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SENATE BILL 352

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO SEX OFFENSES AGAINST CHILDREN; CLARIFYING THAT A DISTRICT ATTORNEY IS NOT REQUIRED TO PROVIDE NOTICE THAT CERTAIN MATERIAL IS HARMFUL TO CHILDREN BEFORE PROSECUTION FOR CERTAIN SEX OFFENSES AGAINST CHILDREN; RECONCILING MULTIPLE AMENDMENTS TO THE DEFINITIONS SECTION IN THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT IN LAWS 2007.

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 by Laws 2007, Chapter 68, Section 1 and by Laws 2007, Chapter 69, Section 5) 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

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1 competent jurisdiction and includes a deferred sentence, but  
2 does not include a conditional discharge;

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

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

6 (2) trade school; or

7 (3) professional school;

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

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

15 (1) is a resident of New Mexico who is  
16 convicted of a sex offense pursuant to state, federal, tribal  
17 or military law;

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

21 (3) 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 pursuant  
25 to state, federal, tribal or military law; or

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

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

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

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

15 (1) aggravated criminal sexual penetration or  
16 criminal sexual penetration in the first, second, third or  
17 fourth degree, as provided in Section 30-9-11 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 30-9-13  
22 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 (12) solicitation to commit criminal sexual  
18 contact of a minor in the second, third or fourth degree, as  
19 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

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

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

25 "30-37-3.2. CHILD SOLICITATION BY ELECTRONIC

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1 COMMUNICATION DEVICE.--

2           A. Child solicitation by electronic communication  
3 device consists of a person knowingly and intentionally  
4 soliciting a child under sixteen years of age, by means of an  
5 electronic communication device, to engage in sexual  
6 intercourse, sexual contact or in a sexual or obscene  
7 performance, or to engage in any other sexual conduct when the  
8 perpetrator is at least four years older than the child.

9           B. Whoever commits child solicitation by electronic  
10 communication device is guilty of a:

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

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

15           C. Whoever commits child solicitation by electronic  
16 communication device and also appears for, attends or is  
17 present at a meeting that the person arranged pursuant to the  
18 solicitation is guilty of a:

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

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

23           D. In a prosecution for child solicitation by  
24 electronic communication device, it is not a defense that the  
25 intended victim of the defendant was a peace officer posing as

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1 a child under sixteen years of age.

2 E. For purposes of determining jurisdiction, child  
3 solicitation by electronic communication device is committed in  
4 this state if an electronic communication device transmission  
5 either originates or is received in this state.

6 F. The notice provisions of Section 30-37-4 NMSA  
7 1978 shall not apply to this section.

8 [~~F.~~] G. As used in this section, "electronic  
9 communication device" means a computer, video recorder, digital  
10 camera, fax machine, telephone, cellular telephone, pager,  
11 audio equipment or any other device that can produce an  
12 electronically generated image, message or signal."

13 SECTION 3. Section 30-37-3.3 NMSA 1978 (being Laws 2007,  
14 Chapter 67, Section 1) is amended to read:

15 "30-37-3.3. CRIMINAL SEXUAL COMMUNICATION WITH A CHILD--  
16 PENALTY.--

17 A. Criminal sexual communication with a child  
18 consists of a person knowingly and intentionally communicating  
19 directly with a specific child under sixteen years of age by  
20 sending the child obscene images of the person's intimate parts  
21 by means of an electronic communication device when the  
22 perpetrator is at least four years older than the child.

23 B. Whoever commits sexual communication with a  
24 child is guilty of a fourth degree felony.

25 C. The notice provisions of Section 30-37-4 NMSA

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1 1978 shall not apply to this section.

2 ~~[G.]~~ D. As used in this section:

3 (1) "electronic communication device" means a  
4 computer, video recorder, digital camera, fax machine,  
5 telephone, pager or any other device that can produce an  
6 electronically generated image; and

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

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