

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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;

B. "institution of higher education" means a:

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

(2) trade school; or

(3) professional school;

C. "registration requirement" means any
requirement set forth in Section 29-11A-4 NMSA 1978 that
requires a sex offender to register, provide information,

1 including a DNA sample, renew, revise or change registration
2 information or provide written notice or disclosure regarding
3 the sex offender's status as a sex offender;

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

5 (1) is a resident of New Mexico who is
6 convicted of a sex offense in New Mexico;

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

10 (3) is a resident of New Mexico who is
11 convicted of a sex offense pursuant to federal, tribal or
12 military law;

13 (4) does not have an established residence
14 in New Mexico, but lives in a shelter, halfway house or
15 transitional living facility or stays in multiple locations
16 in New Mexico and who has been convicted of a sex offense in
17 New Mexico or any other state pursuant to state, federal,
18 tribal or military law; or

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

22 (a) employed full time or part time in
23 New Mexico for a period of time exceeding fourteen days or
24 for an aggregate period of time exceeding thirty days during
25 any calendar year, including any employment or vocation,

1 whether financially compensated, volunteered or for the
2 purpose of government or educational benefit; or

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

6 E. "sex offense" means:

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

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

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

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

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

19 (6) kidnapping, as provided in Section
20 30-4-1 NMSA 1978, when the victim is less than eighteen years
21 of age and the offender is not a parent of the victim;

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

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

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

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

8 (11) child solicitation by electronic
9 communication device, as provided in Section 30-37-3.2 NMSA
10 1978;

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

14 (13) attempt to commit any of the sex
15 offenses set forth in Paragraphs (1) through (11) of this
16 subsection, as provided in Section 30-28-1 NMSA 1978."

17 Section 2. Section 29-11A-5 NMSA 1978 (being Laws 1995,
18 Chapter 106, Section 5, as amended) is amended to read:

19 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
20 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION
21 IN THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

22 A. A county sheriff shall maintain a local
23 registry of sex offenders in the sheriff's jurisdiction
24 required to register pursuant to the provisions of the Sex
25 Offender Registration and Notification Act.

1 B. The county sheriff shall forward:

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

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

17 C. The department of public safety shall maintain
18 a central registry of sex offenders required to register
19 pursuant to the provisions of the Sex Offender Registration
20 and Notification Act. The department shall participate in
21 the 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
25 registry administered by the United States department of

1 justice and to the federal bureau of investigation.

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

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

9 (2) criminal sexual contact of a minor in
10 the 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
20 offenses set forth in Paragraphs (1) through (5) of this
21 subsection, as 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
24 for the following offenses for a period of ten years
25 following the sex offender's conviction, release from prison

1 or release from probation or parole, whichever occurs later:

2 (1) criminal sexual penetration in the
3 fourth 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
7 Section 30-4-3 NMSA 1978, when the victim is less than
8 eighteen years of age and the offender is not a parent of the
9 victim;

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

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

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

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

20 (8) child solicitation by electronic
21 communication device, as provided in Section 30-37-3.2 NMSA
22 1978; or

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

1 F. Notwithstanding the provisions of Subsection E
2 of this section, if a sex offender is convicted a second or
3 subsequent time for a sex offense set forth in that
4 subsection, the department of public safety shall retain
5 information regarding the sex offender for the entirety of
6 the sex offender's natural life.

7 G. The department of public safety shall adopt
8 rules necessary to carry out the provisions of the Sex
9 Offender Registration and Notification Act. Rules necessary
10 for the collection of DNA samples and the administration and
11 operation of the sex offender DNA identification system shall
12 be adopted by the DNA identification system oversight
13 committee pursuant to the provisions of the DNA
14 Identification Act."

15 Section 3. Section 30-37-3.2 NMSA 1978 (being Laws
16 1998, Chapter 64, Section 1, as amended) is amended to read:

17 "30-37-3.2. CHILD SOLICITATION BY ELECTRONIC
18 COMMUNICATION DEVICE.--

19 A. Child solicitation by electronic communication
20 device consists of a person knowingly and intentionally
21 soliciting a child under sixteen years of age, by means of an
22 electronic communication device, to engage in sexual
23 intercourse, sexual contact or in a sexual or obscene
24 performance, or to engage in any other sexual conduct when
25 the perpetrator is at least four years older than the child.

1 B. Whoever commits child solicitation by
2 electronic communication device is guilty of a:

3 (1) fourth degree felony if the child is at
4 least thirteen but under sixteen years of age; or

5 (2) third degree felony if the child is
6 under thirteen years of age.

7 C. Whoever commits child solicitation by
8 electronic communication device and also appears for, attends
9 or is present at a meeting that the person arranged pursuant
10 to the solicitation is guilty of a:

11 (1) third degree felony if the child is at
12 least thirteen but under sixteen years of age; or

13 (2) second degree felony if the child is
14 under thirteen years of age.

15 D. In a prosecution for child solicitation by
16 electronic communication device, it is not a defense that the
17 intended victim of the defendant was a peace officer posing
18 as a child under sixteen years of age.

19 E. For purposes of determining jurisdiction, child
20 solicitation by electronic communication device is committed
21 in this state if an electronic communication device
22 transmission either originates or is received in this state.

23 F. As used in this section, "electronic
24 communication device" means a computer, video recorder,
25 digital camera, fax machine, telephone, cellular telephone,

1 pager, audio equipment or any other device that can produce
2 an electronically generated image, message or signal."

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

5 "31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS AND
6 CONDITIONS OF PAROLE.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 E. If the board finds that a sex offender has
17 violated the terms and conditions of the sex offender's
18 parole, the board may revoke the sex offender's parole or may
19 order additional terms and conditions of parole.

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

25 G. As used in this section, "sex offender" means a

1 person who is convicted of, pleads guilty to or pleads nolo
2 contendere to any one of the following offenses:

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

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

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

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

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

17 (6) child solicitation by electronic
18 communication device, as provided in Section 30-37-3.2 NMSA
19 1978."

20 Section 5. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2007. _____