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BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CORRECTIONS; REQUIRING THE CORRECTIONS DEPARTMENT
TO USE A VALIDATED RISK AND NEEDS ASSESSMENT FOR ALL INMATES;
REQUIRING THE USE OF EVIDENCE-BASED PRISON PROGRAMMING;
PROVIDING THAT MERITORIOUS DEDUCTIONS SHALL BE AWARDED AND
DEDUCTED FROM AN INMATE'S SENTENCE ONLY UPON COMPLETION OF
PRISON PROGRAMMING.

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

SECTION 1. A new section of Chapter 33, Article 2 NMSA
1978 is enacted to read:

"[NEW MATERIAL] VALIDATED RISK AND NEEDS ASSESSMENT AND
EVIDENCE-BASED PROGRAMS.--

A. Inmates incarcerated in state correctional
facilities shall have their needs for prison programming
assessed through the use of validated risk and needs

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1 assessments. Inmates shall be assigned to programs based on
2 the results of the validated risk and needs assessment. The
3 corrections department shall promulgate rules and regulations
4 for the administration of the validated risk and needs
5 assessment.

6 B. The corrections department shall incorporate
7 evidence-based programs into its prison programming as follows:

8 (1) by January 1, 2016, twenty percent of
9 inmate program funding shall be spent on evidence-based
10 programs;

11 (2) by January 1, 2017, thirty percent of
12 inmate program funding shall be spent on evidence-based
13 programs;

14 (3) by January 1, 2018, forty percent of
15 inmate program funding shall be spent on evidence-based
16 programs; and

17 (4) by January 1, 2019, fifty percent of
18 inmate program funding shall be spent on evidence-based
19 programs.

20 C. As used in this section:

21 (1) "cost beneficial" means that the cost
22 savings realized over a reasonable period of time are greater
23 than the costs of implementation;

24 (2) "evidence-based program" means a program
25 or practice that:

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1 (a) incorporates methods demonstrated to
2 be effective for the intended population through scientifically
3 based research, including statistically controlled evaluations
4 or randomized trials;

5 (b) can be implemented with a set of
6 procedures to allow successful replication in New Mexico; and

7 (c) when possible, has been determined
8 to be cost beneficial; and

9 (3) "validated risk and needs assessment"
10 means an actuarial tool scientifically proven to determine a
11 person's risk to reoffend and criminal risk factors, that, when
12 properly addressed, can reduce that person's likelihood of
13 committing future criminal behavior."

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

16 "33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS
17 DEDUCTIONS.--

18 A. To ~~earn~~ accrue meritorious deductions, a
19 prisoner confined in a correctional facility designated by the
20 corrections department must be an active participant in programs
21 recommended for the prisoner by the classification supervisor
22 and approved by the warden or the warden's designee; provided,
23 however, that meritorious deductions accrued pursuant to this
24 subsection shall only be awarded and deducted from the
25 prisoner's sentence upon completion of the programs recommended

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1 for the prisoner. Meritorious deductions shall not exceed the
2 following amounts:

3 (1) for a prisoner confined for committing a
4 serious violent offense, up to a maximum of four days per month
5 of time served;

6 (2) for a prisoner confined for committing a
7 nonviolent offense, up to a maximum of thirty days per month of
8 time served;

9 (3) for a prisoner confined following
10 revocation of parole for the alleged commission of a new felony
11 offense or for absconding from parole, up to a maximum of four
12 days per month of time served during the parole term following
13 revocation; and

14 (4) for a prisoner confined following
15 revocation of parole for a reason other than the alleged
16 commission of a new felony offense or absconding from parole:

17 (a) up to a maximum of eight days per
18 month of time served during the parole term following
19 revocation, if the prisoner was convicted of a serious violent
20 offense or failed to pass a drug test administered as a
21 condition of parole; or

22 (b) up to a maximum of thirty days per
23 month of time served during the parole term following
24 revocation, if the prisoner was convicted of a nonviolent
25 offense.

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1 ~~[B. A prisoner may earn meritorious deductions upon~~
2 ~~recommendation by the classification supervisor, based upon the~~
3 ~~prisoner's active participation in approved programs and the~~
4 ~~quality of the prisoner's participation in those approved~~
5 ~~programs. A prisoner may not earn meritorious deductions unless~~
6 ~~the recommendation of the classification supervisor is approved~~
7 ~~by the warden or the warden's designee.~~

8 G.] B. If a prisoner's active participation in
9 approved programs is interrupted by a lockdown at a correctional
10 facility, the prisoner may continue to ~~[be awarded]~~ accrue
11 meritorious deductions at the rate the prisoner was ~~[earning]~~
12 accruing meritorious deductions prior to the lockdown, unless
13 the warden or the warden's designee determines that the
14 prisoner's conduct contributed to the initiation or continuance
15 of the lockdown.

16 ~~[D.]~~ C. In addition to the meritorious deductions
17 provided for in Subsection A of this section, a prisoner
18 confined in a correctional facility designated by the
19 corrections department is eligible for lump-sum meritorious
20 deductions as follows:

21 (1) for successfully completing an approved
22 vocational, substance abuse or mental health program, one month;
23 except when the prisoner has a demonstrable physical, mental
24 health or developmental disability that prevents the prisoner
25 from successfully earning a ~~[general education diploma]~~ high

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1 school equivalency credential, in which case, the prisoner shall
2 be awarded three months;

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

5 (3) for earning an associate's degree, four
6 months;

7 (4) for earning a bachelor's degree, five
8 months;

9 (5) for earning a graduate qualification, five
10 months; and

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

23 [~~E.~~] D. Lump-sum meritorious deductions, provided in
24 Paragraphs (1) through (6) of Subsection [~~D~~] C of this section,
25 may be awarded in addition to the meritorious deductions

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1 provided in [~~Subsections A and B~~] Subsection A of this section.
2 Lump-sum meritorious deductions shall not exceed one year per
3 award and shall not exceed a total of one year for all lump-sum
4 meritorious deductions awarded in any consecutive twelve-month
5 period.

6 [~~F.~~] E. A prisoner is not eligible to earn
7 meritorious deductions if the prisoner:

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

10 (2) is in disciplinary segregation;

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

14 (4) [~~is not an active participant in~~] fails to
15 complete programs recommended and approved for the prisoner by
16 the classification supervisor.

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

22 [~~H.~~] G. The corrections department shall promulgate
23 rules to implement the provisions of this section, and the rules
24 shall be matters of public record. A concise summary of the
25 rules shall be provided to each prisoner, and each prisoner

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1 shall receive a quarterly statement of the meritorious
2 deductions earned.

3 [~~F.~~] H. A New Mexico prisoner confined in a federal
4 or out-of-state correctional facility is eligible to [~~earn~~]
5 accrue meritorious deductions for active participation in
6 programs on the basis of the prisoner's conduct and program
7 reports furnished by that facility to the corrections
8 department; provided, however, that meritorious deductions
9 accrued pursuant to this subsection shall only be awarded and
10 deducted from the prisoner's sentence upon completion of the
11 programs. All decisions regarding the award and forfeiture of
12 meritorious deductions at such facility are subject to final
13 approval by the director of the adult institutions division of
14 the corrections department or the director's designee.

15 [~~J.~~] I. 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 and completed programs.

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

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

8 [L.] K. 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 third
17 degree abuse of a child, as provided in Section 30-6-1 NMSA
18 1978; 10) third degree dangerous use of explosives, as provided
19 in Section 30-7-5 NMSA 1978; 11) third and fourth degree
20 criminal sexual penetration, as provided in Section 30-9-11 NMSA
21 1978; 12) fourth degree criminal sexual contact of a minor, as
22 provided in Section 30-9-13 NMSA 1978; 13) third degree robbery,
23 as provided in Section 30-16-2 NMSA 1978; 14) third degree
24 homicide by vehicle or great bodily ~~[injury]~~ harm by vehicle, as
25 provided in Section 66-8-101 NMSA 1978; ~~[and]~~ or 15) battery

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1 upon a peace officer, as provided in Section 30-22-24 NMSA 1978.
2 ~~[M.]~~ L. Except for sex offenders, as provided in
3 Section 31-21-10.1 NMSA 1978, an offender sentenced to
4 confinement in a correctional facility designated by the
5 corrections department who has been released from confinement
6 and who is serving a parole term may ~~[be awarded]~~ accrue earned
7 meritorious deductions of up to thirty days per month; provided,
8 however, that meritorious deductions accrued pursuant to this
9 subsection shall only be awarded and deducted from the
10 offender's parole term upon completion of the programs and upon
11 recommendation of the parole officer supervising the offender,
12 with the final approval of the adult parole board. The offender
13 must be in compliance with all the conditions of the offender's
14 parole to be eligible for earned meritorious deductions. The
15 adult parole board may remove earned meritorious deductions
16 previously accrued or awarded if the offender later fails to
17 comply with the conditions of the offender's parole. The
18 corrections department and the adult parole board shall
19 promulgate rules to implement the provisions of this subsection.
20 This subsection applies to offenders who are serving a parole
21 term on or after July 1, 2004."