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SENATE BILL 63

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Mary Jane M. Garcia

FOR THE CORRECTIONS OVERSIGHT, COURTS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CORRECTIONS; AMENDING THE DEFINITION OF SERIOUS  
VIOLENT OFFENSE TO INCLUDE ACTS OF VIOLENCE AGAINST HOUSEHOLD  
MEMBERS FOR THE PURPOSE OF DETERMINING EARNED MERITORIOUS  
DEDUCTIONS FOR INMATES.

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  
corrections department must be an active participant in  
programs recommended for the prisoner by the classification  
committee and approved by the warden. Meritorious deductions

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1 shall not exceed the following amounts:

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

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

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

13 (4) for a prisoner confined following  
14 revocation of parole for a reason other than the alleged  
15 commission of a new felony offense or absconding from parole,  
16 up to a maximum of eight days per month of time served during  
17 the parole term following revocation.

18 B. A prisoner may earn meritorious deductions upon  
19 recommendation by the classification committee, based upon the  
20 prisoner's active participation in approved programs and the  
21 quality of the prisoner's participation in those approved  
22 programs. A prisoner may not earn meritorious deductions  
23 unless the recommendation of the classification committee is  
24 approved by the warden.

25 C. If a prisoner's active participation in approved

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1 programs is interrupted by a lockdown at a correctional  
2 facility, [~~he~~] the prisoner may continue to be awarded  
3 meritorious deductions at the rate [~~he~~] the prisoner was  
4 earning meritorious deductions prior to the lockdown, unless  
5 the warden determines that the prisoner's conduct contributed  
6 to the initiation or continuance of the lockdown.

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

10 (1) for successfully completing an approved  
11 vocational, substance abuse or mental health program, one  
12 month; except when the prisoner has a demonstrable physical,  
13 mental health or developmental disability that prevents the  
14 prisoner from successfully earning a general education diploma,  
15 in which case, the prisoner shall be awarded three months;

16 (2) for earning a general education diploma,  
17 three months;

18 (3) for earning an associate's degree, four  
19 months;

20 (4) for earning a bachelor's degree, five  
21 months;

22 (5) for earning a graduate qualification, five  
23 months; and

24 (6) for engaging in a heroic act of saving  
25 life or property, engaging in extraordinary conduct for the

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1 benefit of the state or the public that is at great expense,  
2 risk or effort on behalf of the [~~inmate~~] prisoner, or engaging  
3 in extraordinary conduct far in excess of normal program  
4 assignments that demonstrates the prisoner's commitment to  
5 [~~rehabilitate himself~~] rehabilitation. The classification  
6 committee and the warden may recommend the number of days to be  
7 awarded in each case based upon the particular merits, but any  
8 award shall be determined by the director of the adult  
9 institutions division of the corrections department.

10 E. Lump-sum meritorious deductions, provided in  
11 Paragraphs (1) through (6) of Subsection D of this section, may  
12 be awarded in addition to the meritorious deductions provided  
13 in Subsections A and B of this section. Lump-sum meritorious  
14 deductions shall not exceed one year per award and shall not  
15 exceed a total of one year for all lump-sum meritorious  
16 deductions awarded in any consecutive twelve-month period.

17 F. A prisoner is not eligible to earn meritorious  
18 deductions if the prisoner:

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

21 (2) is in disciplinary segregation;

22 (3) is within the first sixty days of receipt  
23 by the corrections department; or

24 (4) is not an active participant in programs  
25 recommended and approved for [~~him~~] the prisoner by the

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1 classification committee.

2 G. The provisions of this section shall not be  
3 interpreted as providing eligibility to earn meritorious  
4 deductions from a sentence of life imprisonment or a sentence  
5 of death.

6 H. The corrections department shall promulgate  
7 rules to implement the provisions of this section, and the  
8 rules shall be matters of public record. A concise summary of  
9 the rules shall be provided to each prisoner, and each prisoner  
10 shall receive a quarterly statement of the meritorious  
11 deductions earned.

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

21 J. In order to be eligible for meritorious  
22 deductions, a prisoner confined in a federal or out-of-state  
23 correctional facility designated by the corrections department  
24 must actively participate in programs that are available. If a  
25 federal or out-of-state correctional facility does not have

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1 programs available for a prisoner, the prisoner may be awarded  
2 meritorious deductions at the rate the prisoner could have  
3 earned meritorious deductions if the prisoner had actively  
4 participated in programs.

5 K. A prisoner confined in a correctional facility  
6 in New Mexico that is operated by a private company, pursuant  
7 to a contract with the corrections department, is eligible to  
8 earn meritorious deductions in the same manner as a prisoner  
9 confined in state-run correctional facilities. All decisions  
10 regarding the award or forfeiture of meritorious deductions at  
11 such facilities are subject to final approval by the director  
12 of the adult institutions division of the corrections  
13 department or the director's designee.

14 L. As used in this section:

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

17 (2) "program" means work, vocational,  
18 educational, substance abuse and mental health programs,  
19 approved by the classification committee, that contribute to a  
20 prisoner's self-betterment through the development of personal  
21 and occupational skills. "Program" does not include  
22 recreational activities;

23 (3) "nonviolent offense" means any offense  
24 other than a serious violent offense; and

25 (4) "serious violent offense" means:

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

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

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

7 (d) third degree aggravated battery  
8 against a household member, as provided in Section 30-3-16 NMSA  
9 1978;

10 [~~d~~] (e) first degree kidnapping, as  
11 provided in Section 30-4-1 NMSA 1978;

12 [~~e~~] (f) first and second degree  
13 criminal sexual penetration, as provided in Section 30-9-11  
14 NMSA 1978;

15 [~~f~~] (g) second and third degree  
16 criminal sexual contact of a minor, as provided in Section  
17 30-9-13 NMSA 1978;

18 [~~g~~] (h) first and second degree  
19 robbery, as provided in Section 30-16-2 NMSA 1978;

20 [~~h~~] (i) second degree aggravated  
21 arson, as provided in Section 30-17-6 NMSA 1978;

22 [~~i~~] (j) shooting at a dwelling or  
23 occupied building, as provided in Section 30-3-8 NMSA 1978;

24 [~~j~~] (k) shooting at or from a motor  
25 vehicle, as provided in Section 30-3-8 NMSA 1978;

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1                                    [~~k~~] (l) aggravated battery upon a  
2 peace officer, as provided in Section 30-22-25 NMSA 1978;

3                                    [~~l~~] (m) assault with intent to commit  
4 a violent felony upon a peace officer, as provided in Section  
5 30-22-23 NMSA 1978;

6                                    [~~m~~] (n) aggravated assault upon a  
7 peace officer, as provided in Section 30-22-22 NMSA 1978; and

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

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1 of explosives, as provided in Section 30-7-5 NMSA 1978; ~~[9]~~  
2 11) third and fourth degree criminal sexual penetration, as  
3 provided in Section 30-9-11 NMSA 1978; ~~[10]~~ 12) fourth degree  
4 criminal sexual contact of a minor, as provided in Section  
5 30-9-13 NMSA 1978; ~~[11]~~ 13) third degree robbery, as provided  
6 in Section 30-16-2 NMSA 1978; ~~[12]~~ 14) third degree homicide  
7 by vehicle or great bodily injury by vehicle, as provided in  
8 Section 66-8-101 NMSA 1978; and ~~[13]~~ 15) battery upon a peace  
9 officer, as provided in Section 30-22-24 NMSA 1978.

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

25 Section 2. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2005.

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