section 30-10-3
17 NMSA 1978, when the victim is less than eighteen years of age;

18 [~~(8)~~] (11) solicitation to commit criminal
19 sexual contact of a minor in the second, third or fourth
20 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;
21 or

22 [~~(9)~~] (12) attempt to commit any of the sex
23 offenses set forth in Paragraphs (1) through [~~(7)~~] (10) of this
24 subsection, as provided in Section 30-28-1 NMSA 1978. "

25 Section 2. Section 29-11A-4 NMSA 1978 (being Laws 1995,

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1 Chapter 106, Section 4, as amended) is amended to read:

2 "29-11A-4. REGISTRATION OF SEX OFFENDERS-- INFORMATION
3 REQUIRED-- CRIMINAL PENALTY FOR NONCOMPLIANCE. --

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

7 B. A sex offender who is a [~~current~~] resident of
8 New Mexico shall register with the county sheriff no later than
9 ten days after being released from the custody of the
10 corrections department, the children, youth and families
11 department, a municipal or county jail or a federal, military
12 or tribal correctional facility or detention center or being
13 placed on probation or parole. A sex offender who changes his
14 residence to New Mexico shall register with the county sheriff
15 no later than ten days after [~~establishing residence~~] his
16 arrival in this state. When a sex offender registers with the
17 county sheriff, he shall provide the following registration
18 information:

- 19 (1) his legal name and any other names or
20 aliases that he is using or has used;
21 (2) his date of birth;
22 (3) his social security number;
23 (4) his current address;
24 (5) his place of employment;
25 (6) the sex offense for which he was

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1 convicted; [~~and~~]

2 (7) the date and place of his sex offense
3 conviction; and

4 (8) a sample of his DNA pursuant to the
5 provisions of the DNA Identification Act.

6 C. A sex offender who is a resident of another
7 state but who is employed in New Mexico or attending public or
8 private school or an institution of higher education in New
9 Mexico shall register with the county sheriff for the county in
10 which the sex offender is working or attending school or an
11 institution of higher education.

12 D. A sex offender who is a resident of another
13 state but who is employed in New Mexico or attending public or
14 private school or an institution of higher education in New
15 Mexico shall register with the county sheriff no later than ten
16 days after beginning work or school. When the sex offender
17 registers with the county sheriff, he shall provide the
18 following registration information:

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

21 (2) his date of birth;

22 (3) his social security number;

23 (4) his current address in his state of
24 residence and, if applicable, the address of his place of
25 lodging in New Mexico while he is working or attending school

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1 or an institution of higher education;

2 (5) his place of employment or the name of the
3 school he is attending;

4 (6) the sex offense for which he was
5 convicted; [~~and~~]

6 (7) the date and place of his sex offense
7 conviction; and

8 (8) a sample of his DNA pursuant to the
9 provisions of the DNA Identification Act.

10 E. When a sex offender registers with a county
11 sheriff, the sheriff shall obtain:

12 (1) a photograph of the sex offender and a
13 complete set of the sex offender's fingerprints; and

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

17 F. When a sex offender who is registered changes
18 his residence within the same county, the sex offender shall
19 send written notice of his change of address to the county
20 sheriff no later than ten days after establishing his new
21 residence.

22 G. When a sex offender who is registered changes
23 his residence to a new county in New Mexico, the sex offender
24 shall register with the county sheriff of the new county no
25 later than ten days after establishing his new residence. The

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1 sex offender shall also send written notice of the change in
2 residence to the county sheriff with whom he last registered no
3 later than ten days after establishing his new residence.

4 H. When a sex offender who is registered or
5 required to register does not have an established residence,
6 but lives in a shelter, halfway house or transitional living
7 facility or stays in multiple locations in New Mexico, the sex
8 offender shall register with the county sheriff for each county
9 in which the sex offender is living or temporarily located.
10 The sex offender shall register no later than ten days after a
11 change in his living arrangements or temporary location.

12 I. When a sex offender who is registered or
13 required to register is employed, begins a vocation or is
14 enrolled as a student at an institution of higher education in
15 New Mexico, the sex offender shall disclose his status as a sex
16 offender in writing to the county sheriff for the county in
17 which the institution of higher education is located, the law
18 enforcement entity responsible for the institution of higher
19 education and the registrar for the institution of higher
20 education no later than ten days after beginning employment,
21 beginning a vocation or enrolling at the institution of higher
22 education. The sex offender shall also send written notice of
23 any change regarding his employment, vocation or enrollment
24 status at an institution of higher education to the county
25 sheriff, the law enforcement entity and the registrar no later

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1 than ten days after the change in his employment, vocation or
2 enrollment status.

3 J. When a sex offender who is registered or
4 required to register is employed or is enrolled as a student at
5 a public or private school in New Mexico, the sex offender
6 shall disclose his status as a sex offender in writing to the
7 county sheriff for the county in which the school is located
8 and to the principal of the school no later than ten days after
9 enrolling at the school. The sex offender shall also send
10 written notice of any change regarding his enrollment status at
11 a school to the county sheriff and the principal no later than
12 ten days after the change in his enrollment status.

13 K. When a sex offender who is registered or
14 required to register is employed, begins a vocation or
15 volunteers his services, regardless of whether the sex offender
16 receives payment or other compensation, the sex offender shall
17 disclose his status as a sex offender in writing to his
18 employer, supervisor or person similarly situated. The written
19 disclosure shall be made immediately upon beginning his
20 employment, vocation or volunteer service.

21 ~~[H.]~~ L. Following his initial registration pursuant
22 to the provisions of this section:

23 (1) a sex offender required to register
24 pursuant to the provisions of Subsection D of Section
25 29-11A-5 NMSA 1978 shall ~~[annually]~~ renew his registration with

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1 the county sheriff [~~prior to December 31 of each subsequent~~
2 ~~calendar year for a period of twenty years~~] not less than once
3 in each ninety-day period following the date of the sex
4 offender's initial registration for the entirety of his natural
5 life; and

6 (2) a sex offender required to register
7 pursuant to the provisions of Subsection E of Section
8 29-11A-5 NMSA 1978 shall annually renew his registration with
9 the county sheriff prior to December 31 of each subsequent
10 calendar year for a period of ten years.

11 M Notwithstanding the provisions of Paragraph (2)
12 of Subsection L of this section, if a sex offender is convicted
13 a second or subsequent time for a sex offense set forth in
14 Subsection E of Section 29-11A-5 NMSA 1978, he shall renew his
15 registration with the county sheriff not less than once in each
16 ninety-day period following the date of the sex offender's
17 initial registration for the entirety of his natural life.

18 [~~F.~~] N. A sex offender who willfully or
19 knowingly fails to comply with the registration requirements
20 set forth in this section is guilty of a fourth degree felony
21 and shall be sentenced pursuant to the provisions of Section
22 31-18-15 NMSA 1978. A sex offender who willfully or knowingly
23 fails to comply with the registration requirements set forth in
24 this section after a first or subsequent conviction for a
25 violation pursuant to this section is guilty of a third degree

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1 felony and shall be sentenced pursuant to the provisions of
2 Section 31-18-15 NMSA 1978. The willful failure to comply with
3 any registration requirement set forth in this section shall be
4 deemed part of a continuing transaction or occurrence. A
5 conviction pursuant to this subsection shall not be considered
6 a felony for purposes of the imposition of sentencing
7 enhancements pursuant to the provisions of Section 31-18-17
8 NMSA 1978.

9 ~~[J-]~~ 0. A sex offender who willfully or knowingly
10 provides false information when complying with the registration
11 requirements set forth in this section is guilty of a fourth
12 degree felony and shall be sentenced pursuant to the provisions
13 of Section 31-18-15 NMSA 1978. A sex offender who willfully or
14 knowingly provides false information when complying with the
15 registration requirements set forth in this section after a
16 first or subsequent conviction for a violation pursuant to this
17 section is guilty of a third degree felony and shall be
18 sentenced pursuant to the provisions of Section 31-18-15 NMSA
19 1978. The willful providing by a sex offender of false
20 information with respect to the registration requirements set
21 forth in this section shall be deemed part of a continuing
22 transaction or occurrence. A conviction pursuant to this
23 subsection shall not be considered a felony for purposes of the
24 imposition of sentencing enhancements pursuant to the
25 provisions of Section 31-18-17 NMSA 1978."

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1 Section 3. Section 29-11A-4.1 NMSA 1978 (being Laws 2000,
2 Chapter 8, Section 6) is amended to read:

3 "29-11A-4.1. PROCEDURES WHEN A SEX OFFENDER MOVES FROM
4 NEW MEXICO TO ANOTHER STATE. --

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

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

10 (2) provide the county sheriff with a written
11 notice that identifies the state to which the sex offender is
12 moving.

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

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1 which the sex offender is moving.

2 C. A sex offender who willfully fails to comply
3 with the requirements set forth in this section is guilty of a
4 [~~misdemeanor and shall be punished by imprisonment for a~~
5 ~~definite term less than one year or a fine of not more than one~~
6 ~~thousand dollars (\$1,000) or both]~~ fourth degree felony and
7 shall be sentenced pursuant to the provisions of Section
8 31-18-15 NMSA 1978. "

9 Section 4. 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 IN
13 THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

14 A. A county sheriff shall maintain a local registry
15 of sex offenders in his jurisdiction required to register
16 pursuant to the provisions of the Sex Offender Registration and
17 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 than
23 ten working days after the information is obtained from a sex
24 offender. If the department of public safety receives
25 information regarding a sex offender from a governmental entity

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1 other than a county sheriff, the department shall send that
2 information to the sheriff for the county in which the sex
3 offender resides.

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

14 D. The department of public safety shall retain
15 registration information regarding a sex [~~offenders~~] offender
16 convicted for any of the following sex offenses for [~~a period~~
17 ~~of twenty years following the sex offender's conviction,~~
18 ~~release from prison or release from probation or parole,~~
19 ~~whichever occurs later~~] the entirety of his natural life:

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

23 (2) criminal sexual contact of a minor in the
24 second, [~~or~~] third or fourth degree, as provided in Section
25 30-9-13 NMSA 1978;

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1 (3) sexual exploitation of children, as
2 provided in Section 30-6A-3 NMSA 1978;

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

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

8 ~~[(5)]~~ (6) attempt to commit any of the sex
9 offenses set forth in Paragraphs (1) through ~~[(4)]~~ (5) of this
10 subsection, as provided in Section 30-28-1 NMSA 1978.

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

16 (1) criminal sexual penetration in the ~~[third~~
17 ~~or]~~ fourth degree, as provided in Section 30-9-11 NMSA 1978;

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

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

22 ~~(4)]~~ (2) sexual exploitation of children by
23 prostitution, as provided in Section 30-6A-4 NMSA 1978;

24 ~~[(5)]~~ (3) false imprisonment, as provided in
25 Section 30-4-3 NMSA 1978, when the victim is less than eighteen

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1 years of age and the offender is not a parent of the victim;

2 (4) aggravated indecent exposure, as provided
3 in Section 30-9-14.3 NMSA 1978;

4 (5) enticement of child, as provided in
5 Section 30-9-1 NMSA 1978;

6 (6) incest, as provided in Section 30-10-3
7 NMSA 1978, when the victim is less than eighteen years of age;

8 ~~[(6)]~~ (7) solicitation to commit criminal
9 sexual contact of a minor in the second, third or fourth
10 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;
11 or

12 ~~[(7)]~~ (8) attempt to commit any of the sex
13 offenses set forth in Paragraphs (1) through ~~[(5)]~~ (6) of this
14 subsection, as provided in Section 30-28-1 NMSA 1978.

15 F. Notwithstanding the provisions of Subsection E
16 of this section, if a sex offender is convicted a second or
17 subsequent time for a sex offense set forth in that subsection,
18 the department of public safety shall retain information
19 regarding the sex offender for the entirety of the sex
20 offender's natural life.

21 ~~[F.]~~ G. The department of public safety shall adopt
22 rules necessary to carry out the provisions of the Sex Offender
23 Registration and Notification Act. "

24 Section 5. Section 29-11A-5.1 NMSA 1978 (being Laws 1999,
25 Chapter 19, Section 8, as amended) is amended to read:

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1 "29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING
2 CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY
3 NOTIFICATION--INTERNET WEB SITE.--

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

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

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

17 (3) sexual exploitation of children, as
18 provided in Section 30-6A-3 NMSA 1978;

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

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

24 B. A person who wants to obtain registration
25 information regarding sex offenders described in Subsection A

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1 of this section may request that information from the:

2 (1) sheriff for the county in which the sex
3 offenders reside;

4 (2) chief law enforcement officer for the
5 municipality in which the sex offenders reside;

6 (3) district attorney for the judicial
7 district in which the sex offenders reside; or

8 (4) secretary of public safety.

9 C. Upon receiving a request for registration
10 information regarding sex offenders described in Subsection A
11 of this section, the county sheriff, chief municipal law
12 enforcement officer, district attorney or secretary of public
13 safety shall provide that registration information, with the
14 exception of a sex offender's social security number and DNA
15 information, within a reasonable period of time, and no later
16 than seven days after receiving the request.

17 D. Within seven days of receiving registration
18 information from a sex offender described in Subsection A of
19 this section, the county sheriff shall contact every licensed
20 daycare center, elementary school, middle school and high
21 school within a one-mile radius of the sex offender's residence
22 and provide them with the sex offender's registration
23 information, with the exception of the sex offender's social
24 security number and DNA information.

25 E. The department of public safety [~~may~~] shall

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1 establish and manage an internet web site that provides the
2 public with registration information regarding sex offenders
3 described in Subsection A of this section, except that the
4 department of public safety shall not provide registration
5 information on the internet web site regarding a sex offender
6 who was less than eighteen years of age when he committed the
7 sex offense for which he was convicted as a youthful offender,
8 as provided in Section 32A-2-3 NMSA 1978, unless at the time of
9 sentencing, the court made a finding that the sex offender is
10 not amenable to treatment and is a danger to the community.

11 The registration information provided to the public pursuant to
12 this subsection shall not include a sex offender's social
13 security number or DNA information or a sex offender's place of
14 employment, unless the sex offender's employment requires him
15 to have direct contact with children. "

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

18 "29-11A-7. NOTICE TO SEX OFFENDERS OF DUTY TO
19 REGISTER. --

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

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1 required to:

2 (1) [~~to~~] register with the county sheriff for
3 the county in which the sex offender will reside or, if the sex
4 offender will not have an established residence, with the
5 county sheriff for each county in which the sex offender will
6 live or be temporarily located pursuant to the provisions of
7 the Sex Offender Registration and Notification Act;

8 (2) [~~to~~] report subsequent changes of address
9 pursuant to the provisions of the Sex Offender Registration and
10 Notification Act;

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

16 (4) disclose his status as a sex offender in
17 writing when he begins employment, begins a vocation or enrolls
18 as a student at an institution of higher education in New
19 Mexico to the county sheriff for the county in which the
20 institution of higher education is located and to the law
21 enforcement entity and registrar for the institution of higher
22 education pursuant to the provisions of the Sex Offender
23 Registration and Notification Act;

24 (5) provide written notice of any change
25 regarding his employment, vocation or enrollment status at an

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1 institution of higher education to the county sheriff, the law
2 enforcement entity and the registrar pursuant to the provisions
3 of the Sex Offender Registration and Notification Act;

4 (6) disclose his status as a sex offender in
5 writing when he enrolls as a student at a private or public
6 school in New Mexico, to the county sheriff for the county in
7 which the school is located and to the principal of the school
8 pursuant to the provisions of the Sex Offender Registration and
9 Notification Act;

10 (7) provide written notice of any change
11 regarding his enrollment status at a public or private school
12 in New Mexico to the county sheriff and the principal of the
13 school pursuant to the provisions of the Sex Offender
14 Registration and Notification Act;

15 (8) disclose his status as a sex offender in
16 writing to his employer, supervisor or other person similarly
17 situated, when he begins employment, begins a vocation or
18 volunteers his services, regardless of whether the sex offender
19 receives payment or other compensation, pursuant to the
20 provisions of the Sex Offender Registration and Notification
21 Act; and

22 ~~[(4) to]~~ (9) read and sign a form that
23 indicates that the sex offender has received the written notice
24 and that a responsible court official, designated by the chief
25 judge for that judicial district, has explained the written

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1 notice to the sex offender.

2 B. The corrections department, the children, youth
3 and families department, a municipal or county jail or a
4 detention center at the time of release of a sex offender in
5 [~~the department's~~] its custody, shall provide a written notice
6 to the sex offender of his duty to register, pursuant to the
7 provisions of the Sex Offender Registration and Notification
8 Act. The written notice shall inform the sex offender that he
9 is required to:

10 (1) [~~to~~] register with the county sheriff for
11 the county in which the sex offender will reside or, if the sex
12 offender will not have an established residence, with the
13 county sheriff for each county in which the sex offender will
14 live or be temporarily located pursuant to the provisions of
15 the Sex Offender Registration and Notification Act;

16 (2) [~~to~~] report subsequent changes of address
17 pursuant to the provisions of the Sex Offender Registration and
18 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 register
22 in the other state pursuant to the provisions of the Sex
23 Offender Registration and Notification Act; [~~and~~]

24 (4) disclose his status as a sex offender in
25 writing when he begins employment, begins a vocation or enrolls

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1 as a student at an institution of higher education in New
2 Mexico to the county sheriff for the county in which the
3 institution of higher education is located and to the law
4 enforcement entity and registrar for the institution of higher
5 education pursuant to the provisions of the Sex Offender
6 Registration and Notification Act;

7 (5) provide written notice of any change
8 regarding his employment, vocation or enrollment status at an
9 institution of higher education to the county sheriff, the law
10 enforcement entity and the registrar pursuant to the provisions
11 of the Sex Offender Registration and Notification Act;

12 (6) disclose his status as a sex offender in
13 writing when he enrolls as a student at a private or public
14 school in New Mexico, to the county sheriff for the county in
15 which the school is located and to the principal of the school
16 pursuant to the provisions of the Sex Offender Registration and
17 Notification Act;

18 (7) provide written notice of any change
19 regarding his enrollment status at a public or private school
20 in New Mexico to the county sheriff and the principal of the
21 school pursuant to the provisions of the Sex Offender
22 Registration and Notification Act;

23 (8) disclose his status as a sex offender in
24 writing to his employer, supervisor or other person similarly
25 situated, when he begins employment, begins a vocation or

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1 volunteers his services, regardless of whether the sex offender
2 receives payment or other compensation, pursuant to the
3 provisions of the Sex Offender Registration and Notification
4 Act; and

5 [(4) to] (9) read and sign a form that
6 indicates that the sex offender has received the written notice
7 and that a responsible corrections department official,
8 designated by the secretary of corrections, a responsible
9 department official designated by the secretary of children,
10 youth and families or a responsible municipal or county jail
11 official or detention center official has explained the written
12 notice to the sex offender.

13 C. A court, [or] the corrections department, the
14 children, youth and families department, a municipal or county
15 jail or a detention center shall also provide written
16 notification regarding a sex offender's release to the sheriff
17 of the county in which the sex offender is released and to the
18 department of public safety.

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

25 Section 7. A new section of the Sex Offender Registration

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1 and Notification Act is enacted to read:

2 "[NEW MATERIAL] STATE PREEMPTION. --The state preempts the
3 field of sex offender registration and notification. Cities,
4 counties, home rule municipalities and other political
5 subdivisions of the state are prohibited from adopting or
6 continuing in effect any ordinance, rule, regulation,
7 resolution or statute on sex offender registration and
8 notification. "

9 Section 8. A new section of the Sex Offender Registration
10 and Notification Act is enacted to read:

11 "[NEW MATERIAL] SEVERABILITY. --If any part or application
12 of the Sex Offender Registration and Notification Act is held
13 invalid, the remainder of that act and its application to other
14 situations or persons shall not be affected. "

15 Section 9. Section 29-16-2 NMSA 1978 (being Laws 1997,
16 Chapter 105, Section 2, as amended) is amended to read:

17 "29-16-2. PURPOSE OF ACT. --The purpose of the DNA
18 Identification Act is to:

19 A. establish a DNA identification system for
20 covered offenders;

21 B. facilitate the use of DNA records by local,
22 state and federal law enforcement agencies in the:

23 (1) identification, detection or exclusion of
24 persons in connection with criminal investigations; and

25 (2) registration of sex offenders required to

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1 register pursuant to the provisions of the Sex Offender
2 Registration and Notification Act;

3 C. establish a missing persons DNA identification
4 system consisting of the following DNA indexes:

- 5 (1) unidentified persons;
6 (2) unidentified human remains; and
7 (3) relatives of, or known reference samples
8 from, missing persons; and

9 D. facilitate the use of DNA records by local,
10 state and federal law enforcement agencies and the state
11 medical investigator in the:

12 (1) identification and location of missing and
13 unidentified persons or human remains; and

14 (2) registration of sex offenders required to
15 register pursuant to the provisions of the Sex Offender
16 Registration and Notification Act. "

17 Section 10. Section 29-16-3 NMSA 1978 (being Laws 1997,
18 Chapter 105, Section 3, as amended) is amended to read:

19 "29-16-3. DEFINITIONS. --As used in the DNA Identification
20 Act:

21 A. "administrative center" means the law
22 enforcement agency or unit that administers and operates the
23 DNA identification system;

24 B. "DNA oversight committee" means the DNA
25 identification system oversight committee;

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1 C. "CODIS" means the federal bureau of
2 investigation's national DNA index system for storage and
3 exchange of DNA records submitted by forensic DNA laboratories;

4 D. "covered offender" means any person convicted of
5 a felony offense as an adult under the Criminal Code, the Motor
6 Vehicle Code or the constitution of New Mexico or convicted as
7 an adult pursuant to youthful offender or serious youthful
8 offender proceedings under the Children's Code or a sex
9 offender required to register pursuant to the provisions of the
10 Sex Offender Registration and Notification Act;

11 E. "department" means the department of public
12 safety;

13 F. "DNA" means deoxyribonucleic acid as the basis
14 of human heredity;

15 G. "DNA identification system" means the DNA
16 identification system established pursuant to the DNA
17 Identification Act;

18 H. "DNA records" means the results of DNA testing
19 and related information;

20 I. "DNA testing" means a forensic DNA analysis that
21 includes restriction fragment length polymorphism, polymerase
22 chain reaction or other valid methods of DNA typing performed
23 to obtain identification characteristics of samples;

24 J. "fund" means the DNA identification system fund;

25 K. "missing persons DNA identification system"

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1 means the missing persons DNA identification system established
2 by the DNA Identification Act; [~~and~~]

3 L. "sample" means a sample of biological material
4 sufficient for DNA testing; and

5 M "sex offender DNA identification system" means
6 the sex offender DNA identification system established by the
7 DNA Identification Act. "

8 Section 11. Section 29-16-4 NMSA 1978 (being Laws 1997,
9 Chapter 105, Section 4, as amended) is amended to read:

10 "29-16-4. ADMINISTRATIVE CENTER-- POWERS AND DUTIES--
11 TRANSFER TO OTHER LAW ENFORCEMENT AGENCY.--

12 A. The administrative center shall be an
13 appropriate unit of the department or such other qualified New
14 Mexico law enforcement agency as the secretary of public safety
15 may designate in accordance with this section.

16 B. The administrative center shall:

17 (1) establish and administer the DNA
18 identification system. The DNA identification system shall
19 provide for collection, storage, DNA testing, maintenance and
20 comparison of samples and DNA records for forensic and
21 humanitarian purposes. Those purposes shall include generation
22 of investigative leads, statistical analysis of DNA profiles
23 and identification of missing persons and unidentified human
24 remains. Procedures used for DNA testing shall be compatible
25 with the procedures the federal bureau of investigation has

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1 specified, including comparable test procedures, laboratory
2 equipment, supplies and computer software. Procedures used
3 shall meet or exceed the provisions of the federal DNA
4 Identification Act of 1994 regarding minimum standards for
5 state participation in CODIS, including minimum standards for
6 the acceptance, security and dissemination of DNA records;
7 (2) coordinate sample collection activities;
8 (3) perform or contract for DNA testing;
9 (4) serve as a repository for samples and DNA
10 records;
11 (5) act as liaison with the federal bureau of
12 investigation for purposes of CODIS;
13 (6) adopt rules and procedures governing:
14 (a) sample collection;
15 (b) DNA testing;
16 (c) the DNA identification system and
17 DNA records; and
18 (d) the acceptance, security and
19 dissemination of DNA records;
20 (7) be reimbursed for, pursuant to the DNA
21 Identification Act, the costs of sample collection and DNA
22 testing of samples taken for the purposes of the identification
23 of missing persons and unidentified human remains; [and]
24 (8) establish and administer the missing
25 persons DNA identification system as a part of the DNA

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1 identification system; and
2 (9) establish and administer the sex offender
3 DNA identification system as part of the DNA identification
4 system.

5 C. The secretary of public safety may designate,
6 pursuant to a joint powers agreement, the crime laboratory of
7 the police department for the largest municipality in a class A
8 county having a population of more than two hundred fifty
9 thousand at the most recent federal decennial census to act as
10 the administrative center.

11 D. The secretary of public safety may designate,
12 pursuant to a joint powers agreement, any other law enforcement
13 agency to act as administrative center upon recommendation of
14 five voting members of the DNA advisory committee. "

15 Section 12. Section 29-16-5 NMSA 1978 (being Laws 1997,
16 Chapter 105, Section 5, as amended) is amended to read:

17 "29-16-5. DNA OVERSIGHT COMMITTEE--CREATED--POWERS AND
18 DUTIES.--

19 A. The "DNA identification system oversight
20 committee" is created. The DNA oversight committee shall be
21 composed of nine voting members as follows:

22 (1) a scientific representative from the
23 department crime laboratory appointed by the secretary of
24 public safety;

25 (2) a scientific representative from the crime

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1 laboratory of the police department for the largest
2 municipality in a class A county having a population of more
3 than two hundred fifty thousand at the most recent federal
4 decennial census;

5 (3) the secretary of corrections or ~~his~~ the
6 secretary's designated representative;

7 (4) the state medical investigator or ~~his~~
8 the investigator's designated representative;

9 (5) the attorney general or ~~his~~ the attorney
10 general's designated representative;

11 (6) the president of the district attorneys
12 association or ~~his~~ the president's designated representative;

13 (7) the chief public defender or ~~his~~ the
14 chief public defender's designated representative;

15 (8) the president of the New Mexico criminal
16 defense lawyers association or ~~his~~ the president's designated
17 representative; and

18 (9) the head of the administrative center or
19 ~~his~~ the head's designated representative.

20 B. The DNA oversight committee shall adopt rules
21 and procedures regarding the administration and operation of
22 the DNA identification system

23 C. The administrative center shall review and make
24 recommendations to the DNA oversight committee regarding rules
25 and procedures for the administration and operation of the DNA

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1 identification system.

2 D. The DNA oversight committee shall oversee the
3 establishment and administration of the missing persons DNA
4 identification system as part of the DNA identification system.

5 E. The DNA oversight committee shall adopt rules
6 and procedures regarding the administration and operation of
7 the missing persons DNA identification system as part of the
8 DNA identification system.

9 F. The DNA oversight committee shall oversee the
10 establishment and administration of the sex offender DNA
11 identification system as part of the DNA identification system.

12 G. The DNA oversight committee shall adopt rules
13 and procedures regarding the administration and operation of
14 the sex offender DNA identification system as part of the DNA
15 identification system."

16 Section 13. Section 29-16-6 NMSA 1978 (being Laws 1997,
17 Chapter 105, Section 6, as amended) is amended to read:

18 "29-16-6. COLLECTION OF SAMPLES. --

19 A. A covered offender shall provide one or more
20 samples to the administrative center, as follows:

21 (1) a covered offender convicted on or after
22 July 1, 1997 shall provide a sample immediately upon request of
23 the corrections department so long as the request is made
24 before release from any correctional facility or, if the
25 covered offender is not sentenced to incarceration, before the

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1 end of any period of probation or other supervised release;

2 (2) a covered offender incarcerated on or
3 after July 1, 1997 shall provide a sample immediately upon
4 request of the corrections department so long as the request is
5 made before release from any correctional facility; ~~and~~

6 (3) a covered offender on probation or other
7 supervised release on or after July 1, 1997 shall provide a
8 sample immediately upon request of the corrections department
9 so long as the request is made before the end of any period of
10 probation or other supervised release; and

11 (4) a covered offender required to register
12 pursuant to the provisions of the Sex Offender Registration and
13 Notification Act shall provide a sample immediately upon
14 request by the county sheriff located in any county in which
15 the sex offender is required to register, unless the sex
16 offender provided a sample while in the custody of the
17 corrections department or to the county sheriff of another
18 county in New Mexico in which the sex offender is registered.

19 B. Samples from unidentified persons or relatives
20 of a missing person shall be provided to the administrative
21 center, as follows:

22 (1) upon the completion of a permission to
23 search form authorizing the collection of a DNA sample;

24 (2) upon the receipt of a properly executed
25 search warrant; or

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(3) upon the issuance of a court order.

C. Samples from unidentified human remains shall be provided by the state medical investigator.

D. Samples of known reference materials from missing persons shall be provided by the investigating law enforcement agency. "

Section 14. APPLICABILITY. --The provisions of this act shall apply to any person convicted of a sex offense and required to register pursuant to the provisions of the Sex Offender Registration and Notification Act, except that the laws with respect to registration requirements for sex offenders in effect at the time the sex offense was committed shall apply to:

A. a person convicted as a youthful offender prior to July 1, 2005; and

B. a person convicted prior to July 1, 2005 of any of the following offenses or of attempt to commit any of the following offenses as provided in Section 30-28-1 NMSA 1978:

(1) aggravated indecent exposure, as provided in Section 30-9-14.3 NMSA 1978;

(2) enticement of child, as provided in Section 30-9-1 NMSA 1978; or

(3) incest, as provided in Section 30-10-3 NMSA 1978, when the victim is less than eighteen years of age.

Section 15. EFFECTIVE DATE. --The effective date of the

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1 provisions of this act is July 1, 2005.

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