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SENATE BILL 215

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Mark Moores and Brenda G. McKenna and Andrea Romero and
Daniel A. Ivey-Soto and Andrea Reeb

AN ACT

RELATING TO CRIMES; CREATING THE CRIMES OF BESTIALITY AND
AGGRAVATED BESTIALITY; REQUIRING REGISTRATION AS A SEX
OFFENDER; PRESCRIBING PENALTIES.

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

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

C. "department" means the department of public

1 safety;

2 D. "institution of higher education" means a:

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

5 (2) trade school; or

6 (3) professional school;

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

10 F. "out-of-state registrant" means any person who
11 establishes a residence in New Mexico while the person is
12 required to register as a sex offender in another state or
13 territory;

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

20 H. "sex offender" means a person who:

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

24 (2) changes residence to New Mexico, when that
25 person has been convicted of a sex offense pursuant to state,

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1 federal, tribal or military law;

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

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

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

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

19 I. "sex offense" means any of the following
20 offenses or their equivalents in any other jurisdiction:

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

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

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

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

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

8 (6) kidnapping, as provided in Section 30-4-1
9 NMSA 1978, when committed with the intent to inflict a sexual
10 offense;

11 (7) false imprisonment, as provided in Section
12 30-4-3 NMSA 1978, when committed with the intent to inflict a
13 sexual offense;

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

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

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

21 (11) child solicitation by electronic
22 communication device, as provided in Section 30-37-3.2 NMSA
23 1978, for convictions occurring on or after July 1, 2013;

24 (12) solicitation to commit criminal sexual
25 contact of a minor in the second, third or fourth degree, as

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1 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; [~~or~~]

2 (13) attempt to commit any of the sex offenses
3 set forth in Paragraphs (1) through (11) of this subsection, as
4 provided in Section 30-28-1 NMSA 1978; or

5 (14) bestiality or aggravated bestiality, as
6 provided in Section 30-9A-3 NMSA 1978; and

7 J. "social networking site" means an internet web
8 site that facilitates online social interaction by offering a
9 mechanism for communication with other users, where such users
10 are likely to include a substantial number of minors under the
11 age of sixteen, and allowing users, through the creation of web
12 pages, profiles or other means, to provide information about
13 themselves that is available to the public or to other users."

14 SECTION 2. Section 29-11A-5 NMSA 1978 (being Laws 1995,
15 Chapter 106, Section 5, as amended by Laws 2007, Chapter 68,
16 Section 2 and by Laws 2007, Chapter 69, Section 6) is amended
17 to read:

18 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
19 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN
20 THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

21 A. A county sheriff shall maintain a local registry
22 of sex offenders in the sheriff's jurisdiction required to
23 register pursuant to the provisions of the Sex Offender
24 Registration and Notification Act.

25 B. The county sheriff shall forward:

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1 (1) registration information obtained from sex
2 offenders to the department of public safety. The initial
3 registration information and any new registration information
4 subsequently obtained from a sex offender shall be forwarded by
5 the county sheriff no later than ten working days after the
6 information is obtained from a sex offender. If the department
7 of public safety receives information regarding a sex offender
8 from a governmental entity other than a county sheriff, the
9 department shall send that information to the sheriff for the
10 county in which the sex offender resides; and

11 (2) samples of DNA obtained from sex offenders
12 to the administrative center for the sex offender DNA
13 identification system pursuant to the provisions of the DNA
14 Identification Act.

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

25 D. The department of public safety shall retain

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1 registration information regarding a sex offender convicted for
2 any of the following sex offenses for the entirety of the sex
3 offender's natural life:

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

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

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

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

15 (5) criminal sexual contact in the fourth
16 degree, as provided in Section 30-9-12 NMSA 1978; [or]

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

20 (7) bestiality or aggravated bestiality in the
21 second or third degree as provided in Section 30-9A-3 NMSA
22 1978.

23 E. The department of public safety shall retain
24 registration information regarding a sex offender convicted for
25 the following offenses for a period of ten years following the

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1 sex offender's conviction, release from prison or release from
2 probation or parole, whichever occurs later:

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

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

7 (3) false imprisonment, as provided in Section
8 30-4-3 NMSA 1978, when the victim is less than eighteen years
9 of age and the offender is not a parent of the victim;

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

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

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

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

19 (8) child solicitation by electronic
20 communication device, as provided in Section 30-37-3.2 NMSA
21 1978; ~~or~~

22 (9) attempt to commit any of the sex offenses
23 set forth in Paragraphs (1) through (6) of this subsection, as
24 provided in Section 30-28-1 NMSA 1978; or

25 (10) bestiality in the fourth degree, as

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1 provided in Section 30-9A-3 NMSA 1978.

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

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

15 SECTION 3. A new section of the Criminal Code, Section
16 30-9A-1 NMSA 1978, is enacted to read:

17 "30-9A-1. [NEW MATERIAL] SHORT TITLE.--Chapter 30,
18 Article 9A NMSA 1978 may be cited as the "Animal Sexual Abuse
19 Act"."

20 SECTION 4. A new section of the Criminal Code, Section
21 30-9A-2 NMSA 1978, is enacted to read:

22 "30-9A-2. [NEW MATERIAL] DEFINITIONS.--As used in the
23 Animal Sexual Abuse Act:

24 A. "animal" means any nonhuman wild or domestic
25 creature, including livestock, alive or dead, in any setting;

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1 B. "bestiality" means sexual contact between or
2 involving a human being and an animal;

3 C. "coerce" means the use of threat, physical force
4 or violence against another person to commit an act of
5 bestiality;

6 D. "manipulate" means the use of persuasion,
7 extortion, retaliation, deceit or other acts not involving
8 force or coercion to cause another person to commit an act of
9 bestiality;

10 E. "person" means a human being;

11 F. "serious bodily injury" means bodily harm to an
12 animal requiring immediate medical attention or that may result
13 in permanent disability, disfigurement or death;

14 G. "sexual contact" means:

15 (1) intentional physical contact between the
16 anus, genitals or other body part of a person and the genitals
17 or anus of an animal, whether or not there is any emission; or

18 (2) intentional insertion of a body part of a
19 person into the mouth, anus or genitals of an animal, or of an
20 object placed by a person into the anus or genitals of an
21 animal, whether or not there is any emission.

22 "Sexual contact" does not include accepted veterinary
23 medical practices; accepted animal husbandry, care and grooming
24 practices in the caretaking of animals; accepted practices
25 related to the insemination of animals for the purpose of

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1 procreation; or accepted practices related to conformation
2 judging;

3 H. "solicit" means to entice, induce, encourage or
4 attempt to persuade another person to commit an act of
5 bestiality; and

6 I. "visual or print medium" means:

7 (1) any film, photograph, negative, slide,
8 computer diskette, videotape, videodisc, computer-generated or
9 electronically generated imagery or other similar media; or

10 (2) any book, magazine or other form of
11 publication or photographic reproduction containing or
12 incorporating any film, photograph, negative, slide, computer
13 diskette, videotape, videodisc, computer-generated or
14 electronically generated imagery or similar media."

15 SECTION 5. A new section of the Criminal Code, Section
16 30-9A-3 NMSA 1978, is enacted to read:

17 "30-9A-3. [NEW MATERIAL] BESTIALITY--AGGRAVATED
18 BESTIALITY--PENALTIES--REGISTRATION AS SEX OFFENDER.--

19 A. Bestiality consists of a person intentionally:

20 (1) engaging in, submitting to, observing,
21 furthering, causing, aiding, abetting or inviting sexual
22 contact between a person and an animal;

23 (2) selling or offering to sell or transfer;
24 advertising for sale or transfer; possessing; purchasing or
25 offering to purchase; or otherwise obtaining an animal with the

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1 intent that the animal be used for bestiality;

2 (3) organizing, promoting, conducting or
3 participating as an observer in an act of bestiality;

4 (4) allowing bestiality to be conducted on any
5 premises owned or controlled by a person; or

6 (5) possessing or distributing, selling,
7 transmitting or possessing with the intent to distribute, sell,
8 or transmit any visual or print medium depicting bestiality.

9 A person who commits bestiality is guilty of a fourth
10 degree felony for the first violation and is guilty of a third
11 degree felony for a second or subsequent violation. A person
12 who commits bestiality that results in serious bodily injury or
13 death of an animal or for any act in the presence of a minor
14 person is guilty of a third degree felony.

15 B. Aggravated bestiality consists of a person
16 intentionally:

17 (1) filming, photographing, recording,
18 producing, printing or otherwise creating any visual or print
19 medium depicting bestiality;

20 (2) coercing, manipulating or soliciting
21 another person to engage in bestiality; or

22 (3) engaging in bestiality involving a minor
23 person.

24 A person who commits aggravated bestiality as provided in
25 Paragraph (1) or (2) of this subsection is guilty of a third

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1 degree felony for the first violation and is guilty of a second
2 degree felony for a second or subsequent violation. A person
3 who commits aggravated bestiality as provided in Paragraph (3)
4 of this subsection is guilty of a second degree felony.

5 C. If a person has been convicted of a crime
6 pursuant to this section, in addition to any other penalties,
7 the sentencing court shall include in the judgment and sentence
8 all of the following:

9 (1) that all animals under the direct care and
10 control of the convicted person be seized and turned over to an
11 agent of the New Mexico livestock board or to an animal control
12 agency operated by the state or a local government or an animal
13 shelter or other animal welfare organization designated by the
14 animal control agency. The receiver of seized animals has the
15 authority to determine the disposition of seized animals;

16 (2) that the person shall not be allowed to
17 own, possess, reside with or exercise control over any animal
18 or engage in any occupation or profession, whether paid or
19 unpaid, at any place where animals are kept or cared for, for a
20 definite period not less than three years and not more than
21 fifteen years; provided that the time the person spent in
22 actual confinement serving a criminal sentence shall be
23 excluded from the calculation of the definite period; and

24 (3) that the person be considered a sex
25 offender and required to register as a sex offender in

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1 accordance with the Sex Offender Registration and Notification
2 Act.

3 D. If a person has been convicted of a crime
4 pursuant to this section, in addition to criminal penalties and
5 other penalties specified in Subsection C of this section, the
6 sentencing court may order:

7 (1) that the convicted person submit to a
8 psychological assessment and participate in appropriate
9 counseling; and

10 (2) that the convicted person pay restitution
11 to another person or organization, including a local humane
12 officer or society; a local government animal impound facility;
13 a law enforcement officer or conservation officer of the
14 department of game and fish or the officer's designee, for any
15 pecuniary loss suffered by the person or organization as a
16 result of the crime, regardless of whether the convicted person
17 is placed on probation.

18 E. A person shall not be convicted of a crime
19 specified in this section if the person's sexual contact with
20 an animal was coerced or manipulated."

21 SECTION 6. A new section of the Criminal Code, Section
22 30-9A-4 NMSA 1978, is enacted to read:

23 "30-9A-4. [NEW MATERIAL] DEOXYRIBONUCLEIC ACID
24 SAMPLES.--Submission and handling of deoxyribonucleic acid
25 samples by law enforcement and laboratories in bestiality cases
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1 shall be in accordance with procedures specified in Section
2 30-9-19 NMSA 1978."

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