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SENATE BILL 521

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Carlos R. Cisneros and Richard C. Martinez

AN ACT

RELATING TO HUMAN TRAFFICKING; REQUIRING CERTAIN FELONS TO
INSTALL BLOCKING SOFTWARE WHILE UNDER SUPERVISION; REQUIRING
CERTAIN OFFENDERS TO REGISTER UNDER THE SEX OFFENDER
REGISTRATION AND NOTIFICATION ACT; CREATING A FEE; CREATING THE
HUMAN TRAFFICKING AND CHILD EXPLOITATION PREVENTION FUND;
PROVIDING PENALTIES; MAKING APPROPRIATIONS.

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

SECTION 1. A new section of the Probation and Parole Act
is enacted to read:

"[NEW MATERIAL] SEX OFFENDERS--ADDITIONAL TERMS AND
CONDITIONS OF PAROLE--REQUIRING BLOCKING SOFTWARE.--

A. As used in the section:

(1) "blocking software" means software that
prevents a device from accessing obscene material on the

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1 internet;

2 (2) "internet-capable device" means a device
3 that is capable of providing auditory or visual content through
4 access to the internet;

5 (3) "obscene material" means content:

6 (a) that the average individual applying
7 contemporary community standards would find, when considered or
8 taken as a whole, to appeal to the prurient interests;

9 (b) depicting or describing sexual
10 conduct in a patently offensive way by actual or simulated
11 audio or visual representations; masturbation, excretory
12 functions or exhibitions of a specified anatomical area of
13 oneself or another; or tactile stimulation of the covered or
14 uncovered genitals of oneself or another; and

15 (c) that, when considered or taken as a
16 whole, lacks serious literary, artistic, political or
17 scientific value; and

18 (4) "sex offender" means a person who:

19 (a) is a resident of New Mexico who is
20 convicted of a sex offense as defined in Section 29-11A-3 NMSA
21 1978 pursuant to state, federal, tribal or military law;

22 (b) changes residence to New Mexico,
23 when that person has been convicted of a sex offense pursuant
24 to state, federal, tribal or military law;

25 (c) does not have an established

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1 residence in New Mexico, but lives in a shelter, halfway house
2 or transitional living facility or stays in multiple locations
3 in New Mexico and who has been convicted of a sex offense
4 pursuant to state, federal, tribal or military law; or

5 (d) is a resident of another state and
6 who has been convicted of a sex offense pursuant to state,
7 federal, tribal or military law, but who is: 1) employed full-
8 time or part-time in New Mexico for a period of time exceeding
9 fourteen days or for an aggregate period of time exceeding
10 thirty days during any calendar year, including any employment
11 or vocation, whether financially compensated, as a volunteer or
12 for the purpose of government or educational benefit; or 2)
13 enrolled on a full-time or part-time basis in a private or
14 public school or an institution of higher education in New
15 Mexico.

16 B. A sex offender who is subject to parole,
17 supervised probation, unsupervised probation or a judicially
18 approved community custody release program shall provide all
19 internet-capable devices owned or within the sex offender's
20 custody to the sex offender's supervising officer within forty-
21 eight hours of sentencing or release from custody.

22 C. The supervising officer shall inventory and
23 shall install and test the blocking software on each
24 internet-capable device.

25 D. Absent a contrary order from a court, a sex

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1 offender shall not own, use, acquire, sell, transfer or possess
2 an internet-capable device upon which blocking software cannot
3 be installed. A court order entered pursuant to this
4 subsection shall include explicit findings as to the rationale
5 for allowing the sex offender to own, use, acquire, sell,
6 transfer or possess an internet-capable device.

7 E. At each meeting with the sex offender, whether
8 scheduled or unscheduled, the supervising officer shall
9 inventory and inspect each internet-capable device to ensure
10 that the blocking software is installed and functioning
11 properly.

12 F. A sex offender who acquires an internet-capable
13 device shall submit the device to the sex offender's
14 supervising officer within twenty-four hours.

15 G. The sex offender shall bear all costs associated
16 with the installation and use of the blocking software."

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

21 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
22 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN
23 THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

24 A. A county sheriff shall maintain a local registry
25 of sex offenders in the sheriff's jurisdiction required to

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1 register pursuant to the provisions of the Sex Offender
2 Registration and Notification Act.

3 B. The county sheriff shall forward:

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

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

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

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1 administered by the United States department of justice and to
2 the federal bureau of investigation.

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

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

10 (2) criminal sexual contact of a minor in the
11 second, third or fourth degree, as provided in Section
12 30-9-13 NMSA 1978;

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

15 (4) kidnapping, as provided in Section
16 30-4-1 NMSA 1978, when the victim is less than eighteen years
17 of age and the offender is not a parent of the victim;

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

20 (6) human trafficking for commercial sexual
21 activity, as provided in Section 30-52-1 NMSA 1978; or

22 [~~(6)~~] (7) attempt to commit any of the sex
23 offenses set forth in Paragraphs (1) through [~~(5)~~] (6) of this
24 subsection, as provided in Section 30-28-1 NMSA 1978.

25 E. The department of public safety shall retain

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1 registration information regarding a sex offender convicted for
2 the following offenses for a period of ten years following the
3 sex offender's conviction, release from prison or release from
4 probation or parole, whichever occurs later:

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

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

9 (3) false imprisonment, as provided in Section
10 30-4-3 NMSA 1978, when the victim is less than eighteen years
11 of age and the offender is not a parent of the victim;

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

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

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

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

21 (8) child solicitation by electronic
22 communication device, as provided in Section 30-37-3.2 NMSA
23 1978; or

24 (9) attempt to commit any of the sex offenses
25 set forth in Paragraphs (1) through ~~(6)~~ (8) of this

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1 subsection, as provided in Section 30-28-1 NMSA 1978.

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

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

15 SECTION 3. A new section of Chapter 31, Article 12 NMSA
16 1978 is enacted to read:

17 "[NEW MATERIAL] HUMAN TRAFFICKING--FEE UPON CONVICTION.--

18 A. A person convicted of a violation of, or
19 convicted of attempt or conspiracy to commit a violation of,
20 Section 30-6A-3, 30-6A-4 or 30-52-1 NMSA 1978 shall be
21 assessed, in addition to any other fee or fine, a "human
22 trafficking and child exploitation prevention fee" of two
23 hundred dollars (\$200) to pay for victim reparation and to
24 defray the cost of monitoring the electronic devices of persons
25 on probation or parole for a violation of Section 30-52-1 NMSA

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1 1978.

2 B. Human trafficking and prevention fees shall be
3 deposited in the human trafficking and child exploitation
4 prevention fund."

5 SECTION 4. A new section of Chapter 31, Article 12 NMSA
6 1978 is enacted to read:

7 "[NEW MATERIAL] HUMAN TRAFFICKING AND CHILD EXPLOITATION
8 PREVENTION FUND CREATED.--

9 A. There is created in the state treasury the
10 "human trafficking and child exploitation prevention fund".
11 All fees collected pursuant to Section 3 of this 2019 act shall
12 be transmitted monthly to the state treasurer for credit to the
13 human trafficking and child exploitation prevention fund. All
14 balances in the human trafficking and child exploitation
15 prevention fund are appropriated to the office of the attorney
16 general for the purposes set forth in Subsections B and C of
17 this section. Payments out of the human trafficking and child
18 exploitation prevention fund shall be made on vouchers issued
19 and signed by the attorney general upon warrants drawn by the
20 department of finance and administration. Earnings of the fund
21 shall be credited to the fund. Any unexpended or unencumbered
22 balance in the human trafficking and child exploitation
23 prevention fund shall not revert at the end of a fiscal year.

24 B. The "human trafficking victims reparation
25 subaccount" is established in the human trafficking and child

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1 exploitation prevention fund. One-half of all money collected
2 pursuant to this section shall be deposited in the subaccount.

3 Money in the subaccount shall be used for:

4 (1) expenses actually and reasonably incurred
5 as a result of the victim's injury or death;

6 (2) loss to the victim of earning power as a
7 result of total or partial incapacity;

8 (3) any other pecuniary loss directly
9 resulting from the victim's injury or death that the attorney
10 general determines to be reasonable and proper; and

11 (4) any expenses incurred for rehabilitation
12 services; provided, however, awards made pursuant to this
13 subsection shall be made directly to the provider of the
14 rehabilitation services for payment of those services.

15 C. The "probation and parole monitoring subaccount"
16 is established in the human trafficking and child exploitation
17 prevention fund. One-half of all money collected pursuant to
18 this section shall be deposited in the probation and parole
19 monitoring subaccount. Money in the subaccount shall be used
20 to research, develop, implement and maintain blocking software
21 preventing internet access to sexually suggestive materials by
22 persons on parole or probation for a violation of, or attempt
23 or conspiracy to violate, Section 30-6A-3, 30-6A-4 or 30-52-1
24 NMSA 1978.

25 D. A disbursement from the fund shall be made only

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1 upon a warrant drawn by the secretary of finance and
2 administration pursuant to a voucher signed by the attorney
3 general."

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