
Bill Analysis 2020 Regular Session**SPONSOR:** Representative Matthew McQueen**SHORT TITLE:** Sex Offender Registration

SYNOPSIS OF BILL: Removes the employment and student requirement from the out of state resident sex offender registration requirement in Sec. 29-11A-3(H)(4) NMSA substituting physical presence in the State of New Mexico for 10 consecutive days or a total of 20 aggregate days annually. It also adds to the definition of sex offense “any other conviction that would cause an individual to be registered as a sex offender in the jurisdiction where the offense was committed” effectively adopting the sex offender registration requirements of all 50 states.

STRENGTHS: Reduces community anxiety pertaining to convicted sex offenders visiting New Mexico.

ADDITIONAL INFO: New Mexico currently does not have the infrastructure or resources necessary to track the criminal history of every visitor to the State of New Mexico, nor ascertain the exact number of days they are in the State to enforce sex offender registration for persons in New Mexico for more than 10 days as is proposed by Sec. 29-11A-3(H)(4). Attempts to inquire into the criminal history of every tourist to the state would result in extensive civil rights, due process¹, privacy, and search and seizure litigation.

Doe v. Pa. Bd. of Prob. & Parole raises the significant possibility of legal challenges to the proposed statutory changes based on 14th Amendment equal protection questions of disparate treatment of in-state and out-of-state offenders.²

The proposed change in Sec. 29-11A-3(I)(14) effectively adopts the sex offender registration requirements of every other state, when New Mexico does not deem the statutory elements of the crime to be a sex offense. This would include crimes that were once registrable but are no longer. For example, prior to 2015, New Hampshire required sex offender registration for persons who engaged in consensual sex when there was a three year age gap between a minor and an adult, then classified as age 17. In contrast, New Mexico defines statutory rape in Sec. 30-9-11(G)(1) as one participant being 13-16 years of age and the other participant being over the age of 18 and requires the adult to be more than 4 years older than the minor child. *State v. Hall* 149 N.M. 546 requires that statutory elements of the New Mexico crime the State alleges is equivalent to the conviction in another state must be met. The changes to Sec. 29-11A-3(I)(14) would no longer require that the offense the person was convicted of be equivalent to a registerable offense in New Mexico. Most jurisdictions require registration if a person was convicted of an out-of-state offense that is “comparable,” “similar” or “substantially similar” to one or more of the receiving jurisdiction’s registerable offenses.³ This generally accepted equivalency requirement is what is currently in place in New Mexico and helps reduce overbroad and overlong in duration sex offender registration requirements that have shown to push people into isolation, poverty, and homelessness.⁴

<u>S</u>afer	<u>A</u>political	<u>F</u>iscally-Responsible	<u>E</u>vidence Based	Grade
There is no evidence that sex offender registries are effective crime prevention tools. ⁴	Recent reports of Jeffery Epstein engaging in sex trafficking of young girls in New Mexico has prompted many to push for stricter sex offender registration laws with no evidence doing so would make our communities safer.	This bill would put tremendous responsibility on NM Sheriffs who are responsible for maintaining sex offender registrations in their county to investigate every visitor to the State of New Mexico. ⁵	New Mexico does not collect data as to the number of sex offenders who visit the State of New Mexico for 10 or more consecutive days, nor is there data identifying the number of people convicted of sex offenses in another state who travel to New Mexico and are then charged with committing another sex offense in NM.	D

¹ *Brown v. Montoya*, 662 F.3d 1152 (10th Cir. 2011). Massachusetts requires a due process hearing before an offender is ordered to comply with its full registration requirements, including those convicted prior to the registration statute’s effective date. *See* the procedure followed in Massachusetts, where the Sex Offender Registry Board must find that the offender poses a danger to the community before requiring registration: 803 CMR 106(B), *available at* <http://www.mass.gov/courts/docs/lawlib/800-899cmr/803cmr1.pdf> In *Doe v. Sex Offender Registry Bd.*, 41 N.E.3d 1058 (Mass. 2015), the court held that the burden of proof for classification was no longer by a “preponderance of the evidence” but was constitutionally required to be by the higher standard of “clear and convincing evidence.” Applying community notification retroactively to Massachusetts’ existing Level 2 offenders was held to violate due process. *Moe v. Sex Offender Registry Board*, 6 N.E.3d 530 (Mass. 2014).

² *Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95 (3d Cir. 2008) (Pennsylvania’s disparate treatment of in-state and out-of-state offenders violated the Equal Protection Clause of the 14th Amend.)

³ U.S. Dept. of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Sex Offender Registration and Notification in the United States, Current Case Law and Issue (March 2019), pg. 4, retrieved at <https://www.smart.gov/caselaw/Case-Law-Update-2019-Compiled.pdf>

⁴ Human Rights Watch, No Easy Answers, Sex Offender Laws in the US (Sept. 11, 2007). Reviewed at: <https://www.hrw.org/report/2007/09/11/no-easy-answers/sex-offender-laws-us>

⁵ Sec. 29-11A-4(A) NMSA