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SENATE BILL 735

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

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO SEX OFFENDERS; CREATING A NEW CRIMINAL OFFENSE
KNOWN AS CHILD SOLICITATION BY ELECTRONIC COMMUNICATION DEVICE;
ADDING THE OFFENSE OF CHILD SOLICITATION BY ELECTRONIC
COMMUNICATION DEVICE TO SEX OFFENDER REGISTRATION REQUIREMENTS;
PROVIDING AN EXTENDED PERIOD OF PAROLE FOR THE OFFENSE OF CHILD
SOLICITATION BY ELECTRONIC COMMUNICATION DEVICE; PROVIDING
ADDITIONAL VIOLENT FELONIES IN THE CRIMINAL SENTENCING ACT FOR
PURPOSES OF MANDATORY LIFE IMPRISONMENT FOR TWO VIOLENT SEXUAL
OFFENSE CONVICTIONS.

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:

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

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

5 (1) private or public post-secondary
6 educational institution;

7 (2) trade school; or

8 (3) professional school;

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

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

16 (1) is a resident of New Mexico who is
17 convicted of a sex offense in New Mexico;

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

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

24 (4) does not have an established residence in
25 New Mexico, but lives in a shelter, halfway house or

1 transitional living facility or stays in multiple locations in
2 New Mexico and who has been convicted of a sex offense in New
3 Mexico or any other state pursuant to state, federal, tribal or
4 military law; or

5 (5) is a resident of another state and who has
6 been convicted of a sex offense pursuant to state, federal,
7 tribal or military law, but who is:

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

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

17 E. "sex offense" means:

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

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

23 (3) criminal sexual contact of a minor in the
24 second, third or fourth degree, as provided in Section
25 30-9-13 NMSA 1978;

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

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

5 (6) 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 (7) false imprisonment, as provided in Section
9 30-4-3 NMSA 1978, when the victim is less than eighteen years
10 of age and the offender is not a parent of the victim;

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

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

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

17 (11) child solicitation by electronic
18 communication device, as provided in Section 30-37-3.2 NMSA
19 1978;

20 [~~(11)~~] (12) solicitation to commit criminal
21 sexual contact of a minor in the second, third or fourth
22 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;
23 or

24 [~~(12)~~] (13) attempt to commit any of the sex
25 offenses set forth in Paragraphs (1) through [~~(10)~~] (11) of

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1 this subsection, as provided in Section 30-28-1 NMSA 1978."

2 Section 2. Section 30-37-3.2 NMSA 1978 (being Laws 1998,
3 Chapter 64, Section 1, as amended) is amended to read:

4 "30-37-3.2. CHILD SOLICITATION BY [~~COMPUTER~~] ELECTRONIC
5 COMMUNICATION DEVICE.--

6 A. Child solicitation by [~~computer~~] electronic
7 communication device consists of a person knowingly and
8 intentionally soliciting a child under sixteen years of age, by
9 means of [~~computer~~] an electronic communication device, to
10 engage in sexual intercourse, sexual contact or in a sexual or
11 obscene performance, or to engage in any other sexual conduct
12 when the perpetrator is at least three years older than the
13 child.

14 B. Whoever commits child solicitation by [~~computer~~]
15 electronic communication device is guilty of a [~~fourth~~] third
16 degree felony, except the person is guilty of a second degree
17 felony if the person attends or is present at a meeting that
18 the person arranged pursuant to the solicitation.

19 C. Child solicitation by electronic communication
20 device in the fourth degree consists of a person knowingly and
21 intentionally communicating with a child under sixteen years of
22 age by sending the child images of the person's intimate parts
23 by means of an electronic communication device. Whoever
24 commits child solicitation by electronic communication device
25 in the fourth degree is guilty of a fourth degree felony.

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1 ~~[B-]~~ D. In a prosecution for child solicitation by
2 ~~[computer]~~ electronic communication device, it is not a defense
3 that the intended victim of the defendant was a peace officer
4 posing as a child under sixteen years of age.

5 ~~[G-]~~ E. For purposes of determining jurisdiction,
6 child solicitation by ~~[computer]~~ electronic communication
7 device is committed in this state if ~~[a computer]~~ an electronic
8 communication device transmission either originates or is
9 received in this state.

10 F. As used in this section:

11 (1) "electronic communication device" means a
12 computer, video recorder, digital camera, fax machine,
13 telephone, pager, audio equipment or any other device that can
14 produce an electronically generated image, message or signal;
15 and

16 (2) "intimate parts" means the primary genital
17 area, groin, buttocks, anus or breast."

18 Section 3. Section 31-18-25 NMSA 1978 (being Laws 1996,
19 Chapter 79, Section 1, as amended) is amended to read:

20 "31-18-25. TWO VIOLENT SEXUAL OFFENSE CONVICTIONS--
21 MANDATORY LIFE IMPRISONMENT--EXCEPTION.--

22 A. When a defendant is convicted of a second
23 violent sexual offense, and each violent sexual offense
24 conviction is part of a separate transaction or occurrence, and
25 at least the second violent sexual offense conviction is in New

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1 Mexico, the defendant shall, in addition to the punishment
2 imposed for the second violent sexual offense conviction, be
3 punished by a sentence of life imprisonment. The life
4 imprisonment sentence shall be subject to parole pursuant to
5 the provisions of Section 31-21-10 NMSA 1978.

6 B. Notwithstanding the provisions of Subsection A
7 of this section, when a defendant is convicted of a second
8 violent sexual offense, and each violent sexual offense
9 conviction is part of a separate transaction or occurrence, and
10 the victim of each violent sexual offense was less than
11 thirteen years of age at the time of the offense, and at least
12 the second violent sexual offense conviction is in New Mexico,
13 the defendant shall be punished by a sentence of life
14 imprisonment without the possibility of parole.

15 C. The sentence of life imprisonment shall be
16 imposed after a sentencing hearing, separate from the trial or
17 guilty plea proceeding resulting in the second violent sexual
18 offense conviction, pursuant to the provisions of Section
19 31-18-26 NMSA 1978.

20 D. For the purposes of this section, a violent
21 sexual offense conviction incurred by a defendant before [~~he~~]
22 the defendant reaches the age of eighteen shall not count as a
23 violent sexual offense conviction.

24 E. When a defendant has a felony conviction from
25 another state, the felony conviction shall be considered a

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1 violent sexual offense for the purposes of the Criminal
2 Sentencing Act if the crime would be considered a violent
3 sexual offense in New Mexico.

4 F. As used in the Criminal Sentencing Act, "violent
5 sexual offense" means:

6 (1) criminal sexual penetration in the first
7 or second degree, as provided in [~~Subsection C of~~] Section
8 30-9-11 NMSA 1978; or

9 [~~(2) criminal sexual penetration in the second~~
10 ~~degree, as provided in Subsection D of Section 30-9-11 NMSA~~
11 ~~1978]~~

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

15 Section 4. Section 31-21-10.1 NMSA 1978 (being Laws 2003
16 (1st S.S.), Chapter 1, Section 9) is amended to read:

17 "31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS AND
18 CONDITIONS OF PAROLE.--

19 A. If the district court sentences a sex offender
20 to a term of incarceration in a facility designated by the
21 corrections department, the district court shall include a
22 provision in the judgment and sentence that specifically
23 requires the sex offender to serve an indeterminate period of
24 supervised parole for a period of not less than five years and
25 not in excess of twenty years. A sex offender's period of

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1 supervised parole may be for a period of less than twenty years
2 if, at a review hearing provided for in Subsection B of this
3 section, the state is unable to prove that the sex offender
4 should remain on parole. Prior to placing a sex offender on
5 parole, the board shall conduct a hearing to determine the
6 terms and conditions of supervised parole for the sex offender.
7 The board may consider any relevant factors, including:

8 (1) the nature and circumstances of the
9 offense for which the sex offender was incarcerated;

10 (2) the nature and circumstances of a prior
11 sex offense committed by the sex offender;

12 (3) rehabilitation efforts engaged in by the
13 sex offender, including participation in treatment programs
14 while incarcerated or elsewhere;

15 (4) the danger to the community posed by the
16 sex offender; and

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

21 B. The board shall review the terms and conditions
22 of a sex offender's supervised parole at two and one-half year
23 intervals. When a sex offender has served the initial five
24 years of supervised parole, the board shall also review the
25 duration of the sex offender's supervised parole at two and

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1 one-half year intervals. When a sex offender has served the
2 initial five years of supervised parole, at each review hearing
3 the state shall bear the burden of proving to a reasonable
4 certainty that the sex offender should remain on parole.

5 C. The board may order a sex offender released on
6 parole to abide by reasonable terms and conditions of parole,
7 including:

8 (1) being subject to intensive supervision by
9 a parole officer of the corrections department;

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

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

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

16 (5) being subject to alcohol testing, drug
17 testing or polygraph examinations used to determine if the sex
18 offender is in compliance with the terms and conditions of
19 [his] the sex offender's parole.

20 D. The board shall notify the chief public defender
21 of an upcoming parole hearing for a sex offender, and the chief
22 public defender shall make representation available to the sex
23 offender at the parole hearing.

24 E. If the board finds that a sex offender has
25 violated the terms and conditions of [his] the sex offender's

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1 parole, the board may revoke [~~his~~] the sex offender's parole or
2 may order additional terms and conditions of parole.

3 F. The provisions of this section shall apply to
4 all sex offenders, except geriatric, permanently incapacitated
5 and terminally ill inmates eligible for the medical and
6 geriatric parole program as provided by the Parole Board Act.

7 G. As used in this section, "sex offender" means a
8 person who is convicted of, pleads guilty to or pleads nolo
9 contendere to any one of the following offenses:

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

13 (2) criminal sexual penetration in the first,
14 second or third degree, as provided in Section 30-9-11 NMSA
15 1978;

16 (3) criminal sexual contact of a minor in the
17 second or third degree, as provided in Section 30-9-13 NMSA
18 1978;

19 (4) sexual exploitation of children in the
20 second degree, as provided in Section 30-6A-3 NMSA 1978; [~~or~~]

21 (5) sexual exploitation of children by
22 prostitution in the first or second degree, as provided in
23 Section 30-6A-4 NMSA 1978; or

24 (6) child solicitation by electronic
25 communication device, as provided in Section 30-37-3.2 NMSA

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1 1978."

2 Section 5. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2007.

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