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SENATE BILL 21

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Richard C. Martinez

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CORRECTIONS; CHANGING THE ADMINISTRATIVE AUTHORITY
FOR EARNED MERITORIOUS DEDUCTIONS FOR PRISONERS; DECREASING
EARNED MERITORIOUS DEDUCTIONS FOR SOME PRISONERS AND INCREASING
THEM FOR OTHERS; PROVIDING ELIGIBILITY FOR EARNED MERITORIOUS
DEDUCTIONS TO OFFENDERS SERVING PAROLE TERMS ON OR AFTER JULY
1, 2004.

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

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1 recommended for the prisoner by the classification [~~committee~~]
2 supervisor and approved by the warden or the warden's designee.

3 Meritorious deductions shall not exceed the following amounts:

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

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

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

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

18 (a) up to a maximum of eight days per
19 month of time served during the parole term following
20 revocation, if the prisoner was convicted of a serious violent
21 offense; 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 [~~committee~~] supervisor,
3 based upon the prisoner's active participation in approved
4 programs and the quality of the prisoner's participation in
5 those approved programs. A prisoner may not earn meritorious
6 deductions unless the recommendation of the classification
7 [~~committee~~] supervisor is approved by the warden or the
8 warden's designee.

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

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

20 (1) for successfully completing an approved
21 vocational, substance abuse or mental health program, one
22 month; except when the prisoner has a demonstrable physical,
23 mental health or developmental disability that prevents the
24 prisoner from successfully earning a general education diploma,
25 in which case, the prisoner shall be awarded three months;

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- 1 (2) for earning a general education diploma,
2 three months;
- 3 (3) for earning an associate's degree, four
4 months;
- 5 (4) for earning a bachelor's degree, five
6 months;
- 7 (5) for earning a graduate qualification, five
8 months; and
- 9 (6) for engaging in a heroic act of saving
10 life or property, engaging in extraordinary conduct for the
11 benefit of the state or the public that is at great expense,
12 risk or effort on behalf of the ~~[inmate]~~ prisoner, or engaging
13 in extraordinary conduct far in excess of normal program
14 assignments that demonstrates the prisoner's commitment to
15 ~~[rehabilitate himself]~~ self-rehabilitation. The classification
16 ~~[committee]~~ supervisor and the warden or the warden's designee
17 may recommend the number of days to be awarded in each case
18 based upon the particular merits, but any award shall be
19 determined by the director of the adult institutions division
20 of the corrections department or the director's designee.

21 E. Lump-sum meritorious deductions, provided in
22 Paragraphs (1) through (6) of Subsection D of this section, may
23 be awarded in addition to the meritorious deductions provided
24 in Subsections A and B of this section. Lump-sum meritorious
25 deductions shall not exceed one year per award and shall not

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1 exceed a total of one year for all lump-sum meritorious
2 deductions awarded in any consecutive twelve-month period.

3 F. A prisoner is not eligible to earn meritorious
4 deductions if the prisoner:

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

7 (2) is in disciplinary segregation;

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

11 (4) is not an active participant in programs
12 recommended and approved for [~~him~~] the prisoner by the
13 classification [~~committee~~] supervisor.

14 G. The provisions of this section shall not be
15 interpreted as providing eligibility to earn meritorious
16 deductions from a sentence of life imprisonment or a sentence
17 of death.

18 H. The corrections department shall promulgate
19 rules to implement the provisions of this section, and the
20 rules shall be matters of public record. A concise summary of
21 the rules shall be provided to each prisoner, and each prisoner
22 shall receive a quarterly statement of the meritorious
23 deductions earned.

24 I. A New Mexico prisoner confined in a federal or
25 out-of-state correctional facility is eligible to earn

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1 meritorious deductions for active participation in programs on
2 the basis of the prisoner's conduct and program reports
3 furnished by that facility to the corrections department. All
4 decisions regarding the award and forfeiture of meritorious
5 deductions at such facility 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 J. In order to be eligible for meritorious
9 deductions, a prisoner confined in a federal or out-of-state
10 correctional facility designated by the corrections department
11 must actively participate in programs that are available. If a
12 federal or out-of-state correctional facility does not have
13 programs available for a prisoner, the prisoner may be awarded
14 meritorious deductions at the rate the prisoner could have
15 earned meritorious deductions if the prisoner had actively
16 participated in programs.

17 K. A prisoner confined in a correctional facility
18 in New Mexico that is operated by a private company, pursuant
19 to a contract with the corrections department, is eligible to
20 earn meritorious deductions in the same manner as a prisoner
21 confined in a state-run correctional [facilities] facility.
22 All decisions regarding the award or forfeiture of meritorious
23 deductions at such facilities are subject to final approval by
24 the director of the adult institutions division of the
25 corrections department or the director's designee.

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1 L. As used in this section:

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

4 (2) "program" means work, vocational,
5 educational, substance abuse and mental health programs,
6 approved by the classification [~~committee~~] supervisor, that
7 contribute to a prisoner's self-betterment through the
8 development of personal and occupational skills. "Program"
9 does not include recreational activities;

10 (3) "nonviolent offense" means any offense
11 other than a serious violent offense; and

12 (4) "serious violent offense" means:

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

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

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

19 (d) third degree aggravated battery
20 against a household member, as provided in Section 30-3-16 NMSA
21 1978;

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

24 [~~e~~] (f) first and second degree
25 criminal sexual penetration, as provided in Section 30-9-11

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1 NMSA 1978;

2 [~~(f)~~] (g) second and third degree
3 criminal sexual contact of a minor, as provided in Section
4 30-9-13 NMSA 1978;

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

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

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

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

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

15 [~~(l)~~] (m) assault with intent to commit
16 a violent felony upon a peace officer, as provided in Section
17 30-22-23 NMSA 1978;

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

20 [~~(n)~~] (o) any of the following offenses,
21 when the nature of the offense and the resulting harm are such
22 that the court judges the crime to be a serious violent offense
23 for the purpose of this section: 1) involuntary manslaughter,
24 as provided in Section 30-2-3 NMSA 1978; 2) fourth degree
25 aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3)

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1 third degree assault with intent to commit a violent felony, as
2 provided in Section 30-3-3 NMSA 1978; 4) fourth degree
3 aggravated assault against a household member, as provided in
4 Section 30-3-13 NMSA 1978; 5) third degree assault against a
5 household member with intent to commit a violent felony, as
6 provided in Section 30-3-14 NMSA 1978; 6) third and fourth
7 degree aggravated stalking, as provided in Section 30-3A-3.1
8 NMSA 1978; [5] 7) second degree kidnapping, as provided in
9 Section 30-4-1 NMSA 1978; [6] 8) second degree abandonment of
10 a child, as provided in Section 30-6-1 NMSA 1978; [7] 9)
11 first, second and third degree abuse of a child, as provided in
12 Section 30-6-1 NMSA 1978; [8] 10) third degree dangerous use
13 of explosives, as provided in Section 30-7-5 NMSA 1978; [9]
14 11) third and fourth degree criminal sexual penetration, as
15 provided in Section 30-9-11 NMSA 1978; [10] 12) fourth degree
16 criminal sexual contact of a minor, as provided in Section
17 30-9-13 NMSA 1978; [11] 13) third degree robbery, as provided
18 in Section 30-16-2 NMSA 1978; [12] 14) third degree homicide
19 by vehicle or great bodily injury by vehicle, as provided in
20 Section 66-8-101 NMSA 1978; and [13] 15) battery upon a peace
21 officer, as provided in Section 30-22-24 NMSA 1978.

22 M. Except for sex offenders, as provided in Section
23 31-21-10.1 NMSA 1978, an offender sentenced to confinement in a
24 correctional facility designated by the corrections department
25 who has been released from confinement and who is serving a

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1 parole term may be awarded earned meritorious deductions of up
2 to thirty days per month upon recommendation of the parole
3 officer supervising the offender, with the final approval of
4 the adult parole board. The offender must be in compliance
5 with all the conditions of the offender's parole to be eligible
6 for earned meritorious deductions. The adult parole board may
7 remove earned meritorious deductions previously awarded if the
8 offender later fails to comply with the conditions of the
9 offender's parole. The corrections department and the adult
10 parole board shall promulgate rules to implement the provisions
11 of this subsection. This subsection applies to offenders who
12 are serving a parole term on or after July 1, 2004."

13 Section 2. Section 33-2-36 NMSA 1978 (being Laws 1988,
14 Chapter 78, Section 6, as amended) is amended to read:

15 "33-2-36. FORFEITURE OF EARNED MERITORIOUS DEDUCTIONS.--

16 A. Meritorious deductions earned by a prisoner may
17 be forfeited in an amount up to ninety days for two or more
18 misconduct violations. Meritorious deductions earned by a
19 prisoner may be forfeited in an amount in excess of ninety days
20 for a major conduct violation. Forfeitures of meritorious
21 deductions of up to ninety days shall only proceed upon the
22 recommendation of the classification [~~committee~~] supervisor and
23 final approval by the warden or the warden's designee.

24 Forfeitures of meritorious deductions in an amount in excess of
25 ninety days shall only proceed upon the recommendation of the

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1 classification [~~committee~~] supervisor and the warden or the
2 warden's designee and final approval of the director of the
3 adult institutions division of the corrections department or
4 the director's designee. The secretary of corrections may
5 review and revise any decision regarding the forfeiture of
6 meritorious deductions.

7 B. The provisions of this section also apply to the
8 forfeiture of earned meritorious deductions for a prisoner
9 confined in a:

10 (1) federal or out-of-state correctional
11 facility; or

12 (2) correctional facility in New Mexico
13 operated by a private company pursuant to a contract with the
14 corrections department."

15 Section 3. Section 33-2-37 NMSA 1978 (being Laws 1988,
16 Chapter 78, Section 7, as amended) is amended to read:

17 "33-2-37. RESTORATION OF FORFEITED MERITORIOUS
18 DEDUCTIONS.--

19 A. Meritorious deductions forfeited [~~under~~]
20 pursuant to Section 33-2-36 NMSA 1978 may be restored in whole
21 or in part to a prisoner who is exemplary in conduct and work
22 performance for a period of not less than six months following
23 the date of forfeiture. Meritorious deductions may be restored
24 upon recommendation of the classification [~~committee~~]
25 supervisor, approval by the warden or the warden's designee and

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1 final approval by the [~~secretary of corrections~~] director of
2 the adult institutions division of the corrections department
3 or the director's designee.

4 B. The provisions of this section also apply to the
5 restoration of earned meritorious deductions for a prisoner
6 confined in a:

7 (1) federal or out-of-state correctional
8 facility; or

9 (2) correctional facility in New Mexico
10 operated by a private company pursuant to a contract with the
11 corrections department."

12 Section 4. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2006.

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