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HOUSE BILL 661

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO CORRECTIONS; INCREASING THE AMOUNT OF MERITORIOUS DEDUCTIONS THAT A PRISONER MAY OBTAIN FOR PARTICIPATING IN CERTAIN PROGRAMS; PROHIBITING CERTAIN PRISONERS FROM EARNING MERITORIOUS DEDUCTIONS UNTIL CERTAIN PROGRAMS HAVE BEEN COMPLETED; EXCEPT FOR COMPELLING SECURITY REASONS, PROHIBITING THE TRANSFER OF PRISONERS WHO ARE ACTIVELY PARTICIPATING IN CERTAIN PROGRAMS.

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

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1 corrections department must be an active participant in
2 programs recommended for the prisoner by the classification
3 supervisor and approved by the warden or the warden's designee.
4 Meritorious deductions shall not exceed the following amounts:

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

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

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

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

19 (a) up to a maximum of eight days per
20 month of time served during the parole term following
21 revocation, if the prisoner was convicted of a serious violent
22 offense or failed to pass a drug test administered as a
23 condition of parole; or

24 (b) up to a maximum of thirty days per
25 month of time served during the parole term following

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1 revocation, if the prisoner was convicted of a nonviolent
2 offense.

3 B. A prisoner may earn meritorious deductions upon
4 recommendation by the classification supervisor, based upon the
5 prisoner's active participation in approved programs and the
6 quality of the prisoner's participation in those approved
7 programs. A prisoner may not earn meritorious deductions
8 unless the recommendation of the classification supervisor is
9 approved by the warden or the warden's designee. A prisoner
10 who has not earned a general education diploma may accumulate,
11 but shall not earn, any meritorious deductions available
12 pursuant to Paragraphs (1) through (4) of Subsection A of this
13 section until the prisoner has earned a general education
14 diploma or, if the prisoner has a demonstrable physical, mental
15 health or developmental disability that prevents the prisoner
16 from successfully earning a general education diploma, until
17 the prisoner has successfully completed an approved vocational,
18 substance abuse or mental health program. Upon earning a
19 general education diploma or completing an approved vocational,
20 substance abuse or mental health program, the prisoner shall
21 earn both the lump-sum meritorious deductions pursuant to
22 Paragraph (1) or (2) of Subsection D of this section plus the
23 accumulated meritorious deductions pursuant to Paragraphs (1)
24 through (4) of Subsection A of this section.

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, the prisoner may continue to be awarded meritorious
3 deductions at the rate the prisoner was earning meritorious
4 deductions prior to the lockdown, unless the warden or the
5 warden's designee determines that the prisoner's conduct
6 contributed 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~~] four
16 months;

17 (2) for earning a general education diploma,
18 [~~three~~] four months;

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

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

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

25 (6) for engaging in a heroic act of saving

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

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 confined for committing a serious
25 violent offense and 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 the prisoner by the classification
4 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 a state-run correctional facility. 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 supervisor, that contribute to a
23 prisoner's self-betterment through the development of personal
24 and occupational skills. "Program" does not include
25 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) third degree aggravated battery
11 against a household member, as provided in Section 30-3-16 NMSA
12 1978;

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

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

17 (g) second and third degree criminal
18 sexual contact of a minor, as provided in Section 30-9-13 NMSA
19 1978;

20 (h) first and second degree robbery, as
21 provided in Section 30-16-2 NMSA 1978;

22 (i) second degree aggravated arson, as
23 provided in Section 30-17-6 NMSA 1978;

24 (j) shooting at a dwelling or occupied
25 building, as provided in Section 30-3-8 NMSA 1978;

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1 (k) shooting at or from a motor vehicle,
2 as provided in Section 30-3-8 NMSA 1978;

3 (l) aggravated battery upon a peace
4 officer, as provided in Section 30-22-25 NMSA 1978;

5 (m) assault with intent to commit a
6 violent felony upon a peace officer, as provided in Section
7 30-22-23 NMSA 1978;

8 (n) aggravated assault upon a peace
9 officer, as provided in Section 30-22-22 NMSA 1978; and

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

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

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

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1 of this subsection. This subsection applies to offenders who
2 are serving a parole term on or after July 1, 2004.

3 N. Except for compelling security reasons, a
4 prisoner in a program described in Paragraphs (1) through (5)
5 of Subsection D of this section shall not be transferred as
6 long as the prisoner is an active participant in the program."

7 Section 2. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2009.