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HOUSE BILL 839

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Al Park

AN ACT

**RELATING TO CORRECTIONS; AMENDING ELIGIBILITY FORMULAS FOR
EARNED MERITORIOUS DEDUCTIONS; EXPANDING THE LIST OF PREDICATE
OFFENSES FOR A "SERIOUS VIOLENT OFFENSE"; AMENDING A SECTION 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 1999,
Chapter 238, Section 1) 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~~
10 ~~felony offense or for absconding from parole~~] if the parole
11 term is for an offense that is a serious violent offense, up to
12 a maximum of four days per month of time served during the
13 parole term following 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 if the parole term is for an offense that is a nonviolent
18 offense, up to a maximum of [~~eight~~] thirty days per month of
19 time served during the parole term following revocation.

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

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1 approved by the warden.

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

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

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

18 (2) for earning a general education diploma,
19 three months;

20 (3) for earning an associate's degree, four
21 months;

22 (4) for earning a bachelor's degree, five
23 months;

24 (5) for earning a graduate qualification, five
25 months; and

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

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

19 F. A prisoner is not eligible to earn meritorious
20 deductions if the prisoner:

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

23 (2) is in disciplinary segregation;

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

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

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

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

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

23 J. In order to be eligible for meritorious
24 deductions, a prisoner confined in a federal or out-of-state
25 correctional facility designated by the corrections department

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1 must actively participate in programs that are available. If a
2 federal or out-of-state correctional facility does not have
3 programs available for a prisoner, the prisoner may be awarded
4 meritorious deductions at the rate the prisoner could have
5 earned meritorious deductions if the prisoner had actively
6 participated in programs.

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

16 L. As used in this section:

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

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

25 (3) "nonviolent offense" means any offense

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1 other than a serious violent offense; and

2 (4) "serious violent offense" means:

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

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

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

9 (d) third degree aggravated battery
10 against a household member, as provided in Section 30-3-16 NMSA
11 1978;

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

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

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

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

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

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

25 [~~(j)~~] (k) shooting at or from a motor

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1 vehicle, as provided in Section 30-3-8 NMSA 1978;

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

4 [~~(l)~~] (m) assault with intent to commit
5 a violent felony upon a peace officer, as provided in Section
6 30-22-23 NMSA 1978;

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

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

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1 third and fourth degree criminal sexual penetration, as
2 provided in Section 30-9-11 NMSA 1978; [~~10~~] 11) fourth degree
3 criminal sexual contact of a minor, as provided in Section
4 30-9-13 NMSA 1978; [~~11~~] 12) third degree robbery, as provided
5 in Section 30-16-2 NMSA 1978; [~~12~~] 13) third degree homicide
6 by vehicle or great bodily injury by vehicle, as provided in
7 Section 66-8-101 NMSA 1978; [~~and 13~~] 14) battery upon a peace
8 officer, as provided in Section 30-22-24 NMSA 1978; and 15)
9 attempt to commit any of the felonies listed in Subparagraphs
10 (a) through (n) of this paragraph, as provided in Section
11 30-28-1 NMSA 1978. "

12 Section 2. APPLICABILITY.--The provisions of this 2003
13 act apply to persons convicted of a criminal offense committed
14 on or after July 1, 2003. As to persons convicted of a
15 criminal offense committed prior to July 1, 2003, the laws with
16 respect to meritorious deductions in effect at the time the
17 offense was committed shall apply.

18 Section 3. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2003.