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SENATE BILL 599

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

INTRODUCED BY

Richard C. Martinez

AN ACT

RELATING TO CORRECTIONS; CHANGING THE ADMINISTRATIVE AUTHORITY
TO AWARD, FORFEIT AND RESTORE EARNED MERITORIOUS DEDUCTIONS;
AMENDING 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 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] supervisor and approved by the warden or the
warden's designee. Meritorious deductions shall not exceed the

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1 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]~~ supervisor,
20 based upon the prisoner's active participation in approved
21 programs and the quality of the prisoner's participation in
22 those approved programs. A prisoner may not earn meritorious
23 deductions unless the recommendation of the classification
24 ~~[committee]~~ supervisor is approved by the warden or the
25 warden's designee.

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1 C. If a prisoner's active participation in approved
2 programs is interrupted by a lockdown at a correctional
3 facility, ~~[he]~~ the prisoner may continue to be awarded
4 meritorious deductions at the rate ~~[he]~~ the prisoner was
5 earning meritorious deductions prior to the lockdown, unless
6 the warden or the warden's designee determines that the
7 prisoner's conduct contributed to the initiation or continuance
8 of the 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]~~ prisoner, or engaging
5 in extraordinary conduct far in excess of normal program
6 assignments that demonstrates the prisoner's commitment to
7 ~~[rehabilitate himself]~~ rehabilitation. The classification
8 ~~[committee]~~ supervisor and the warden or the warden's designee
9 may recommend the number of days to be awarded in each case
10 based upon the particular merits, but any award shall be
11 determined by the director of the adult institutions division
12 of the corrections department or the director's designee.

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

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

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

24 (2) is in disciplinary segregation;

25 (3) is within the first sixty days of receipt

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1 by the corrections department; or

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

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

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

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

24 J. In order to be eligible for meritorious
25 deductions, a prisoner confined in a federal or out-of-state

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

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

17 L. As used in this section:

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

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

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

3 (4) "serious violent offense" means:

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

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

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

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

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

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

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

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

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

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

25 (k) aggravated battery upon a peace

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1 officer, as provided in Section 30-22-25 NMSA 1978;

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

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

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

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

5 M Except for sex offenders, as provided in Section
6 31-21-10.1 NMSA 1978, an offender sentenced to confinement in a
7 correctional facility designated by the corrections department
8 who has been released from confinement and who is serving a
9 parole term may be awarded earned meritorious deductions of up
10 to thirty days per month upon recommendation of the parole
11 officer supervising the offender, with the final approval of
12 the adult parole board. The offender must be in compliance
13 with all the conditions of the offender's parole to be eligible
14 for earned meritorious deductions. The adult parole board may
15 remove earned meritorious deductions previously awarded if the
16 offender later fails to comply with the conditions of the
17 offender's parole. The corrections department and the adult
18 parole board shall promulgate rules to implement the provisions
19 of this subsection."

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

22 "33-2-36. FORFEITURE OF EARNED MERITORIOUS DEDUCTIONS. --

23 A. Meritorious deductions earned by a prisoner may
24 be forfeited in an amount up to ninety days for two or more
25 misconduct violations. Meritorious deductions earned by a

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1 prisoner may be forfeited in an amount in excess of ninety days
2 for a major conduct violation. Forfeitures of meritorious
3 deductions of up to ninety days shall only proceed upon the
4 recommendation of the classification [~~committee~~] supervisor and
5 final approval by the warden or the warden's designee.

6 Forfeitures of meritorious deductions in an amount in excess of
7 ninety days shall only proceed upon the recommendation of the
8 classification [~~committee~~] supervisor and the warden or the
9 warden's designee and final approval of the director of the
10 adult institutions division of the corrections department or
11 the director's designee. The secretary of corrections may
12 review and revise any decision regarding the forfeiture of
13 meritorious deductions.

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

- 17 (1) federal or out-of-state correctional
18 facility; or
19 (2) correctional facility in New Mexico
20 operated by a private company pursuant to a contract with the
21 corrections department. "

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

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

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1 A. Meritorious deductions forfeited ~~[under]~~
2 pursuant to Section 33-2-36 NMSA 1978 may be restored in whole
3 or in part to a prisoner who is exemplary in conduct and work
4 performance for a period of not less than six months following
5 the date of forfeiture. Meritorious deductions may be restored
6 upon recommendation of the classification ~~[committee]~~
7 supervisor, approval by the warden or the warden's designee and
8 final approval by the ~~[secretary of corrections]~~ director of
9 the adult institutions division of the corrections department
10 or the director's designee.

11 B. The provisions of this section also apply to the
12 restoration of earned meritorious deductions for a prisoner
13 confined in a:

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

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

19 Section 4. EFFECTIVE DATE. --The effective date of the
20 provisions of this act is July 1, 2005.