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SENATE BILL 540

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Michael S. Sanchez

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO CORRECTIONS; REQUIRING INMATES TO EARN MERITORIOUS DEDUCTIONS FROM A TERM OF IMPRISONMENT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 33-2-34 NMSA 1978 (being Laws 1978, Chapter 40, Section 1, as amended) is repealed and a new Section 33-2-34 NMSA 1978 is enacted to read:

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

A. To earn meritorious deductions, a prisoner confined in the penitentiary of New Mexico or other state correctional facility 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 be earned according to the number of hours per week that
2 a prisoner participates in approved programs, and are
3 calculated as follows:

4 (1) for a prisoner confined for committing a
5 serious violent offense, the number of hours per week he
6 participates in approved programs, divided by seven and one-
7 half and rounded to the nearest whole number equals the number
8 of earned meritorious deductions in days per month, up to a
9 maximum of four days per month of time served;

10 (2) for a prisoner confined for committing a
11 nonviolent offense, the number of hours per week he
12 participates in approved programs equals the number of earned
13 meritorious deductions in days per month, up to a maximum of
14 thirty days per month of time served;

15 (3) for a prisoner confined following
16 revocation of parole for the alleged commission of a new
17 felony offense or for absconding from parole, the number of
18 hours per week he participates in approved programs, divided
19 by seven and one-half and rounded to the nearest whole number
20 equals the number of earned meritorious deductions in days per
21 month during the parole time that remains to be served, up to
22 a maximum of four days per month of time served; and

23 (4) for a prisoner confined following
24 revocation of parole for a reason other than the alleged
25 commission of a new felony offense or absconding from parole,

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1 the number of hours per week he participates in approved
2 programs, divided by four and rounded to the nearest whole
3 number equals the number of earned meritorious deductions in
4 days per month during the parole time that remains to be
5 served, up to a maximum of eight days per month of time
6 served.

7 B. A prisoner earns meritorious deductions upon
8 recommendation by the classification committee, based upon the
9 prisoner's active participation in approved programs and
10 approval by the warden.

11 C. If a prisoner's active participation in
12 approved programs is interrupted by a lockdown at a
13 correctional facility, he shall continue to earn meritorious
14 deductions at the rate he was earning meritorious deductions
15 prior to the lockdown, until the prisoner resumes active
16 participation in programs following termination of the
17 lockdown.

18 D. A prisoner confined in the penitentiary of New
19 Mexico or other state correctional facility is eligible for
20 lump-sum meritorious deductions as follows:

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

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1 diploma, in which case the prisoner shall be awarded three
2 months;

3 (2) for earning a general education diploma,
4 three months;

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

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

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

11 E. A prisoner is not eligible to earn meritorious
12 deductions if the prisoner:

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

15 (2) is in disciplinary segregation;

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

18 (4) is not an active participant in programs
19 recommended and approved for him by the classification
20 committee.

21 F. The provisions of this section shall not be
22 interpreted as providing eligibility to earn meritorious
23 deductions to a prisoner during the initial thirty years of a
24 sentence imposed pursuant to the provisions of:

25 (1) Subsection A of Section 30-2-1 NMSA 1978;

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1 (2) Section 31-18-23 NMSA 1978; or

2 (3) Section 31-18-25 NMSA 1978.

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

9 H. If a federal or out-of-state correctional
10 facility does not have work or educational or mental health
11 courses available for a prisoner, the prisoner shall earn
12 meritorious deductions at the average rate earned by prisoners
13 confined in the penitentiary of New Mexico or other state
14 correctional facilities. The average rate of earned
15 meritorious deductions shall be determined by the criminal and
16 juvenile justice coordinating council pursuant to the
17 provisions of Section 31-18-15 NMSA 1978.

18 I. A New Mexico prisoner confined in a federal or
19 out-of-state correctional facility is eligible to earn
20 meritorious deductions on the basis of the prisoner's conduct
21 and program reports furnished by that facility to the
22 corrections department, subject to final approval by the
23 secretary of corrections.

24 J. 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 state-run correctional facilities.

4 K. As used in this section:

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

7 (2) "program" means vocational, educational,
8 substance abuse and mental health programs that contribute to
9 a prisoner's self-betterment through the development of
10 personal and occupational skills. "Program" does not include
11 recreational activities;

12 (3) "nonviolent offense" means any felony
13 offense other than a serious violent offense; and

14 (4) "serious violent offense" means:

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

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

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

21 (d) first degree kidnapping, as
22 provided in Section 30-4-1 NMSA 1978;

23 (e) first and second degree criminal
24 sexual penetration, as provided in Section 30-9-11 NMSA 1978;

25 (f) third degree criminal sexual

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

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1 injury by vehicle, as provided in Section 66-8-101 NMSA 1978. "

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

4 "33-2-36. FORFEITURE OF EARNED MERITORIOUS DEDUCTIONS. --

5 ~~[Any accrued deductions may be forfeited by the convict for~~
6 ~~any major conduct violation upon the recommendation of the~~
7 ~~classification committee, approval by the warden and final~~
8 ~~approval by the secretary of corrections.]~~

9 A. Meritorious deductions earned by a prisoner may
10 be forfeited for a major conduct violation upon the
11 recommendation of the classification committee, approval by
12 the warden and final approval by the secretary of corrections.

13 B. The provisions of this section also apply to
14 the forfeiture of earned meritorious deductions for a prisoner
15 confined in a:

16 (1) federal or out-of-state correctional
17 facility; or

18 (2) correctional facility in New Mexico
19 operated by a private company pursuant to a contract with the
20 corrections department. "

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

23 "33-2-37. RESTORATION OF FORFEITED MERITORIOUS
24 DEDUCTIONS. --

25 A. Meritorious deductions forfeited under Section

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1 33-2-36 NMSA 1978 may be restored in whole or in part to [any]
2 a prisoner who is exemplary in conduct and work performance
3 for a period of not less than six months following the date of
4 forfeiture. Meritorious deductions may be restored upon
5 recommendation of the classification committee, approval by
6 the warden and final approval by the secretary of corrections.

7 B. The provisions of this section also apply to
8 the restoration of earned meritorious deductions for a
9 prisoner 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 4. Section 33-2-38 NMSA 1978 (being Laws 1889,
16 Chapter 76, Section 13, as amended) is amended to read:

17 "33-2-38. COMPUTATION OF TERM. -- [Sec. 54. No convict] A
18 prisoner shall not be discharged from the penitentiary of New
19 Mexico or any other correctional facility until he has
20 [remained] served the full term for which he was sentenced.
21 [to be] The term shall be computed from and [including]
22 include the day on which his sentence took effect and
23 [excluding] shall exclude any time the convict may have been
24 at large by reason of escape [therefrom], unless he [may be]
25 is pardoned or otherwise released by legal authority.

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1 ~~[Provided that nothing in]~~ The provisions of this section
2 shall ~~[be so construed as]~~ not be interpreted to deprive ~~[any~~
3 ~~convict]~~ a prisoner of any reduction of time to which he may
4 be entitled ~~[to under § 5070]~~ pursuant to the provisions of
5 Sections 31-20-11, 31-20-12 and 33-2-34 NMSA 1978. "

6 Section 5. Section 31-18-15 NMSA 1978 (being Laws 1977,
7 Chapter 216, Section 4, as amended) is amended to read:

8 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
9 BASIC SENTENCES AND FINES--PAROLE AUTHORITY-- MERITORIOUS
10 DEDUCTIONS. --

11 A. If a person is convicted of a noncapital
12 felony, the basic sentence of imprisonment is as follows:

13 (1) for a first degree felony, eighteen years
14 imprisonment;

15 (2) for a second degree felony resulting in
16 the death of a human being, fifteen years imprisonment;

17 (3) for a second degree felony, nine years
18 imprisonment;

19 (4) for a third degree felony resulting in
20 the death of a human being, six years imprisonment;

21 (5) for a third degree felony, three years
22 imprisonment; or

23 (6) for a fourth degree felony, eighteen
24 months imprisonment.

25 B. The appropriate basic sentence of imprisonment

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1 shall be imposed upon a person convicted of a first, second,
2 third or fourth degree felony or a second or third degree
3 felony resulting in the death of a human being, unless the
4 court alters such sentence pursuant to the provisions of
5 Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA
6 1978.

7 C. The court shall include in the judgment and
8 sentence of each person convicted of a first, second, third or
9 fourth degree felony or a second or third degree felony
10 resulting in the death of a human being and sentenced to
11 imprisonment in a corrections facility designated by the
12 corrections department authority for a period of parole to be
13 served in accordance with the provisions of Section 31-21-10
14 NMSA 1978 after the completion of any actual time of
15 imprisonment and authority to require, as a condition of
16 parole, the payment of the costs of parole services and
17 reimbursement to a law enforcement agency or local crime
18 stopper program in accordance with the provisions of that
19 section. The period of parole shall be deemed to be part of
20 the sentence of the convicted person in addition to the basic
21 sentence imposed pursuant to Subsection A of this section
22 together with alterations, if any, pursuant to the provisions
23 of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA
24 1978.

25 D. When a court imposes a sentence of imprisonment

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1 pursuant to the provisions of Section 31-18-15.1, 31-18-16,
2 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the
3 basic sentence of imprisonment provided pursuant to the
4 provisions of Subsection A of this section, the period of
5 parole shall be served in accordance with the provisions of
6 Section 31-21-10 NMSA 1978 for the degree of felony for the
7 basic sentence for which the inmate was convicted. For the
8 purpose of designating a period of parole, a court shall not
9 consider that the basic sentence of imprisonment was suspended
10 or deferred and that the inmate served a period of
11 imprisonment pursuant to the provisions of Section 31-18-15.1,
12 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

13 E. The court may, in addition to the imposition of
14 a basic sentence of imprisonment, impose a fine not to exceed:

15 (1) for a first degree felony, fifteen
16 thousand dollars (\$15,000);

17 (2) for a second degree felony resulting in
18 the death of a human being, twelve thousand five hundred
19 dollars (\$12,500);

20 (3) for a second degree felony, ten thousand
21 dollars (\$10,000);

22 (4) for a third degree felony resulting in
23 the death of a human being, five thousand dollars (\$5,000); or

24 (5) for a third or fourth degree felony, five
25 thousand dollars (\$5,000).

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1 F. When the court imposes a sentence of
2 imprisonment for a felony offense, the court shall indicate
3 whether or not the offense is a serious violent offense, as
4 defined in Section 33-2-34 NMSA 1978. The court shall inform
5 an offender that the offender's sentence of imprisonment is
6 subject to the provisions of Sections 33-2-34, 33-2-36,
7 33-2-37 and 33-2-38 NMSA 1978. If the court fails to inform
8 an offender that the offender's sentence is subject to those
9 provisions or if the court provides the offender with
10 erroneous information regarding those provisions, the failure
11 to inform or the error shall not provide a basis for a writ of
12 habeas corpus.

13 G. No later than October 31 of each year, the
14 criminal and juvenile justice coordinating council shall
15 provide a written report to the secretary of corrections, all
16 New Mexico criminal court judges, the administrative office of
17 the district attorneys and the chief public defender. The
18 report shall specify the average reduction in the sentence of
19 imprisonment for serious violent offenses and nonviolent
20 offenses, as defined in Section 33-2-34 NMSA 1978, due to
21 meritorious deductions earned by prisoners during the previous
22 fiscal year pursuant to the provisions of Sections 33-2-34,
23 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. The corrections
24 department shall allow the coordinating council access to
25 documents used by the department to determine earned

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1 meritorious deductions for prisoners. "

2 Section 6. REPEAL. --Section 33-8-14 NMSA 1978 (being
3 Laws 1981, Chapter 127, Section 14) is repealed.

4 Section 7. APPLICABILITY. --The provisions of Sections 1
5 through 6 of this act apply to persons convicted of a criminal
6 offense committed on or after July 1, 1999. As to persons
7 convicted of a criminal offense committed prior to July 1,
8 1999, the laws with respect to the vesting of meritorious
9 deductions in effect at the time the offense was committed
10 shall apply.

11 Section 8. EFFECTIVE DATE. --The effective date of the
12 provisions of this act is July 1, 1999.

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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5
6 March 1, 1999

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8 Mr. President:

9
10 Your JUDICIARY COMMITTEE, to whom has been referred

11
12 SENATE BILL 540

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14 has had it under consideration and reports same with
15 recommendation that it DO NOT PASS, but that

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17 SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
18 SENATE BILL 540

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20 DO PASS.

21 Respectfully submitted,
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Michael S. Sanchez, Chairman

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Adopted _____ Not Adopted _____

1 (Chief Clerk)

(Chief Clerk)

2

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4 Date _____

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7 The roll call vote was 6 For 0 Against

8 Yes: 6

9 No: None

10 Excused: Aragon, Payne

11 Absent: None

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SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 540

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

AN ACT

RELATING TO CORRECTIONS; REQUIRING INMATES TO EARN MERITORIOUS
DEDUCTIONS FROM A TERM OF IMPRISONMENT; AMENDING, REPEALING
AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 33-2-34 NMSA 1978 (being Laws 1978,
Chapter 40, Section 1, as amended) is repealed and a new
Section 33-2-34 NMSA 1978 is enacted to read:

"33-2-34. [NEW MATERIAL] 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

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
4 month of time served;

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

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

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

6 D. A prisoner confined in a correctional facility
7 designated by the corrections department whose record of conduct
8 shows that he has otherwise faithfully observed the rules of the
9 facility may be eligible for lump-sum meritorious deductions, but
10 only for engaging in a heroic act of saving life or property,
11 engaging in extraordinary conduct for the benefit of the state or
12 the public that is at great expense, risk or effort on behalf of
13 the inmate, or engaging in extraordinary conduct far in excess of
14 normal program assignments that demonstrates the prisoner's
15 commitment to rehabilitate himself. Lump-sum meritorious
16 deductions may be awarded in addition to the meritorious
17 deductions provided in Subsections A and B of this section.
18 Lump-sum meritorious deductions shall not exceed one year per
19 award and shall not exceed a total of one year for all lump-sum
20 meritorious deductions awarded in any consecutive twelve-month
21 period. The classification committee and the warden may
22 recommend the number of days to be awarded in each case based
23 upon the particular merits, but any award shall be determined by
24 the director of the adult institutions division of the
25 corrections department.

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1 E. A prisoner is not eligible to earn meritorious
2 deductions if the prisoner:

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

5 (2) is in disciplinary segregation;

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

8 (4) is not an active participant in programs
9 recommended and approved for him by the classification committee.

10 F. The provisions of this section shall not be
11 interpreted as providing eligibility to earn meritorious
12 deductions from a sentence of life imprisonment or a sentence of
13 death.

14 G. The corrections department shall promulgate rules to
15 implement the provisions of this section, and the rules shall be
16 matters of public record. A concise summary of the rules shall
17 be provided to each prisoner, and each prisoner shall receive a
18 quarterly statement of the meritorious deductions earned.

19 H. A New Mexico prisoner confined in a federal or
20 out-of-state correctional facility is eligible to earn
21 meritorious deductions for active participation in programs on
22 the basis of the prisoner's conduct and program reports furnished
23 by that facility to the corrections department. All decisions
24 regarding the award and forfeiture of meritorious deductions at
25 such facility are subject to final approval by the director of

1 the adult institutions division of the corrections department or
2 his designee.

3 I. In order to be eligible for meritorious deductions,
4 a prisoner confined in a federal or out-of-state correctional
5 facility designated by the corrections department must actively
6 participate in programs that are available. If a federal or
7 out-of-state correctional facility does not have programs
8 available for a prisoner, the prisoner may be awarded meritorious
9 deductions at the rate the prisoner could have earned meritorious
10 deductions if the prisoner had actively participated in programs.

11 J. A prisoner confined in a correctional facility in
12 New Mexico that is operated by a private company, pursuant to a
13 contract with the corrections department, is eligible to earn
14 meritorious deductions in the same manner as a prisoner confined
15 in state-run correctional facilities. All decisions regarding
16 the award or forfeiture of meritorious deductions at such
17 facilities are subject to final approval by the director of the
18 adult institutions division of the corrections department or his
19 designee.

20 K. As used in this section:

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

23 (2) "program" means work, vocational, educational,
24 substance abuse and mental health programs, approved by the
25 classification committee, that contribute to a prisoner's self-

1 betterment through the development of personal and occupational
2 skills. "Program" does not include recreational activities;

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

5 (4) "serious violent offense" means:

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

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

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

12 (d) first degree kidnapping, as provided in
13 Section 30-4-1 NMSA 1978;

14 (e) first and second degree criminal sexual
15 penetration, as provided in Section 30-9-11 NMSA 1978;

16 (f) third degree criminal sexual contact of a
17 minor, as provided in Section 30-9-13 NMSA 1978;

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

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

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

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

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

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

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

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

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1 NMSA 1978; 12) third degree homicide by vehicle or great bodily
2 injury by vehicle, as provided in Section 66-8-101 NMSA 1978; and
3 13) battery upon a peace officer, as provided in Section 30-22-24
4 NMSA 1978. "

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

7 "33-2-36. FORFEITURE OF EARNED MERITORIOUS DEDUCTIONS. --
8 [~~Any accrued deductions may be forfeited by the convict for any~~
9 ~~major conduct violation upon the recommendation of the~~
10 ~~classification committee, approval by the warden and final~~
11 ~~approval by the secretary of corrections.~~]

12 A. Meritorious deductions earned by a prisoner may be
13 forfeited in an amount up to ninety days for misconduct upon the
14 recommendation of the classification committee and final approval
15 by the warden. Meritorious deductions earned by a prisoner may
16 be forfeited in an amount in excess of ninety days for major
17 misconduct upon the recommendation of the classification
18 committee and the warden and final approval of the director of
19 the adult institutions division of the corrections department.
20 The secretary of corrections may review and revise any decision
21 regarding the forfeiture of meritorious deductions.

22 B. The provisions of this section also apply to the
23 forfeiture of earned meritorious deductions for a prisoner
24 confined in a:

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

1 or

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

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

7 "33-2-37. RESTORATION OF FORFEITED MERITORIOUS DEDUCTIONS. -

8 -
9 A. Meritorious deductions forfeited under Section 33-2-
10 36 NMSA 1978 may be restored in whole or in part to [~~any~~] a
11 prisoner who is exemplary in conduct and work performance for a
12 period of not less than six months following the date of
13 forfeiture. Meritorious deductions may be restored upon
14 recommendation of the classification committee, approval by the
15 warden and final approval by the secretary of corrections.

16 B. The provisions of this section also apply to the
17 restoration of earned meritorious deductions for a prisoner
18 confined in a:

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

20 or

21 (2) correctional facility in New Mexico operated
22 by a private company pursuant to a contract with the corrections
23 department. "

24 Section 4. Section 33-2-38 NMSA 1978 (being Laws 1889,
25 Chapter 76, Section 13, as amended) is amended to read:

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1 "33-2-38. COMPUTATION OF TERM. -- [~~Sec. 54. No convict~~] A
2 prisoner shall not be discharged from the penitentiary of New
3 Mexico or any other correctional facility until he has [~~remained~~]
4 served the full term for which he was sentenced. [~~to be~~] The term
5 shall be computed from and [~~including~~] include the day on which
6 his sentence took effect and [~~excluding~~] shall exclude any time
7 the convict may have been at large by reason of escape
8 [~~therefrom~~], unless he [~~may be~~] is pardoned or otherwise released
9 by legal authority. [~~Provided that nothing in~~] The provisions of
10 this section shall [~~be so construed as~~] not be interpreted to
11 deprive [~~any convict~~] a prisoner of any reduction of time to
12 which he may be entitled [~~to under § 5070~~] pursuant to the
13 provisions of Sections 31-20-11, 31-20-12 and 33-2-34 NMSA 1978. "

14 Section 5. Section 31-18-15 NMSA 1978 (being Laws 1977,
15 Chapter 216, Section 4, as amended) is amended to read:

16 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--BASIC
17 SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS DEDUCTIONS.--

18 A. If a person is convicted of a noncapital felony, the
19 basic sentence of imprisonment is as follows:

20 (1) for a first degree felony, eighteen years
21 imprisonment;

22 (2) for a second degree felony resulting in the
23 death of a human being, fifteen years imprisonment;

24 (3) for a second degree felony, nine years
25 imprisonment;

1 (4) for a third degree felony resulting in the
2 death of a human being, six years imprisonment;

3 (5) for a third degree felony, three years
4 imprisonment; or

5 (6) for a fourth degree felony, eighteen months
6 imprisonment.

7 B. The appropriate basic sentence of imprisonment shall
8 be imposed upon a person convicted of a first, second, third or
9 fourth degree felony or a second or third degree felony resulting
10 in the death of a human being, unless the court alters such
11 sentence pursuant to the provisions of Section 31-18-15.1, 31-18-
12 16, 31-18-16.1 or 31-18-17 NMSA 1978.

13 C. The court shall include in the judgment and sentence
14 of each person convicted of a first, second, third or fourth
15 degree felony or a second or third degree felony resulting in the
16 death of a human being and sentenced to imprisonment in a
17 corrections facility designated by the corrections department
18 authority for a period of parole to be served in accordance with
19 the provisions of Section 31-21-10 NMSA 1978 after the completion
20 of any actual time of imprisonment and authority to require, as a
21 condition of parole, the payment of the costs of parole services
22 and reimbursement to a law enforcement agency or local crime
23 stopper program in accordance with the provisions of that
24 section. The period of parole shall be deemed to be part of the
25 sentence of the convicted person in addition to the basic

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1 sentence imposed pursuant to Subsection A of this section
2 together with alterations, if any, pursuant to the provisions of
3 Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

4 D. When a court imposes a sentence of imprisonment
5 pursuant to the provisions of Section 31-18-15.1, 31-18-16,
6 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the basic
7 sentence of imprisonment provided pursuant to the provisions of
8 Subsection A of this section, the period of parole shall be
9 served in accordance with the provisions of Section 31-21-10 NMSA
10 1978 for the degree of felony for the basic sentence for which
11 the inmate was convicted. For the purpose of designating a
12 period of parole, a court shall not consider that the basic
13 sentence of imprisonment was suspended or deferred and that the
14 inmate served a period of imprisonment pursuant to the provisions
15 of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA
16 1978.

17 E. The court may, in addition to the imposition of a
18 basic sentence of imprisonment, impose a fine not to exceed:

19 (1) for a first degree felony, fifteen thousand
20 dollars (\$15,000);

21 (2) for a second degree felony resulting in the
22 death of a human being, twelve thousand five hundred dollars
23 (\$12,500);

24 (3) for a second degree felony, ten thousand
25 dollars (\$10,000);

1 (4) for a third degree felony resulting in the
2 death of a human being, five thousand dollars (\$5,000); or

3 (5) for a third or fourth degree felony, five
4 thousand dollars (\$5,000).

5 F. When the court imposes a sentence of imprisonment
6 for a felony offense, the court shall indicate whether or not the
7 offense is a serious violent offense, as defined in Section
8 33-2-34 NMSA 1978. The court shall inform an offender that the
9 offender's sentence of imprisonment is subject to the provisions
10 of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. If
11 the court fails to inform an offender that the offender's
12 sentence is subject to those provisions or if the court provides
13 the offender with erroneous information regarding those
14 provisions, the failure to inform or the error shall not provide
15 a basis for a writ of habeas corpus.

16 G. No later than October 31 of each year, the criminal
17 and juvenile justice coordinating council shall provide a written
18 report to the secretary of corrections, all New Mexico criminal
19 court judges, the administrative office of the district attorneys
20 and the chief public defender. The report shall specify the
21 average reduction in the sentence of imprisonment for serious
22 violent offenses and nonviolent offenses, as defined in Section
23 33-2-34 NMSA 1978, due to meritorious deductions earned by
24 prisoners during the previous fiscal year pursuant to the
25 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA

1 1978. The corrections department shall allow the coordinating
2 council access to documents used by the department to determine
3 earned meritorious deductions for prisoners. "

4 Section 6. Section 31-26-4 NMSA 1978 (being Laws 1994,
5 Chapter 144, Section 4) is amended to read:

6 "31-26-4. VICTIM S RIGHTS. --A victim shall have the right
7 to:

8 A. be treated with fairness and respect for the
9 victim's dignity and privacy throughout the criminal justice
10 process;

11 B. timely disposition of the case;

12 C. be reasonably protected from the accused throughout
13 the criminal justice process;

14 D. notification of court proceedings;

15 E. attend all public court proceedings the accused has
16 the right to attend;

17 F. confer with the prosecution;

18 G. make a statement to the court at sentencing and at
19 any post-sentencing hearings for the accused;

20 H. restitution from the person convicted of the
21 criminal offense that caused the victim's loss or injury;

22 I. information about the conviction, sentencing,
23 imprisonment, escape or release of the accused;

24 J. have the prosecuting attorney notify the victim's
25 employer, if requested by the victim, of the necessity of the

1 victim's cooperation and testimony in a court proceeding that may
2 necessitate the absence of the victim from work for good cause;
3 [~~and~~]

4 K. promptly receive any property belonging to the
5 victim that is being held for evidentiary purposes by a law
6 enforcement agency or the prosecuting attorney, unless there are
7 compelling evidentiary reasons for retention of the victim's
8 property; and

9 L. be informed by the court at a sentencing proceeding
10 that the offender is eligible to earn meritorious deductions from
11 the offender's sentence and the amount of meritorious deductions
12 that may be earned by the offender. "

13 Section 7. REPEAL. --Section 33-8-14 NMSA 1978 (being Laws
14 1981, Chapter 127, Section 14) is repealed.

15 Section 8. APPLICABILITY. --The provisions of Sections 1
16 through 5 and Section 7 of this act apply to persons convicted of
17 a criminal offense committed on or after July 1, 1999. As to
18 persons convicted of a criminal offense committed prior to July
19 1, 1999, the laws with respect to meritorious deductions in
20 effect at the time the offense was committed shall apply.

21 Section 9. EFFECTIVE DATE. --The effective date of the
22 provisions of this act is July 1, 1999.

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999
3
4
5

6 March 15, 1999
7

8 Mr. Speaker:
9

10 Your JUDICIARY COMMITTEE, to whom has been referred
11

12 SENATE JUDICIARY COMMITTEE SUBSTITUTE
13 FOR SENATE BILL 540
14

15 has had it under consideration and reports same with
16 recommendation that it DO PASS.

17 Respectfully submitted,
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19
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21 _____
22 R. David Pederson, Chairman
23
24
25

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

SJC/SB 540

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 8 For 1 Against

Yes: 8

No: Stewart

Excused: Garcia, Luna, Sanchez

Absent: None

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999

3
4 March 19, 1999

5
6
7 Mr. Speaker:

8
9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to whom
10 has been referred

11 SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
12 SENATE BILL 540

13
14 has had it under consideration and reports same with
15 recommendation that it DO PASS.

16
17 Respectfully submitted,

18
19
20
21 _____
22 Max Coll, Chairman
23
24
25

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

SJC/SB 540

Page 54

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 16 For 0 Against

Yes: 16

Excused: Buffett

Absent: None

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underscored material = new
[bracketed material] = delete