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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/02/09  
 LAST UPDATED 03/12/09    **HB** 807/aHJC

SPONSOR Maestas

SHORT TITLE Jail Good Behavior Standards    **SB** \_\_\_\_\_

ANALYST Weber

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicate SB 250

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorney (AODA)
- Attorney General (AOG)
- Public Defender Department (PDD)
- Department of Public Safety (DPS)
- Association of Counties

### SUMMARY

#### Synopsis of House Judiciary Committee Amendment to House Bill 807

1. On page 4, strike line 10 in its entirety and renumber the succeeding paragraphs accordingly. This eliminates “(1) disobeys an order to perform labor;” as a reason to not be eligible for good time deductions.
2. On page 4 line 24, after “behavior”, strike the remainder of the line, and strike line 25 up to the period. This eliminates “prior to their implementation, and the rules, policies and procedures shall be a matter of public record”.

#### Synopsis of Original Bill

House Bill 807 amends Section 33-3-9 NMSA 1978 to remove the requirement of judicial approval before a sheriff or jail administrator of any county may grant deductions of time from a

prison sentence for good behavior in accordance with Sections 33-3-9 and 33-3-9.1. An additional amendment to Section 33-3-9 permits an independent contractor operating a jail to make reports of disciplinary violations and good behavior to the jail administrator of the county where the jail is located instead of the sheriff. The jail administrator or sheriff must then take action on such reports and decide on awards or forfeitures of good time.

The bill adds a new section 33-3-9.1 NMSA 1978 to set standards for eligibility for deduction of time for good behavior. Eligibility under the bill extends to an inmate confined to a county jail that is operated by a private contractor. The Board of County Commissioners is required to approve rules, policies and procedures relating to deductions of time for good behavior prior to their implementation, and the rules, policies and procedures shall be a matter of public record. An “active participant,” “jail administrator” and “program” are defined.

The effective date of the Act is July 1, 2009.

### **FISCAL IMPLICATIONS**

There are no obvious, direct fiscal implications for the state. However, there could be savings for counties due to reduced jail inmate population and the potential relief of overcrowding.

### **SIGNIFICANT ISSUES**

The AOC offers the following extensive review of issues.

Under current law, “good time” can be awarded for prisoners serving felony sentences in facilities operated by the department of corrections when an inmate satisfies written criteria, such as completion of programs established by the department, and subject to statutory restrictions on the amount of good time that can be earned under the Earned Meritorious Deductions Act (Section 33-2-34, the EMDA) that requires an inmate to serve at least 85% of the sentence for certain stated crimes. HB 807 follows the EMDA in part by the creation of Section 33-3-9.1, discussing the requirement for an inmate to adequately participate in a “work, vocational, educational, substance abuse or mental health program, approved by the jail administrator or the administrator's designee.” The EMDA requires active participation in approved programs “recommended for the prisoner by the classification supervisor and approved by the warden.” County detention facilities do not have classification supervisors for inmates. It appears that programs would be selected and participation would be monitored by the jail administrator.

Existing law requires the sentencing judge or the presiding judge of the court where the prisoner was convicted to approve the eligibility of a person held in the county detention center to be granted a good time reduction on the sentence. HB 807 removes the requirement of judicial approval, giving sole discretion to the sheriff or jail administrator to release any person committed to the county detention center, except those serving mandatory sentences for dwi.

The existing sentencing system, whereby most misdemeanor offenders are allowed by the sentencing judge to earn good time and a minority are not, resulted from a legislative change instituted in 1995. From 1993 to 1995, judges were removed from the determination to allow a misdemeanor offender to earn good time and that decision was in the sole discretion of the jails. The two-year experiment appears to have been unsatisfactory, and the 1995 return to involving judges in the process has been in place since then. The New Mexico Court of Appeals approved

this system in a recent ruling:

we hold that [Section 33-3-9\(A\)](#) allows a county sheriff or jail administrator to permissively grant an individual, who has been approved for the opportunity to earn good time credits by the sentencing judge, a deduction of time from the term of his sentence for good behavior and industry. We further hold that the decision whether to permit a convicted party the opportunity to earn good time credits under [Section 33-3-9](#) is the domain of the sentencing judge, not the sheriff or jail administrator. See, e.g., [State v. Irvin, 114 N.M. 597, 599, 844 P.2d 847, 849 \(Ct.App.1992\)](#) (sentencing “defendant to 364 days in jail, to be served at the Bernalillo County Detention Center with no good-time credit”). If the sentencing judge permits a convicted individual the opportunity to earn good time credits, then the procedures established by the sheriff or jail administrator pursuant to [Section 33-3-9](#) govern the award and revocation of that individual's credits. Accordingly, we hold that the metropolitan court judge's decision to sentence Defendant to straight time was not in violation of the plain language of [Section 33-3-9](#).

[State v. Wynam, 144 N.M. 701, 704 \(Ct.App.\), cert. granted, 145 N.M. 255 \(N.M. 2008\)](#)

The New Mexico Supreme Court granted certiorari review on August 25, 2008, and has this matter under consideration.

The magistrate and metropolitan courts have limited jurisdiction and can only sentence offenders to a maximum of one year. Many offenses within the court's jurisdiction carry a maximum period of incarceration of 180 days or 90 days. When misdemeanor offenders are actually incarcerated, the judge determines whether the offender should be eligible to earn good time. Many factors may go into the judge's decision, including what kind of programs or guidance the sheriff or jail administrator has in place for the award of good time in the local detention center. If the judge determines the inmate is eligible to earn good time, the jail administrator determines the criteria and progress toward earned good time. Adoption of HB 807 would mean that, at the time of sentencing, the judge will have no input on the offender's ability to be released from the detention center early, without serving the full sentence imposed.

Sentencing is an individual determination made by a judge based on assessment of the individual facts and circumstances presented to the court. As recognized by the New Mexico Supreme Court, “there has never been any doubt about the authority of a judge to exercise discretion in imposing a sentence within a statutory range.” [State v. Lopez 138 N.M. 521, 542 \(2005\)](#), citing [United States .v Booker 125 S.Ct. 738, 750 \(2005\)](#). Particularly when the court's jurisdiction is limited, as it is for offenders who will serve a sentence in a county's detention center, the sentence to incarceration reflects the court's consideration of all the relevant factors. “In imposing a sentence or sentences upon a defendant, the trial judge is invested with discretion as to the length of the sentence, whether the sentence should be suspended or deferred, or made to run concurrently or consecutively within the guidelines imposed by the Legislature.” [State v. Duran, 126 N.M. 60, 69 \(Ct. App. 1998\)](#).

HB 807 cedes the legislative power to authorize a sentence as well as the judicial authority to impose a sentence by granting to an elected sheriff, or non-elected jail administrator, the power to reduce the statutorily authorized incarceration period, imposed by a judge, by one-half. Current law provides, in the unusual case where a judge, for example, imposes a 90-day

maximum sentence, that the court can determine that the individual requires the full 90 days incarceration. HB 807 would allow the sheriff or jail administrator to override that judicial determination. When this occurs with felony offenders, the EMDA provides careful exceptions and criteria for the award of good time, and requires the involvement of a classification supervisor who is assigned to the individual prisoner and is required to regularly review the prisoner's progress in approved programs. HB 807 proposes a less detailed plan to guide the non-judicial determination to release the offender.

HB 807 addresses the overcrowding in many county detention centers by establishing a good time program to release offenders earlier than the offender would be released following the sentence imposed by the court. The requirement for programs raises the question of funding for those programs when the genesis of the bill seems to be the inability of counties to fund existing detention center operations. Under existing law, most offenders sentenced for misdemeanor crimes can be eligible for earned good time, and the criteria in HB 807 improve on the existing lack of criteria for the award of good time for those offenders. The unusual case, when a judge determines that a misdemeanor offender should not be eligible for good time, provides an important tool for a judge with limited jurisdiction to adequately address the need of the offender, and of public safety. As with the sentencing decision, the determination whether a misdemeanor offender should be entitled to earn a good time reduction in the sentence is within the province of the court.

The AGO also contributes the following interesting additional information.

This amendment in HB 807 is similar to the 1993 - 1995 version of Section 33-3-9(A). The basic impact is removing the sentencing discretion from the judge and placing the granting of good time credit with the sheriff or jail administrator. A separation of powers issue and policy issue is presented: Should good time credit be granted by a court or by a jail official? This exact issue and the statutory construction of Section 33-3-9(A) is currently pending in the New Mexico Supreme Court: State of New Mexico v. Wyman, 2008-NMCA-113, 144 N.M. 701, 191 P.3d 599, cert. granted, 2008-NMCERT-8, 145 N.M. 255, 195 P.3d 1269. The New Mexico Court of Appeals held in State v. Wyman that the sole authority to decide whether good time credit may be granted for a misdemeanor sentence is within the prerogative of the sentencing court, not the sheriff or jail administrator.

An attempt is made in new Section 33-3-9.1 to provide good time for misdemeanor sentences served in a jail facility using the process and procedures for the award of good time credit against a felony sentence served in a facility run by the New Mexico Corrections Department. The Legislature has the power to set a sentence and provide for the granting (or denial) of good time credit. Good time credit is generally viewed as a privilege and not a right (unless the right is granted by statute or the due process clause).

Consideration should be made of the number of misdemeanor sentences that are served without the granting of good time credit (straight time). Fiscal implications should be noted and the significant issue of overcrowding (especially at MDC in Albuquerque). Good time credit has been recognized as a valuable tool for detention facilities in encouraging good behavior with the possibility of an earlier release date. The issue of good time for jail facilities is a complex issue regarding sentencing authority and discretion, money, and jail management. Another important factor is the position of the judges, the Administrative Office of the Courts, and whether all jails throughout New Mexico desire this authority and new duties and responsibilities. Certain liabilities may be incurred for the sole authority relating to good time credit.

**POSSIBLE QUESTIONS**

Should good time determination be removed from the auspices of the court and allowed to reside in the hands of an elected official, the sheriff, and a county paid jail administrator, both who may make decisions based on county finances and local political considerations?

MW/svb:mc