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HOUSE BILL 918

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Rhonda S. King

AN ACT

RELATING TO SEX OFFENDERS; CREATING A NEW CRIMINAL OFFENSE
KNOWN AS CHILD SOLICITATION BY ELECTRONIC COMMUNICATION DEVICE;
ADDING THE OFFENSE OF CHILD SOLICITATION BY ELECTRONIC
COMMUNICATION DEVICE TO SEX OFFENDER REGISTRATION REQUIREMENTS;
PROVIDING AN EXTENDED PERIOD OF PAROLE FOR THE OFFENSE OF CHILD
SOLICITATION BY ELECTRONIC COMMUNICATION DEVICE.

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
does not include a conditional discharge;

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

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

4 (2) trade school; or

5 (3) professional school;

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

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

13 (1) is a resident of New Mexico who is
14 convicted of a sex offense in New Mexico;

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

18 (3) is a resident of New Mexico who is
19 convicted of a sex offense pursuant to federal, tribal or
20 military law;

21 (4) does not have an established residence in
22 New Mexico, but lives in a shelter, halfway house or
23 transitional living facility or stays in multiple locations in
24 New Mexico and who has been convicted of a sex offense in New
25 Mexico or any other state pursuant to state, federal, tribal or

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1 military law; or

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

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

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

14 E. "sex offense" means:

15 (1) criminal sexual penetration in the first,
16 second, third or fourth degree, as provided in Section 30-9-11
17 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 second, third or fourth degree, as provided in Section
22 30-9-13 NMSA 1978;

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

25 (5) sexual exploitation of children by

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1 prostitution, as provided in Section 30-6A-4 NMSA 1978;

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

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

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

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

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

14 (11) child solicitation by electronic
15 communication device, as provided in Section 30-37-3.2 NMSA
16 1978;

17 [~~(11)~~] (12) solicitation to commit criminal
18 sexual contact of a minor in the second, third or fourth
19 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;
20 or

21 [~~(12)~~] (13) attempt to commit any of the sex
22 offenses set forth in Paragraphs (1) through [~~(10)~~] (11) of
23 this subsection, as provided in Section 30-28-1 NMSA 1978."

24 Section 2. Section 30-37-3.2 NMSA 1978 (being Laws 1998,
25 Chapter 64, Section 1, as amended) is amended to read:

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1 "30-37-3.2. CHILD SOLICITATION BY [~~COMPUTER~~] ELECTRONIC
2 COMMUNICATION DEVICE.--

3 A. Child solicitation by [~~computer~~] electronic
4 communication device consists of a person knowingly and
5 intentionally soliciting a child under sixteen years of age, by
6 means of [~~computer~~] an electronic communication device, to
7 engage in sexual intercourse, sexual contact or in a sexual or
8 obscene performance, or to engage in any other sexual conduct
9 when the perpetrator is at least three years older than the
10 child.

11 B. Whoever commits child solicitation by [~~computer~~]
12 electronic communication device is guilty of a [~~fourth~~] third
13 degree felony, except the person is guilty of a second degree
14 felony if the person also attends or is present at a meeting
15 that the person arranged pursuant to the solicitation.

16 [~~B.~~] C. In a prosecution for child solicitation by
17 [~~computer~~] electronic communication device, it is not a defense
18 that the intended victim of the defendant was a peace officer
19 posing as a child under sixteen years of age.

20 [~~C.~~] D. For purposes of determining jurisdiction,
21 child solicitation by [~~computer~~] electronic communication
22 device is committed in this state if [~~a computer~~] an electronic
23 communication device transmission either originates or is
24 received in this state.

25 E. As used in this section, "electronic

1 communication device" means a computer, video recorder, digital
2 camera, fax machine, telephone, pager, audio equipment or any
3 other device that can produce an electronically generated
4 image, message or signal."

5 Section 3. Section 31-21-10.1 NMSA 1978 (being Laws 2003
6 (1st S.S.), Chapter 1, Section 9) is amended to read:

7 "31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS AND
8 CONDITIONS OF PAROLE.--

9 A. If the district court sentences a sex offender
10 to a term of incarceration in a facility designated by the
11 corrections department, the district court shall include a
12 provision in the judgment and sentence that specifically
13 requires the sex offender to serve an indeterminate period of
14 supervised parole for a period of not less than five years and
15 not in excess of twenty years. A sex offender's period of
16 supervised parole may be for a period of less than twenty years
17 if, at a review hearing provided for in Subsection B of this
18 section, the state is unable to prove that the sex offender
19 should remain on parole. Prior to placing a sex offender on
20 parole, the board shall conduct a hearing to determine the
21 terms and conditions of supervised parole for the sex offender.
22 The board may consider any relevant factors, including:

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

25 (2) the nature and circumstances of a prior

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1 sex offense committed by the sex offender;

2 (3) rehabilitation efforts engaged in by the
3 sex offender, including participation in treatment programs
4 while incarcerated or elsewhere;

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

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

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

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

23 (1) being subject to intensive supervision by
24 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 not
3 to use alcohol or drugs;

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

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

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

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

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

22 G. As used in this section, "sex offender" means a
23 person who is convicted of, pleads guilty to or pleads nolo
24 contendere to any one of the following offenses:

25 (1) kidnapping, as provided in Section 30-4-1

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1 NMSA 1978, when committed with intent to inflict a sexual
2 offense upon the victim;

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

6 (3) criminal sexual contact of a minor in the
7 second or third degree, as provided in Section 30-9-13 NMSA
8 1978;

9 (4) sexual exploitation of children in the
10 second degree, as provided in Section 30-6A-3 NMSA 1978; ~~[or]~~

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

14 (6) child solicitation by electronic
15 communication device, as provided in Section 30-37-3.2 NMSA
16 1978."

17 Section 4. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2007.