

HOUSE BILL 443

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

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AN ACT

RELATING TO SEX OFFENDER REGISTRATION; AMENDING DEFINITIONS OF
SEX OFFENSES; ADDING SEX OFFENSES FOR WHICH A PERSON HAS TO
REGISTER, FOR WHICH REGISTRATION INFORMATION WILL BE RETAINED
AND THAT WILL BE PLACED ON THE SEX OFFENDER PUBLIC WEBSITE.

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. "business day" means a day that is not a
Saturday, a Sunday or a state holiday;

B. "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 C. "department" means the department of public
2 safety;

3 D. "institution of higher education" means a:
4 (1) private or public post-secondary
5 educational institution;

6 (2) trade school; or

7 (3) professional school;

8 E. "habitually lives" means any place where a sex
9 offender lives for at least thirty days in any three-hundred-
10 sixty-five-day period;

11 F. "out-of-state registrant" means any person who
12 establishes a residence in New Mexico while the person is
13 required to register as a sex offender in another state or
14 territory;

15 G. "registration requirement" means any requirement
16 set forth in Section 29-11A-4 NMSA 1978 that requires a sex
17 offender to register; provide information, including a DNA
18 sample; renew, revise or change registration information; or
19 provide written notice or disclosure regarding the sex
20 offender's status as a sex offender;

21 H. "sex offender" means a person who:

22 (1) is a resident of New Mexico who is
23 convicted of a sex offense pursuant to state, federal, tribal
24 or military law;

25 (2) changes residence to New Mexico, when that

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1 person has been convicted of a sex offense pursuant to state,
2 federal, tribal or military law;

3 (3) does not have an established residence in
4 New Mexico, but lives in a shelter, halfway house or
5 transitional living facility or stays in multiple locations in
6 New Mexico and who has been convicted of a sex offense pursuant
7 to state, federal, tribal or military law; or

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

11 (a) employed full time or part time in
12 New Mexico for a period of time exceeding fourteen days or for
13 an aggregate period of time exceeding thirty days during any
14 calendar year, including any employment or vocation, whether
15 financially compensated, volunteered or for the purpose of
16 government or educational benefit; or

17 (b) enrolled on a full-time or part-time
18 basis in a private or public school or an institution of higher
19 education in New Mexico;

20 I. "sex offense" means any of the following
21 offenses or their equivalents in any other jurisdiction:

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

25 (2) criminal sexual contact in the fourth

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1 degree, as provided in Section 30-9-12 NMSA 1978;

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

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

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

9 (6) kidnapping, as provided in Section 30-4-1
10 NMSA 1978, when committed with the intent to inflict a sexual
11 offense;

12 (7) false imprisonment, as provided in Section
13 30-4-3 NMSA 1978, when committed with the intent to inflict a
14 sexual offense;

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

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

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

22 (11) child solicitation by electronic
23 communication device, as provided in Section 30-37-3.2 NMSA
24 1978, for convictions occurring on or after July 1, 2013;

25 (12) solicitation to commit criminal sexual

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1 contact of a minor in the second, third or fourth degree, as
2 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; [~~or~~]

3 (13) patronizing prostitutes, as provided in
4 Subsection B of Section 30-9-3 NMSA 1978, when the person
5 believed to be a prostitute is less than sixteen years of age;

6 (14) promoting prostitution, as provided in
7 Section 30-9-4 NMSA 1978, when the victim is less than eighteen
8 years of age;

9 (15) accepting earnings of a prostitute, as
10 provided in Section 30-9-4.1 NMSA 1978, from a person engaged
11 in prostitution who is less than eighteen years of age;

12 (16) voyeurism, as provided in Section 30-9-20
13 NMSA 1978, when the victim is less than sixteen years of age;

14 (17) human trafficking, as provided in Section
15 30-52-1 NMSA 1978, for a sexual purpose, when the victim is
16 under sixteen years of age;

17 [~~(13)~~] (18) attempt to commit any of the sex
18 offenses set forth in Paragraphs (1) through [~~(11)~~] (17) of
19 this subsection, as provided in Section 30-28-1 NMSA 1978;
20 [~~and~~] or

21 (19) conspiracy to commit any of the sex
22 offenses set forth in Paragraphs (1) through (17) of this
23 subsection, as provided in Section 30-28-2 NMSA 1978; and

24 J. "social networking site" means an internet [~~web~~
25 site] website that facilitates online social interaction by

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1 offering a mechanism for communication with other users, where
2 such users are likely to include a substantial number of minors
3 under the age of sixteen, and allowing users, through the
4 creation of web pages, profiles or other means, to provide
5 information about themselves that is available to the public or
6 to other users."

7 SECTION 2. Section 29-11A-5 NMSA 1978 (being Laws 1995,
8 Chapter 106, Section 5, as amended by Laws 2007, Chapter 68,
9 Section 2 and by Laws 2007, Chapter 69, Section 6) is amended
10 to read:

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

14 A. A county sheriff shall maintain a local registry
15 of sex offenders in the sheriff's jurisdiction required to
16 register pursuant to the provisions of the Sex Offender
17 Registration and Notification Act.

18 B. The county sheriff shall forward:

19 (1) registration information obtained from sex
20 offenders to the department of public safety. The initial
21 registration information and any new registration information
22 subsequently obtained from a sex offender shall be forwarded by
23 the county sheriff no later than ten working days after the
24 information is obtained from a sex offender. If the department
25 of public safety receives information regarding a sex offender

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1 from a governmental entity other than a county sheriff, the
2 department shall send that information to the sheriff for the
3 county in which the sex offender resides; and

4 (2) samples of DNA obtained from sex offenders
5 to the administrative center for the sex offender DNA
6 identification system pursuant to the provisions of the DNA
7 Identification Act.

8 C. The department of public safety shall maintain a
9 central registry of sex offenders required to register pursuant
10 to the provisions of the Sex Offender Registration and
11 Notification Act. The department shall participate in the
12 national sex offender registry administered by the United
13 States department of justice. The department shall send
14 conviction information and fingerprints for all sex offenders
15 registered in New Mexico to the national sex offender registry
16 administered by the United States department of justice and to
17 the federal bureau of investigation.

18 D. The department of public safety shall retain
19 registration information regarding a sex offender convicted for
20 any of the following sex offenses for the entirety of the sex
21 offender's natural life:

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

25 (2) criminal sexual contact of a minor in the

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1 second, third or fourth degree, as provided in Section
2 30-9-13 NMSA 1978;

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

5 (4) kidnapping, as provided in Section
6 30-4-1 NMSA 1978, when [~~the victim is less than eighteen years~~
7 ~~of age and the offender is not a parent of the victim]~~
8 committed with the intent to commit a sex offense;

9 (5) criminal sexual contact in the fourth
10 degree, as provided in Section 30-9-12 NMSA 1978; [~~or~~]

11 (6) patronizing prostitutes, as provided in
12 Subsection B of Section 30-9-3 NMSA 1978, when the person
13 believed to be a prostitute is less than sixteen years of age;

14 (7) promoting prostitution, as provided in
15 Section 30-9-4 NMSA 1978, when the victim is less than eighteen
16 years of age;

17 (8) accepting earnings of a prostitute, as
18 provided in Section 30-9-4.1 NMSA 1978, from a person engaged
19 in prostitution who is less than eighteen years of age;

20 (9) voyeurism, as provided in Section 30-9-20
21 NMSA 1978, when the victim is less than sixteen years of age;

22 (10) human trafficking, as provided in Section
23 30-52-1 NMSA 1978, for a sexual purpose, when the victim is
24 under sixteen years of age;

25 [~~6~~] (11) attempt to commit any of the sex

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1 offenses set forth in Paragraphs (1) through [~~(5)~~] (10) of this
2 subsection, as provided in Section 30-28-1 NMSA 1978; or
3 (12) conspiracy to commit any of the sex
4 offenses set forth in Paragraphs (1) through (10) of this
5 subsection, as provided in Section 30-28-2 NMSA 1978.

6 E. The department of public safety shall retain
7 registration information regarding a sex offender convicted for
8 the following offenses for a period of ten years following the
9 sex offender's conviction, release from prison or release from
10 probation or parole, whichever occurs later:

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

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

15 (3) false imprisonment, as provided in Section
16 30-4-3 NMSA 1978, when [~~the victim is less than eighteen years~~
17 ~~of age and the offender is not a parent of the victim]~~
18 committed with the intent to commit a sex offense;

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

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

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

25 (7) solicitation to commit criminal sexual

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1 contact of a minor in the second, third or fourth degree, as
2 provided in Sections 30-9-13 and 30-28-3 NMSA 1978;

3 (8) child solicitation by electronic
4 communication device, as provided in Section 30-37-3.2 NMSA
5 1978; or

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

9 F. Notwithstanding the provisions of Subsection E
10 of this section, if a sex offender is convicted a second or
11 subsequent time for a sex offense set forth in that subsection,
12 the department of public safety shall retain information
13 regarding the sex offender for the entirety of the sex
14 offender's natural life.

15 G. The department of public safety shall adopt
16 rules necessary to carry out the provisions of the Sex Offender
17 Registration and Notification Act. Rules necessary for the
18 collection of DNA samples and the administration and operation
19 of the sex offender DNA identification system shall be adopted
20 by the DNA identification system oversight committee pursuant
21 to the provisions of the DNA Identification Act."

22 SECTION 3. Section 29-11A-5.1 NMSA 1978 (being Laws 1999,
23 Chapter 19, Section 8, as amended) is amended to read:

24 "29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING
25 CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY

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1 NOTIFICATION--INTERNET [~~WEB-SITE~~] WEBSITE.--

2 A. If a sex offender is convicted of one of the
3 following sex offenses, the county sheriff shall forward
4 registration information obtained from the sex offender to the
5 district attorney for the judicial district in which the sex
6 offender resides and, if the sex offender is a resident of a
7 municipality, the chief law enforcement officer for the
8 municipality in which the sex offender resides:

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

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

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

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

19 (5) patronizing prostitutes, as provided in
20 Subsection B of Section 30-9-3 NMSA 1978, when the person
21 believed to be a prostitute is less than sixteen years of age;

22 (6) promoting prostitution, as provided in
23 Section 30-9-4 NMSA 1978, when the victim is less than eighteen
24 years of age;

25 (7) accepting earnings of a prostitute, as

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1 provided in Section 30-9-4.1 NMSA 1978, from a person engaged
2 in prostitution who is less than sixteen years of age;

3 (8) human trafficking, as provided in Section
4 30-52-1 NMSA 1978, for a sexual purpose, when the victim is
5 under sixteen years of age;

6 [~~5~~] (9) attempt to commit any of the sex
7 offenses set forth in Paragraphs (1) through [~~4~~] (8) of this
8 subsection, as provided in Section 30-28-1 NMSA 1978; or

9 (10) conspiracy to commit any of the sex
10 offenses set forth in Paragraphs (1) through (8) of this
11 subsection, as provided in Section 30-28-2 NMSA 1978.

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

15 (1) sheriff for the county in which the sex
16 offenders reside;

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

19 (3) district attorney for the judicial
20 district in which the sex offenders reside; or

21 (4) secretary of public safety.

22 C. Upon receiving a request for registration
23 information regarding sex offenders described in Subsection A
24 of this section, the county sheriff, chief municipal law
25 enforcement officer, district attorney or secretary of public

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1 safety shall provide that registration information, with the
2 exception of a sex offender's social security number and DNA
3 information, within a reasonable period of time, and no later
4 than seven days after receiving the request.

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

13 E. The department shall establish and manage an
14 internet [~~web site~~] website that provides the public with
15 registration information regarding sex offenders described in
16 Subsection A of this section, except that the department shall
17 not provide registration information on the internet [~~web site~~]
18 website regarding a sex offender who was less than eighteen
19 years of age when the sex offender committed the sex offense
20 for which the sex offender was convicted as a youthful
21 offender, as provided in Section 32A-2-3 NMSA 1978, unless at
22 the time of sentencing, the court made a finding that the sex
23 offender is not amenable to treatment and is a danger to the
24 community. The registration information provided to the public
25 pursuant to this subsection shall not include a sex offender's

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1 social security number or DNA information or the identity of a
2 sex offender's place of employment, unless the sex offender's
3 employment requires the sex offender to have direct contact
4 with children. The internet [~~web site~~] website shall provide
5 only the following registration information:

6 (1) the sex offender's legal name and any
7 other names or aliases that the sex offender is using or has
8 used;

9 (2) the sex offender's current address and the
10 address of every place where the sex offender habitually lives;

11 (3) if the sex offender's employment involves
12 direct contact with children, the sex offender's place of
13 employment;

14 (4) the sex offenses for which the sex
15 offender has been convicted;

16 (5) a photograph of the sex offender;

17 (6) the sex offender's date of birth;

18 (7) a physical description, including a
19 description of any tattoos, scars or other distinguishing
20 features on the sex offender's body that would assist in
21 identifying the sex offender; and

22 (8) a link that will pinpoint the location of
23 the sex offender's place of employment if the sex offender has
24 direct contact with children."