

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 861

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO LAW ENFORCEMENT; REQUIRING SEX OFFENDERS TO PROVIDE
DNA SAMPLES WHEN REGISTERING; INCLUDING SEX OFFENDERS AS
COVERED OFFENDERS SUBJECT TO COLLECTION OF DNA SAMPLES;
PROVIDING FOR THE DNA IDENTIFICATION OF MISSING PERSONS,
UNIDENTIFIED PERSONS AND UNIDENTIFIED HUMAN REMAINS; MAKING AN
APPROPRIATION.

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

Section 1. Section 29-11A-4 NMSA 1978 (being Laws 1995,
Chapter 106, Section 4, as amended) is amended to read:

"29-11A-4. REGISTRATION OF SEX OFFENDERS-- INFORMATION
REQUIRED-- CRIMINAL PENALTY FOR NONCOMPLIANCE. --

A. A sex offender residing in this state shall
register with the county sheriff for the county in which the
sex offender resides.

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1 B. A sex offender who is a current resident of New
2 Mexico shall register with the county sheriff no later than ten
3 days after being released from the custody of the corrections
4 department or being placed on probation or parole. A sex
5 offender who changes his residence to New Mexico shall register
6 with the county sheriff no later than ten days after
7 establishing residence in this state. When a sex offender
8 registers with the county sheriff, he shall provide the
9 following registration information:

10 (1) his legal name and any other names or
11 aliases that he is using or has used;

12 (2) his date of birth;

13 (3) his social security number;

14 (4) his current address;

15 (5) his place of employment;

16 (6) the sex offense for which he was
17 convicted; and

18 (7) the date and place of his sex offense
19 conviction.

20 C. A sex offender who is a resident of another
21 state but who is employed in New Mexico or attending school in
22 New Mexico shall register with the county sheriff for the
23 county in which the sex offender is working or attending
24 school.

25 D. A sex offender who is a resident of another

1 state but who is employed in New Mexico or attending school in
2 New Mexico shall register with the county sheriff no later than
3 ten days after beginning work or school. When the sex offender
4 registers with the county sheriff, he shall provide the
5 following registration information:

6 (1) his legal name and any other names or
7 aliases that he is using or has used;

8 (2) his date of birth;

9 (3) his social security number;

10 (4) his current address in his state of
11 residence and, if applicable, the address of his place of
12 lodging in New Mexico while he is working or attending school;

13 (5) his place of employment or the name of the
14 school he is attending;

15 (6) the sex offense for which he was
16 convicted; and

17 (7) the date and place of his sex offense
18 conviction.

19 E. When a sex offender registers with a county
20 sheriff, the sheriff shall obtain:

21 (1) a photograph of the sex offender and a
22 complete set of the sex offender's fingerprints; [and]

23 (2) a description of any tattoos, scars or
24 other distinguishing features on the sex offender's body that
25 would assist in identifying the sex offender;

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1 (3) a DNA sample for insertion into the DNA
2 identification system as a covered offender pursuant to the
3 provisions of the DNA Identification Act; and

4 (4) a DNA collection fee of one hundred
5 dollars (\$100). The fee shall be deposited in the DNA
6 identification system fund.

7 F. When a sex offender who is registered changes
8 his residence within the same county, the sex offender shall
9 send written notice of his change of address to the county
10 sheriff no later than ten days after establishing his new
11 residence.

12 G. When a sex offender who is registered changes
13 his residence to a new county in New Mexico, the sex offender
14 shall register with the county sheriff of the new county no
15 later than ten days after establishing his new residence. The
16 sex offender shall also send written notice of the change in
17 residence to the county sheriff with whom he last registered no
18 later than ten days after establishing his new residence.

19 H. Following his initial registration pursuant to
20 the provisions of this section:

21 (1) a sex offender required to register
22 pursuant to the provisions of Subsection D of Section 29-11A-5
23 NMSA 1978 shall annually renew his registration with the county
24 sheriff prior to December 31 of each subsequent calendar year
25 for a period of twenty years; and

1 (2) a sex offender required to register
2 pursuant to the provisions of Subsection E of Section 29-11A-5
3 NMSA 1978 shall annually renew his registration with the county
4 sheriff prior to December 31 of each subsequent calendar year
5 for a period of ten years.

6 I. A sex offender who willfully fails to comply
7 with the registration requirements set forth in this section is
8 guilty of a fourth degree felony and shall be sentenced
9 pursuant to the provisions of Section 31-18-15 NMSA 1978.

10 J. A sex offender who willfully provides false
11 information when complying with the registration requirements
12 set forth in this section is guilty of a fourth degree felony
13 and shall be sentenced pursuant to the provisions of Section
14 31-18-15 NMSA 1978. "

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

17 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
18 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN
19 THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

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

24 B. The county sheriff shall forward:

25 (1) registration information obtained from sex

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

10 (2) samples of DNA obtained from sex offenders
11 to the DNA identification system's administrative center for
12 insertion into the DNA identification system as a covered
13 offender; and

14 (3) collected fees to the department of public
15 safety for deposit into the DNA identification system fund.

16 C. The department of public safety shall maintain a
17 central registry of sex offenders required to register pursuant
18 to the provisions of the Sex Offender Registration and
19 Notification Act. The department shall participate in the
20 national sex offender registry administered by the United
21 States department of justice. The department shall send
22 conviction information and fingerprints for all sex offenders
23 registered in New Mexico to the national sex offender registry
24 administered by the United States department of justice and to
25 the federal bureau of investigation.

1 D. The department of public safety shall retain
2 registration information regarding sex offenders convicted for
3 the following sex offenses for a period of twenty years
4 following the sex offender's conviction, release from prison or
5 release from probation or parole, whichever occurs later:

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

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

10 (3) sexual exploitation of children, as
11 provided in Subsection A, B or C of Section 30-6A-3 NMSA 1978;

12 (4) kidnapping, as provided in Section
13 30-4-1 NMSA 1978, when the victim is less than eighteen years
14 of age and the offender is not a parent of the victim; or

15 (5) attempt to commit any of the sex offenses
16 set forth in Paragraphs (1) through (4) of this subsection, as
17 provided in Section 30-28-1 NMSA 1978.

18 E. The department of public safety shall retain
19 registration information regarding sex offenders convicted for
20 the following offenses for a period of ten years following the
21 sex offender's conviction, release from prison or release from
22 probation or parole, whichever occurs later:

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

25 (2) criminal sexual contact in the fourth

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

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

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

6 (5) 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 (6) solicitation to commit criminal sexual
10 contact of a minor in the third or fourth degree, as provided
11 in Sections 30-9-13 and 30-28-3 NMSA 1978; or

12 (7) attempt to commit any of the sex offenses
13 set forth in Paragraphs (1) through (5) of this subsection, as
14 provided in Section 30-28-1 NMSA 1978.

15 F. The department of public safety shall adopt
16 rules necessary to carry out the provisions of the Sex Offender
17 Registration and Notification Act. "

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

20 "29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING
21 CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY
22 NOTIFICATION--INTERNET WEB SITE. --

23 A. If a sex offender is convicted of one of the
24 following sex offenses, the county sheriff shall forward
25 registration information obtained from the sex offender to the

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1 district attorney for the judicial district in which the sex
2 offender resides and, if the sex offender is a resident of a
3 municipality, the chief law enforcement officer for the
4 municipality in which the sex offender resides:

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

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

10 (3) sexual exploitation of children, as
11 provided in Subsection A, B or C of Section 30-6A-3 NMSA 1978;

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

14 (5) attempt to commit any of the sex offenses
15 set forth in Paragraphs (1) through (4) of this subsection, as
16 provided in Section 30-28-1 NMSA 1978.

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

20 (1) county sheriff for the county in which the
21 sex offenders reside;

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

24 (3) district attorney for the judicial
25 district in which the sex offenders reside; or

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1 (4) secretary of public safety.

2 C. Upon receiving a request for registration
3 information regarding sex offenders described in Subsection A
4 of this section, the county sheriff, chief municipal law
5 enforcement officer, district attorney or secretary of public
6 safety shall provide that registration information, with the
7 exception of a sex offender's social security number, within a
8 reasonable period of time, and no later than seven days after
9 receiving the request.

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

18 E. The department of public safety may establish
19 and manage an internet web site that provides the public with
20 registration information regarding sex offenders described in
21 Subsection A of this section. The registration information
22 provided to the public pursuant to this subsection shall not
23 include a sex offender's social security number or a sex
24 offender's place of employment, unless the sex offender's
25 employment requires him to have direct contact with children.

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1 F. DNA analysis information shall only be disclosed
2 pursuant to the provisions of Section 29-16-8 NMSA 1978."

3 Section 4. Section 29-16-6 NMSA 1978 (being Laws 1997,
4 Chapter 105, Section 6) is amended to read:

5 "29-16-6. [~~COVERED OFFENDERS SUBJECT TO~~] COLLECTION OF
6 SAMPLES. -- [~~Each~~]

7 A. A covered offender shall provide one or more
8 samples to the administrative center, as follows:

9 [~~A.-~~] (1) a covered [offenders] offender
10 convicted on or after [the effective date of the DNA
11 Identification Act] July 1, 1997 shall provide a sample [at any
12 time] immediately upon request of the corrections department so
13 long as the request is made before release from any
14 correctional facility or, if the covered offender is not
15 sentenced to incarceration, before the end of any period of
16 probation or other supervised release;

17 [~~B.-~~] (2) a covered [offenders] offender
18 incarcerated on [the effective date of the DNA Identification
19 Act] or after July 1, 1997 shall provide a sample [at any time]
20 immediately upon request of the corrections department so long
21 as the request is made before release from any correctional
22 facility; [and]

23 [~~C.-~~] (3) a covered [offenders] offender on
24 probation or other supervised release on [the effective date of
25 the DNA Identification Act] or after July 1, 1997 shall provide

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1 a sample immediately upon request of the corrections department
2 so long as the request is made before the end of any period of
3 probation or other supervised release; and

4 (4) a covered offender who registers or renews
5 his registration as a sex offender pursuant to the provisions
6 of Section 29-11A-4 NMSA 1978 on or after July 1, 2003 shall
7 provide a sample at the time the sex offender registers or
8 renews his registration.

9 B. Samples from unidentified persons or relatives
10 of a missing person shall be provided to the administrative
11 center, as follows:

12 (1) upon the completion of a permission to
13 search form authorizing the collection of a DNA sample;

14 (2) upon the receipt of a properly executed
15 search warrant; or

16 (3) upon the issuance of a court order.

17 C. Samples from unidentified human remains shall be
18 provided by the state medical investigator.

19 D. Samples of known reference materials from
20 missing persons shall be provided by the investigating law
21 enforcement agency."

22 Section 5. EFFECTIVE DATE. --The effective date of the
23 provisions of this act is July 1, 2003.