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HOUSE BILL 441

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

RITA G. GETTY

AN ACT

RELATING TO LAW ENFORCEMENT; PROVIDING THAT A DELINQUENT CHILD
ADJUDICATED FOR A SEX OFFENSE BE SUBJECT TO THE PROVISIONS OF
THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT; PROVIDING
PENALTIES; REQUIRING PHYSICAL DESCRIPTION BE INCLUDED IN
REGISTRATION INFORMATION; PROVIDING PUBLIC ACCESS TO
INFORMATION REGARDING CERTAIN REGISTERED SEX OFFENDERS;
REQUIRING RELEASE OF INFORMATION NECESSARY TO PROTECT THE
PUBLIC; AMENDING, REPEALING AND ENACTING SECTIONS OF THE SEX
OFFENDER REGISTRATION AND NOTIFICATION ACT.

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

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

"29-11A-1. SHORT TITLE. -- [~~This act~~] Chapter 29, Article
11A NMSA 1978 may be cited as the "Sex Offender Registration

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1 and Notification Act". "

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

4 "29-11A-2. FINDINGS- -PURPOSE. - -

5 A. The legislature finds that:

6 (1) sex offenders pose a significant risk of
7 recidivism; and

8 (2) the efforts of law enforcement agencies
9 to protect their communities from sex offenders are impaired
10 by the lack of information available concerning convicted sex
11 offenders who live within the agencies' [jurisdiction]
12 jurisdictions.

13 B. The purpose of the Sex Offender Registration
14 and Notification Act is to assist law enforcement agencies'
15 efforts to protect their communities by:

16 (1) requiring sex offenders to register with
17 the county sheriff of the county in which the sex offender
18 resides; and

19 (2) requiring the establishment of a central
20 registry for sex offenders. "

21 Section 3. Section 29-11A-3 NMSA 1978 (being Laws 1995,
22 Chapter 106, Section 3) is amended to read:

23 "29-11A-3. DEFINITIONS. - -As used in the Sex Offender
24 Registration and Notification Act:

25 A. "sex offender" means:

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1 (1) a person convicted of a sex offense on or
2 after July 1, 1995; [~~or~~]

3 (2) a person who changes his residence to New
4 Mexico, when that person has been convicted of a sex offense
5 in another state on or after July 1, 1995; [~~and~~]

6 (3) a delinquent child adjudicated for a sex
7 offense on or after July 1, 1998; or

8 (4) a delinquent child who changes his
9 residence to New Mexico, when that delinquent child has been
10 adjudicated for a sex offense in another state on or after
11 July 1, 1998; and

12 B. "sex offense" means:

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

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

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

21 (4) sexual exploitation of children, as
22 provided in Subsection A, B or C of Section 30-6A-3 NMSA 1978;
23 or

24 (5) sexual exploitation of children by
25 prostitution, as provided in Section 30-6A-4 NMSA 1978. "

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

3 "29-11A-4. REGISTRATION OF SEX OFFENDERS-- INFORMATION
4 REQUIRED-- 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 current resident of New
9 Mexico shall register with the county sheriff no later than
10 thirty days after being released from the custody of the
11 corrections department or the children, youth and families
12 department or being placed on probation or parole. A sex
13 offender who changes his residence to New Mexico shall
14 register with the county sheriff no later than forty-five days
15 after establishing residence in this state. When a sex
16 offender registers with the county sheriff, he shall provide
17 the following information:

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

20 (2) his date of birth;

21 (3) his height, weight, hair color, eye color
22 and description of any identifying marks;

23 [~~(3)~~] (4) his social security number;

24 [~~(4)~~] (5) his current address;

25 [~~(5)~~] (6) his place of employment;

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1 [~~(6)~~] (7) the sex offense for which he was
2 convicted or adjudicated delinquent; and

3 [~~(7)~~] (8) the date and place of his sex
4 offense conviction or adjudication.

5 C. When a sex offender registers with a county
6 sheriff, the sheriff shall obtain:

7 (1) a photograph of the sex offender and a
8 complete set of the sex offender's fingerprints; and

9 (2) a description of any tattoos, scars or
10 other distinguishing features on the sex offender's body that
11 would assist in identifying the sex offender.

12 D. When a sex offender who is registered changes
13 his residence within the same county, the sex offender shall
14 [~~send~~] deliver written notice of his change of address to the
15 county sheriff no later than ten days after establishing his
16 new residence.

17 E. When a sex offender who is registered changes
18 his residence to a new county in New Mexico, the sex offender
19 shall register with the county sheriff of the new county no
20 later than ten days after establishing his new residence. The
21 sex offender shall also [~~send~~] deliver written notice of the
22 change in residence to the county sheriff with whom he last
23 registered no later than ten days after establishing his new
24 residence.

25 F. If the sex offender is a delinquent child, as

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1 provided in Paragraph (3) or (4) of Subsection A of Section
2 29-11A-3 NMSA 1978, the sex offender's parent, guardian or
3 custodian shall be responsible for complying with the
4 registration requirements set forth in the Sex Offender
5 Registration and Notification Act until the sex offender
6 reaches eighteen years of age. When the sex offender reaches
7 eighteen years of age, he shall be responsible for complying
8 with the registration requirements set forth in the Sex
9 Offender Registration and Notification Act.

10 ~~[F.]~~ G. A sex offender or a sex offender's parent,
11 guardian or custodian who willfully fails to comply with the
12 registration requirements set forth in this section is guilty
13 of a misdemeanor and shall be punished by imprisonment for a
14 definite term less than one year or a fine of not more than
15 one thousand dollars (\$1,000) or both.

16 ~~[G.]~~ H. A sex offender or a sex offender's parent,
17 guardian or custodian who provides false information when
18 complying with the registration requirements set forth in this
19 section is guilty of a misdemeanor and shall be punished by
20 imprisonment for a definite term less than one year or a fine
21 of not more than one thousand dollars (\$1,000) or both. "

22 Section 5. Section 29-11A-5 NMSA 1978 (being Laws 1995,
23 Chapter 106, Section 5) is amended to read:

24 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
25 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--EXCHANGE OF

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1 REGISTRATION INFORMATION WITH OTHER STATES-- RELEASE OF
2 INFORMATION-- RULES [AND REGULATIONS].--

3 A. A county sheriff may maintain a local registry
4 of sex offenders in his jurisdiction required to register
5 pursuant to the provisions of the Sex Offender Registration
6 and Notification Act.

7 B. The county sheriff shall forward registration
8 information obtained from sex offenders to the department of
9 public safety. The registration information shall be
10 forwarded by the county sheriff no later than ten working days
11 after the information is obtained from a sex offender.

12 C. The department of public safety shall maintain
13 a central registry of sex offenders required to register
14 pursuant to the provisions of the Sex Offender Registration
15 and Notification Act. The department may enter into
16 interstate compact agreements providing for the exchange of
17 information regarding sex offenders [~~provided that the other~~
18 ~~state does not permit dissemination of information regarding~~
19 ~~sex offenders to any persons or entities other than law~~
20 ~~enforcement agencies~~].

21 D. The department of public safety shall release
22 relevant information that is necessary to protect the public
23 concerning a sex offender required to register pursuant to the
24 provisions of the Sex Offender Registration and Notification
25 Act, except that the identity of a victim of an offense that

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1 requires registration under that act shall not be released.

2 ~~[D.]~~ E. The department of public safety shall
3 retain registration information regarding sex offenders
4 convicted or adjudicated delinquent for the following sex
5 offenses for a period of twenty years following the sex
6 offender's conviction, adjudication, release from prison or
7 release from probation or parole, whichever occurs later:

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

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

12 (3) sexual exploitation of children, as
13 provided in Subsection A, B or C of Section 30-6A-3 NMSA 1978.

14 ~~[E.]~~ F. The department of public safety shall
15 retain registration information regarding sex offenders
16 convicted or adjudicated delinquent for the following offenses
17 for a period of ten years following the sex offender's
18 conviction, adjudication, release from prison or release from
19 probation or parole, whichever occurs later:

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

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

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

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

~~[F-]~~ G. The department of public safety shall adopt rules ~~[and regulations]~~ necessary to carry out the provisions of the Sex Offender Registration and Notification Act. "

Section 6. Section 29-11A-7 NMSA 1978 (being Laws 1995, Chapter 106, Section 7) is amended to read:

"29-11A-7. NOTICE TO SEX OFFENDERS OF DUTY TO REGISTER. --

A. A court shall provide a sex offender adjudicated guilty or delinquent in that court with written notice of his duty to register pursuant to the provisions of the Sex Offender Registration and Notification Act. ~~[The written notice shall be included in judgment and sentence forms provided to the sex offender.]~~

B. The corrections department or the children, youth and families department, at the time of release of a sex offender in the department's custody, shall provide written notification to the sex offender or the sex offender's parent, guardian or custodian of his duty to register pursuant to the provisions of the Sex Offender Registration and Notification Act. The corrections department or the children, youth and families department shall also provide written notification regarding a sex offender's release to the sheriff of the

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1 county in which the sex offender is released.

2 C. The department of public safety, at the time it
3 is notified by officials from another state that a sex
4 offender will be establishing residence in New Mexico, shall
5 provide written notification to the sex offender or the sex
6 offender's parent, guardian or custodian of his duty to
7 register pursuant to the provisions of the Sex Offender
8 Registration and Notification Act. "

9 Section 7. Section 29-11A-8 NMSA 1978 (being Laws 1995,
10 Chapter 106, Section 8) is amended to read:

11 "29-11A-8. IMMUNITY. -- Nothing in the Sex Offender
12 Registration and Notification Act creates a cause of action on
13 behalf of a person against a public employer, public employee
14 or public agency responsible for enforcement of the provisions
15 of that act, so long as the public employer, public employee
16 or public agency complies with the provisions of that act. "

17 Section 8. A new section of the Sex Offender
18 Registration and Notification Act is enacted to read:

19 "[NEW MATERIAL] PUBLIC ACCESS TO INFORMATION REGARDING
20 CERTAIN REGISTERED SEX OFFENDERS. --

21 A. If a sex offender is convicted or adjudicated
22 delinquent for one of the following sex offenses, the county
23 sheriff shall forward registration information obtained from
24 the sex offender to the chief municipal law enforcement
25 officer, the chief administrator of the public library and the

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1 superintendent of schools in the municipality in which the sex
2 offender resides:

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

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

8 (3) sexual exploitation of children, as
9 provided in Subsection A, B or C of Section 30-6A-3 NMSA 1978;
10 or

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

13 B. A person who wishes to obtain registration
14 information regarding sex offenders described in Subsection A
15 of this section may request that information from a county
16 sheriff, a chief law enforcement officer of a municipality, a
17 chief administrator of a public library or a superintendent of
18 schools. All requests for registration information regarding
19 sex offenders described in Subsection A of this section shall
20 be subject to the provisions of the Inspection of Public
21 Records Act. "

22 Section 9. REPEAL. --Section 29-11A-6 NMSA 1978 (being
23 Laws 1995, Chapter 106, Section 6) is repealed.

24 Section 10. EFFECTIVE DATE. --The effective date of the
25 provisions of this act is July 1, 1998.