

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 570

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO SEX OFFENDERS; REQUIRING ADDITIONAL REGISTRATION
INFORMATION; REQUIRING SEX OFFENDERS TO REGISTER AND UPDATE
INFORMATION WITHIN FIVE BUSINESS DAYS; PROVIDING FOR
VERIFICATION OF REGISTRATION; PROVIDING FOR ELECTRONIC UPDATES;
INCLUDING ADDITIONAL OFFENDERS ON THE SEX OFFENDER INTERNET WEB
SITE; REQUIRING THAT CERTAIN CRIMES BE COMMITTED WITH SEXUAL
INTENT BEFORE THEY ARE DEEMED A SEX OFFENSE; PROVIDING FOR
INFORMATION TO BE AVAILABLE ON THE SEX OFFENDER INTERNET WEB
SITE; REITERATING STATE PREEMPTION OF THE FIELD OF SEX OFFENDER
REGISTRATION BY PROHIBITING LAW ENFORCEMENT FROM REQUIRING
ADDITIONAL REGISTRATION OR FROM IMPOSING OTHER RESTRICTIONS;
PROVIDING DEFINITIONS; RECONCILING MULTIPLE AMENDMENTS TO THE
SAME SECTIONS OF LAW IN LAWS 2007.

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

.193982.7

underscoring material = new
~~[bracketed material] = delete~~

1 SECTION 1. Section 29-11A-3 NMSA 1978 (being Laws 1995,
2 Chapter 106, Section 3, as amended by Laws 2007, Chapter 68,
3 Section 1 and by Laws 2007, Chapter 69, Section 5) is amended
4 to read:

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

7 A. "business day" means a day that is not a
8 Saturday, a Sunday or a state holiday;

9 ~~[A.]~~ B. "conviction" means a conviction in any
10 court of competent jurisdiction and includes a deferred
11 sentence, but does not include a conditional discharge;

12 C. "department" means the department of public
13 safety;

14 ~~[B.]~~ D. "institution of higher education" means a:

15 (1) private or public post-secondary
16 educational institution;

17 (2) trade school; or

18 (3) professional school;

19 E. "habitually lives" means any place where a sex
20 offender lives for at least thirty days in any three-hundred-
21 sixty-five-day period;

22 F. "out-of-state registrant" means any person who
23 establishes a residence in New Mexico while the person is
24 required to register as a sex offender in another state or
25 territory;

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

7 ~~[D.]~~ H. "sex offender" means a person who:

8 (1) is a resident of New Mexico who is
9 convicted of a sex offense pursuant to state, federal, tribal
10 or military law;

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

14 (3) does not have an established residence in
15 New Mexico, but lives in a shelter, halfway house or
16 transitional living facility or stays in multiple locations in
17 New Mexico and who has been convicted of a sex offense pursuant
18 to state, federal, tribal or military law; or

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

22 (a) employed full time or part time in
23 New Mexico for a period of time exceeding fourteen days or for
24 an aggregate period of time exceeding thirty days during any
25 calendar year, including any employment or vocation, whether

.193982.7

1 financially compensated, volunteered or for the purpose of
2 government or educational benefit; or

3 (b) enrolled on a full-time or
4 part-time basis in a private or public school or an institution
5 of higher education in New Mexico; ~~and~~

6 ~~E.]~~ I. "sex offense" means any of the following
7 offenses or their equivalents in any other jurisdiction:

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

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

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

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

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

20 (6) 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]~~ committed
23 with the intent to inflict a sexual offense;

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

1 ~~of age and the offender is not a parent of the victim]~~
 2 committed with the intent to inflict a sexual offense;

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

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

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

10 (11) child solicitation by electronic
 11 communication device, as provided in Section 30-37-3.2 NMSA
 12 1978, for convictions occurring on or after July 1, 2013;

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

16 (13) attempt to commit any of the sex offenses
 17 set forth in Paragraphs (1) through (11) of this subsection, as
 18 provided in Section 30-28-1 NMSA 1978; and

19 J. "social networking site" means an internet web
 20 site that facilitates online social interaction by offering a
 21 mechanism for communication with other users, where such users
 22 are likely to include a substantial number of minors under the
 23 age of sixteen, and allowing users, through the creation of web
 24 pages, profiles or other means, to provide information about
 25 themselves that is available to the public or to other users."

.193982.7

1 SECTION 2. Section 29-11A-4 NMSA 1978 (being Laws 1995,
2 Chapter 106, Section 4, as amended) is amended to read:

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

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

8 B. A sex offender who is a resident of New Mexico
9 shall initially register with the county sheriff no later than
10 [~~ten~~] five business days after being released from the custody
11 of the corrections department, a municipal or county jail or a
12 federal, military or tribal correctional facility or detention
13 center or being placed on probation or parole. A sex offender
14 who changes [~~his~~] residence to New Mexico shall register with
15 the county sheriff no later than [~~ten~~] five business days after
16 [~~his~~] arrival in this state. When a sex offender initially
17 registers with the county sheriff, [~~he~~] the sex offender shall
18 provide the following registration information:

19 (1) [~~his~~] the sex offender's legal name and
20 any other names or aliases that [~~he~~] the sex offender is using
21 or has used;

22 (2) [~~his~~] the sex offender's date of birth;

23 (3) [~~his~~] the sex offender's social security
24 number;

25 (4) [~~his~~] the sex offender's current physical

1 and mailing address and the address of every place where the
2 sex offender habitually lives;

3 (5) [his] the sex offender's place of
4 employment;

5 (6) the sex offense for which [he] the sex
6 offender was convicted; [and]

7 (7) the date and place of [his] the sex
8 offense conviction;

9 (8) the sex offender's names, email addresses
10 and monikers and other self-identifiers used on social
11 networking sites, to be used only for law enforcement purposes;

12 (9) the sex offender's landline and cellular
13 telephone numbers and any other telephone numbers primarily
14 used by the sex offender;

15 (10) the sex offender's professional licenses;

16 (11) the license plate or other identifier and
17 the description of any vehicle owned or primarily operated by
18 the sex offender, including aircraft and watercraft;

19 (12) the name and address of any school or
20 institution of higher education that the sex offender is
21 attending; and

22 (13) copies of the sex offender's passport and
23 immigration documents.

24 C. A sex offender who is a resident of another
25 state but who is employed in New Mexico or attending public or

.193982.7

1 private school or an institution of higher education in New
2 Mexico shall register with the county sheriff for the county in
3 which the sex offender is working or attending school or an
4 institution of higher education.

5 D. A sex offender who is a resident of another
6 state but who is employed in New Mexico or attending public or
7 private school or an institution of higher education in New
8 Mexico shall register with the county sheriff no later than
9 ~~[ten]~~ five business days after beginning work or school. When
10 the sex offender registers with the county sheriff, ~~[he]~~ the
11 sex offender shall provide the following registration
12 information:

13 (1) ~~[his]~~ the sex offender's legal name and
14 any other names or aliases that ~~[he]~~ the sex offender is using
15 or has used;

16 (2) ~~[his]~~ the sex offender's date of birth;

17 (3) ~~[his]~~ the sex offender's social security
18 number;

19 (4) ~~[his]~~ the sex offender's current physical
20 and mailing address in ~~[his]~~ the sex offender's state of
21 residence and, if applicable, the address of ~~[his]~~ the sex
22 offender's place of lodging in New Mexico while ~~[he-is]~~ working
23 or attending school or an institution of higher education;

24 (5) ~~[his]~~ the sex offender's place of
25 employment or the name of the school ~~[he]~~ the sex offender is

.193982.7

1 attending;

2 (6) the sex offense for which [~~he~~] the sex
3 offender was convicted; and

4 (7) the date and place of [~~his~~] the sex
5 offense conviction.

6 E. When a sex offender registers with a county
7 sheriff, the sheriff shall obtain:

8 (1) a photograph of the sex offender and a
9 complete set of the sex offender's fingerprints and a palm
10 print;

11 (2) a physical description, including a
12 description of any tattoos, scars or other distinguishing
13 features on the sex offender's body that would assist in
14 identifying the sex offender; and

15 (3) a DNA sample [~~of his DNA~~] for inclusion in
16 the sex offender DNA identification system pursuant to the
17 provisions of the DNA Identification Act.

18 F. When a sex offender who is registered changes
19 [~~his residence within the same county~~] any information required
20 under this section, the sex offender shall send written notice
21 of [~~his~~] the change [~~of address~~] on a form approved by the
22 department to the county sheriff no later than [~~ten~~] five
23 business days after [~~establishing his new residence~~] the change
24 occurs.

25 G. When a sex offender who is registered changes

.193982.7

1 [his] residence to a new county in New Mexico, the sex offender
2 shall register with the county sheriff of the new county no
3 later than [~~ten~~] five business days after establishing [his]
4 the new residence. The sex offender shall also send written
5 notice of the change in residence to the county sheriff with
6 whom [~~he~~] the sex offender last registered no later than [~~ten~~]
7 five business days after establishing [his] the new residence.

8 H. When a sex offender who is registered or
9 required to register is homeless or does not have an
10 established residence, but lives in a shelter, halfway house or
11 transitional living facility or stays in multiple locations in
12 New Mexico, the sex offender shall register each address or
13 temporary location with the county sheriff for each county in
14 which the sex offender is living or temporarily located. The
15 sex offender shall register no later than [~~ten~~] five business
16 days after a change in [his] living arrangements or temporary
17 location.

18 I. When a sex offender who is registered or
19 required to register is employed, begins a vocation or is
20 enrolled as a student at an institution of higher education in
21 New Mexico, the sex offender shall disclose [his] the sex
22 offender's status as a sex offender in writing to the county
23 sheriff for the county in which the institution of higher
24 education is located, the law enforcement entity responsible
25 for the institution of higher education and the registrar for

1 the institution of higher education no later than [~~ten~~] five
2 business days after beginning employment, beginning a vocation
3 or enrolling at the institution of higher education. The sex
4 offender shall also send written notice of any change regarding
5 [~~his~~] employment, vocation or enrollment status at an
6 institution of higher education to the county sheriff, the law
7 enforcement entity and the registrar no later than [~~ten~~] five
8 business days after the change in [~~his~~] employment, vocation or
9 enrollment status.

10 J. When a sex offender who is registered or
11 required to register is employed or is enrolled as a student at
12 a public or private school in New Mexico, the sex offender
13 shall disclose [~~his~~] the sex offender's status as a sex
14 offender in writing to the county sheriff for the county in
15 which the school is located and to the principal of the school
16 no later than [~~ten~~] five business days after beginning
17 employment or enrolling at the school. The sex offender shall
18 also send written notice of any change regarding [~~his~~]
19 employment or enrollment status at a school to the county
20 sheriff and the principal no later than [~~ten~~] five business
21 days after the change in [~~his~~] employment or enrollment status.

22 K. When a sex offender who is registered or
23 required to register is employed, begins a vocation or
24 volunteers [~~his~~] services, regardless of whether the sex
25 offender receives payment or other compensation, the sex

.193982.7

1 offender shall disclose [~~his~~] the sex offender's status as a
2 sex offender in writing to [~~his~~] the sex offender's employer,
3 supervisor or person similarly situated. The written
4 disclosure shall be made immediately upon beginning [~~his~~]
5 employment, vocation or volunteer service.

6 L. Following [~~his~~] initial registration pursuant to
7 the provisions of this section:

8 (1) a sex offender required to register
9 pursuant to the provisions of Subsection D of Section 29-11A-5
10 NMSA 1978 shall [~~renew his~~] verify registration information
11 with the county sheriff as provided in Subsection N of this
12 section not less than once in each ninety-day period following
13 the date of the sex offender's initial registration for the
14 [~~entirety~~] remainder of [~~his~~] the sex offender's natural life;
15 [~~and~~]

16 (2) a sex offender required to register
17 pursuant to the provisions of Subsection E of Section 29-11A-5
18 NMSA 1978 shall [~~annually renew his~~] verify registration
19 information with the county sheriff [~~prior to December 31 of~~
20 ~~each subsequent calendar year~~] as provided in Subsection N of
21 this section once every six months for a period of ten years;
22 and

23 (3) an out-of-state registrant shall verify
24 registration information with the county sheriff for whichever
25 is the longer of:

1 (a) the duration of time remaining in
2 the registrant's convicting jurisdiction and at the same
3 frequency as required in that state or territory, but no less
4 than once every six months; or

5 (b) the duration of time remaining that
6 would be required for the equivalent offense in New Mexico.

7 M. Notwithstanding the provisions of Paragraph (2)
8 of Subsection L of this section, if a sex offender is convicted
9 a second or subsequent time for a sex offense set forth in
10 Subsection E of Section 29-11A-5 NMSA 1978, [~~he~~] the sex
11 offender shall [~~renew his~~] verify registration information with
12 the county sheriff as provided in Subsection N of this section
13 not less than once in each ninety-day period following the date
14 of the sex offender's initial registration for the [~~entirety~~]
15 remainder of [~~his~~] the sex offender's natural life.

16 N. At least fifteen days prior to the time a sex
17 offender is required to verify registration information, the
18 department shall send a verification form to the sex offender,
19 by first class mail, containing the sex offender's current
20 registration information and a notice of the date that the sex
21 offender's next verification is due. The sex offender shall
22 appear in person at a location designated by the department to
23 verify the information contained on the form, to change the
24 information as necessary and to sign a statement under oath
25 that the information is true and correct. The department may

.193982.7

1 photograph the sex offender at that time if the sex offender's
2 appearance is significantly different from the photograph
3 already contained in the sex offender's file. If a sex
4 offender does not receive a verification form before the time
5 that the sex offender is required to verify registration
6 pursuant to Subsection L of this section, the sex offender
7 shall appear at a location designated by the department to
8 verify registration information as required by this section.

9 O. The department shall establish a secure system
10 that will permit a sex offender to notify the department
11 electronically of any change in registration information.

12 ~~[N.]~~ P. A sex offender who willfully or
13 knowingly fails to comply with the registration or verification
14 requirements set forth in this section is guilty of a fourth
15 degree felony and shall be sentenced pursuant to the provisions
16 of Section 31-18-15 NMSA 1978. A sex offender who willfully or
17 knowingly fails to comply with the registration or verification
18 requirements set forth in this section after a first or
19 subsequent conviction for a violation pursuant to this section
20 is guilty of a third degree felony and shall be sentenced
21 pursuant to the provisions of Section 31-18-15 NMSA 1978. The
22 willful failure to comply with any registration or verification
23 requirement set forth in this section shall be deemed part of a
24 continuing transaction or occurrence. A conviction pursuant to
25 this subsection shall not be considered a felony for purposes

.193982.7

1 of the imposition of sentencing enhancements pursuant to the
2 provisions of Section 31-18-17 NMSA 1978.

3 ~~[Q.]~~ Q. A sex offender who willfully or knowingly
4 provides false information when complying with the registration
5 or verification requirements set forth in this section is
6 guilty of a fourth degree felony and shall be sentenced
7 pursuant to the provisions of Section 31-18-15 NMSA 1978. A
8 sex offender who willfully or knowingly provides false
9 information when complying with the registration or
10 verification requirements set forth in this section after a
11 first or subsequent conviction for a violation pursuant to this
12 section is guilty of a third degree felony and shall be
13 sentenced pursuant to the provisions of Section 31-18-15 NMSA
14 1978. The willful providing by a sex offender of false
15 information with respect to the registration or verification
16 requirements set forth in this section shall be deemed part of
17 a continuing transaction or occurrence. A conviction pursuant
18 to this subsection shall not be considered a felony for
19 purposes of the imposition of sentencing enhancements pursuant
20 to the provisions of Section 31-18-17 NMSA 1978."

21 SECTION 3. Section 29-11A-5.1 NMSA 1978 (being Laws 1999,
22 Chapter 19, Section 8, as amended) is amended to read:

23 "29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING
24 CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY
25 NOTIFICATION--INTERNET WEB SITE.--

.193982.7

1 A. If a sex offender is convicted of one of the
2 following sex offenses, the county sheriff shall forward
3 registration information obtained from the sex offender to the
4 district attorney for the judicial district in which the sex
5 offender resides and, if the sex offender is a resident of a
6 municipality, the chief law enforcement officer for the
7 municipality in which the sex offender resides:

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

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

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

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

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

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

24 (1) sheriff for the county in which the sex
25 offenders reside;

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

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

5 (4) secretary of public safety.

6 C. Upon receiving a request for registration
7 information regarding sex offenders described in Subsection A
8 of this section, the county sheriff, chief municipal law
9 enforcement officer, district attorney or secretary of public
10 safety shall provide that registration information, with the
11 exception of a sex offender's social security number and DNA
12 information, within a reasonable period of time, and no later
13 than seven days after receiving the request.

14 D. Within seven days of receiving registration
15 information from a sex offender described in Subsection A of
16 this section, the county sheriff shall contact every licensed
17 daycare center, elementary school, middle school and high
18 school within a one-mile radius of the sex offender's residence
19 and provide them with the sex offender's registration
20 information, with the exception of the sex offender's social
21 security number and DNA information.

22 E. The department [~~of public safety~~] shall
23 establish and manage an internet web site that provides the
24 public with registration information regarding sex offenders
25 described in Subsection A of this section, except that the

.193982.7

1 department [~~of public safety~~] shall not provide registration
2 information on the internet web site regarding a sex offender
3 who was less than eighteen years of age when the sex offender
4 committed the sex offense for which the sex offender was
5 convicted as a youthful offender, as provided in Section
6 32A-2-3 NMSA 1978, unless at the time of sentencing, the court
7 made a finding that the sex offender is not amenable to
8 treatment and is a danger to the community. The registration
9 information provided to the public pursuant to this subsection
10 shall not include a sex offender's social security number or
11 DNA information or the identity of a sex offender's place of
12 employment, unless the sex offender's employment requires the
13 sex offender to have direct contact with children. The
14 internet web site shall provide only the following registration
15 information:

16 (1) the sex offender's legal name and any
17 other names or aliases that the sex offender is using or has
18 used;

19 (2) the sex offender's current address and the
20 address of every place where the sex offender habitually lives;

21 (3) if the sex offender's employment involves
22 direct contact with children, the sex offender's place of
23 employment;

24 (4) the sex offenses for which the sex
25 offender has been convicted;

- 1 (5) a photograph of the sex offender;
 2 (6) the sex offender's date of birth;
 3 (7) a physical description, including a
 4 description of any tattoos, scars or other distinguishing
 5 features on the sex offender's body that would assist in
 6 identifying the sex offender; and
 7 (8) a link that will pinpoint the location of
 8 the sex offender's place of employment if the sex offender has
 9 direct contact with children."

10 SECTION 4. Section 29-11A-9 NMSA 1978 (being Laws 2005,
 11 Chapter 279, Section 7) is amended to read:

12 "29-11A-9. STATE PREEMPTION--SAVING CLAUSE.--

13 A. The state preempts the field of sex offender
 14 registration and notification. Cities, counties, home rule
 15 municipalities and other political subdivisions of the state
 16 are prohibited from adopting or continuing in effect any
 17 ordinance, rule, regulation, resolution or statute on sex
 18 offender registration and notification and from imposing any
 19 other restrictions on sex offenders that are not included in
 20 the Sex Offender Registration and Notification Act. The
 21 department, cities, counties, home rule municipalities and
 22 other political subdivisions of the state shall not require a
 23 sex offender to report or to register more frequently or to
 24 provide information not required by the Sex Offender
 25 Registration and Notification Act.

.193982.7

1 B. After January 18, 2005, cities, counties, home
2 rule municipalities and other political subdivisions of the
3 state are prohibited from adopting or amending an ordinance,
4 rule, regulation or resolution on sex offender registration and
5 notification. An ordinance in effect on January 18, 2005 shall
6 continue in force and effect until repealed; provided that the
7 ordinance shall only continue in force and effect with regard
8 to sex offenders who are required to register pursuant to the
9 provisions of the ordinance but who are not required to
10 register pursuant to the provisions of the Sex Offender
11 Registration and Notification Act. All other sex offenders
12 shall register pursuant to the provisions of the Sex Offender
13 Registration and Notification Act."

14 **SECTION 5. APPLICABILITY.**--The provisions of these 2013
15 amendments to the Sex Offender Registration and Notification
16 Act are applicable to a person who, on or after July 1, 2013,
17 is found guilty of committing a sex offense.

18 **SECTION 6. EFFECTIVE DATE.**--The effective date of the
19 provisions of this act is July 1, 2013.