

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILLS 528 & 439

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO SEX OFFENDERS; CREATING A NEW CRIME OF AGGRAVATED
CRIMINAL SEXUAL PENETRATION; INCREASING PENALTIES FOR SEX
OFFENSES AGAINST MINORS; RESPONDING TO JESSICA'S LAW; IMPOSING
LIFETIME PAROLE SUPERVISION FOR CERTAIN SEX OFFENDERS;
CLARIFYING STANDARD OF PROOF; CLARIFYING DEFINITIONS;
INCREASING PERIOD OF PAROLE FOR CRIMINAL SEXUAL CONTACT OF A
MINOR IN THE FOURTH DEGREE.

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

Section 1. Section 30-9-11 NMSA 1978 (being Laws 1975,
Chapter 109, Section 2, as amended) is amended to read:

"30-9-11. CRIMINAL SEXUAL PENETRATION.--

A. Criminal sexual penetration is the unlawful and
intentional causing of a person to engage in sexual
intercourse, cunnilingus, fellatio or anal intercourse or the

.169035.2GR

underscored material = new
[bracketed material] = delete

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

4 B. Criminal sexual penetration does not include
5 medically indicated procedures.

6 C. Aggravated criminal sexual penetration consists
7 of all criminal sexual penetration perpetrated:

8 (1) on a child under nine years of age; or

9 (2) with an intent to kill or with a depraved
10 mind regardless of human life.

11 Whoever commits aggravated criminal sexual penetration is
12 guilty of a first degree felony for aggravated criminal sexual
13 penetration.

14 [~~E.~~] D. Criminal sexual penetration in the first
15 degree consists of all criminal sexual penetration perpetrated:

16 (1) on a child [~~under~~] nine to thirteen years
17 of age; or

18 (2) by the use of force or coercion that
19 results in great bodily harm or great mental anguish to the
20 victim.

21 Whoever commits criminal sexual penetration in the first
22 degree is guilty of a first degree felony.

23 [~~D.~~] E. Criminal sexual penetration in the second
24 degree consists of all criminal sexual penetration perpetrated:

25 (1) by the use of force or coercion on a child

1 thirteen to eighteen years of age [~~when the perpetrator is in a~~
 2 ~~position of authority over the child and uses this authority to~~
 3 ~~coerce the child to submit~~];

4 (2) on an inmate confined in a correctional
 5 facility or jail when the perpetrator is in a position of
 6 authority over the inmate;

7 (3) by the use of force or coercion that
 8 results in personal injury to the victim;

9 (4) by the use of force or coercion when the
 10 perpetrator is aided or abetted by one or more persons;

11 (5) in the commission of any other felony; or

12 (6) when the perpetrator is armed with a
 13 deadly weapon.

14 Whoever commits criminal sexual penetration in the second
 15 degree is guilty of a second degree felony. Whoever commits
 16 criminal sexual penetration in the second degree when the
 17 victim is a child who is thirteen to eighteen years of age is
 18 guilty of a second degree felony for a sexual offense against a
 19 child and, notwithstanding the provisions of Section 31-18-15
 20 NMSA 1978, shall be sentenced to a minimum term of imprisonment
 21 of three years, which shall not be suspended or deferred. The
 22 imposition of a minimum, mandatory term of imprisonment
 23 pursuant to the provisions of this subsection shall not be
 24 interpreted to preclude the imposition of sentencing
 25 enhancements pursuant to the provisions of [~~Sections 31-18-17,~~
 .169035.2GR

underscored material = new
 [bracketed material] = delete

1 ~~31-18-25 and 31-18-26 NMSA 1978]~~ the Criminal Sentencing Act.

2 [E.] F. Criminal sexual penetration in the third
3 degree consists of all criminal sexual penetration perpetrated
4 through the use of force or coercion not otherwise specified in
5 this section.

6 Whoever commits criminal sexual penetration in the third
7 degree is guilty of a third degree felony. [~~Whoever commits~~
8 ~~criminal sexual penetration in the third degree when the victim~~
9 ~~is a child who is thirteen to eighteen years of age is guilty~~
10 ~~of a third degree felony for a sexual offense against a child.~~

11 ~~F.]~~ G. Criminal sexual penetration in the fourth
12 degree consists of all criminal sexual penetration:

13 (1) not defined in Subsections [~~C through E]~~ D
14 through F of this section perpetrated on a child thirteen to
15 sixteen years of age when the perpetrator is at least eighteen
16 years of age and is at least four years older than the child
17 and not the spouse of that child; or

18 (2) perpetrated on a child thirteen to
19 eighteen years of age when the perpetrator, who is a licensed
20 school employee, an unlicensed school employee, a school
21 contract employee, a school health service provider or a school
22 volunteer, and who is at least eighteen years of age and is at
23 least four years older than the child and not the spouse of
24 that child, learns while performing services in or for a school
25 that the child is a student in a school.

.169035.2GR

1 Whoever commits criminal sexual penetration in the fourth
2 degree is guilty of a fourth degree felony."

3 Section 2. Section 31-18-15 NMSA 1978 (being Laws 1977,
4 Chapter 216, Section 4, as amended) is amended to read:

5 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
6 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
7 DEDUCTIONS.--

8 A. If a person is convicted of a noncapital felony,
9 the basic sentence of imprisonment is as follows:

10 (1) for a first degree felony resulting in the
11 death of a child, life imprisonment;

12 (2) for a first degree felony for aggravated
13 criminal sexual penetration, life imprisonment;

14 ~~(2)~~ (3) for a first degree felony, eighteen
15 years imprisonment;

16 ~~(3)~~ (4) for a second degree felony resulting
17 in the death of a human being, fifteen years imprisonment;

18 ~~(4)~~ (5) for a second degree felony for a
19 sexual offense against a child, fifteen years imprisonment;

20 ~~(5)~~ (6) for a second degree felony, nine
21 years imprisonment;

22 ~~(6)~~ (7) for a third degree felony resulting
23 in the death of a human being, six years imprisonment;

24 ~~(7)~~ (8) for a third degree felony for a
25 sexual offense against a child, six years imprisonment;

.169035.2GR

underscored material = new
[bracketed material] = delete

1 [~~8~~] (9) for a third degree felony, three
2 years imprisonment; or

3 [~~9~~] (10) for a fourth degree felony,
4 eighteen months imprisonment.

5 B. The appropriate basic sentence of imprisonment
6 shall be imposed upon a person convicted and sentenced pursuant
7 to Subsection A of this section, unless the court alters the
8 sentence pursuant to the provisions of [~~Section 31-18-15.1,~~
9 ~~31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978~~] the Criminal
10 Sentencing Act.

11 C. The court shall include in the judgment and
12 sentence of each person convicted and sentenced to imprisonment
13 in a corrections facility designated by the corrections
14 department authority for a period of parole to be served in
15 accordance with the provisions of Section 31-21-10 NMSA 1978
16 after the completion of any actual time of imprisonment and
17 authority to require, as a condition of parole, the payment of
18 the costs of parole services and reimbursement to a law
19 enforcement agency or local crime stopper program in accordance
20 with the provisions of that section. The period of parole
21 shall be deemed to be part of the sentence of the convicted
22 person in addition to the basic sentence imposed pursuant to
23 Subsection A of this section together with alterations, if any,
24 pursuant to the provisions of [~~Section 31-18-15.1, 31-18-16,~~
25 ~~31-18-16.1 or 31-18-17 NMSA 1978~~] the Criminal Sentencing Act.

.169035.2GR

1 D. When a court imposes a sentence of imprisonment
 2 pursuant to the provisions of Section 31-18-15.1, 31-18-16,
 3 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the
 4 basic sentence of imprisonment provided pursuant to the
 5 provisions of Subsection A of this section, the period of
 6 parole shall be served in accordance with the provisions of
 7 Section 31-21-10 NMSA 1978 for the degree of felony for the
 8 basic sentence for which the inmate was convicted. For the
 9 purpose of designating a period of parole, a court shall not
 10 consider that the basic sentence of imprisonment was suspended
 11 or deferred and that the inmate served a period of imprisonment
 12 pursuant to the provisions of [~~Section 31-18-15.1, 31-18-16,~~
 13 ~~31-18-16.1 or 31-18-17 NMSA 1978~~] the Criminal Sentencing Act.

14 E. The court may, in addition to the imposition of
 15 a basic sentence of imprisonment, impose a fine not to exceed:

16 (1) for a first degree felony resulting in the
 17 death of a child, seventeen thousand five hundred dollars
 18 (\$17,500);

19 (2) for a first degree felony for aggravated
 20 criminal sexual penetration, seventeen thousand five hundred
 21 dollars (\$17,500);

22 [~~(2)~~] (3) for a first degree felony, fifteen
 23 thousand dollars (\$15,000);

24 [~~(3)~~] (4) for a second degree felony resulting
 25 in the death of a human being, twelve thousand five hundred

.169035.2GR

1 dollars (\$12,500);

2 ~~[(4)]~~ (5) for a second degree felony for a
3 sexual offense against a child, twelve thousand five hundred
4 dollars (\$12,500);

5 ~~[(5)]~~ (6) for a second degree felony, ten
6 thousand dollars (\$10,000);

7 ~~[(6)]~~ (7) for a third degree felony resulting
8 in the death of a human being, five thousand dollars (\$5,000);

9 ~~[(7)]~~ (8) for a third degree felony for a
10 sexual offense against a child, five thousand dollars (\$5,000);
11 or

12 ~~[(8)]~~ (9) for a third or fourth degree felony,
13 five thousand dollars (\$5,000).

14 F. When the court imposes a sentence of
15 imprisonment for a felony offense, the court shall indicate
16 whether or not the offense is a serious violent offense, as
17 defined in Section 33-2-34 NMSA 1978. The court shall inform
18 an offender that the offender's sentence of imprisonment is
19 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37
20 and 33-2-38 NMSA 1978. If the court fails to inform an
21 offender that the offender's sentence is subject to those
22 provisions or if the court provides the offender with erroneous
23 information regarding those provisions, the failure to inform
24 or the error shall not provide a basis for a writ of habeas
25 corpus.

.169035.2GR

1 G. No later than October 31 of each year, the New
 2 Mexico sentencing commission shall provide a written report to
 3 the secretary of corrections, all New Mexico criminal court
 4 judges, the administrative office of the district attorneys and
 5 the chief public defender. The report shall specify the
 6 average reduction in the sentence of imprisonment for serious
 7 violent offenses and nonviolent offenses, as defined in Section
 8 33-2-34 NMSA 1978, due to meritorious deductions earned by
 9 prisoners during the previous fiscal year pursuant to the
 10 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
 11 NMSA 1978. The corrections department shall allow the
 12 commission access to documents used by the department to
 13 determine earned meritorious deductions for prisoners."

14 Section 3. Section 31-21-10 NMSA 1978 (being Laws 1980,
 15 Chapter 28, Section 1, as amended) is amended to read:

16 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

17 A. An inmate of an institution who was sentenced to
 18 life imprisonment [~~as the result of the commission of a capital~~
 19 ~~felony, who was sentenced to life imprisonment as the result of~~
 20 ~~a conviction for a first degree felony resulting in the death~~
 21 ~~of a child, who was convicted of three violent felonies and~~
 22 ~~sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978~~
 23 ~~or who was convicted of two violent sexual offenses and~~
 24 ~~sentenced pursuant to Subsection A of Section 31-18-25 NMSA~~
 25 ~~1978 and Section 31-18-26 NMSA 1978]~~ becomes eligible for a

.169035.2GR

1 parole hearing after [~~he~~] the inmate has served thirty years of
2 [~~his~~] the sentence. Before ordering the parole of an inmate
3 sentenced to life imprisonment, the board shall:

4 (1) interview the inmate at the institution
5 where [~~he~~] the inmate is committed;

6 (2) consider all pertinent information
7 concerning the inmate, including:

8 (a) the circumstances of the offense;

9 (b) mitigating and aggravating
10 circumstances;

11 (c) whether a deadly weapon was used in
12 the commission of the offense;

13 (d) whether the inmate is a habitual
14 offender;

15 (e) the reports filed under Section
16 31-21-9 NMSA 1978; and

17 (f) the reports of such physical and
18 mental examinations as have been made while in an institution;

19 (3) make a finding that a parole is in the
20 best interest of society and the inmate; and

21 (4) make a finding that the inmate is able and
22 willing to fulfill the obligations of a law-abiding citizen.

23 If parole is denied, the inmate sentenced to life
24 imprisonment shall again become entitled to a parole hearing at
25 two-year intervals. The board may, on its own motion, reopen

.169035.2GR

1 any case in which a hearing has already been granted and parole
2 denied.

3 B. Unless the board finds that it is in the best
4 interest of society and the parolee to reduce the period of
5 parole, a person who was convicted of a capital felony shall be
6 required to undergo a minimum period of parole of five years.
7 During the period of parole, the person shall be under the
8 guidance and supervision of the board.

9 C. Except for certain sex offenders as provided in
10 Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a
11 first, second or third degree felony and who has served the
12 sentence of imprisonment imposed by the court in an institution
13 designated by the corrections department shall be required to
14 undergo a two-year period of parole. An inmate who was
15 convicted of a fourth degree felony and who has served the
16 sentence of imprisonment imposed by the court in an institution
17 designated by the corrections department shall be required to
18 undergo a one-year period of parole. During the period of
19 parole, the person shall be under the guidance and supervision
20 of the board.

21 D. Every person while on parole shall remain in the
22 legal custody of the institution from which ~~[he]~~ the person was
23 released, but shall be subject to the orders of the board. The
24 board shall furnish to each inmate as a prerequisite to ~~[his]~~
25 release under its supervision a written statement of the

.169035.2GR

1 conditions of parole that shall be accepted and agreed to by
2 the inmate as evidenced by [~~his~~] the inmate's signature affixed
3 to a duplicate copy to be retained in the files of the board.
4 The board shall also require as a prerequisite to release the
5 submission and approval of a parole plan. If an inmate refuses
6 to affix [~~his~~] the inmate's signature to the written statement
7 of the conditions of [~~his~~] parole or does not have an approved
8 parole plan, [~~he~~] the inmate shall not be released and shall
9 remain in the custody of the institution in which [~~he~~] the
10 inmate has served [~~his~~] the inmate's sentence, excepting
11 parole, until such time as the period of parole [~~he~~] the inmate
12 was required to serve, less meritorious deductions, if any,
13 expires, at which time [~~he~~] the inmate shall be released from
14 that institution without parole, or until such time that [~~he~~]
15 the inmate evidences [~~his~~] acceptance and agreement to the
16 conditions of parole as required or receives approval for [~~his~~]
17 the inmate's parole plan or both. Time served from the date
18 that an inmate refuses to accept and agree to the conditions of
19 parole or fails to receive approval for [~~his~~] the inmate's
20 parole plan shall reduce the period, if any, to be served under
21 parole at a later date. If the district court has ordered that
22 the inmate make restitution to a victim as provided in Section
23 31-17-1 NMSA 1978, the board shall include restitution as a
24 condition of parole. The board shall also personally apprise
25 the inmate of the conditions of parole and [~~his~~] the inmate's

.169035.2GR

1 duties relating thereto.

2 E. When a person on parole has performed the
3 obligations of [~~his~~] the person's release for the period of
4 parole provided in this section, the board shall make a final
5 order of discharge and issue [~~him~~] the person a certificate of
6 discharge.

7 F. Pursuant to the provisions of Section 31-18-15
8 NMSA 1978, the board shall require the inmate as a condition of
9 parole:

10 (1) to pay the actual costs of [~~his~~] parole
11 services to the adult probation and parole division of the
12 corrections department for deposit to the corrections
13 department intensive supervision fund not exceeding one
14 thousand eight hundred dollars (\$1,800) annually to be paid in
15 monthly installments of not less than twenty-five dollars
16 (\$25.00) and not more than one hundred fifty dollars (\$150), as
17 set by the appropriate district supervisor of the adult
18 probation and parole division, based upon the financial
19 circumstances of the defendant. The defendant's payment of the
20 supervised parole costs shall not be waived unless the board
21 holds an evidentiary hearing and finds that the defendant is
22 unable to pay the costs. If the board waives the defendant's
23 payment of the supervised parole costs and the defendant's
24 financial circumstances subsequently change so that the
25 defendant is able to pay the costs, the appropriate district

.169035.2GR

1 supervisor of the adult probation and parole division shall
2 advise the board and the board shall hold an evidentiary
3 hearing to determine whether the waiver should be rescinded;
4 and

5 (2) to reimburse a law enforcement agency or
6 local crime stopper program for the amount of any reward paid
7 by the agency or program for information leading to ~~[his]~~ the
8 inmate's arrest, prosecution or conviction.

9 G. The provisions of this section shall apply to
10 all inmates except geriatric, permanently incapacitated and
11 terminally ill inmates eligible for the medical and geriatric
12 parole program as provided by the Parole Board Act."

13 Section 4. Section 31-21-10.1 NMSA 1978 (being Laws
14 2003 (1st S.S.), Chapter 1, Section 9) is amended to read:

15 "31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS AND
16 CONDITIONS OF PAROLE.--

17 A. If the district court sentences a sex offender
18 to a term of incarceration in a facility designated by the
19 corrections department, the district court shall include a
20 provision in the judgment and sentence that specifically
21 requires the sex offender to serve an indeterminate period of
22 supervised parole for a period of:

23 (1) not less than five years and not in
24 excess of twenty years for the offense of kidnapping when
25 committed with intent to inflict a sexual offense upon the

1 victim, criminal sexual penetration in the third degree,
 2 criminal sexual contact of a minor in the fourth degree or
 3 sexual exploitation of children in the second degree; or
 4 (2) not less than five years and up to the
 5 natural life of the sex offender for the offense of
 6 aggravated criminal sexual penetration, criminal sexual
 7 penetration in the first or second degree, criminal sexual
 8 contact of a minor in the second or third degree or sexual
 9 exploitation of children by prostitution in the first or
 10 second degree.

11 A sex offender's period of supervised parole may be for
 12 a period of less than [~~twenty years~~] the maximum if, at a
 13 review hearing provided for in Subsection [~~B~~] C of this
 14 section, the state is unable to prove that the sex offender
 15 should remain on parole.

16 B. Prior to placing a sex offender on parole, the
 17 board shall conduct a hearing to determine the terms and
 18 conditions of supervised parole for the sex offender. The
 19 board may consider any relevant factors, including:

- 20 (1) the nature and circumstances of the
 21 offense for which the sex offender was incarcerated;
 22 (2) the nature and circumstances of a prior
 23 sex offense committed by the sex offender;
 24 (3) rehabilitation efforts engaged in by the
 25 sex offender, including participation in treatment programs

.169035.2GR

1 while incarcerated or elsewhere;

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

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

9 ~~[B. The board shall review the terms and~~
10 ~~conditions of a sex offender's supervised parole at two and~~
11 ~~one-half year intervals.]~~

12 C. When a sex offender has served the initial
13 five years of supervised parole, and at two and one-half year
14 intervals thereafter, the board shall ~~[also]~~ review the
15 duration of the sex offender's supervised parole ~~[at two and~~
16 ~~one-half year intervals. When a sex offender has served the~~
17 ~~initial five years of supervised parole]~~. At each review
18 hearing, the ~~[state]~~ attorney general shall bear the burden
19 of proving ~~[to a reasonable certainty]~~ by clear and
20 convincing evidence that the sex offender should remain on
21 parole.

22 ~~[G.]~~ D. The board may order a sex offender
23 released on parole to abide by reasonable terms and
24 conditions of parole, including:

25 (1) being subject to intensive supervision

1 by a parole officer of the corrections department;

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

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

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

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

13 E. The board shall require electronic real-time
14 monitoring of every sex offender released on parole for the
15 entire time the sex offender is on parole. The electronic
16 monitoring shall use global positioning system monitoring
17 technology or any successor technology that would give
18 continuous information on the sex offender's whereabouts and
19 enable law enforcement and the corrections department to
20 determine the real-time position of a sex offender to a high
21 level of accuracy.

22 ~~[D.]~~ F. The board shall notify the chief public
23 defender of an upcoming parole hearing for a sex offender
24 pursuant to Subsection C of this section, and the chief
25 public defender shall make representation available to the

.169035.2GR

1 sex offender at the parole hearing.

2 [E.] G. If the board finds that a sex offender
3 has violated the terms and conditions of [~~his~~] parole, the
4 board may revoke [~~his~~] the sex offender's parole or may
5 [~~order additional~~] modify the terms and conditions of parole.

6 [F.] H. The provisions of this section shall
7 apply to all sex offenders, except geriatric, permanently
8 incapacitated and terminally ill inmates eligible for the
9 medical and geriatric parole program as provided by the
10 Parole Board Act.

11 [G.] I. As used in this section, "sex offender"
12 means a person who is convicted of, pleads guilty to or
13 pleads nolo contendere to any one of the following offenses:

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

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

20 (3) criminal sexual contact of a minor in
21 the second, [~~or~~] third or fourth degree, as provided in
22 Section 30-9-13 NMSA 1978;

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

25 (5) sexual exploitation of children by

1 prostitution in the first or second degree, as provided in
2 Section 30-6A-4 NMSA 1978."

3 Section 5. Section 29-11A-3 NMSA 1978 (being Laws 1995,
4 Chapter 106, Section 3, as amended) is amended to read:

5 "29-11A-3. DEFINITIONS.--As used in the Sex Offender
6 Registration and Notification Act:

7 A. "conviction" means a conviction in any court
8 of competent jurisdiction and includes a deferred sentence,
9 but does not include a conditional discharge;

10 B. "institution of higher education" means a:

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

13 (2) trade school; or

14 (3) professional school;

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

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

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

.169035.2GR

1 (2) changes [~~his~~] residence to New Mexico,
2 when that person has been convicted of a sex offense [~~in~~
3 ~~another state~~] pursuant to state, federal, tribal or military
4 law;

5 [~~(3) is a resident of New Mexico who is~~
6 ~~convicted of a sex offense pursuant to federal, tribal or~~
7 ~~military law;~~

8 ~~(4)] (3) does not have an established~~

9 residence in New Mexico, but lives in a shelter, halfway
10 house or transitional living facility or stays in multiple
11 locations in New Mexico and who has been convicted of a sex
12 offense [~~in New Mexico or any other state~~] pursuant to state,
13 federal, tribal or military law; or

14 [~~(5)] (4) is a resident of another state and~~

15 who has been convicted of a sex offense pursuant to state,
16 federal, tribal or military law, but who is:

17 (a) employed full time or part time in
18 New Mexico for a period of time exceeding fourteen days or
19 for an aggregate period of time exceeding thirty days during
20 any calendar year, including any employment or vocation,
21 whether financially compensated, volunteered or for the
22 purpose of government or educational benefit; or

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

1 E. "sex offense" means any of the following
2 offenses or their equivalents in any other jurisdiction:

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

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

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

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

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

15 (6) kidnapping, as provided in Section
16 30-4-1 NMSA 1978, when the victim is less than eighteen years
17 of age and the offender is not a parent of the victim;

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

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

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

.169035.2GR

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

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

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

10 Section 6. Section 29-11A-5 NMSA 1978 (being Laws 1995,
11 Chapter 106, Section 5, as amended) is amended to read:

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

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

19 B. The county sheriff shall forward:

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

.169035.2GR

1 If the department of public safety receives information
2 regarding a sex offender from a governmental entity other
3 than a county sheriff, the department shall send that
4 information to the sheriff for the county in which the sex
5 offender resides; and

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

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

20 D. The department of public safety shall retain
21 registration information regarding a sex offender convicted
22 for any of the following sex offenses for the entirety of
23 ~~[his]~~ the sex offender's natural life:

24 (1) aggravated criminal sexual penetration
25 or criminal sexual penetration in the first, second or third

.169035.2GR

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

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

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

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

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

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

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

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

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

24 (3) false imprisonment, as provided in
25 Section 30-4-3 NMSA 1978, when the victim is less than

1 eight years of age and the offender is not a parent of the
2 victim;

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

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

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

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

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

16 F. Notwithstanding the provisions of Subsection E
17 of this section, if a sex offender is convicted a second or
18 subsequent time for a sex offense set forth in that
19 subsection, the department of public safety shall retain
20 information regarding the sex offender for the entirety of
21 the sex offender's natural life.

22 G. The department of public safety shall adopt
23 rules necessary to carry out the provisions of the Sex
24 Offender Registration and Notification Act. Rules necessary
25 for the collection of DNA samples and the administration and

.169035.2GR

1 operation of the sex offender DNA identification system shall
2 be adopted by the DNA identification system oversight
3 committee pursuant to the provisions of the DNA
4 Identification Act."

5 Section 7. Section 29-11A-5.1 NMSA 1978 (being Laws
6 1999, Chapter 19, Section 8, as amended) is amended to read:

7 "29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING
8 CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY
9 NOTIFICATION--INTERNET WEB SITE.--

10 A. If a sex offender is convicted of one of the
11 following sex offenses, the county sheriff shall forward
12 registration information obtained from the sex offender to
13 the district attorney for the judicial district in which the
14 sex offender resides and, if the sex offender is a resident
15 of a municipality, the chief law enforcement officer for the
16 municipality in which the sex offender resides:

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

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

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

25 (4) sexual exploitation of children by

1 prostitution, as provided in Section 30-6A-4 NMSA 1978; or

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

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

8 (1) sheriff for the county in which the sex
9 offenders reside;

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

12 (3) district attorney for the judicial
13 district in which the sex offenders reside; or

14 (4) secretary of public safety.

15 C. Upon receiving a request for registration
16 information regarding sex offenders described in Subsection A
17 of this section, the county sheriff, chief municipal law
18 enforcement officer, district attorney or secretary of public
19 safety shall provide that registration information, with the
20 exception of a sex offender's social security number and DNA
21 information, within a reasonable period of time, and no later
22 than seven days after receiving the request.

23 D. Within seven days of receiving registration
24 information from a sex offender described in Subsection A of
25 this section, the county sheriff shall contact every licensed

.169035.2GR

1 daycare center, elementary school, middle school and high
2 school within a one-mile radius of the sex offender's
3 residence and provide them with the sex offender's
4 registration information, with the exception of the sex
5 offender's social security number and DNA information.

6 E. The department of public safety shall
7 establish and manage an internet web site that provides the
8 public with registration information regarding sex offenders
9 described in Subsection A of this section, except that the
10 department of public safety shall not provide registration
11 information on the internet web site regarding a sex offender
12 who was less than eighteen years of age when [~~he~~] the sex
13 offender committed the sex offense for which [~~he~~] the sex
14 offender was convicted as a youthful offender, as provided in
15 Section 32A-2-3 NMSA 1978, unless at the time of sentencing,
16 the court made a finding that the sex offender is not
17 amenable to treatment and is a danger to the community. The
18 registration information provided to the public pursuant to
19 this subsection shall not include a sex offender's social
20 security number or DNA information or a sex offender's place
21 of employment, unless the sex offender's employment requires
22 [~~him~~] the sex offender to have direct contact with children."

23 Section 8. APPLICABILITY.--The provisions of Section 5
24 of this act are applicable to:

25 A. a person convicted of a sex offense on or

1 after July 1, 1995; and

2 B. a person convicted of a sex offense prior to
3 July 1, 1995 and who, on July 1, 1995, was still
4 incarcerated, on probation or on parole for commission of
5 that sex offense.

6 Section 9. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2007.

8 - 29 -

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
underscored material = new
[bracketed material] = delete