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SENATE BILL 439

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

INTRODUCED BY

John T. L. Grubescic

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; or

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

10 Whoever commits aggravated criminal sexual penetration is  
11 guilty of a first degree felony for aggravated criminal sexual  
12 penetration.

13 [~~E.~~] D. Criminal sexual penetration in the first  
14 degree consists of all criminal sexual penetration perpetrated:

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

17 (2) by the use of force or coercion that  
18 results in great bodily harm or great mental anguish to the  
19 victim.

20 Whoever commits criminal sexual penetration in the first  
21 degree is guilty of a first degree felony.

22 [~~D.~~] E. Criminal sexual penetration in the second  
23 degree consists of all criminal sexual penetration perpetrated:

24 (1) by the use of force or coercion on a child  
25 thirteen to eighteen years of age [~~when the perpetrator is in a~~

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1 ~~position of authority over the child and uses this authority to~~  
2 ~~coerce the child to submit];~~

3 (2) on an inmate confined in a correctional  
4 facility or jail when the perpetrator is in a position of  
5 authority over the inmate;

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

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

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

11 (6) when the perpetrator is armed with a  
12 deadly weapon.

13 Whoever commits criminal sexual penetration in the second  
14 degree is guilty of a second degree felony. Whoever commits  
15 criminal sexual penetration in the second degree when the  
16 victim is a child who is thirteen to eighteen years of age is  
17 guilty of a second degree felony for a sexual offense against a  
18 child and, notwithstanding the provisions of Section 31-18-15  
19 NMSA 1978, shall be sentenced to a minimum term of imprisonment  
20 of three years, which shall not be suspended or deferred. The  
21 imposition of a minimum, mandatory term of imprisonment  
22 pursuant to the provisions of this subsection shall not be  
23 interpreted to preclude the imposition of sentencing  
24 enhancements pursuant to the provisions of [~~Sections 31-18-17,~~  
25 ~~31-18-25 and 31-18-26 NMSA 1978~~] the Criminal Sentencing Act.

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

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

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

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

17                   (2) perpetrated on a child thirteen to  
18 eighteen years of age when the perpetrator, who is a licensed  
19 school employee, an unlicensed school employee, a school  
20 contract employee, a school health service provider or a school  
21 volunteer, and who is at least eighteen years of age and is at  
22 least four years older than the child and not the spouse of  
23 that child, learns while performing services in or for a school  
24 that the child is a student in a school.

25           Whoever commits criminal sexual penetration in the fourth

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1 degree is guilty of a fourth degree felony."

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

4 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--  
5 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS  
6 DEDUCTIONS.--

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

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

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

13 [~~(2)~~] (3) for a first degree felony, eighteen  
14 years imprisonment;

15 [~~(3)~~] (4) for a second degree felony resulting  
16 in the death of a human being, fifteen years imprisonment;

17 [~~(4)~~] (5) for a second degree felony for a  
18 sexual offense against a child, fifteen years imprisonment;

19 [~~(5)~~] (6) for a second degree felony, nine  
20 years imprisonment;

21 [~~(6)~~] (7) for a third degree felony resulting  
22 in the death of a human being, six years imprisonment;

23 [~~(7)~~] (8) for a third degree felony for a  
24 sexual offense against a child, six years imprisonment;

25 [~~(8)~~] (9) for a third degree felony, three

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1 years imprisonment; or

2 [~~(9)~~] (10) for a fourth degree felony,  
3 eighteen months imprisonment.

4 B. The appropriate basic sentence of imprisonment  
5 shall be imposed upon a person convicted and sentenced pursuant  
6 to Subsection A of this section, unless the court alters the  
7 sentence pursuant to the provisions of [~~Section 31-18-15.1,~~  
8 ~~31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978~~] the Criminal  
9 Sentencing Act.

10 C. The court shall include in the judgment and  
11 sentence of each person convicted and sentenced to imprisonment  
12 in a corrections facility designated by the corrections  
13 department authority for a period of parole to be served in  
14 accordance with the provisions of Section 31-21-10 NMSA 1978  
15 after the completion of any actual time of imprisonment and  
16 authority to require, as a condition of parole, the payment of  
17 the costs of parole services and reimbursement to a law  
18 enforcement agency or local crime stopper program in accordance  
19 with the provisions of that section. The period of parole  
20 shall be deemed to be part of the sentence of the convicted  
21 person in addition to the basic sentence imposed pursuant to  
22 Subsection A of this section together with alterations, if any,  
23 pursuant to the provisions of [~~Section 31-18-15.1, 31-18-16,~~  
24 ~~31-18-16.1 or 31-18-17 NMSA 1978~~] the Criminal Sentencing Act.

25 D. When a court imposes a sentence of imprisonment

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

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

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

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

21 [~~(2)~~] (3) for a first degree felony, fifteen  
22 thousand dollars (\$15,000);

23 [~~(3)~~] (4) for a second degree felony resulting  
24 in the death of a human being, twelve thousand five hundred  
25 dollars (\$12,500);

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1                    [~~(4)~~] (5) for a second degree felony for a  
2 sexual offense against a child, twelve thousand five hundred  
3 dollars (\$12,500);

4                    [~~(5)~~] (6) for a second degree felony, ten  
5 thousand dollars (\$10,000);

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

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

11                    [~~(8)~~] (9) for a third or fourth degree felony,  
12 five thousand dollars (\$5,000).

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

25                    G. No later than October 31 of each year, the New

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1 Mexico sentencing commission shall provide a written report to  
2 the secretary of corrections, all New Mexico criminal court  
3 judges, the administrative office of the district attorneys and  
4 the chief public defender. The report shall specify the  
5 average reduction in the sentence of imprisonment for serious  
6 violent offenses and nonviolent offenses, as defined in Section  
7 33-2-34 NMSA 1978, due to meritorious deductions earned by  
8 prisoners during the previous fiscal year pursuant to the  
9 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38  
10 NMSA 1978. The corrections department shall allow the  
11 commission access to documents used by the department to  
12 determine earned meritorious deductions for prisoners."

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

15 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

16 A. An inmate of an institution who was sentenced to  
17 life imprisonment [~~as the result of the commission of a capital~~  
18 ~~felony, who was sentenced to life imprisonment as the result of~~  
19 ~~a conviction for a first degree felony resulting in the death~~  
20 ~~of a child, who was convicted of three violent felonies and~~  
21 ~~sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978~~  
22 ~~or who was convicted of two violent sexual offenses and~~  
23 ~~sentenced pursuant to Subsection A of Section 31-18-25 NMSA~~  
24 ~~1978 and Section 31-18-26 NMSA 1978]~~ becomes eligible for a  
25 parole hearing after [~~he~~] the inmate has served thirty years of

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1     ~~[his]~~ the sentence. Before ordering the parole of an inmate  
2 sentenced to life imprisonment, the board shall:

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

5                     (2) consider all pertinent information  
6 concerning the inmate, including:

7                             (a) the circumstances of the offense;

8                             (b) mitigating and aggravating  
9 circumstances;

10                            (c) whether a deadly weapon was used in  
11 the commission of the offense;

12                            (d) whether the inmate is a habitual  
13 offender;

14                            (e) the reports filed under Section  
15 31-21-9 NMSA 1978; and

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

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

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

22             If parole is denied, the inmate sentenced to life  
23 imprisonment shall again become entitled to a parole hearing at  
24 two-year intervals. The board may, on its own motion, reopen  
25 any case in which a hearing has already been granted and parole

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1 denied.

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

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

20 D. Every person while on parole shall remain in the  
21 legal custody of the institution from which [~~he~~] the person was  
22 released, but shall be subject to the orders of the board. The  
23 board shall furnish to each inmate as a prerequisite to [~~his~~]  
24 release under its supervision a written statement of the  
25 conditions of parole that shall be accepted and agreed to by

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

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

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

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

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1 advise the board and the board shall hold an evidentiary  
2 hearing to determine whether the waiver should be rescinded;  
3 and

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

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

12 Section 4. Section 31-21-10.1 NMSA 1978 (being Laws  
13 2003 (1st S.S.), Chapter 1, Section 9) is amended to read:

14 "31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS AND  
15 CONDITIONS OF PAROLE.--

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

22 (1) not less than five years and not in  
23 excess of twenty years for the offense of kidnapping when  
24 committed with intent to inflict a sexual offense upon the  
25 victim, criminal sexual penetration in the third degree,

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

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

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

- 19 (1) the nature and circumstances of the  
20 offense for which the sex offender was incarcerated;  
21 (2) the nature and circumstances of a prior  
22 sex offense committed by the sex offender;  
23 (3) rehabilitation efforts engaged in by the  
24 sex offender, including participation in treatment programs  
25 while incarcerated or elsewhere;

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

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

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

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

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

23 (2) participating in an outpatient or  
24 inpatient sex offender treatment program;

25 (3) a parole agreement by the sex offender



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1 not to use alcohol or drugs;

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

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

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

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

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

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

25 (1) kidnapping, as provided in

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1 Section 30-4-1 NMSA 1978, when committed with intent to  
2 inflict a sexual offense upon the victim;

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

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

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

16 "29-11A-3. DEFINITIONS.--As used in the Sex Offender  
17 Registration and Notification Act:

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

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

22 (1) private or public post-secondary  
23 educational institution;

24 (2) trade school; or

25 (3) professional school;

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

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

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

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

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~~] the  
5 sex offender's 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~~] the sex offender committed the  
17 sex offense for which [~~he~~] the sex offender was convicted as a  
18 youthful offender, as provided in Section 32A-2-3 NMSA 1978,  
19 unless at the time of sentencing, the court made a finding that  
20 the sex offender is not amenable to treatment and is a danger  
21 to the community. The registration information provided to the  
22 public pursuant to this subsection shall not include a sex  
23 offender's social security number or DNA information or a sex  
24 offender's place of employment, unless the sex offender's  
25 employment requires [~~him~~] the sex offender to have direct

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1 contact with children."

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

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

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

9 Section 9. EFFECTIVE DATE.--The effective date of the  
10 provisions of this act is July 1, 2007.

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