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BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO EARNED MERITORIOUS DEDUCTIONS WHEN INCARCERATED;
ALLOWING ALL PERSONS INCARCERATED IN STATE CORRECTIONAL
FACILITIES TO EARN MERITORIOUS DEDUCTIONS UP TO A MAXIMUM OF
THIRTY DAYS PER MONTH OF TIME SERVED; ALLOWING THE EARNING OF
MERITORIOUS DEDUCTIONS OR GOOD TIME DURING PRESENTENCE
CONFINEMENT WHEN UNDER CORRECTIONS DEPARTMENT OR COUNTY SHERIFF
OR JAIL ADMINISTRATOR CONTROL.

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

SECTION 1. Section 33-2-34 NMSA 1978 (being Laws 1999,
Chapter 238, Section 1, as amended) is amended to read:

"33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS
DEDUCTIONS.--

A. To earn meritorious deductions, a prisoner
confined in a correctional facility designated by the

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1 corrections department, or otherwise confined at the direction
2 of or under the control of the corrections department,
3 including confinement entitled to presentence confinement
4 credit under Section 31-20-12 NMSA 1978, must be an active
5 participant in programs recommended for the prisoner by the
6 classification supervisor and approved by the warden or the
7 warden's designee, if such programs are available in the
8 prisoner's place of incarceration. Meritorious deductions
9 shall not exceed the following amounts:

10 [~~(1)~~] ~~for a prisoner confined for committing a~~
11 ~~serious violent offense, up to a maximum of four days per month~~
12 ~~of time served;~~

13 ~~(2)]~~ (1) for a prisoner confined for
14 [~~committing a nonviolent~~] the initial sentence for an offense,
15 up to a maximum of thirty days per month of time served;

16 [~~(3)]~~ (2) for a prisoner confined following
17 revocation of parole for the alleged commission of a new felony
18 offense or for absconding from parole, up to a maximum of four
19 days per month of time served during the parole term following
20 revocation; and

21 [~~(4)]~~ (3) for a prisoner confined following
22 revocation of parole for a reason other than the alleged
23 commission of a new felony offense or absconding from parole:

24 (a) up to a maximum of eight days per
25 month of time served during the parole term following

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1 revocation, if the prisoner was convicted of a serious violent
2 offense or failed to pass a drug test administered as a
3 condition of parole; or

4 (b) up to a maximum of thirty days per
5 month of time served during the parole term following
6 revocation, if the prisoner was convicted of a nonviolent
7 offense.

8 B. A prisoner may earn meritorious deductions upon
9 recommendation by the classification supervisor, based upon the
10 prisoner's active participation in approved programs and the
11 quality of the prisoner's participation in those approved
12 programs. A prisoner may not earn meritorious deductions
13 unless the recommendation of the classification supervisor is
14 approved by the warden or the warden's designee.

15 C. If a prisoner's active participation in approved
16 programs is interrupted by a lockdown at a correctional
17 facility, the prisoner may continue to be awarded meritorious
18 deductions at the rate the prisoner was earning meritorious
19 deductions prior to the lockdown, unless the warden or the
20 warden's designee determines that the prisoner's conduct
21 contributed to the initiation or continuance of the lockdown.

22 D. A prisoner confined in a correctional facility
23 designated by the corrections department is eligible for lump-
24 sum meritorious deductions as follows:

25 (1) for successfully completing an approved

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1 vocational, substance abuse or mental health program, one
2 month; except when the prisoner has a demonstrable physical,
3 mental health or developmental disability that prevents the
4 prisoner from successfully earning a [~~general education~~
5 ~~diploma~~] high school equivalency credential, in which case, the
6 prisoner shall be awarded three months;

7 (2) for earning a [~~general education diploma~~]
8 high school equivalency credential, three months;

9 (3) for earning an associate's degree, four
10 months;

11 (4) for earning a bachelor's degree, five
12 months;

13 (5) for earning a graduate qualification, five
14 months; and

15 (6) for engaging in a heroic act of saving
16 life or property, engaging in extraordinary conduct for the
17 benefit of the state or the public that is at great expense or
18 risk to or involves great effort on [~~behalf~~] the part of the
19 prisoner or engaging in extraordinary conduct far in excess of
20 normal program assignments that demonstrates the prisoner's
21 commitment to self-rehabilitation. The classification
22 supervisor and the warden or the warden's designee may
23 recommend the number of days to be awarded in each case based
24 upon the particular merits, but any award shall be determined
25 by the director of the adult institutions division of the

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1 corrections department or the director's designee.

2 E. Lump-sum meritorious deductions, provided in
3 Paragraphs (1) through (6) of Subsection D of this section, may
4 be awarded in addition to the meritorious deductions provided
5 in Subsections A and B of this section. Lump-sum meritorious
6 deductions shall not exceed one year per award and shall not
7 exceed a total of one year for all lump-sum meritorious
8 deductions awarded in any consecutive twelve-month period.

9 F. A prisoner is not eligible to earn meritorious
10 deductions if the prisoner:

11 (1) disobeys an order to perform labor,
12 pursuant to Section 33-8-4 NMSA 1978;

13 (2) is in disciplinary segregation;

14 (3) is confined for committing a serious
15 violent offense and is within the first sixty days of receipt
16 by the corrections department; or

17 (4) is not an active participant in programs
18 recommended and approved for the prisoner by the classification
19 supervisor.

20 G. The provisions of this section shall not be
21 interpreted as providing eligibility to earn meritorious
22 deductions from a sentence of life imprisonment or a sentence
23 of [~~death~~] life imprisonment without possibility of release or
24 parole.

25 H. The corrections department shall promulgate

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1 rules to implement the provisions of this section, and the
2 rules shall be matters of public record. A concise summary of
3 the rules shall be provided to each prisoner, and each prisoner
4 shall receive a quarterly statement of the meritorious
5 deductions earned.

6 I. A New Mexico prisoner confined in a federal or
7 out-of-state correctional facility is eligible to earn
8 meritorious deductions for active participation in programs on
9 the basis of the prisoner's conduct and program reports
10 furnished by that facility to the corrections department. All
11 decisions regarding the award and forfeiture of meritorious
12 deductions at such facility are subject to final approval by
13 the director of the adult institutions division of the
14 corrections department or the director's designee.

15 J. In order to be eligible for meritorious
16 deductions, a prisoner confined in a federal or out-of-state
17 correctional facility designated by the corrections department
18 must actively participate in programs that are available. If a
19 federal or out-of-state correctional facility does not have
20 programs available for a prisoner, the prisoner may be awarded
21 meritorious deductions at the rate the prisoner could have
22 earned meritorious deductions if the prisoner had actively
23 participated in programs.

24 K. A prisoner confined in a correctional facility
25 in New Mexico that is operated by a private company, pursuant

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1 to a contract with the corrections department, is eligible to
2 earn meritorious deductions in the same manner as a prisoner
3 confined in a state-run correctional facility. All decisions
4 regarding the award or forfeiture of meritorious deductions at
5 such facilities are subject to final approval by the director
6 of the adult institutions division of the corrections
7 department or the director's designee.

8 L. As used in this section:

9 (1) "active participant" means a prisoner who
10 has begun, and is regularly engaged in, approved programs;

11 (2) "program" means work, vocational,
12 educational, substance abuse and mental health programs,
13 approved by the classification supervisor, that contribute to a
14 prisoner's self-betterment through the development of personal
15 and occupational skills. "Program" does not include
16 recreational activities;

17 (3) "nonviolent offense" means any offense
18 other than a serious violent offense; and

19 (4) "serious violent offense" means:

20 (a) second degree murder, as provided in
21 Section 30-2-1 NMSA 1978;

22 (b) voluntary manslaughter, as provided
23 in Section 30-2-3 NMSA 1978;

24 (c) third degree aggravated battery, as
25 provided in Section 30-3-5 NMSA 1978;

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1 (d) third degree aggravated battery
2 against a household member, as provided in Section 30-3-16 NMSA
3 1978;

4 (e) first degree kidnapping, as provided
5 in Section 30-4-1 NMSA 1978;

6 (f) first and second degree criminal
7 sexual penetration, as provided in Section 30-9-11 NMSA 1978;

8 (g) second and third degree criminal
9 sexual contact of a minor, as provided in Section 30-9-13 NMSA
10 1978;

11 (h) first and second degree robbery, as
12 provided in Section 30-16-2 NMSA 1978;

13 (i) second degree aggravated arson, as
14 provided in Section 30-17-6 NMSA 1978;

15 (j) shooting at a dwelling or occupied
16 building, as provided in Section 30-3-8 NMSA 1978;

17 (k) shooting at or from a motor vehicle,
18 as provided in Section 30-3-8 NMSA 1978;

19 (l) aggravated battery upon a peace
20 officer, as provided in Section 30-22-25 NMSA 1978;

21 (m) assault with intent to commit a
22 violent felony upon a peace officer, as provided in Section
23 30-22-23 NMSA 1978;

24 (n) aggravated assault upon a peace
25 officer, as provided in Section 30-22-22 NMSA 1978; ~~and~~ or

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1 (o) any of the following offenses, when
2 the nature of the offense and the resulting harm are such that
3 the court judges the crime to be a serious violent offense for
4 the purpose of this section: 1) involuntary manslaughter, as
5 provided in Section 30-2-3 NMSA 1978; 2) fourth degree
6 aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3)
7 third degree assault with intent to commit a violent felony, as
8 provided in Section 30-3-3 NMSA 1978; 4) fourth degree
9 aggravated assault against a household member, as provided in
10 Section 30-3-13 NMSA 1978; 5) third degree assault against a
11 household member with intent to commit a violent felony, as
12 provided in Section 30-3-14 NMSA 1978; 6) third and fourth
13 degree aggravated stalking, as provided in Section 30-3A-3.1
14 NMSA 1978; 7) second degree kidnapping, as provided in Section
15 30-4-1 NMSA 1978; 8) second degree abandonment of a child, as
16 provided in Section 30-6-1 NMSA 1978; 9) first, second and
17 third degree abuse of a child, as provided in Section 30-6-1
18 NMSA 1978; 10) third degree dangerous use of explosives, as
19 provided in Section 30-7-5 NMSA 1978; 11) third and fourth
20 degree criminal sexual penetration, as provided in Section
21 30-9-11 NMSA 1978; 12) fourth degree criminal sexual contact of
22 a minor, as provided in Section 30-9-13 NMSA 1978; 13) third
23 degree robbery, as provided in Section 30-16-2 NMSA 1978; 14)
24 third degree homicide by vehicle or great bodily ~~[injury]~~ harm
25 by vehicle, as provided in Section 66-8-101 NMSA 1978; ~~[and]~~ or

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1 15) battery upon a peace officer, as provided in Section
2 30-22-24 NMSA 1978.

3 M. Except for sex offenders, as provided in Section
4 31-21-10.1 NMSA 1978, an offender sentenced to confinement in a
5 correctional facility designated by the corrections department
6 who has been released from confinement and who is serving a
7 parole term may be awarded earned meritorious deductions of up
8 to thirty days per month upon recommendation of the parole
9 officer supervising the offender, with the final approval of
10 the adult parole board. The offender must be in compliance
11 with all the conditions of the offender's parole to be eligible
12 for earned meritorious deductions. The adult parole board may
13 remove earned meritorious deductions previously awarded if the
14 offender later fails to comply with the conditions of the
15 offender's parole. The corrections department and the adult
16 parole board shall promulgate rules to implement the provisions
17 of this subsection. This subsection applies to offenders who
18 are serving a parole term on or after July 1, 2004."

19 SECTION 2. Section 33-3-9 NMSA 1978 (being Laws 1969,
20 Chapter 207, Section 1, as amended) is amended to read:

21 "33-3-9. COUNTY JAILS--DEDUCTION OF TIME FOR GOOD
22 BEHAVIOR.--

23 A. The sheriff or jail administrator of any county,
24 with the approval of the committing judge or presiding judge,
25 may grant any person imprisoned in the county jail, or

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1 otherwise confined at the direction of or under the control of
2 the sheriff or jail administrator, including confinement
3 entitled to presentence confinement credit under Section
4 31-20-12 NMSA 1978, a deduction of time from the term of [~~his~~]
5 the person's sentence for good behavior and industry and shall
6 establish rules for the accrual of "good time". Deductions of
7 time shall not exceed one-half of the term of the prisoner's
8 original sentence. If a prisoner is under two or more
9 cumulative sentences, the sentences shall be treated as one
10 sentence for the purpose of deducting time for good behavior.

11 B. A prisoner shall not accrue good time for the
12 mandatory portion of a sentence imposed pursuant to the
13 provisions of:

14 (1) [~~Sections~~] Section 66-8-102 [~~and~~] or
15 66-5-39 NMSA 1978; or

16 (2) a county or municipal ordinance that
17 prohibits driving while under the influence of intoxicating
18 liquor or drugs or driving with a revoked or suspended driver's
19 license.

20 C. A part or all of the prisoner's accrued
21 deductions may be forfeited for any conduct violation. The
22 sheriff or jail administrator shall establish rules and
23 procedures for the forfeiture of accrued deductions and keep a
24 record of all forfeitures of accrued deductions and the reasons
25 for the forfeitures. In addition, any independent contractor

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1 shall also keep a duplicate record of such forfeitures.

2 D. No other time allowance or credits in addition
3 to deductions of time permitted under this section may be
4 granted to any prisoner.

5 E. If a private independent contractor operates a
6 jail, ~~[he]~~ the independent contractor shall make reports of
7 disciplinary violations and good behavior to the sheriff of the
8 county in which the jail is located. All action on such
9 reports and awards or forfeitures of good time shall be made by
10 the sheriff. The independent contractor shall not have the
11 power to award or cause the forfeiture of good time pursuant to
12 this section."