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SENATE BILL 512

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO PROSTITUTION; PROVIDING FOR CONDITIONAL DISCHARGE FOR A FIRST OFFENSE OF PROSTITUTION OR PATRONIZING PROSTITUTES; REQUIRING PARTICIPATION IN AND COMPLETION OF A PROSTITUTION EDUCATION AND INTERVENTION PROGRAM; REQUIRING THE DEPARTMENT OF HEALTH TO ESTABLISH THE PROGRAM WITH TWO COMPONENTS; CREATING A FUND; IMPOSING A FEE; MAKING AN APPROPRIATION.

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

SECTION 1. Section 30-9-2 NMSA 1978 (being Laws 1963, Chapter 303, Section 9-11, as amended) is amended to read:

"30-9-2. PROSTITUTION.--

A. Prostitution consists of knowingly engaging in or offering to engage in a sexual act for hire.

B. As used in this section, "sexual act" means sexual intercourse, cunnilingus, fellatio, masturbation of

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1 another, anal intercourse or the causing of penetration to any
2 extent and with any object of the genital or anal opening of
3 another, whether or not there is any emission.

4 C. Whoever commits prostitution is:

5 (1) for a first offense, guilty of a petty
6 misdemeanor [unless such crime is] and shall be required to
7 participate in and complete a component of the prostitution
8 education and intervention program established by the
9 department of health; or

10 (2) for a second or subsequent [conviction, in
11 which case such person is] offense, guilty of a misdemeanor and
12 may be required to participate in and complete a component of
13 the prostitution education and intervention program established
14 by the department of health."

15 SECTION 2. Section 30-9-3 NMSA 1978 (being Laws 1963,
16 Chapter 303, Section 9-12, as amended) is amended to read:

17 "30-9-3. PATRONIZING PROSTITUTES.--

18 A. Patronizing prostitutes consists of:

19 ~~[A.]~~ (1) entering or remaining in a house of
20 prostitution or any other place where prostitution is
21 practiced, encouraged or allowed with intent to engage in a
22 sexual act with a prostitute; or

23 ~~[B.]~~ (2) knowingly hiring or offering to hire
24 a prostitute, or one believed by the offeror to be a
25 prostitute, to engage in a sexual act with the actor or

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1 another.

2 B. As used in this section, "a sexual act" means
3 sexual intercourse, cunnilingus, fellatio, masturbation of
4 another, anal intercourse or the causing of penetration to any
5 extent and with any object of the genital or an anal opening of
6 another, whether or not there is any emission.

7 C. Whoever commits patronizing prostitutes is:

8 (1) for a first offense, guilty of a petty
9 misdemeanor [~~unless such crime is~~] and shall be required to
10 participate in and complete a component of the prostitution
11 education and intervention program established by the
12 department of health; or

13 (2) for a second or subsequent [~~conviction, in~~
14 ~~which case such person is~~] offense, guilty of a misdemeanor and
15 may be required to participate in and complete a component of
16 the prostitution education and intervention program established
17 by the department of health."

18 **SECTION 3. [NEW MATERIAL] CONDITIONAL DISCHARGE FOR**
19 **PROSTITUTION OR PATRONIZING PROSTITUTES AS A FIRST OFFENSE.--**

20 A. If a person who has not previously been
21 convicted of violating the laws of any state relating to
22 prostitution or patronizing a prostitute is found guilty, after
23 trial or upon a plea of guilty, of a violation of Section
24 30-9-2 or 30-9-3 NMSA 1978, the court shall, without entering a
25 judgment of guilty and with the consent of the person, defer

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1 further proceedings and place the person on probation upon
2 reasonable conditions as the court may prescribe for a period
3 not to exceed six months.

4 B. The court shall require, as a condition of
5 probation, that the person participate in and successfully
6 complete a component of the prostitution education and
7 intervention program established by the department of health.

8 C. Upon violation of a condition of probation, the
9 court may enter an adjudication of guilt and proceed as
10 otherwise provided by law.

11 D. If the person completes the period of probation
12 without violating a condition of probation, the court shall
13 discharge the person and dismiss the proceedings. Discharge
14 and dismissal under this section shall be without adjudication
15 of guilt, but a nonpublic record shall be retained by the
16 attorney general solely for use by the courts in determining
17 whether or not, in subsequent proceedings, the person qualifies
18 under this section. A discharge and dismissal shall not be
19 deemed a conviction for purposes of disqualifications or
20 disabilities imposed by law upon conviction of a crime.
21 Discharge and dismissal under this section may occur only once
22 with respect to a person.

23 SECTION 4. [NEW MATERIAL] PROSTITUTION EDUCATION AND
24 INTERVENTION FUND CREATED--PROGRAM--COMPONENTS--FEE.--

25 A. The "prostitution education and intervention

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1 fund" is created as a nonreverting fund in the state treasury
2 to be administered by the department of health. The fund
3 consists of fees collected pursuant to Subsection E of this
4 section, income from investment of the fund and any
5 appropriations, gifts, grants and donations. Money in the fund
6 is appropriated to the department of health to establish a
7 program with two components as provided in this section.
8 Payment from the fund shall be made on warrants drawn by the
9 department of finance and administration pursuant to vouchers
10 issued and signed by the secretary of health.

11 B. The department of health, in collaboration with
12 the human services department, the children, youth and families
13 department and the interagency behavioral health purchasing
14 collaborative, shall develop guidelines for, and the department
15 of health shall institute, a prostitution education and
16 intervention program with two separate and distinct components.

17 C. The first component of the prostitution
18 education and intervention program shall provide education,
19 treatment and intervention services to those referred to the
20 program by a court for prostitution and may include:

21 (1) education, counseling and discussion on
22 sexual assault;

23 (2) assistance in getting to a safe house for
24 those being controlled or endangered by another;

25 (3) legal and health consequences of

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- 1 prostitution;
- 2 (4) sexually transmitted disease education;
- 3 (5) presentation of cases involving
- 4 prostitutes who were victims of rape, assault or murder;
- 5 (6) education on human trafficking and
- 6 prostitution;
- 7 (7) alcohol and drug treatment; and
- 8 (8) assistance with social services that may
- 9 be available.

10 D. The second component of the prostitution
11 education and intervention program shall provide educational
12 seminars to those referred to the program by a court for
13 patronizing prostitutes and may include:

- 14 (1) prostitution-related education from law
- 15 enforcement officials;
- 16 (2) legal and health consequences of
- 17 patronizing prostitutes;
- 18 (3) community perspectives about the damage
- 19 prostitution inflicts on the community;
- 20 (4) education on sex trafficking;
- 21 (5) information on sexually transmitted
- 22 diseases; and
- 23 (6) assistance or treatment for addictive or
- 24 compulsive behaviors.

25 E. The department of health shall charge a fee of
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1 not more than two hundred fifty dollars (\$250) from those who
2 participate in the program; provided that no fee shall be
3 charged to a person referred to the program for a violation of
4 Section 30-9-2 NMSA 1978. All fees shall be deposited in the
5 prostitution education and intervention fund.

6 F. The department of health shall promulgate rules
7 that define criteria for the program and its components,
8 successful completion and fees.

9 SECTION 5. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2013.