

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; 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 LAWS 2007.

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

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

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

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

B. "institution of higher education" means a:

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

(2) trade school; or

(3) professional school;

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

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

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

(1) is a resident of New Mexico who is convicted of a sex offense pursuant to state, federal, tribal or military law or pursuant to the law of a foreign nation that the United States department of state, in its country

reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that nation during the year in which the conviction occurred;

(2) changes residence to New Mexico, when that person has been convicted of a sex offense pursuant to state, federal, tribal or military law or pursuant to the law of a foreign nation that the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that nation during the year in which the conviction occurred;

(3) does not have an established residence in New Mexico, but lives in a shelter, halfway house or transitional living facility or stays in multiple locations in New Mexico and who has been convicted of a sex offense pursuant to state, federal, tribal or military law or pursuant to the law of a foreign nation that the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that nation during the year in which the conviction occurred; or

(4) is a resident of another state and who has been convicted of a sex offense pursuant to state, federal, tribal or military law or pursuant to the law of a foreign nation that the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair

trial in that nation during the year in which the conviction occurred, but
who is:

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) child solicitation by electronic communication device, as provided in Section 30-37-3.2 NMSA 1978 for convictions occurring on or after July 1, 2011;

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

(13) attempt to commit any of the sex offenses set forth in Paragraphs (1) through [(44)] (10) of this subsection, as provided in Section 30-28-1 NMSA 1978; and

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

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

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

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

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

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

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

- (3) ~~[his]~~ the sex offender's social security number;
- (4) ~~[his]~~ the sex offender's current physical and mailing address
and the address of every place where the sex offender habitually lives;
- (5) ~~[his]~~ the sex offender's place of employment;
- (6) the sex offense for which ~~[he]~~ the sex offender was convicted;
~~[and]~~
- (7) the date and place of ~~[his]~~ the sex offense conviction;
- (8) the sex offender's names, email addresses and monikers and
other self-identifiers used on social networking sites, to be used only for
law enforcement purposes;
- (9) the sex offender's landline and cellular telephone numbers and
any other telephone numbers primarily used by the sex offender;
- (10) the sex offender's professional licenses;
- (11) the license plate or other identifier and the description of any
vehicle owned or primarily operated by the sex offender, including aircraft
and watercraft;
- (12) the name and address of any school or institution of higher
education that the sex offender is attending; and
- (13) copies of the sex offender's passport and immigration
documents.

C. A sex offender who is a resident of another state but who is employed in New Mexico or attending public or private school or an institution of higher education in New Mexico shall register with the county sheriff for the county in

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

- (1) ~~[his]~~ the sex offender's legal name and any other names or aliases that ~~[he]~~ the sex offender is using or has used;
- (2) ~~[his]~~ the sex offender's date of birth;
- (3) ~~[his]~~ the sex offender's social security number;
- (4) ~~[his]~~ the sex offender's current physical and mailing address and the address of every place where the sex offender habitually lives in ~~[his]~~ the sex offender's state of residence and, if applicable, the address of ~~[his]~~ the sex offender's place of lodging in New Mexico while ~~[he is]~~ working or attending school or an institution of higher education;
- (5) ~~[his]~~ the sex offender's place of employment or the name of the school ~~[he]~~ the sex offender is attending;
- (6) the sex offense for which ~~[he]~~ the sex offender was convicted;
~~[and]~~
- (7) the date and place of ~~[his]~~ the sex offense conviction;

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

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

(10) the sex offender's professional licenses;

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

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

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

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

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

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

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

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

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

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

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

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

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

I. When a sex offender who is registered or required to register is employed, begins a vocation or is enrolled as a student at an institution of higher education in New Mexico, the sex offender shall disclose [~~his~~] the sex offender's status as a sex offender in writing to the county sheriff for the county in which the institution of higher education is located, the law enforcement entity responsible for the institution of higher education and the registrar for the institution of higher education no later than ten days after beginning employment, beginning a vocation or enrolling at the institution of higher education. The sex offender shall also send written notice of any change regarding [~~his~~] employment, vocation or enrollment status at an institution of higher education to the county sheriff, the law enforcement entity and the registrar no later than ten days after the change in [~~his~~] employment, vocation or enrollment status.

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

K. When a sex offender who is registered or required to register is employed, begins a vocation or volunteers [~~his~~] services, regardless of whether

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

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

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

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

M. Notwithstanding the provisions of Paragraph (2) of Subsection L of this section, if a sex offender is convicted a second or subsequent time for a sex offense set forth in Subsection E of Section 29-11A-5 NMSA 1978, ~~[he]~~ the sex

offender shall ~~renew his~~ verify registration information with the county sheriff as provided in Subsection N of this section not less than once in each ninety-day period following the date of the sex offender's initial registration for the ~~[entirety]~~ remainder of ~~[his]~~ the sex offender's natural life.

N. At least fifteen days prior to the time a sex offender is required to verify the sex offender's registration with a county sheriff, the department of public safety shall send, electronically or by first class mail, to any sex offender who elects to receive notification, a registration verification form containing the sex offender's current registration information and a notice that the sex offender is required to appear at the county sheriff's office. The sex offender shall return the verification form in person to the county sheriff on or before the date specified in the notice and sign the statement under oath. The sheriff may photograph the sex offender at that time if the sex offender's appearance is significantly different from the photograph already contained in the sex offender's file. Regardless of whether the sex offender receives notification, the sex offender shall appear at the county sheriff's office to verify registration information as required by this section.

~~[N.]~~ O. A sex offender who willfully or knowingly fails to comply with the registration or verification requirements set forth in this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. A sex offender who willfully or knowingly fails to comply with the registration or verification requirements set forth in this section after a first or subsequent conviction for a violation pursuant to this section is

guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. The willful failure to comply with any registration or verification requirement set forth in this section shall be deemed part of a continuing transaction or occurrence. A conviction pursuant to this subsection shall not be considered a felony for purposes of the imposition of sentencing enhancements pursuant to the provisions of Section 31-18-17 NMSA 1978.

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

SECTION 3. Section 29-11A-5 NMSA 1978 (being Laws 1995, Chapter 106, Section 5, as amended by Laws 2007, Chapter 68, Section 2 and by Laws 2007, Chapter 69, Section 6) is amended to read:

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

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

B. The county sheriff shall forward:

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

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

C. The department of public safety shall maintain a central registry of sex offenders required to register pursuant to the provisions of the Sex Offender Registration and Notification Act. The department shall participate in the national sex offender registry administered by the United States department of justice. The

department shall send conviction information and fingerprints for all sex offenders registered in New Mexico to the national sex offender registry administered by the United States department of justice and to the federal bureau of investigation.

D. The department of public safety shall retain registration information regarding a sex offender convicted for any of the following sex offenses for the entirety of the sex offender's natural life:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. If a sex offender is convicted of one of the following sex offenses, the county sheriff shall forward registration information obtained from the sex

offender to the district attorney for the judicial district in which the sex offender resides and, if the sex offender is a resident of a municipality, the chief law enforcement officer for the municipality in which the sex offender resides:

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

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

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

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

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

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

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

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

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

(4) secretary of public safety.

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

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

E. The department of public safety shall establish and manage an internet web site that provides the public with registration information regarding sex offenders described in Subsection A of this section, except that the department of public safety shall not provide registration information on the internet web site regarding a sex offender who was less than eighteen years of age when the sex offender committed the sex offense for which the sex offender was convicted as a youthful offender, as provided in Section 32A-2-3 NMSA 1978, unless at the time of sentencing, the court made a finding that the sex offender is not amenable to treatment and is a danger to the community. The registration information provided to the public pursuant to this subsection shall not include a sex offender's social

security number or DNA information or a sex offender's place of employment, unless the sex offender's employment requires the sex offender to have [~~direct~~] unsupervised contact with children under sixteen years of age. The internet web site shall provide only the following registration information:

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

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

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

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

(5) a photograph of the sex offender;

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

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

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

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

A. The state preempts the field of sex offender registration and notification. Cities, counties, home rule municipalities and other political subdivisions of the state are prohibited from adopting or continuing in effect any

ordinance, rule, regulation, resolution or statute on sex offender registration and notification and from imposing any other restrictions on sex offenders that are not included in the Sex Offender Registration and Notification Act. Local law enforcement agencies shall not require a sex offender to report or to register more frequently or to provide information not required by the Sex Offender Registration and Notification Act.

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

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

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

A. Child solicitation by electronic communication device consists of a person knowingly [~~and intentionally~~] soliciting a child under sixteen years of age, by means of an electronic communication device, with the intent to engage the

child in sexual intercourse, sexual contact, [~~or in a~~] sexual or obscene performance or [~~to engage in~~] any other sexual conduct when the perpetrator is at least four years older than the child.

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

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

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

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

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

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

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

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

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

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

(1) "electronic communication device" means a computer, video recorder, digital camera, fax machine, telephone, cellular telephone, pager, audio equipment or any other device that can produce an electronically generated image, message or signal; and

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

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

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

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

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

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

[~~C.~~] D. As used in this section:

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

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

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

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

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

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