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Closing New Mexico's Child Pornography & Exploitation Loophole: Representatives Sarah Maestas Barnes, Javier Martinez & Randal Crowder Pre-File Legislation Supported by New Mexico Attorney General

Santa Fe, NM – Representatives Sarah Maestas Barnes (R-Bernalillo), Javier Martinez (D-Bernalillo) and Randal Crowder (R-Curry) will pre-file legislation today backed by Attorney General Hector Balderas to close New Mexico's child pornography and exploitation loophole. The current law limits the ability of prosecutors to charge defendants who possess multiple images of children being raped, objectified, and exploited in multiple forms of media and online. Currently, these child predators are only subject to prosecution of one count of child exploitation by possession, irrespective of the number of images they possessed.

The bill sponsored by Maestas Barnes, Martinez and Crowder would strengthen the current statute to allow prosecutors the option of prosecuting individuals for each image or depiction of child pornography possessed by the individual. This bill adds mandatory time when a child depicted in an image of sexual abuse is under 13 so that where the Court or a Jury finds beyond a reasonable doubt that there is a baby or toddler being sexually abused, raped, or exploited in the visual or print medium, the offender faces mandatory sex offender registration and mandatory incarceration.

"We have a moral responsibility to protect our children from child pornographers and sexual predators," said **Representative Sarah Maestas Barnes**. "New Mexico cannot be viewed as an attractive location for child pornographers due to weaknesses in our criminal code. We must close this loophole and end this unspeakable exploitation of children."

"Child pornography is not just pictures or videos, it is horrific violence and assault that children are subjected to in order to make those images and videos," said **Attorney General Hector Balderas**. "New Mexico judges and prosecutors need the appropriate tools when it comes to combatting predators who exploit our children, and closing this loophole will ensure just that. I am urging the legislature to pass this bipartisan legislation that will protect all New Mexico children."

Juan Santos Torres, a licensed pediatrician, was found guilty in October 2015 of only one count of Sexual Exploitation of Children by Possession despite possessing numerous videos of multiple children being sexually abused. Santos Torres was sentenced to only 14 months in jail, only a small fraction of time due to the child pornography and exploitation loophole. Joshua Weitz, an Albuquerque Public School kindergarten teacher, was charged in November with only one count

of Sexual Exploitation of Children by Possession despite allegedly possessing 40 files of child pornography. The Weitz case has since been accepted for federal prosecution.

“We cannot wait another year to close the child pornography and exploitation loophole because we have child predators in New Mexico who are benefiting from this alarming flaw in our criminal justice system,” said **Representative Sarah Maestas Barnes**.

The bill gives prosecutors the flexibility to use their discretion in charging violators based on the nature of the images, sexual abuse depicted, and volume of the collection. It does not mandate prosecution for every image possessed.

Maestas Barnes, Martinez and Crowder introduced similar legislation during the 2015 Legislative Session. The bipartisan effort was supported by Attorney General Hector Balderas and Governor Susana Martinez, and unanimously passed the New Mexico House of Representatives but died in the New Mexico Senate Public Affairs Committee.

Please see attached for a copy of the bill.

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HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CHILD EXPLOITATION; MAKING EACH SEPARATE DEPICTION OF A CHILD CHARGEABLE AS AN INDIVIDUAL CRIMINAL OFFENSE; REVISING DEFINITIONS IN THE SEXUAL EXPLOITATION OF CHILDREN ACT; ADDING AN ENHANCEMENT FOR AN OFFENSE AGAINST A CHILD UNDER THE AGE OF THIRTEEN; DECLARING AN EMERGENCY.

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;

underscoring material = new
~~[bracketed material] = delete~~

- 1 (2) bestiality;
2 (3) masturbation;
3 (4) sadomasochistic abuse for the purpose of
4 sexual stimulation; [~~or~~]
5 (5) lewd and sexually explicit exhibition with
6 a focus on the genitals or pubic area of any person for the
7 purpose of sexual stimulation; or
8 (6) a simulation of any of the acts provided
9 in Paragraphs (1) through (5) of this subsection;

10 B. "visual or print medium" means:

11 (1) any single visual depiction of a
12 prohibited sexual act in any film, photograph, negative, slide,
13 computer diskette, videotape, videodisc or any computer or
14 electronically generated, created or stored imagery; or

15 (2) any single visual depiction of a
16 prohibited sexual act in any book, magazine or other form of
17 publication or photographic reproduction containing or
18 incorporating any film, photograph, negative, slide, computer
19 diskette, videotape, videodisc or any computer generated,
20 created or stored or electronically generated imagery;

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

23 D. "manufacture" means the production, processing,
24 copying by any means, printing, packaging or repackaging of any
25 visual or print medium depicting any prohibited sexual act [~~or~~

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1 ~~simulation of such an act~~] if one or more of the participants
2 in that act is a child under eighteen years of age; and

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

5 (1) appeals to a prurient interest in sex, as
6 determined by the average person applying contemporary
7 community standards;

8 (2) portrays a prohibited sexual act in a
9 patently offensive way; and

10 (3) lacks serious literary, artistic,
11 political or scientific value."

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

14 "30-6A-3. SEXUAL EXPLOITATION OF CHILDREN.--

15 A. It is unlawful for a person to intentionally
16 possess ~~any~~ an obscene visual or print medium depicting ~~any~~
17 a prohibited sexual act ~~[or simulation of such an act]~~ if that
18 person knows or has reason to know that the obscene medium
19 depicts ~~any~~ a prohibited sexual act ~~[or simulation of such~~
20 ~~act]~~ and if that person knows or has reason to know that one or
21 more of the participants in that act is a child under eighteen
22 years of age. A person who violates the provisions of this
23 subsection is guilty of a fourth degree felony. When a
24 separate finding of fact by the court or jury shows that a
25 child depicted in the visual or print medium is a child under

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1 the age of thirteen, the basic sentence shall be increased by
2 six months and the sentence imposed by this subsection shall be
3 the first six months served and shall not be suspended or
4 deferred; provided that when the offender is a youthful
5 offender, the sentence imposed by this subsection may be
6 increased by six months.

7 B. It is unlawful for a person to intentionally
8 distribute [~~any~~] an obscene visual or print medium depicting
9 [~~any~~] a prohibited sexual act [~~or simulation of such an act~~] if
10 that person knows or has reason to know that the obscene medium
11 depicts [~~any~~] a prohibited sexual act [~~or simulation of such~~
12 ~~act~~] and if that person knows or has reason to know that one or
13 more of the participants in that act is a child under eighteen
14 years of age. A person who violates the provisions of this
15 subsection is guilty of a third degree felony. When a separate
16 finding of fact by the court or jury shows that a child
17 depicted in the visual or print medium is a child under the age
18 of thirteen, the basic sentence shall be increased by one year
19 and the sentence imposed by this subsection shall be the first
20 year served and shall not be suspended or deferred; provided
21 that when the offender is a youthful offender, the sentence
22 imposed by this subsection may be increased by one year.

23 C. It is unlawful for a person to intentionally
24 cause or permit a child under eighteen years of age to engage
25 in [~~any~~] a prohibited sexual act [~~or simulation of such an act~~]

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underscored material = new
[bracketed material] = delete

1 if that person knows, has reason to know or intends that the
2 act may be recorded in [~~any~~] an obscene visual or print medium
3 or performed publicly. A person who violates the provisions of
4 this subsection is guilty of a third degree felony, unless the
5 child is under the age of thirteen, in which event the person
6 is guilty of a second degree felony. When a separate finding
7 of fact by the court or jury shows that a child depicted in the
8 visual or print medium is a child under the age of thirteen,
9 the basic sentence shall be increased by eighteen months and
10 the sentence imposed by this subsection shall be the first
11 eighteen months served and shall not be suspended or deferred;
12 provided that when the offender is a youthful offender, the
13 sentence imposed by this subsection may be increased by
14 eighteen months.

15 D. It is unlawful for a person to intentionally
16 manufacture [~~any~~] an obscene visual or print medium depicting
17 [~~any~~] a prohibited sexual act [~~or simulation of such an act~~] if
18 one or more of the participants in that act is a child under
19 eighteen years of age. A person who violates the provisions of
20 this subsection is guilty of a second degree felony. When a
21 separate finding of fact by the court or jury shows that a
22 child depicted in the visual or print medium is a child under
23 the age of thirteen, the basic sentence shall be increased by
24 eighteen months and the sentence imposed by this subsection
25 shall be the first eighteen months served and shall not be

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underscored material = new
[bracketed material] = delete

1 suspended or deferred; provided that when the offender is a
2 youthful offender, the sentence imposed by this subsection may
3 be increased by eighteen months.

4 E. It is unlawful for a person to intentionally
5 manufacture ~~[any]~~ an obscene visual or print medium depicting
6 ~~[any]~~ a prohibited sexual act ~~[or simulation of such an act]~~ if
7 that 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 fourth degree
13 felony. When a separate finding of fact by the court or jury
14 shows that a child depicted in the visual or print medium is a
15 child under the age of thirteen, the basic sentence shall be
16 increased by eighteen months and the sentence imposed by this
17 subsection shall be the first eighteen months served and shall
18 not be suspended or deferred; provided that when the offender
19 is a youthful offender, the sentence imposed by this subsection
20 may be increased by eighteen months.

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

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underscored material = new
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1 and if that person knows or has reason to know that a real
2 child under eighteen years of age, who is not a participant, is
3 depicted as a participant in that act. A person who violates
4 the provisions of this subsection is guilty of a third degree
5 felony. When a separate finding of fact by the court or jury
6 shows that a child depicted in the visual or print medium is a
7 child under the age of thirteen, the basic sentence shall be
8 increased by one year and the sentence imposed by this
9 subsection shall be the first year served and shall not be
10 suspended or deferred; provided that when the offender is a
11 youthful offender, the sentence imposed by this subsection may
12 be increased by one year.

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

15 H. For the purposes of this section, the
16 possession, distribution or manufacture of each separate
17 depiction of a child under eighteen years of age engaged in a
18 prohibited sexual act contained on an item of visual or print
19 medium shall be considered a distinct act and may be charged as
20 an individual criminal offense pursuant to the relevant
21 subsection of this section."

22 SECTION 3. EMERGENCY.--It is necessary for the public
23 peace, health and safety that this act take effect immediately.