

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 298

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

AN ACT

RELATING TO SEX OFFENDERS; PROVIDING FOR VERIFICATION OF  
REGISTRATION; PROVIDING FOR ANNUAL VERIFICATION OF REGISTRATION  
AFTER TEN YEARS OF CONTINUOUS COMPLIANCE WITH NINETY-DAY  
VERIFICATIONS; REQUIRING THAT THE CRIMES OF KIDNAPPING AND  
FALSE IMPRISONMENT BE COMMITTED WITH SEXUAL INTENT BEFORE THEY  
ARE DEEMED A SEX OFFENSE; MODIFYING REGISTRATION REQUIREMENTS;  
EXPANDING THE DEFINITION OF "SEX OFFENDER"; CLARIFYING THE  
INFORMATION 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 THAN IS REQUIRED BY STATE LAW OR FROM  
IMPOSING OTHER RESTRICTIONS; PROVIDING THAT A DISTRICT ATTORNEY  
IS NOT REQUIRED TO PROVIDE NOTICE BEFORE PROSECUTION FOR  
CERTAIN SEX OFFENSES AGAINST CHILDREN; PROVIDING DEFINITIONS;  
RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTIONS OF LAW IN

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1 LAWS 2007.

2  
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

8 "29-11A-3. DEFINITIONS.--As used in the Sex Offender  
9 Registration and Notification Act:

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

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

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

16 (2) trade school; or

17 (3) professional school;

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

21 [~~G.~~] D. "registration requirement" means any  
22 requirement set forth in Section 29-11A-4 NMSA 1978 that  
23 requires a sex offender to register; provide information,  
24 including a DNA sample; renew, revise or change registration  
25 information; or provide written notice or disclosure regarding

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1 the sex offender's status as a sex offender;

2 ~~[D-]~~ E. "sex offender" means a person who:

3 (1) is a resident of New Mexico who is  
4 convicted of a sex offense pursuant to state, federal, tribal  
5 or military law or pursuant to the law of a foreign nation that  
6 the United States department of state, in its country reports  
7 on human rights practices, has concluded that an independent  
8 judiciary generally or vigorously enforced the right to a fair  
9 trial in that nation during the year in which the conviction  
10 occurred;

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 or pursuant to the law of a  
14 foreign nation that the United States department of state, in  
15 its country reports on human rights practices, has concluded  
16 that an independent judiciary generally or vigorously enforced  
17 the right to a fair trial in that nation during the year in  
18 which the conviction occurred;

19 (3) does not have an established residence in  
20 New Mexico, but lives in a shelter, halfway house or  
21 transitional living facility or stays in multiple locations in  
22 New Mexico and who has been convicted of a sex offense pursuant  
23 to state, federal, tribal or military law or pursuant to the  
24 law of a foreign nation that the United States department of  
25 state, in its country reports on human rights practices, has

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1 concluded that an independent judiciary generally or vigorously  
2 enforced the right to a fair trial in that nation during the  
3 year in which the conviction occurred; or

4 (4) is a resident of another state and who has  
5 been convicted of a sex offense pursuant to state, federal,  
6 tribal or military law or pursuant to the law of a foreign  
7 nation that the United States department of state, in its  
8 country reports on human rights practices, has concluded that  
9 an independent judiciary generally or vigorously enforced the  
10 right to a fair trial in that nation during the year in which  
11 the conviction occurred, but who is:

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

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

21 ~~E.]~~ F. "sex offense" means any of the following  
22 offenses or their equivalents in any other jurisdiction:

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

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

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

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

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

10 (6) kidnapping, as provided in Section  
11 30-4-1 NMSA 1978, [~~when the victim is less than eighteen years~~  
12 ~~of age and the offender is not a parent of the victim~~] with  
13 intent to inflict a sexual offense;

14 (7) false imprisonment, as provided in Section  
15 30-4-3 NMSA 1978, [~~when the victim is less than eighteen years~~  
16 ~~of age and the offender is not a parent of the victim~~] with  
17 intent to inflict a sexual offense;

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

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

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

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

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1 1978 for convictions occurring on or after July 1, 2011;

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

5 (13) attempt to commit any of the sex offenses  
6 set forth in Paragraphs (1) through [~~(11)~~] (10) of this  
7 subsection, as provided in Section 30-28-1 NMSA 1978; and

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

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

17 "29-11A-4. REGISTRATION OF SEX OFFENDERS--INFORMATION  
18 REQUIRED--VERIFICATION--CRIMINAL PENALTY FOR NONCOMPLIANCE.--

19 A. A sex offender residing in this state shall  
20 register with the county sheriff for the county in which the  
21 sex offender resides.

22 B. A sex offender who is a resident of New Mexico  
23 shall initially register with the county sheriff no later than  
24 ten days after being released from the custody of the  
25 corrections department, a municipal or county jail or a

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1 federal, military or tribal correctional facility or detention  
2 center or being placed on probation or parole. A sex offender  
3 who changes [~~his~~] residence to New Mexico shall register with  
4 the county sheriff no later than ten days after [~~his~~] arrival  
5 in this state. When a sex offender initially registers with  
6 the county sheriff, [~~he~~] the sex offender shall provide the  
7 following registration information:

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

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

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

14 (4) [~~his~~] the sex offender's current physical  
15 and mailing address and the address of every place where the  
16 sex offender habitually lives;

17 (5) [~~his~~] the sex offender's place of  
18 employment;

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

21 (7) the date and place of [~~his~~] the sex  
22 offense conviction;

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

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1                   (9) the sex offender's landline and cellular  
2 telephone numbers and any other telephone numbers primarily  
3 used by the sex offender;

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

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

8                   (12) the name and address of any school or  
9 institution of higher education that the sex offender is  
10 attending; and

11                   (13) copies of the sex offender's passport and  
12 immigration documents.

13                   C. A sex offender who is a resident of another  
14 state but who is employed in New Mexico or attending public or  
15 private school or an institution of higher education in New  
16 Mexico shall register with the county sheriff for the county in  
17 which the sex offender is working or attending school or an  
18 institution of higher education. [~~D. A sex offender who is a~~  
19 ~~resident of another state but who is employed in New Mexico or~~  
20 ~~attending public or private school or an institution of higher~~  
21 ~~education in New Mexico] The sex offender shall register [with  
22 ~~the county sheriff] no later than ten days after beginning work~~  
23 or school. When the sex offender registers with the county  
24 sheriff, [he] the sex offender shall provide the following  
25 registration information:~~

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

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

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

7 (4) ~~[his]~~ the sex offender's current physical  
8 and mailing address and the address of every place where the  
9 sex offender habitually lives in ~~[his]~~ the sex offender's state  
10 of residence and, if applicable, the address of ~~[his]~~ the sex  
11 offender's place of lodging in New Mexico while ~~[he is]~~ working  
12 or attending school or an institution of higher education;

13 (5) ~~[his]~~ the sex offender's place of  
14 employment or the name of the school ~~[he]~~ the sex offender is  
15 attending;

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

18 (7) the date and place of ~~[his]~~ the sex  
19 offense conviction;

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

23 (9) the sex offender's landline and cellular  
24 telephone numbers and any other telephone numbers primarily  
25 used by the sex offender;

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

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

5                   (12) the name and address of any school or  
6 institution of higher education that the sex offender is  
7 attending; and

8                   (13) copies of the sex offender's passport and  
9 immigration documents.

10                  ~~[E.]~~ D. When a sex offender registers with a county  
11 sheriff, the sheriff shall obtain:

12                   (1) a photograph of the sex offender and a  
13 complete set of the sex offender's fingerprints and a palm  
14 print;

15                   (2) a physical description, including a  
16 description of any tattoos, scars or other distinguishing  
17 features on the sex offender's body that would assist in  
18 identifying the sex offender; and

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

22                  ~~[F.]~~ E. When a sex offender who is registered  
23 changes ~~[his]~~ residence within the same county, the sex  
24 offender shall send written notice of ~~[his]~~ the change of  
25 address to the county sheriff no later than ten days after

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1 establishing ~~[his]~~ the new residence.

2 ~~[G.]~~ F. When a sex offender who is registered  
3 changes ~~[his]~~ residence to a new county in New Mexico, the sex  
4 offender shall:

5 (1) register with the county sheriff of the  
6 new county no later than ten days after establishing ~~[his]~~ the  
7 new residence; ~~[The sex offender shall also]~~ and

8 (2) send written notice of the change in  
9 residence to the county sheriff with whom ~~[he]~~ the sex offender  
10 last registered no later than ten days after establishing ~~[his]~~  
11 the new residence.

12 G. When a sex offender who is registered is  
13 incarcerated for more than ten consecutive days, the sex  
14 offender shall report to the county sheriff no later than seven  
15 days after being released.

16 H. When a sex offender who is registered or  
17 required to register is homeless or does not have an  
18 established residence, but lives in a shelter, halfway house or  
19 transitional living facility or stays in multiple locations in  
20 New Mexico, the sex offender shall register with the county  
21 sheriff for each county in which the sex offender is living or  
22 temporarily located. The sex offender shall register no later  
23 than ten days after a change in ~~[his]~~ living arrangements or  
24 temporary location.

25 I. When a sex offender who is registered or

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1 required to register is employed, begins a vocation or is  
2 enrolled as a student at an institution of higher education in  
3 New Mexico, the sex offender shall disclose [~~his~~] the sex  
4 offender's status as a sex offender in writing to the county  
5 sheriff for the county in which the institution of higher  
6 education is located, the law enforcement entity responsible  
7 for the institution of higher education and the registrar for  
8 the institution of higher education no later than ten days  
9 after beginning employment, beginning a vocation or enrolling  
10 at the institution of higher education. The sex offender shall  
11 also send written notice of any change regarding [~~his~~]  
12 employment, vocation or enrollment status at an institution of  
13 higher education to the county sheriff, the law enforcement  
14 entity and the registrar no later than ten days after the  
15 change in [~~his~~] employment, vocation or enrollment status.

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

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1 than ten days after the change in [~~his~~] employment or  
2 enrollment status.

3 K. When a sex offender who is registered or  
4 required to register is employed, begins a vocation or  
5 volunteers [~~his~~] services, regardless of whether the sex  
6 offender receives payment or other compensation, the sex  
7 offender shall disclose [~~his~~] the sex offender's status as a  
8 sex offender in writing to [~~his~~] the sex offender's employer,  
9 supervisor or person similarly situated. The written  
10 disclosure shall be made immediately upon beginning [~~his~~]  
11 employment, vocation or volunteer service.

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

14 (1) a sex offender [~~required to register~~  
15 ~~pursuant to the provisions of~~] convicted of any of the sex  
16 offenses enumerated in Subsection D of Section 29-11A-5 NMSA  
17 1978 or their equivalents shall [~~renew his~~] verify registration  
18 information with the county sheriff as provided in Subsection N  
19 of this section not less than once in each ninety-day period  
20 following the date of the sex offender's initial registration  
21 for a period of ten years. After ten years of continuous and  
22 compliant registration pursuant to this section, if the sex  
23 offender has not been arrested for a subsequent felony or  
24 misdemeanor sex offense, the sex offender shall verify  
25 registration information every six months for the [~~entirety~~]

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1 remainder of [~~his~~] the sex offender's natural life; and

2 (2) a sex offender [~~required to register~~  
3 ~~pursuant to the provisions of~~] convicted of any of the sex  
4 offenses enumerated in Subsection E of Section 29-11A-5 NMSA  
5 1978 or their equivalents shall annually [~~renew his~~] verify  
6 registration information with the county sheriff as provided in  
7 Subsection N of this section prior to December 31 of each  
8 subsequent calendar year for a period of ten years.

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

18 N. At least fifteen days prior to the time a sex  
19 offender is required to verify the sex offender's registration  
20 with a county sheriff, the department of public safety shall  
21 send a verification form, by first class mail, to the sex  
22 offender containing the sex offender's current registration  
23 information and a notice that the sex offender is required to  
24 appear at the county sheriff's office to verify the information  
25 in the form, to change the information as necessary and to sign

1 a statement under oath that the information is true and  
2 correct. The sex offender shall return the verification form  
3 in person to the county sheriff within ten days of receipt and  
4 sign the statement under oath. The sheriff may photograph the  
5 sex offender at that time if the sex offender's appearance is  
6 significantly different from the photograph already contained  
7 in the sex offender's file. If a sex offender does not receive  
8 a verification form before the time that the sex offender is  
9 required to verify registration pursuant to Subsection L of  
10 this section, the sex offender shall appear at the county  
11 sheriff's office to verify registration information as required  
12 by this section.

13           ~~[N.]~~ O. A sex offender who willfully or  
14 knowingly fails to comply with the registration or verification  
15 requirements set forth in this section is guilty of a fourth  
16 degree felony and shall be sentenced pursuant to the provisions  
17 of Section 31-18-15 NMSA 1978. A sex offender who willfully or  
18 knowingly fails to comply with the registration or verification  
19 requirements set forth in this section after a first or  
20 subsequent conviction for a violation pursuant to this section  
21 is guilty of a third degree felony and shall be sentenced  
22 pursuant to the provisions of Section 31-18-15 NMSA 1978. The  
23 willful failure to comply with any registration or verification  
24 requirement set forth in this section shall be deemed part of a  
25 continuing transaction or occurrence. A conviction pursuant to

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1 this subsection shall not be considered a felony for purposes  
2 of the imposition of sentencing enhancements pursuant to the  
3 provisions of Section 31-18-17 NMSA 1978.

4 ~~[0-]~~ P. A sex offender who willfully or knowingly  
5 provides false information when complying with the registration  
6 or verification requirements set forth in this section is  
7 guilty of a fourth degree felony and shall be sentenced  
8 pursuant to the provisions of Section 31-18-15 NMSA 1978. A  
9 sex offender who willfully or knowingly provides false  
10 information when complying with the registration or  
11 verification requirements set forth in this section after a  
12 first or subsequent conviction for a violation pursuant to this  
13 section is guilty of a third degree felony and shall be  
14 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
15 1978. The willful providing by a sex offender of false  
16 information with respect to the registration or verification  
17 requirements set forth in this section shall be deemed part of  
18 a continuing transaction or occurrence. A conviction pursuant  
19 to this subsection shall not be considered a felony for  
20 purposes of the imposition of sentencing enhancements pursuant  
21 to the provisions of Section 31-18-17 NMSA 1978."

22 **SECTION 3.** Section 29-11A-5 NMSA 1978 (being Laws 1995,  
23 Chapter 106, Section 5, as amended by Laws 2007, Chapter 68,  
24 Section 2 and by Laws 2007, Chapter 69, Section 6) is amended  
25 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 the sheriff's jurisdiction required to  
6 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 the sex  
11 offender's natural life:

12 (1) aggravated criminal sexual penetration or  
13 criminal sexual penetration in the first, second or third  
14 degree, as provided in Section 30-9-11 NMSA 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~~] with  
23 intent to inflict a sexual offense; or

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

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1                   ~~(6)~~ (5) attempt to commit any of the sex  
 2 offenses set forth in Paragraphs (1) through ~~(5)~~ (4) of this  
 3 subsection, as provided in Section 30-28-1 NMSA 1978.

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

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

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

13                   (3) false imprisonment, as provided in Section  
 14 30-4-3 NMSA 1978, ~~[when the victim is less than eighteen years~~  
 15 ~~of age and the offender is not a parent of the victim]~~ with  
 16 intent to inflict a sexual offense;

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

19                   ~~(4)~~ (5) aggravated indecent exposure, as  
 20 provided in Section 30-9-14.3 NMSA 1978;

21                   ~~(5)~~ (6) enticement of child, as provided in  
 22 Section 30-9-1 NMSA 1978;

23                   ~~(6)~~ (7) incest, as provided in Section  
 24 30-10-3 NMSA 1978, when the victim is less than eighteen years  
 25 of age;

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1                    [~~(7)~~] (8) solicitation to commit criminal  
2 sexual contact of a minor in the second, third or fourth  
3 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;

4                    [~~(8)~~] (9) child solicitation by electronic  
5 communication device, as provided in Section 30-37-3.2 NMSA  
6 1978 for convictions occurring on or after July 1, 2011; or

7                    [~~(9)~~] (10) attempt to commit any of the sex  
8 offenses set forth in Paragraphs (1) through [~~(6)~~] (7) of this  
9 subsection, as provided in Section 30-28-1 NMSA 1978.

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

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

23                    SECTION 4. Section 29-11A-5.1 NMSA 1978 (being Laws 1999,  
24 Chapter 19, Section 8, as amended) is amended to read:

25                    "29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING

1 CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY  
2 NOTIFICATION--INTERNET WEB SITE.--

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

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

13 (2) 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 (3) sexual exploitation of children, as  
17 provided in Section 30-6A-3 NMSA 1978;

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

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

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

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

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

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

7                   (4) secretary of public safety.

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

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

24                   E. The department of public safety shall establish  
25 and manage an internet web site that provides the public with

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

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

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

22 (3) if the sex offender's employment involves  
23 unsupervised contact with children under sixteen years of age,  
24 the sex offender's place of employment;

25 (4) the sex offenses for which the sex

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1 offender has been convicted;

2 (5) a photograph of the sex offender;

3 (6) the sex offender's date of birth; and

4 (7) a physical description, including a  
5 description of any tattoos, scars or other distinguishing  
6 features on the sex offender's body that would assist in  
7 identifying the sex offender."

8 SECTION 5. Section 29-11A-9 NMSA 1978 (being Laws 2005,  
9 Chapter 279, Section 7) is amended to read:

10 "29-11A-9. STATE PREEMPTION--SAVING CLAUSE.--

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

23 B. After January 18, 2005, cities, counties, home  
24 rule municipalities and other political subdivisions of the  
25 state are prohibited from adopting or amending an ordinance,

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1 rule, regulation or resolution on sex offender registration and  
 2 notification. An ordinance in effect on January 18, 2005 shall  
 3 continue in force and effect until repealed; provided that the  
 4 ordinance shall only continue in force and effect with regard  
 5 to sex offenders who are required to register pursuant to the  
 6 provisions of the ordinance but who are not required to  
 7 register pursuant to the provisions of the Sex Offender  
 8 Registration and Notification Act. All other sex offenders  
 9 shall register pursuant to the provisions of the Sex Offender  
 10 Registration and Notification Act."

11 SECTION 6. Section 30-37-3.2 NMSA 1978 (being Laws 1998,  
 12 Chapter 64, Section 1, as amended) is amended to read:

13 "30-37-3.2. CHILD SOLICITATION BY ELECTRONIC  
 14 COMMUNICATION DEVICE.--

15 A. Child solicitation by electronic communication  
 16 device consists of a person knowingly [~~and intentionally~~]  
 17 soliciting a child under sixteen years of age, by means of an  
 18 electronic communication device, with the intent to engage the  
 19 child in sexual intercourse, sexual contact, [~~or in a~~] sexual  
 20 or obscene performance or [~~to engage in~~] any other sexual  
 21 conduct when the perpetrator is at least four years older than  
 22 the child.

23 B. Whoever commits child solicitation by electronic  
 24 communication device is guilty of a:

25 (1) fourth degree felony if the child is at

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1 least thirteen but under sixteen years of age; or

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

4 C. Whoever commits child solicitation by electronic  
5 communication device and also appears for, attends or is  
6 present at a meeting that the person arranged pursuant to the  
7 solicitation is guilty of a:

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

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

12 D. In a prosecution for child solicitation by  
13 electronic communication device, it is not a defense that the  
14 intended victim of the defendant was a peace officer posing as  
15 a child under sixteen years of age.

16 E. For purposes of determining jurisdiction, child  
17 solicitation by electronic communication device is committed in  
18 this state if an electronic communication device transmission  
19 either originates or is received in this state.

20 F. The notice provisions of Section 30-37-4 NMSA  
21 1978 shall not apply to this section.

22 [~~F.~~] G. As used in this section:

23 (1) "electronic communication device" means a  
24 computer, video recorder, digital camera, fax machine,  
25 telephone, cellular telephone, pager, audio equipment or any

1 other device that can produce an electronically generated  
2 image, message or signal; and

3 (2) "soliciting" means requesting, inducing,  
4 urging, advising, commanding or otherwise attempting to promote  
5 or facilitate another to engage in certain conduct."

6 SECTION 7. Section 30-37-3.3 NMSA 1978 (being Laws 2007,  
7 Chapter 67, Section 1) is amended to read:

8 "30-37-3.3. CRIMINAL SEXUAL COMMUNICATION WITH A CHILD--  
9 PENALTY.--

10 A. Criminal sexual communication with a child  
11 consists of a person knowingly and intentionally communicating  
12 directly with a specific child under sixteen years of age by  
13 sending the child obscene images of the person's intimate parts  
14 by means of an electronic communication device when the  
15 perpetrator is at least four years older than the child.

16 B. Whoever commits sexual communication with a  
17 child is guilty of a fourth degree felony.

18 C. The notice provisions of Section 30-37-4 NMSA  
19 1978 shall not apply to this section.

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

21 (1) "electronic communication device" means a  
22 computer, video recorder, digital camera, fax machine,  
23 telephone, pager or any other device that can produce an  
24 electronically generated image; and

25 (2) "intimate parts" means the primary genital

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1 area, groin, buttocks, anus or breast."

2 SECTION 8. APPLICABILITY.--The provisions of Sections 1  
3 through 5 of this act apply to:

4 A. a person convicted of a sex offense on or after  
5 July 1, 2005; and

6 B. a person convicted of a sex offense prior to  
7 July 1, 2005 and who, on July 1, 2005, was still incarcerated,  
8 on probation or on parole for commission of that sex offense.

9 SECTION 9. EFFECTIVE DATE.--The effective date of the  
10 provisions of this act is July 1, 2011.