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HOUSE BILL 11

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

INTRODUCED BY

Daniel R. Foley

AN ACT

RELATING TO SEXUAL OFFENSES; CLARIFYING REGISTRATION REQUIREMENTS IN NEW MEXICO FOR A SEX OFFENDER CONVICTED IN ANOTHER JURISDICTION; INCREASING PENALTIES FOR A SEX OFFENDER WHO WILLFULLY FAILS TO COMPLY WITH REGISTRATION REQUIREMENTS WHEN MOVING FROM NEW MEXICO TO ANOTHER STATE; PROVIDING FOR PUBLIC NOTIFICATION UPON A CONVICTION FOR A SECOND SEX OFFENSE; EXPANDING WRITTEN NOTIFICATION WHEN A SEX OFFENDER IS RELEASED; PLACING LIMITS ON COURT REFERRALS OF SEX OFFENDERS TO TREATMENT OR HOUSING FACILITIES; AMENDING AND ENACTING SECTIONS OF THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT; DECLARING AN EMERGENCY.

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:

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1 "29-11A-3. DEFINITIONS. -- As used in the Sex Offender
2 Registration and Notification Act:

3 A. "sex offender" means a person eighteen years of
4 age or older who:

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

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

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

13 (4) is a resident of another state and who has
14 been convicted of a sex offense pursuant to state, federal or
15 military law, but who is:

16 (a) employed full time or part time in
17 New Mexico for a period of time exceeding fourteen days or for
18 an aggregate period of time exceeding thirty days during any
19 calendar year; or

20 (b) enrolled on a full-time or part-time
21 basis in a private or public school in New Mexico, including a
22 secondary school, a trade school, a professional institution or
23 an institution of higher education; and

24 B. "sex offense" means:

25 (1) criminal sexual penetration in the first,

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1 second, third or fourth degree, as provided in Section 30-9-11
2 NMSA 1978;

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

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

8 (4) sexual exploitation of children, as
9 provided in [~~Subsection A, B or C of~~] Section 30-6A-3 NMSA
10 1978;

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

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

16 (7) false imprisonment, as provided in Section
17 30-4-3 NMSA 1978, when the victim is less than eighteen years
18 of age and the offender is not a parent of the victim;

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

22 (9) attempt to commit any of the sex offenses
23 set forth in Paragraphs (1) through (7) of this subsection, as
24 provided in Section 30-28-1 NMSA 1978. "

25 Section 2. Section 29-11A-4 NMSA 1978 (being Laws 1995,

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1 Chapter 106, Section 4, as amended) is amended to read:

2 "29-11A-4. REGISTRATION OF SEX OFFENDERS-- INFORMATION
3 REQUIRED-- CRIMINAL PENALTY FOR NONCOMPLIANCE. --

4 A. A sex offender residing in this state shall
5 register with the [county] sheriff for the county in which the
6 sex offender resides.

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

- 16 (1) his legal name and any other names or
- 17 aliases that he is using or has used;
- 18 (2) his date of birth;
- 19 (3) his social security number;
- 20 (4) his current address;
- 21 (5) his place of employment;
- 22 (6) the sex offense for which he was
- 23 convicted; and
- 24 (7) the date and place of his sex offense
- 25 conviction.

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1 C. A sex offender who is a resident of another
2 state but who is employed in New Mexico or attending school in
3 New Mexico shall register with the [county] sheriff for the
4 county in which the sex offender is working or attending
5 school.

6 D. A sex offender who is a resident of another
7 state but who is employed in New Mexico or attending school in
8 New Mexico shall register with the county sheriff no later than
9 ten days after beginning work or school. When the sex offender
10 registers with the county sheriff, he shall provide the
11 following registration information:

- 12 (1) his legal name and any other names or
- 13 aliases that he is using or has used;
- 14 (2) his date of birth;
- 15 (3) his social security number;
- 16 (4) his current address in his state of
- 17 residence and, if applicable, the address of his place of
- 18 lodging in New Mexico while he is working or attending school;
- 19 (5) his place of employment or the name of the
- 20 school he is attending;
- 21 (6) the sex offense for which he was
- 22 convicted; and
- 23 (7) the date and place of his sex offense
- 24 conviction.

25 E. When a sex offender registers with a county

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1 sheriff, the sheriff shall obtain:

2 (1) a photograph of the sex offender and a
3 complete set of the sex offender's fingerprints; and

4 (2) a description of any tattoos, scars or
5 other distinguishing features on the sex offender's body that
6 would assist in identifying the sex offender.

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. When a sex offender who is registered or who is
20 required to register does not have an established residence,
21 but is homeless, lives in a shelter, halfway house or
22 transitional living facility or stays in multiple locations,
23 the sex offender shall register with the sheriff for each
24 county in which the sex offender is living. The sex offender
25 shall register no later than ten days after a change in his

. 148216. 2

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1 living arrangements.

2 ~~[H.]~~ I. Following his initial registration pursuant
3 to the provisions of this section:

4 (1) a sex offender required to register
5 pursuant to the provisions of Subsection D of Section
6 29-11A-5 NMSA 1978 shall annually renew his registration with
7 the county sheriff prior to December 31 of each subsequent
8 calendar year for a period of twenty years; ~~[and]~~

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

14 (3) a sex offender convicted in another
15 jurisdiction, who subsequently changes his residence to New
16 Mexico, shall annually renew his registration with the county
17 sheriff prior to December 31 of each subsequent calendar year
18 for the period of time that would have been required by the
19 jurisdiction in which he was convicted or twenty years,
20 whichever period of time is less.

21 ~~[I.]~~ J. A sex offender who willfully fails to
22 comply with the registration requirements set forth in this
23 section is guilty of a fourth degree felony and shall be
24 sentenced pursuant to the provisions of Section 31-18-15 NMSA
25 1978.

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1 [~~J-~~] K. A sex offender who willfully provides false
2 information when complying with the registration requirements
3 set forth in this section is guilty of a fourth degree felony
4 and shall be sentenced pursuant to the provisions of Section
5 31-18-15 NMSA 1978. "

6 Section 3. Section 29-11A-4.1 NMSA 1978 (being Laws 2000,
7 Chapter 8, Section 6) is amended to read:

8 "29-11A-4.1. PROCEDURES WHEN A SEX OFFENDER MOVES FROM
9 NEW MEXICO TO ANOTHER STATE. --

10 A. If a sex offender intends to move from New
11 Mexico to another state, no later than thirty days prior to
12 moving to the other state, he shall:

13 (1) notify the [~~county~~] sheriff of the county
14 he resides in that he is moving to the other state; and

15 (2) provide the county sheriff with a written
16 notice that identifies the state to which the sex offender is
17 moving.

18 B. Within five days of receiving a sex offender's
19 written notice of intent to move to another state, the county
20 sheriff shall transmit that information to the department of
21 public safety. Within five days of receiving that information
22 from a county sheriff, the department shall contact the state
23 agency responsible for registering sex offenders in the state
24 to which the sex offender is moving. The department shall
25 provide that state agency with registration information

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1 regarding the sex offender. The department shall also obtain
2 information regarding registration requirements for sex
3 offenders in the state to which the sex offender is moving.
4 The department shall provide the sex offender with written
5 notification of the registration requirements in the state to
6 which the sex offender is moving.

7 C. A sex offender who willfully fails to comply
8 with the requirements set forth in this section is guilty of a
9 ~~[misdemeanor and shall be punished by imprisonment for a~~
10 ~~definite term less than one year or a fine of not more than one~~
11 ~~thousand dollars (\$1,000) or both]~~ fourth degree felony and
12 shall be sentenced pursuant to the provisions of Section
13 31-18-15 NMSA 1978. "

14 Section 4. Section 29-11A-5 NMSA 1978 (being Laws 1995,
15 Chapter 106, Section 5, as amended) is amended to read:

16 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
17 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN
18 THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

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

23 B. The county sheriff shall forward registration
24 information obtained from sex offenders to the department of
25 public safety. The initial registration information and any

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

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

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

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

. 148216. 2

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

3 (3) sexual exploitation of children, as
4 provided in [~~Subsection A, B or C of~~] Section 30-6A-3 NMSA
5 1978;

6 (4) kidnapping, as provided in Section
7 30-4-1 NMSA 1978, when the victim is less than eighteen years
8 of age and the offender is not a parent of the victim; or

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

12 E. The department of public safety shall retain
13 registration information regarding sex offenders convicted for
14 the following offenses for a period of ten years following the
15 sex offender's conviction, release from prison or release from
16 probation or parole, whichever occurs later:

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

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

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

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

25 (5) false imprisonment, as provided in Section

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1 30-4-3 NMSA 1978, when the victim is less than eighteen years
2 of age and the offender is not a parent of the victim;

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

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

9 F. The department of public safety shall adopt
10 rules necessary to carry out the provisions of the Sex Offender
11 Registration and Notification Act. "

12 Section 5. Section 29-11A-5.1 NMSA 1978 (being Laws 1999,
13 Chapter 19, Section 8, as amended) is amended to read:

14 "29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING
15 CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY
16 NOTIFICATION--INTERNET WEB SITE. --

17 A. If a sex offender is convicted of one of the
18 following sex offenses or is convicted a second time for the
19 commission of any sex offense, the county sheriff shall forward
20 registration information obtained from the sex offender to the
21 district attorney for the judicial district in which the sex
22 offender resides and, if the sex offender is a resident of a
23 municipality, the chief law enforcement officer for the
24 municipality in which the sex offender resides:

25 (1) criminal sexual penetration in the first

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1 or second degree, as provided in Section 30-9-11 NMSA 1978;

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

5 (3) sexual exploitation of children, as
6 provided in [~~Subsection A, B or C of~~] Section 30-6A-3 NMSA
7 1978;

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

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

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

16 (1) [~~county~~] sheriff for the county in which
17 the sex offenders reside;

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

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

22 (4) secretary of public safety.

23 C. Upon receiving a request for registration
24 information regarding sex offenders described in Subsection A
25 of this section, the county sheriff, chief municipal law

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

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

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

22 Section 6. Section 29-11A-7 NMSA 1978 (being Laws 1995,
23 Chapter 106, Section 7, as amended) is amended to read:

24 "29-11A-7. NOTICE TO SEX OFFENDERS OF DUTY TO
25 REGISTER. --

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1 A. A court shall provide a sex offender convicted
2 in that court with written notice of his duty to register
3 pursuant to the provisions of the Sex Offender Registration and
4 Notification Act. The written notice shall be included in
5 judgment and sentence forms provided to the sex offender. The
6 written notice shall inform the sex offender that he is
7 required to:

8 (1) [~~to~~] register with the [~~county~~] sheriff
9 for the county in which the sex offender will reside, pursuant
10 to the provisions of the Sex Offender Registration and
11 Notification Act;

12 (2) [~~to~~] report subsequent changes of address,
13 pursuant to the provisions of the Sex Offender Registration and
14 Notification Act;

15 (3) [~~to~~] notify the [~~county~~] sheriff of the
16 county he resides in if the sex offender intends to move to
17 another state and that the sex offender is required to register
18 in the other state, pursuant to the provisions of the Sex
19 Offender Registration and Notification Act; and

20 (4) [~~to~~] read and sign a form that indicates
21 that the sex offender has received the written notice and that
22 a responsible court official, designated by the chief judge for
23 that judicial district, has explained the written notice to the
24 sex offender.

25 B. The corrections department, at the time of

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1 release of a sex offender in the department's custody, shall
2 provide a written notice to the sex offender of his duty to
3 register, pursuant to the provisions of the Sex Offender
4 Registration and Notification Act. The written notice shall
5 inform the sex offender that he is required to:

6 (1) ~~[to]~~ register with the ~~[county]~~ sheriff
7 for the county in which the sex offender will reside, pursuant
8 to the provisions of the Sex Offender Registration and
9 Notification Act;

10 (2) ~~[to]~~ report subsequent changes of address,
11 pursuant to the provisions of the Sex Offender Registration and
12 Notification Act;

13 (3) ~~[to]~~ notify the ~~[county]~~ sheriff of the
14 county he resides in if the sex offender intends to move to
15 another state and that the sex offender is required to register
16 in the other state, pursuant to the provisions of the Sex
17 Offender Registration and Notification Act; and

18 (4) ~~[to]~~ read and sign a form that indicates
19 that the sex offender has received the written notice and that
20 a responsible corrections department official, designated by
21 the secretary of corrections, has explained the written notice
22 to the sex offender.

23 C. A court or the corrections department shall also
24 provide written notification regarding a sex offender's release
25 to ~~[the sheriff of the county in which the sex offender is~~

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1 ~~released and to the department of public safety]:~~

2 (1) the sheriff of the county in which the sex
3 offender is released;

4 (2) the sheriff of the county in which the sex
5 offender intends to establish residence;

6 (3) the sheriff of the county in which the sex
7 offender committed a sex offense; and

8 (4) the department of public safety.

9 D. The department of public safety, at the time it
10 is notified by officials from another state that a sex offender
11 will be establishing residence in New Mexico, shall provide
12 written notice to the sex offender of his duty to register,
13 pursuant to the provisions of the Sex Offender Registration and
14 Notification Act. "

15 Section 7. A new section of the Sex Offender Registration
16 and Notification Act is enacted to read:

17 "[NEW MATERIAL] PROBATION FOR SEX OFFENDERS--LIMITS ON
18 REFERRALS. --When a court refers a sex offender to a treatment
19 or housing facility as a condition of probation, the court
20 shall not refer the sex offender to a facility that is located
21 within five miles of a licensed daycare center, elementary
22 school, middle school or high school. "

23 Section 8. EMERGENCY.--It is necessary for the public
24 peace, health and safety that this act take effect immediately.