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HOUSE BILL 283

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Hector H. Balderas

AN ACT

RELATING TO SEX OFFENDERS; CREATING A NEW CRIME OF AGGRAVATED
CRIMINAL SEXUAL PENETRATION; INCREASING PENALTIES FOR SEX
OFFENSES AGAINST MINORS; IMPOSING LIFETIME PAROLE SUPERVISION
FOR CERTAIN SEX OFFENDERS; CLARIFYING STANDARD OF PROOF;
CLARIFYING DEFINITIONS; INCREASING PERIOD OF PAROLE FOR
CRIMINAL SEXUAL CONTACT OF A MINOR IN THE FOURTH DEGREE.

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

Section 1. Section 30-9-11 NMSA 1978 (being Laws 1975,
Chapter 109, Section 2, as amended) is amended to read:

"30-9-11. CRIMINAL SEXUAL PENETRATION.--

A. Criminal sexual penetration is the unlawful and
intentional causing of a person to engage in sexual
intercourse, cunnilingus, fellatio or anal intercourse or the
causing of penetration, to any extent and with any object, of

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1 the genital or anal openings of another, whether or not there
2 is any emission.

3 B. Criminal sexual penetration does not include
4 medically indicated procedures.

5 C. Aggravated criminal sexual penetration consists
6 of all criminal sexual penetration perpetrated:

7 (1) on a child under nine years of age;

8 (2) with an intent to kill or with a depraved
9 mind regardless of human life; or

10 (3) by a perpetrator who commits criminal
11 sexual penetration in the first degree who is found, by the
12 finder of fact, to be a continuing threat to the community.

13 Whoever commits aggravated criminal sexual penetration is
14 guilty of a first degree felony for aggravated criminal sexual
15 penetration.

16 [~~G.~~] D. Criminal sexual penetration in the first
17 degree consists of all criminal sexual penetration perpetrated:

18 (1) on a child [~~under~~] nine to thirteen years
19 of age; or

20 (2) by the use of force or coercion that
21 results in great bodily harm or great mental anguish to the
22 victim.

23 Whoever commits criminal sexual penetration in the first
24 degree is guilty of a first degree felony.

25 [~~D.~~] E. Criminal sexual penetration in the second

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1 degree consists of all criminal sexual penetration perpetrated:

2 (1) by the use of force or coercion on a child
3 thirteen to eighteen years of age [~~when the perpetrator is in a~~
4 ~~position of authority over the child and uses this authority to~~
5 ~~coerce the child to submit~~];

6 (2) on an inmate confined in a correctional
7 facility or jail when the perpetrator is in a position of
8 authority over the inmate;

9 (3) by the use of force or coercion that
10 results in personal injury to the victim;

11 (4) by the use of force or coercion when the
12 perpetrator is aided or abetted by one or more persons;

13 (5) in the commission of any other felony; or

14 (6) when the perpetrator is armed with a
15 deadly weapon.

16 Whoever commits criminal sexual penetration in the second
17 degree is guilty of a second degree felony. Whoever commits
18 criminal sexual penetration in the second degree when the
19 victim is a child who is thirteen to eighteen years of age is
20 guilty of a second degree felony for a sexual offense against a
21 child and, notwithstanding the provisions of Section 31-18-15
22 NMSA 1978, shall be sentenced to a minimum term of imprisonment
23 of three years, which shall not be suspended or deferred. The
24 imposition of a minimum, mandatory term of imprisonment
25 pursuant to the provisions of this subsection shall not be

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1 interpreted to preclude the imposition of sentencing
2 enhancements pursuant to the provisions of Sections 31-18-17,
3 31-18-25 and 31-18-26 NMSA 1978.

4 ~~[E.]~~ F. Criminal sexual penetration in the third
5 degree consists of all criminal sexual penetration perpetrated
6 through the use of force or coercion not otherwise specified in
7 this section.

8 Whoever commits criminal sexual penetration in the third
9 degree is guilty of a third degree felony. ~~[Whoever commits~~
10 ~~criminal sexual penetration in the third degree when the victim~~
11 ~~is a child who is thirteen to eighteen years of age is guilty~~
12 ~~of a third degree felony for a sexual offense against a child.~~

13 ~~F.]~~ G. Criminal sexual penetration in the fourth
14 degree consists of all criminal sexual penetration:

15 (1) not defined in Subsections ~~[C through E]~~ D
16 through F of this section perpetrated on a child thirteen to
17 sixteen years of age when the perpetrator is at least eighteen
18 years of age and is at least four years older than the child
19 and not the spouse of that child; or

20 (2) perpetrated on a child thirteen to
21 eighteen years of age when the perpetrator, who is a licensed
22 school employee, an unlicensed school employee, a school
23 contract employee, a school health service provider or a school
24 volunteer, and who is at least eighteen years of age and is at
25 least four years older than the child and not the spouse of

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1 that child, learns while performing services in or for a school
2 that the child is a student in a school.

3 Whoever commits criminal sexual penetration in the fourth
4 degree is guilty of a fourth degree felony."

5 Section 2. Section 31-18-15 NMSA 1978 (being Laws 1977,
6 Chapter 216, Section 4, as amended) is amended to read:

7 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
8 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
9 DEDUCTIONS.--

10 A. If a person is convicted of a noncapital felony,
11 the basic sentence of imprisonment is as follows:

12 (1) for a first degree felony resulting in the
13 death of a child, life imprisonment;

14 (2) for a first degree felony for aggravated
15 criminal sexual penetration, life imprisonment;

16 [~~(2)~~] (3) for a first degree felony, eighteen
17 years imprisonment;

18 [~~(3)~~] (4) for a second degree felony resulting
19 in the death of a human being, fifteen years imprisonment;

20 [~~(4)~~] (5) for a second degree felony for a
21 sexual offense against a child, fifteen years imprisonment;

22 [~~(5)~~] (6) for a second degree felony, nine
23 years imprisonment;

24 [~~(6)~~] (7) for a third degree felony resulting
25 in the death of a human being, six years imprisonment;

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1 [~~(7)~~] (8) for a third degree felony for a
2 sexual offense against a child, six years imprisonment;

3 [~~(8)~~] (9) for a third degree felony, three
4 years imprisonment; or

5 [~~(9)~~] (10) for a fourth degree felony,
6 eighteen months imprisonment.

7 B. The appropriate basic sentence of imprisonment
8 shall be imposed upon a person convicted and sentenced pursuant
9 to Subsection A of this section, unless the court alters the
10 sentence pursuant to the provisions of Section 31-18-15.1,
11 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

12 C. The court shall include in the judgment and
13 sentence of each person convicted and sentenced to imprisonment
14 in a corrections facility designated by the corrections
15 department authority for a period of parole to be served in
16 accordance with the provisions of Section 31-21-10 NMSA 1978
17 after the completion of any actual time of imprisonment and
18 authority to require, as a condition of parole, the payment of
19 the costs of parole services and reimbursement to a law
20 enforcement agency or local crime stopper program in accordance
21 with the provisions of that section. The period of parole
22 shall be deemed to be part of the sentence of the convicted
23 person in addition to the basic sentence imposed pursuant to
24 Subsection A of this section together with alterations, if any,
25 pursuant to the provisions of Section 31-18-15.1, 31-18-16,

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1 31-18-16.1 or 31-18-17 NMSA 1978.

2 D. When a court imposes a sentence of imprisonment
3 pursuant to the provisions of Section 31-18-15.1, 31-18-16,
4 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the
5 basic sentence of imprisonment provided pursuant to the
6 provisions of Subsection A of this section, the period of
7 parole shall be served in accordance with the provisions of
8 Section 31-21-10 NMSA 1978 for the degree of felony for the
9 basic sentence for which the inmate was convicted. For the
10 purpose of designating a period of parole, a court shall not
11 consider that the basic sentence of imprisonment was suspended
12 or deferred and that the inmate served a period of imprisonment
13 pursuant to the provisions of Section 31-18-15.1, 31-18-16,
14 31-18-16.1 or 31-18-17 NMSA 1978.

15 E. The court may, in addition to the imposition of
16 a basic sentence of imprisonment, impose a fine not to exceed:

17 (1) for a first degree felony resulting in the
18 death of a child, seventeen thousand five hundred dollars
19 (\$17,500);

20 (2) for a first degree felony for aggravated
21 criminal sexual penetration, seventeen thousand five hundred
22 dollars (\$17,500);

23 [+2] (3) for a first degree felony, fifteen
24 thousand dollars (\$15,000);

25 [+3] (4) for a second degree felony resulting

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1 in the death of a human being, twelve thousand five hundred
2 dollars (\$12,500);

3 [~~(4)~~] (5) for a second degree felony for a
4 sexual offense against a child, twelve thousand five hundred
5 dollars (\$12,500);

6 [~~(5)~~] (6) for a second degree felony, ten
7 thousand dollars (\$10,000);

8 [~~(6)~~] (7) for a third degree felony resulting
9 in the death of a human being, five thousand dollars (\$5,000);

10 [~~(7)~~] (8) for a third degree felony for a
11 sexual offense against a child, five thousand dollars (\$5,000);
12 or

13 [~~(8)~~] (9) for a third or fourth degree felony,
14 five thousand dollars (\$5,000).

15 F. When the court imposes a sentence of
16 imprisonment for a felony offense, the court shall indicate
17 whether or not the offense is a serious violent offense, as
18 defined in Section 33-2-34 NMSA 1978. The court shall inform
19 an offender that the offender's sentence of imprisonment is
20 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37
21 and 33-2-38 NMSA 1978. If the court fails to inform an
22 offender that the offender's sentence is subject to those
23 provisions or if the court provides the offender with erroneous
24 information regarding those provisions, the failure to inform
25 or the error shall not provide a basis for a writ of habeas

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1 corpus.

2 G. No later than October 31 of each year, the New
3 Mexico sentencing commission shall provide a written report to
4 the secretary of corrections, all New Mexico criminal court
5 judges, the administrative office of the district attorneys and
6 the chief public defender. The report shall specify the
7 average reduction in the sentence of imprisonment for serious
8 violent offenses and nonviolent offenses, as defined in Section
9 33-2-34 NMSA 1978, due to meritorious deductions earned by
10 prisoners during the previous fiscal year pursuant to the
11 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
12 NMSA 1978. The corrections department shall allow the
13 commission access to documents used by the department to
14 determine earned meritorious deductions for prisoners."

15 Section 3. Section 31-21-10 NMSA 1978 (being Laws 1980,
16 Chapter 28, Section 1, as amended) is amended to read:

17 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

18 A. An inmate of an institution who was sentenced to
19 life imprisonment [~~as the result of the commission of a capital~~
20 ~~felony, who was sentenced to life imprisonment as the result of~~
21 ~~a conviction for a first degree felony resulting in the death~~
22 ~~of a child, who was convicted of three violent felonies and~~
23 ~~sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978~~
24 ~~or who was convicted of two violent sexual offenses and~~
25 ~~sentenced pursuant to Subsection A of Section 31-18-25 NMSA~~

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1 ~~1978 and Section 31-18-26 NMSA 1978~~] becomes eligible for a
2 parole hearing after [~~he~~] the inmate has served thirty years of
3 [~~his~~] the sentence. Before ordering the parole of an inmate
4 sentenced to life imprisonment, the board shall:

5 (1) interview the inmate at the institution
6 where [~~he~~] the inmate is committed;

7 (2) consider all pertinent information
8 concerning the inmate, including:

9 (a) the circumstances of the offense;

10 (b) mitigating and aggravating
11 circumstances;

12 (c) whether a deadly weapon was used in
13 the commission of the offense;

14 (d) whether the inmate is a habitual
15 offender;

16 (e) the reports filed under Section
17 31-21-9 NMSA 1978; and

18 (f) the reports of such physical and
19 mental examinations as have been made while in an institution;

20 (3) make a finding that a parole is in the
21 best interest of society and the inmate; and

22 (4) make a finding that the inmate is able and
23 willing to fulfill the obligations of a law-abiding citizen.

24 If parole is denied, the inmate sentenced to life
25 imprisonment shall again become entitled to a parole hearing at

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1 two-year intervals. The board may, on its own motion, reopen
2 any case in which a hearing has already been granted and parole
3 denied.

4 B. Unless the board finds that it is in the best
5 interest of society and the parolee to reduce the period of
6 parole, a person who was convicted of a capital felony shall be
7 required to undergo a minimum period of parole of five years.
8 During the period of parole, the person shall be under the
9 guidance and supervision of the board.

10 C. Except for certain sex offenders as provided in
11 Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a
12 first, second or third degree felony and who has served the
13 sentence of imprisonment imposed by the court in an institution
14 designated by the corrections department shall be required to
15 undergo a two-year period of parole. An inmate who was
16 convicted of a fourth degree felony and who has served the
17 sentence of imprisonment imposed by the court in an institution
18 designated by the corrections department shall be required to
19 undergo a one-year period of parole. During the period of
20 parole, the person shall be under the guidance and supervision
21 of the board.

22 D. Every person while on parole shall remain in the
23 legal custody of the institution from which ~~[he]~~ the person was
24 released, but shall be subject to the orders of the board. The
25 board shall furnish to each inmate as a prerequisite to ~~[his]~~

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1 release under its supervision a written statement of the
2 conditions of parole that shall be accepted and agreed to by
3 the inmate as evidenced by [~~his~~] the inmate's signature affixed
4 to a duplicate copy to be retained in the files of the board.
5 The board shall also require as a prerequisite to release the
6 submission and approval of a parole plan. If an inmate refuses
7 to affix [~~his~~] the inmate's signature to the written statement
8 of the conditions of [~~his~~] parole or does not have an approved
9 parole plan, [~~he~~] the inmate shall not be released and shall
10 remain in the custody of the institution in which [~~he~~] the
11 inmate has served his sentence, excepting parole, until such
12 time as the period of parole [~~he~~] the inmate was required to
13 serve, less meritorious deductions, if any, expires, at which
14 time [~~he~~] the inmate shall be released from that institution
15 without parole, or until such time that [~~he~~] the inmate
16 evidences [~~his~~] acceptance and agreement to the conditions of
17 parole as required or receives approval for [~~his~~] the inmate's
18 parole plan or both. Time served from the date that an inmate
19 refuses to accept and agree to the conditions of parole or
20 fails to receive approval for [~~his~~] the inmate's parole plan
21 shall reduce the period, if any, to be served under parole at a
22 later date. If the district court has ordered that the inmate
23 make restitution to a victim as provided in Section 31-17-1
24 NMSA 1978, the board shall include restitution as a condition
25 of parole. The board shall also personally apprise the inmate

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1 of the conditions of parole and [~~his~~] the inmate's duties
2 relating thereto.

3 E. When a person on parole has performed the
4 obligations of [~~his~~] the person's release for the period of
5 parole provided in this section, the board shall make a final
6 order of discharge and issue [~~him~~] the person a certificate of
7 discharge.

8 F. Pursuant to the provisions of Section 31-18-15
9 NMSA 1978, the board shall require the inmate as a condition of
10 parole:

11 (1) to pay the actual costs of [~~his~~] parole
12 services to the adult probation and parole division of the
13 corrections department for deposit to the corrections
14 department intensive supervision fund not exceeding one
15 thousand eight hundred dollars (\$1,800) annually to be paid in
16 monthly installments of not less than twenty-five dollars
17 (\$25.00) and not more than one hundred fifty dollars (\$150), as
18 set by the appropriate district supervisor of the adult
19 probation and parole division, based upon the financial
20 circumstances of the defendant. The defendant's payment of the
21 supervised parole costs shall not be waived unless the board
22 holds an evidentiary hearing and finds that the defendant is
23 unable to pay the costs. If the board waives the defendant's
24 payment of the supervised parole costs and the defendant's
25 financial circumstances subsequently change so that the

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1 defendant is able to pay the costs, the appropriate district
2 supervisor of the adult probation and parole division shall
3 advise the board and the board shall hold an evidentiary
4 hearing to determine whether the waiver should be rescinded;
5 and

6 (2) to reimburse a law enforcement agency or
7 local crime stopper program for the amount of any reward paid
8 by the agency or program for information leading to ~~[his]~~ the
9 inmate's arrest, prosecution or conviction.

10 G. The provisions of this section shall apply to
11 all inmates except geriatric, permanently incapacitated and
12 terminally ill inmates eligible for the medical and geriatric
13 parole program as provided by the Parole Board Act."

14 Section 4. Section 31-21-10.1 NMSA 1978 (being Laws
15 2003 (1st S.S.), Chapter 1, Section 9) is amended to read:

16 "31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS AND
17 CONDITIONS OF PAROLE.--

18 A. If the district court sentences a sex offender
19 to a term of incarceration in a facility designated by the
20 corrections department, the district court shall include a
21 provision in the judgment and sentence that specifically
22 requires the sex offender to serve an indeterminate period of
23 supervised parole for a period of:

24 (1) not less than five years and not in
25 excess of twenty years for the offense of kidnapping when

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1 committed with intent to inflict a sexual offense upon the
2 victim, criminal sexual penetration in the third degree,
3 criminal sexual contact of a minor in the fourth degree or
4 sexual exploitation of children in the second degree; or

5 (2) not less than five years and up to the
6 natural life of the sex offender for the offense of
7 aggravated criminal sexual penetration, criminal sexual
8 penetration in the first or second degree, criminal sexual
9 contact of a minor in the second or third degree or sexual
10 exploitation of children by prostitution in the first or
11 second degree.

12 A sex offender's period of supervised parole may be for
13 a period of less than [~~twenty years~~] the maximum if, at a
14 review hearing provided for in Subsection [B] C of this
15 section, the state is unable to prove that the sex offender
16 should remain on parole.

17 B. Prior to placing a sex offender on parole, the
18 board shall conduct a hearing to determine the terms and
19 conditions of supervised parole for the sex offender. The
20 board may consider any relevant factors, including:

21 (1) the nature and circumstances of the
22 offense for which the sex offender was incarcerated;

23 (2) the nature and circumstances of a prior
24 sex offense committed by the sex offender;

25 (3) rehabilitation efforts engaged in by the

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1 sex offender, including participation in treatment programs
2 while incarcerated or elsewhere;

3 (4) the danger to the community posed by the
4 sex offender; and

5 (5) a risk and needs assessment regarding
6 the sex offender, developed by the sex offender management
7 board of the New Mexico sentencing commission or another
8 appropriate entity, to be used by appropriate parole board
9 personnel.

10 ~~[B.]~~ C. The board shall review the terms and
11 conditions of a sex offender's supervised parole at two and
12 one-half year intervals. When a sex offender has served the
13 initial five years of supervised parole, the board shall also
14 review the duration of the sex offender's supervised parole
15 at two and one-half year intervals. When a sex offender has
16 served the initial five years of supervised parole, at each
17 review hearing the state shall bear the burden of proving ~~[to~~
18 ~~a reasonable certainty]~~ by clear and convincing evidence that
19 the sex offender should remain on parole.

20 ~~[C.]~~ D. The board may order a sex offender
21 released on parole to abide by reasonable terms and
22 conditions of parole, including:

23 (1) being subject to intensive supervision
24 by a parole officer of the corrections department;

25 (2) participating in an outpatient or

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1 inpatient sex offender treatment program;

2 (3) a parole agreement by the sex offender
3 not to use alcohol or drugs;

4 (4) a parole agreement by the sex offender
5 not to have contact with certain persons or classes of
6 persons; and

7 (5) being subject to alcohol testing, drug
8 testing or polygraph examinations used to determine if the
9 sex offender is in compliance with the terms and conditions
10 of his parole.

11 [~~D.~~] E. The board shall notify the chief public
12 defender of an upcoming parole hearing for a sex offender,
13 and the chief public defender shall make representation
14 available to the sex offender at the parole hearing.

15 [~~E.~~] F. If the board finds that a sex offender
16 has violated the terms and conditions of [~~his~~] parole, the
17 board may revoke [~~his~~] parole or may order additional terms
18 and conditions of parole.

19 [~~F.~~] G. The provisions of this section shall
20 apply to all sex offenders, except geriatric, permanently
21 incapacitated and terminally ill inmates eligible for the
22 medical and geriatric parole program as provided by the
23 Parole Board Act.

24 [~~G.~~] H. As used in this section, "sex offender"
25 means a person who is convicted of, pleads guilty to or

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1 pleads nolo contendere to any one of the following offenses:

2 (1) kidnapping, as provided in
3 Section 30-4-1 NMSA 1978, when committed with intent to
4 inflict a sexual offense upon the victim;

5 (2) aggravated criminal sexual penetration
6 or criminal sexual penetration in the first, second or third
7 degree, as provided in Section 30-9-11 NMSA 1978;

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

11 (4) sexual exploitation of children in the
12 second degree, as provided in Section 30-6A-3 NMSA 1978; or

13 (5) sexual exploitation of children by
14 prostitution in the first or second degree, as provided in
15 Section 30-6A-4 NMSA 1978."

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

18 "29-11A-3. DEFINITIONS.--As used in the Sex Offender
19 Registration and Notification Act:

20 A. "conviction" means a conviction in any court
21 of competent jurisdiction and includes a deferred sentence,
22 but does not include a conditional discharge;

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

24 (1) private or public post-secondary
25 educational institution;

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1 (2) trade school; or

2 (3) professional school;

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

9 D. "sex offender" means a person who:

10 (1) is a resident of New Mexico who is
11 convicted of a sex offense [~~in New Mexico~~] pursuant to state,
12 federal, tribal or military law;

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

16 [~~(3) is a resident of New Mexico who is~~
17 ~~convicted of a sex offense pursuant to federal, tribal or~~
18 ~~military law;~~

19 ~~(4)] (3) does not have an established~~

20 residence in New Mexico, but lives in a shelter, halfway house
21 or transitional living facility or stays in multiple locations
22 in New Mexico and who has been convicted of a sex offense [~~in~~
23 ~~New Mexico or any other state~~] pursuant to state, federal,
24 tribal or military law; or

25 ~~(5)] (4) is a resident of another state and~~

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1 who has been convicted of a sex offense pursuant to state,
2 federal, tribal or military law, but who is:

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

9 (b) enrolled on a full-time or part-time
10 basis in a private or public school or an institution of higher
11 education in New Mexico; and

12 E. "sex offense" means:

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

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

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

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

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

25 (6) kidnapping, as provided in Section

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1 30-4-1 NMSA 1978, when the victim is less than eighteen years
2 of age and the offender is not a parent of the victim;

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

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

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

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

12 (11) solicitation to commit criminal sexual
13 contact of a minor in the second, third or fourth degree, as
14 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

15 (12) attempt to commit any of the sex offenses
16 set forth in Paragraphs (1) through (10) of this subsection, as
17 provided in Section 30-28-1 NMSA 1978."

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

20 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
21 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN
22 THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

23 A. A county sheriff shall maintain a local registry
24 of sex offenders in [his] the sheriff's jurisdiction required
25 to register pursuant to the provisions of the Sex Offender

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1 Registration and Notification Act.

2 B. The county sheriff shall forward:

3 (1) registration information obtained from sex
4 offenders to the department of public safety. The initial
5 registration information and any new registration information
6 subsequently obtained from a sex offender shall be forwarded by
7 the county sheriff no later than ten working days after the
8 information is obtained from a sex offender. If the department
9 of public safety receives information regarding a sex offender
10 from a governmental entity other than a county sheriff, the
11 department shall send that information to the sheriff for the
12 county in which the sex offender resides; and

13 (2) samples of DNA obtained from sex offenders
14 to the administrative center for the sex offender DNA
15 identification system pursuant to the provisions of the DNA
16 Identification Act.

17 C. The department of public safety shall maintain a
18 central registry of sex offenders required to register pursuant
19 to the provisions of the Sex Offender Registration and
20 Notification Act. The department shall participate in the
21 national sex offender registry administered by the United
22 States department of justice. The department shall send
23 conviction information and fingerprints for all sex offenders
24 registered in New Mexico to the national sex offender registry
25 administered by the United States department of justice and to

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1 the federal bureau of investigation.

2 D. The department of public safety shall retain
3 registration information regarding a sex offender convicted for
4 any of the following sex offenses for the entirety of his
5 natural life:

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

9 (2) criminal sexual contact of a minor in the
10 second, third or fourth degree, as provided in Section
11 30-9-13 NMSA 1978;

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

14 (4) kidnapping, as provided in Section
15 30-4-1 NMSA 1978, when the victim is less than eighteen years
16 of age and the offender is not a parent of the victim;

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

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

22 E. The department of public safety shall retain
23 registration information regarding a sex offender convicted for
24 the following offenses for a period of ten years following the
25 sex offender's conviction, release from prison or release from

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1 probation or parole, whichever occurs later:

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

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

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

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

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

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

15 (7) solicitation to commit criminal sexual
16 contact of a minor in the second, third or fourth degree, as
17 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

18 (8) attempt to commit any of the sex offenses
19 set forth in Paragraphs (1) through (6) of this subsection, as
20 provided in Section 30-28-1 NMSA 1978.

21 F. Notwithstanding the provisions of Subsection E
22 of this section, if a sex offender is convicted a second or
23 subsequent time for a sex offense set forth in that subsection,
24 the department of public safety shall retain information
25 regarding the sex offender for the entirety of the sex

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1 offender's natural life.

2 G. The department of public safety shall adopt
3 rules necessary to carry out the provisions of the Sex Offender
4 Registration and Notification Act. Rules necessary for the
5 collection of DNA samples and the administration and operation
6 of the sex offender DNA identification system shall be adopted
7 by the DNA identification system oversight committee pursuant
8 to the provisions of the DNA Identification Act."

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

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

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

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

24 (2) 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 (3) sexual exploitation of children, as
3 provided in Section 30-6A-3 NMSA 1978;

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

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

9 B. A person who wants to obtain registration
10 information regarding sex offenders described in Subsection A
11 of this section may request that information from the:

12 (1) sheriff for the county in which the sex
13 offenders reside;

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

16 (3) district attorney for the judicial
17 district in which the sex offenders reside; or

18 (4) secretary of public safety.

19 C. Upon receiving a request for registration
20 information regarding sex offenders described in Subsection A
21 of this section, the county sheriff, chief municipal law
22 enforcement officer, district attorney or secretary of public
23 safety shall provide that registration information, with the
24 exception of a sex offender's social security number and DNA
25 information, within a reasonable period of time, and no later

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1 than seven days after receiving the request.

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

10 E. The department of public safety shall establish
11 and manage an internet web site that provides the public with
12 registration information regarding sex offenders described in
13 Subsection A of this section, except that the department of
14 public safety shall not provide registration information on the
15 internet web site regarding a sex offender who was less than
16 eighteen years of age when he committed the sex offense for
17 which he was convicted as a youthful offender, as provided in
18 Section 32A-2-3 NMSA 1978, unless at the time of sentencing,
19 the court made a finding that the sex offender is not amenable
20 to treatment and is a danger to the community. The
21 registration information provided to the public pursuant to
22 this subsection shall not include a sex offender's social
23 security number or DNA information or a sex offender's place of
24 employment, unless the sex offender's employment requires him
25 to have direct contact with children."

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Section 8. APPLICABILITY.--The provisions of Section 5 of this act are applicable to:

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

B. a person convicted of a sex offense prior to July 1, 1995 and who, on July 1, 1995, was still incarcerated, on probation or on parole for commission of that sex offense.

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2006.