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HOUSE BILL 485

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

INTRODUCED BY

Andrea Reeb and Ambrose Castellano and William "Bill" R. Rehm
and Rod Montoya

AN ACT

RELATING TO SEXUAL OFFENSES AGAINST CHILDREN; INCREASING
PENALTIES FOR CERTAIN SEXUAL OFFENSES; LIMITING THE DEFENSE FOR
CRIMINAL SEXUAL COMMUNICATION WITH A CHILD; AMENDING THE
DEFINITION OF "SEX OFFENDER".

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

SECTION 1. Section 30-6A-2 NMSA 1978 (being Laws 1984,
Chapter 92, Section 2, as amended) is amended to read:

"30-6A-2. DEFINITIONS.--As used in the Sexual
Exploitation of Children Act:

A. "prohibited sexual act" means:

(1) sexual intercourse, including genital-
genital, oral-genital, anal-genital or oral-anal, whether
between persons of the same or opposite sex;

(2) bestiality;

1 (3) masturbation;

2 (4) sadomasochistic abuse for the purpose of
3 sexual stimulation; or

4 (5) lewd and sexually explicit exhibition with
5 a focus on the genitals or pubic area of any person for the
6 purpose of sexual stimulation;

7 B. "visual or print medium" means:

8 (1) any film, photograph, negative, slide,
9 computer diskette, videotape or videodisc or any computer or
10 electronically generated imagery; or

11 (2) any book, magazine or other form of
12 publication or photographic reproduction containing or
13 incorporating any film, photograph, negative, slide, computer
14 diskette, videotape or videodisc or any computer generated or
15 electronically generated imagery;

16 C. "performed publicly" means performed in a place
17 that is open to or used by the public;

18 D. "manufacture" means the production, processing,
19 [~~copying by any means~~] printing, packaging or repackaging of
20 any visual or print medium depicting any prohibited sexual act
21 or simulation of such an act if one or more of the participants
22 in that act is a child under eighteen years of age; and

23 E. "obscene" means any material, when the content
24 if taken as a whole:

25 (1) appeals to a prurient interest in sex, as

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1 determined by the average person applying contemporary
2 community standards;

3 (2) portrays a prohibited sexual act in a
4 patently offensive way; and

5 (3) lacks serious literary, artistic,
6 political or scientific value."

7 SECTION 2. Section 30-6A-3 NMSA 1978 (being Laws 1984,
8 Chapter 92, Section 3, as amended) is amended to read:

9 "30-6A-3. SEXUAL EXPLOITATION OF CHILDREN.--

10 A. It is unlawful for a person to intentionally
11 possess any obscene visual or print medium depicting any
12 prohibited sexual act or simulation of such an act if that
13 person knows or has reason to know that the obscene medium
14 depicts any prohibited sexual act or simulation of such act and
15 if that person knows or has reason to know that one or more of
16 the participants in that act is a child under eighteen years of
17 age. A person who violates the provisions of this subsection
18 is guilty of a fourth degree felony for sexual exploitation of
19 children and shall be sentenced pursuant to the provisions of
20 Section 31-18-15 NMSA 1978, unless the person intentionally
21 possesses more than twenty-five images, films, photographs,
22 other visual or print medium or any combination thereof, in
23 which event the person is guilty of a third degree felony for a
24 sexual offense against a child and shall be sentenced pursuant
25 to the provisions of Section 31-18-15 NMSA 1978. When a

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1 separate finding of fact made by a court or jury shows beyond a
2 reasonable doubt that a child depicted in the visual or print
3 medium is a child under the age of thirteen, the basic sentence
4 shall be increased by one year, and the sentence imposed by
5 this subsection shall be the first year served and shall not be
6 suspended or deferred; provided that when the offender is a
7 youthful offender, the sentence imposed by this subsection may
8 be increased by one year.

9 B. The provisions of Subsection A of this section
10 shall not apply to a depiction possessed by a child under the
11 age of eighteen in which the depicted child is between the ages
12 of fourteen and eighteen and the depicted child knowingly and
13 voluntarily consented to the possession, and:

14 (1) the depicted child knowingly and
15 voluntarily consented to the creation of the depiction; or

16 (2) the depicted child knowingly and
17 voluntarily produced the depiction without coercion.

18 This subsection shall not prohibit prosecution nor create
19 an immunity from prosecution for the possession of depictions
20 that are the result of coercion.

21 C. It is unlawful for a person to intentionally
22 distribute or copy by any means any obscene visual or print
23 medium depicting any prohibited sexual act or simulation of
24 such an act if that person knows or has reason to know that the
25 obscene medium depicts any prohibited sexual act or simulation

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1 of such act and if that person knows or has reason to know that
2 one or more of the participants in that act is a child under
3 eighteen years of age. A person who violates the provisions of
4 this subsection is guilty of a third degree felony for sexual
5 exploitation of children and shall be sentenced pursuant to the
6 provisions of Section 31-18-15 NMSA 1978. When a separate
7 finding of fact made by a court or jury shows beyond a
8 reasonable doubt that a child depicted in the visual or print
9 medium is a child under the age of thirteen, the basic sentence
10 shall be increased by two years, and the sentence imposed by
11 this subsection shall be the first two years served and shall
12 not be suspended or deferred; provided that when the offender
13 is a youthful offender, the sentence imposed by this subsection
14 may be increased by two years.

15 D. It is unlawful for a person to intentionally
16 cause or permit a child under eighteen years of age to engage
17 in any prohibited sexual act or simulation of such an act if
18 that person knows, has reason to know or intends that the act
19 may be recorded in any obscene visual or print medium or
20 performed publicly. A person who violates the provisions of
21 this subsection is guilty of a third degree felony for sexual
22 exploitation of children and shall be sentenced pursuant to the
23 provisions of Section 31-18-15 NMSA 1978 unless the child is
24 under the age of thirteen, in which event the person is guilty
25 of a second degree felony for sexual exploitation of children

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1 and shall be sentenced pursuant to the provisions of Section
2 31-18-15 NMSA 1978. When a separate finding of fact made by a
3 court or jury shows beyond a reasonable doubt that a child
4 depicted in the visual or print medium is a child under the age
5 of thirteen, the basic sentence shall be increased by two
6 years, and the sentence imposed by this subsection shall be the
7 first two years served and shall not be suspended or deferred;
8 provided that when the offender is a youthful offender, the
9 sentence imposed by this subsection may be increased by two
10 years.

11 E. It is unlawful for a person to intentionally
12 manufacture any obscene visual or print medium depicting any
13 prohibited sexual act or simulation of such an act if one or
14 more of the participants in that act is a child under eighteen
15 years of age. A person who violates the provisions of this
16 subsection is guilty of a second degree felony for sexual
17 exploitation of children and shall be sentenced pursuant to the
18 provisions of Section 31-18-15 NMSA 1978.

19 F. It is unlawful for a person to intentionally
20 manufacture any obscene visual or print medium depicting any
21 prohibited sexual act or simulation of such an act if that
22 person knows or has reason to know that the obscene medium
23 depicts a prohibited sexual act or simulation of such an act
24 and if that person knows or has reason to know that a real
25 child under eighteen years of age, who is not a participant, is

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1 depicted as a participant in that act. A person who violates
2 the provisions of this subsection is guilty of a fourth degree
3 felony.

4 G. It is unlawful for a person to intentionally
5 distribute any obscene visual or print medium depicting any
6 prohibited sexual act or simulation of such an act if that
7 person knows or has reason to know that the obscene medium
8 depicts a prohibited sexual act or simulation of such an act
9 and if that person knows or has reason to know that a real
10 child under eighteen years of age, who is not a participant, is
11 depicted as a participant in that act. A person who violates
12 the provisions of this subsection is guilty of a third degree
13 felony.

14 H. The penalties provided for in this section shall
15 be in addition to those set out in Section 30-9-11 NMSA 1978."

16 SECTION 3. Section 30-37-3.3 NMSA 1978 (being Laws 2007,
17 Chapter 67, Section 1) is amended to read:

18 "30-37-3.3. CRIMINAL SEXUAL COMMUNICATION WITH A CHILD--
19 PENALTY.--

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

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

3 C. In a prosecution for criminal sexual
4 communication with a child, it is not a defense that the
5 intended victim of the defendant was a peace officer posing as
6 a child under sixteen years of age.

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

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

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

14 SECTION 4. Section 31-18-15 NMSA 1978 (being Laws 1977,
15 Chapter 216, Section 4, as amended) is amended to read:

16 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
17 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
18 DEDUCTIONS.--

19 A. As used in a statute that establishes a
20 noncapital felony, the following defined felony classifications
21 and associated basic sentences of imprisonment are as follows:

22	FELONY CLASSIFICATION	BASIC SENTENCE
23	first degree felony	
24	resulting in the death	
25	of a child	life imprisonment

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1 first degree felony for
2 aggravated criminal sexual
3 penetration life imprisonment
4 first degree felony eighteen years imprisonment
5 second degree felony
6 resulting in the death of
7 a human being fifteen years imprisonment
8 second degree felony for a
9 sexual offense against a
10 child fifteen years imprisonment
11 second degree felony for
12 sexual exploitation of
13 children twelve years imprisonment
14 second degree felony nine years imprisonment
15 third degree felony resulting
16 in the death of a human being six years imprisonment
17 third degree felony for a
18 sexual offense against a
19 child ~~[six]~~ eleven years imprisonment
20 third degree felony for sexual
21 exploitation of children eleven years imprisonment
22 third degree felony three years imprisonment
23 fourth degree felony for
24 sexual exploitation of
25 children ten years imprisonment

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1 D. When a court imposes a sentence of imprisonment
2 pursuant to the provisions of Section 31-18-15.1, 31-18-16 or
3 31-18-17 NMSA 1978 and suspends or defers the basic sentence of
4 imprisonment provided pursuant to the provisions of Subsection
5 A of this section, the period of parole shall be served in
6 accordance with the provisions of Section 31-21-10 NMSA 1978
7 for the degree of felony for the basic sentence for which the
8 inmate was convicted. For the purpose of designating a period
9 of parole, a court shall not consider that the basic sentence
10 of imprisonment was suspended or deferred and that the inmate
11 served a period of imprisonment pursuant to the provisions of
12 the Criminal Sentencing Act.

13 E. The court may, in addition to the imposition of
14 a basic sentence of imprisonment, impose a fine not to exceed:

15 (1) for a first degree felony resulting in the
16 death of a child, seventeen thousand five hundred dollars
17 (\$17,500);

18 (2) for a first degree felony for aggravated
19 criminal sexual penetration, seventeen thousand five hundred
20 dollars (\$17,500);

21 (3) for a first degree felony, fifteen
22 thousand dollars (\$15,000);

23 (4) for a second degree felony resulting in
24 the death of a human being, twelve thousand five hundred
25 dollars (\$12,500);

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1 (5) for a second degree felony for a sexual
2 offense against a child, twelve thousand five hundred dollars
3 (\$12,500);

4 (6) for a second degree felony for sexual
5 exploitation of children, five thousand dollars (\$5,000);

6 (7) for a second degree felony, ten thousand
7 dollars (\$10,000);

8 (8) for a third degree felony resulting in the
9 death of a human being, five thousand dollars (\$5,000);

10 (9) for a third degree felony for a sexual
11 offense against a child, five thousand dollars (\$5,000);

12 (10) for a third degree felony for sexual
13 exploitation of children, five thousand dollars (\$5,000);

14 (11) for a third or fourth degree felony, five
15 thousand dollars (\$5,000); or

16 (12) for a fourth degree felony for sexual
17 exploitation of children, five thousand dollars (\$5,000).

18 F. When the court imposes a sentence of
19 imprisonment for a felony offense, the court shall indicate
20 whether or not the offense is a serious violent offense as
21 defined in Section 33-2-34 NMSA 1978. The court shall inform
22 an offender that the offender's sentence of imprisonment is
23 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37
24 and 33-2-38 NMSA 1978. If the court fails to inform an
25 offender that the offender's sentence is subject to those

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1 provisions or if the court provides the offender with erroneous
2 information regarding those provisions, the failure to inform
3 or the error shall not provide a basis for a writ of habeas
4 corpus.

5 G. No later than October 31 of each year, the
6 New Mexico sentencing commission shall provide a written report
7 to the secretary of corrections, all New Mexico criminal court
8 judges, the administrative office of the district attorneys and
9 the chief public defender. The report shall specify the
10 average reduction in the sentence of imprisonment for serious
11 violent offenses and nonviolent offenses, as defined in Section
12 33-2-34 NMSA 1978, due to meritorious deductions earned by
13 prisoners during the previous fiscal year pursuant to the
14 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
15 NMSA 1978. The corrections department shall allow the
16 commission access to documents used by the department to
17 determine earned meritorious deductions for prisoners."

18 SECTION 5. Section 31-20-5.2 NMSA 1978 (being Laws 2003
19 (1st S.S.), Chapter 1, Section 7) is amended to read:

20 "31-20-5.2. SEX OFFENDERS--PERIOD OF PROBATION--TERMS AND
21 CONDITIONS OF PROBATION.--

22 A. When a district court defers imposition of a
23 sentence for a sex offender, or suspends all or any portion of
24 a sentence for a sex offender, the district court shall include
25 a provision in the judgment and sentence that specifically

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1 requires the sex offender to serve an indeterminate period of
2 supervised probation for a period of not less than five years
3 and not in excess of twenty years. A sex offender's period of
4 supervised probation may be for a period of less than twenty
5 years if, at a review hearing provided for in Subsection B of
6 this section, the state is unable to prove that the sex
7 offender should remain on probation. Prior to placing a sex
8 offender on probation, the district court shall conduct a
9 hearing to determine the terms and conditions of supervised
10 probation for the sex offender. The district court may
11 consider any relevant factors, including:

12 (1) the nature and circumstances of the
13 offense for which the sex offender was convicted or
14 adjudicated;

15 (2) the nature and circumstances of a prior
16 sex offense committed by the sex offender;

17 (3) rehabilitation efforts engaged in by the
18 sex offender, including participation in treatment programs
19 while incarcerated or elsewhere;

20 (4) the danger to the community posed by the
21 sex offender; and

22 (5) a risk and needs assessment regarding the
23 sex offender, developed by the sex offender management board of
24 the New Mexico sentencing commission or another appropriate
25 entity, to be used by appropriate district court personnel.

1 B. A district court shall review the terms and
2 conditions of a sex offender's supervised probation at two and
3 one-half year intervals. When a sex offender has served the
4 initial five years of supervised probation, the district court
5 shall also review the duration of the sex offender's supervised
6 probation at two and one-half year intervals. When a sex
7 offender has served the initial five years of supervised
8 probation, at each review hearing the state shall bear the
9 burden of proving to a reasonable certainty that the sex
10 offender should remain on probation.

11 C. The district court may order a sex offender
12 placed on probation to abide by reasonable terms and conditions
13 of probation, including:

14 (1) being subject to intensive supervision by
15 a probation officer of the corrections department;

16 (2) participating in an outpatient or
17 inpatient sex offender treatment program;

18 (3) a probationary agreement by the sex
19 offender not to use alcohol or drugs;

20 (4) a probationary agreement by the sex
21 offender not to have contact with certain persons or classes of
22 persons; and

23 (5) being subject to alcohol testing, drug
24 testing or polygraph examinations used to determine if the sex
25 offender is in compliance with the terms and conditions of

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1 ~~[his]~~ the sex offender's probation.

2 D. The district court shall notify the sex
3 offender's counsel of record of an upcoming probation hearing
4 for a sex offender, and the sex offender's counsel of record
5 shall represent the sex offender at the probation hearing.
6 When a sex offender's counsel of record provides the court with
7 good cause that the counsel of record should not represent the
8 sex offender at the probation hearing and the sex offender is
9 subsequently unable to obtain counsel, the district court shall
10 notify the chief public defender of the upcoming probation
11 hearing and the chief public defender shall make representation
12 available to the sex offender at that hearing.

13 E. If the district court finds that a sex offender
14 has violated the terms and conditions of ~~[his]~~ the sex
15 offender's probation, the district court may revoke ~~[his]~~ the
16 sex offender's probation or may order additional terms and
17 conditions of probation.

18 F. As used in this section, "sex offender" means a
19 person who is convicted of, pleads guilty to or pleads nolo
20 contendere to any one of the following offenses:

21 (1) kidnapping, as provided in Section 30-4-1
22 NMSA 1978, when committed with intent to inflict a sexual
23 offense upon the victim;

24 (2) aggravated criminal sexual penetration or
25 criminal sexual penetration in the first, second, ~~[or]~~ third or

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1 fourth degree, as provided in Section 30-9-11 NMSA 1978;

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

5 (4) sexual exploitation of children in the
6 second degree, as provided in Section 30-6A-3 NMSA 1978; [~~or~~]

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

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

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

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

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

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

22 (11) child solicitation by electronic
23 communication device, as provided in Section 30-37-3.2 NMSA
24 1978, for convictions occurring on or after July 1, 2013;

25 (12) solicitation to commit criminal sexual

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1 contact of a minor in the second, third or fourth degree, as
2 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

3 (13) attempt to commit any of the sex offenses
4 set forth in Paragraphs (1) through (11) of this subsection
5 when the attempt is a felony, as provided in Section 30-28-1
6 NMSA 1978."

7 SECTION 6. Section 31-21-10.1 NMSA 1978 (being Laws 2003
8 (1st S.S.), Chapter 1, Section 9, as amended by Laws 2007,
9 Chapter 68, Section 4 and by Laws 2007, Chapter 69, Section 4)
10 is amended to read:

11 "31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS AND
12 CONDITIONS OF PAROLE.--

13 A. If the district court sentences a sex offender
14 to a term of incarceration in a facility designated by the
15 corrections department, the district court shall include a
16 provision in the judgment and sentence that specifically
17 requires the sex offender to serve an indeterminate period of
18 supervised parole for a period of:

19 (1) not less than five years and not in excess
20 of twenty years for the offense of kidnapping when committed
21 with intent to inflict a sexual offense upon the victim,
22 criminal sexual penetration in the third degree, criminal
23 sexual contact of a minor in the fourth degree or sexual
24 exploitation of children in the second degree; or

25 (2) not less than five years and up to the

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1 natural life of the sex offender for the offense of aggravated
2 criminal sexual penetration, criminal sexual penetration in the
3 first or second degree, criminal sexual contact of a minor in
4 the second or third degree or sexual exploitation of children
5 by prostitution in the first or second degree.

6 A sex offender's period of supervised parole may be for a
7 period of less than the maximum if, at a review hearing
8 provided for in Subsection C of this section, the state is
9 unable to prove that the sex offender should remain on parole.

10 B. Prior to placing a sex offender on parole, the
11 board shall conduct a hearing to determine the terms and
12 conditions of supervised parole for the sex offender. The
13 board may consider any relevant factors, including:

14 (1) the nature and circumstances of the
15 offense for which the sex offender was incarcerated;

16 (2) the nature and circumstances of a prior
17 sex offense committed by the sex offender;

18 (3) rehabilitation efforts engaged in by the
19 sex offender, including participation in treatment programs
20 while incarcerated or elsewhere;

21 (4) the danger to the community posed by the
22 sex offender; and

23 (5) a risk and needs assessment regarding the
24 sex offender, developed by the sex offender management board of
25 the New Mexico sentencing commission or another appropriate

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1 entity, to be used by appropriate parole board personnel.

2 C. When a sex offender has served the initial five
3 years of supervised parole, and at two and one-half year
4 intervals thereafter, the board shall review the duration of
5 the sex offender's supervised parole. At each review hearing,
6 the attorney general shall bear the burden of proving by clear
7 and convincing evidence that the sex offender should remain on
8 parole.

9 D. The board may order a sex offender released on
10 parole to abide by reasonable terms and conditions of parole,
11 including:

12 (1) being subject to intensive supervision by
13 a parole officer of the corrections department;

14 (2) participating in an outpatient or
15 inpatient sex offender treatment program;

16 (3) a parole agreement by the sex offender not
17 to use alcohol or drugs;

18 (4) a parole agreement by the sex offender not
19 to have contact with certain persons or classes of persons; and

20 (5) being subject to alcohol testing, drug
21 testing or polygraph examinations used to determine if the sex
22 offender is in compliance with the terms and conditions of the
23 sex offender's parole.

24 E. The board shall require electronic real-time
25 monitoring of every sex offender released on parole for the

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1 entire time the sex offender is on parole. The electronic
2 monitoring shall use global positioning system monitoring
3 technology or any successor technology that would give
4 continuous information on the sex offender's whereabouts and
5 enable law enforcement and the corrections department to
6 determine the real-time position of a sex offender to a high
7 level of accuracy.

8 F. The board shall notify the chief public defender
9 of an upcoming parole hearing for a sex offender pursuant to
10 Subsection C of this section, and the chief public defender
11 shall make representation available to the sex offender at the
12 parole hearing.

13 G. If the board finds that a sex offender has
14 violated the terms and conditions of the sex offender's parole,
15 the board may revoke the sex offender's parole or may modify
16 the terms and conditions of parole.

17 H. The provisions of this section shall apply to
18 all sex offenders, except geriatric, permanently incapacitated
19 and terminally ill inmates eligible for the medical and
20 geriatric parole program as provided by the Parole Board Act.

21 I. As used in this section, "sex offender" means a
22 person who is convicted of, pleads guilty to or pleads nolo
23 contendere to any one of the following offenses:

24 (1) kidnapping, as provided in Section 30-4-1
25 NMSA 1978, when committed with intent to inflict a sexual

1 offense upon the victim;

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

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

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

10 (5) sexual exploitation of children by
11 prostitution in the first or second degree, as provided in
12 Section 30-6A-4 NMSA 1978; [or]

13 (6) child solicitation by electronic
14 communication device, as provided in Section 30-37-3.2 NMSA
15 1978;

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

18 (8) false imprisonment, as provided in Section
19 30-4-3 NMSA 1978, when committed with the intent to inflict a
20 sexual offense;

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

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

25 (11) incest, as provided in Section 30-10-3

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1 NMSA 1978, when the victim is younger than eighteen years of
2 age;

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

6 (13) attempt to commit any of the sex offenses
7 set forth in Paragraphs (1) through (11) of this subsection
8 when the attempt is a felony, as provided in Section 30-28-1
9 NMSA 1978."