

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 735

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

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.

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. "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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underscored material = new
[bracketed material] = delete

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

2 (1) private or public post-secondary
3 educational institution;

4 (2) trade school; or

5 (3) professional school;

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

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

13 (1) is a resident of New Mexico who is
14 convicted of a sex offense in New Mexico;

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

18 (3) is a resident of New Mexico who is
19 convicted of a sex offense pursuant to federal, tribal or
20 military law;

21 (4) does not have an established residence in
22 New Mexico, but lives in a shelter, halfway house or
23 transitional living facility or stays in multiple locations in
24 New Mexico and who has been convicted of a sex offense in New
25 Mexico or any other state pursuant to state, federal, tribal or

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1 military law; or

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

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

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

14 E. "sex offense" means:

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

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

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

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

25 (5) sexual exploitation of children by

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

2 (6) kidnapping, as provided in Section
3 30-4-1 NMSA 1978, when the victim is less than eighteen years
4 of age and the offender is not a parent of the victim;

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

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

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

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

14 (11) child solicitation by electronic
15 communication device, as provided in Section 30-37-3.2 NMSA
16 1978;

17 [~~(11)~~] (12) solicitation to commit criminal
18 sexual contact of a minor in the second, third or fourth
19 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;
20 or

21 [~~(12)~~] (13) attempt to commit any of the sex
22 offenses set forth in Paragraphs (1) through [~~(10)~~] (11) of
23 this subsection, as provided in Section 30-28-1 NMSA 1978."

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

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1 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
2 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN
3 THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

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

8 B. The county sheriff shall forward:

9 (1) registration information obtained from sex
10 offenders to the department of public safety. The initial
11 registration information and any new registration information
12 subsequently obtained from a sex offender shall be forwarded by
13 the county sheriff no later than ten working days after the
14 information is obtained from a sex offender. If the department
15 of public safety receives information regarding a sex offender
16 from a governmental entity other than a county sheriff, the
17 department shall send that information to the sheriff for the
18 county in which the sex offender resides; and

19 (2) samples of DNA obtained from sex offenders
20 to the administrative center for the sex offender DNA
21 identification system pursuant to the provisions of the DNA
22 Identification Act.

23 C. The department of public safety shall maintain a
24 central registry of sex offenders required to register pursuant
25 to the provisions of the Sex Offender Registration and

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1 Notification Act. The department shall participate in the
2 national sex offender registry administered by the United
3 States department of justice. The department shall send
4 conviction information and fingerprints for all sex offenders
5 registered in New Mexico to the national sex offender registry
6 administered by the United States department of justice and to
7 the federal bureau of investigation.

8 D. The department of public safety shall retain
9 registration information regarding a sex offender convicted for
10 any of the following sex offenses for the entirety of [~~his~~] the
11 sex offender's natural life:

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

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

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

20 (4) kidnapping, as provided in Section
21 30-4-1 NMSA 1978, when the victim is less than eighteen years
22 of age and the offender is not a parent of the victim;

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

25 (6) attempt to commit any of the sex offenses

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1 set forth in Paragraphs (1) through (5) of this subsection, as
2 provided in Section 30-28-1 NMSA 1978.

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

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

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

12 (3) false imprisonment, as provided in Section
13 30-4-3 NMSA 1978, when the victim is less than eighteen years
14 of age and the offender is not a parent of the victim;

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

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

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

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

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

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1 1978; or

2 [~~8~~] (9) attempt to commit any of the sex
3 offenses set forth in Paragraphs (1) through (6) of this
4 subsection, as provided in Section 30-28-1 NMSA 1978.

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

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

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

20 "30-37-3.2. CHILD SOLICITATION BY [~~COMPUTER~~] ELECTRONIC
21 COMMUNICATION DEVICE.--

22 A. Child solicitation by [~~computer~~] electronic
23 communication device consists of a person knowingly and
24 intentionally soliciting a child under sixteen years of age, by
25 means of [~~computer~~] an electronic communication device, to

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1 engage in sexual intercourse, sexual contact or in a sexual or
2 obscene performance, or to engage in any other sexual conduct
3 when the perpetrator is at least [~~three~~] four years older than
4 the child.

5 B. Whoever commits child solicitation by [~~computer~~]
6 electronic communication device is guilty of a:

7 (1) fourth degree felony if the child is at
8 least thirteen but under sixteen years of age; or

9 (2) third degree felony if the child is under
10 thirteen years of age.

11 C. Whoever commits child solicitation by electronic
12 communication device and also appears for, attends or is
13 present at a meeting that the person arranged pursuant to the
14 solicitation is guilty of a:

15 (1) third degree felony if the child is at
16 least thirteen but under sixteen years of age; or

17 (2) second degree felony if the child is under
18 thirteen years of age.

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

23 [~~C.~~] E. For purposes of determining jurisdiction,
24 child solicitation by [~~computer~~] electronic communication
25 device is committed in this state if [~~a computer~~] an electronic

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1 communication device transmission either originates or is
2 received in this state.

3 F. As used in this section, "electronic
4 communication device" means a computer, video recorder, digital
5 camera, fax machine, telephone, cellular telephone, pager,
6 audio equipment or any other device that can produce an
7 electronically generated image, message or signal."

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

10 "31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS AND
11 CONDITIONS OF PAROLE.--

12 A. If the district court sentences a sex offender
13 to a term of incarceration in a facility designated by the
14 corrections department, the district court shall include a
15 provision in the judgment and sentence that specifically
16 requires the sex offender to serve an indeterminate period of
17 supervised parole for a period of not less than five years and
18 not in excess of twenty years. A sex offender's period of
19 supervised parole may be for a period of less than twenty years
20 if, at a review hearing provided for in Subsection B of this
21 section, the state is unable to prove that the sex offender
22 should remain on parole. Prior to placing a sex offender on
23 parole, the board shall conduct a hearing to determine the
24 terms and conditions of supervised parole for the sex offender.
25 The board may consider any relevant factors, including:

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- 1 (1) the nature and circumstances of the
2 offense for which the sex offender was incarcerated;
- 3 (2) the nature and circumstances of a prior
4 sex offense committed by the sex offender;
- 5 (3) rehabilitation efforts engaged in by the
6 sex offender, including participation in treatment programs
7 while incarcerated or elsewhere;
- 8 (4) the danger to the community posed by the
9 sex offender; and
- 10 (5) a risk and needs assessment regarding the
11 sex offender, developed by the sex offender management board of
12 the New Mexico sentencing commission or another appropriate
13 entity, to be used by appropriate parole board personnel.

14 B. The board shall review the terms and conditions
15 of a sex offender's supervised parole at two and one-half year
16 intervals. When a sex offender has served the initial five
17 years of supervised parole, the board shall also review the
18 duration of the sex offender's supervised parole at two and
19 one-half year intervals. When a sex offender has served the
20 initial five years of supervised parole, at each review hearing
21 the state shall bear the burden of proving to a reasonable
22 certainty that the sex offender should remain on parole.

23 C. The board may order a sex offender released on
24 parole to abide by reasonable terms and conditions of parole,
25 including:

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

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

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

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

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

13 D. The board shall notify the chief public defender
14 of an upcoming parole hearing for a sex offender, and the chief
15 public defender shall make representation available to the sex
16 offender at the parole hearing.

17 E. If the board finds that a sex offender has
18 violated the terms and conditions of [~~his~~] the sex offender's
19 parole, the board may revoke [~~his~~] the sex offender's parole or
20 may order additional terms and conditions of parole.

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

25 G. As used in this section, "sex offender" means a

1 person who is convicted of, pleads guilty to or pleads nolo
2 contendere to any one of the following offenses:

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

6 (2) criminal sexual penetration in the first,
7 second or third degree, as provided in Section 30-9-11 NMSA
8 1978;

9 (3) criminal sexual contact of a minor in the
10 second or third degree, as provided in Section 30-9-13 NMSA
11 1978;

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

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

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

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