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HOUSE BILL 370

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Dennis J. Kintigh

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING THAT A PERSON
CONVICTED OF AN ATTEMPT, SOLICITATION OR CONSPIRACY TO COMMIT A
SERIOUS VIOLENT FELONY BE ELIGIBLE TO EARN MERITORIOUS
DEDUCTIONS AT THE SAME RATE AS A PERSON CONVICTED OF A SERIOUS
VIOLENT FELONY.

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 supervisor

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1 and approved by the warden or the warden's designee.

2 Meritorious deductions shall not exceed the following amounts:

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

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

9 (3) for a prisoner confined following
10 revocation of parole for the alleged commission of a new felony
11 offense or for absconding from parole, up to a maximum of four
12 days per month of time served during the parole term following
13 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 (a) up to a maximum of eight days per
18 month of time served during the parole term following
19 revocation, if the prisoner was convicted of a serious violent
20 offense or failed to pass a drug test administered as a
21 condition of parole; 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 supervisor, based upon the
3 prisoner's active participation in approved programs and the
4 quality of the prisoner's participation in those approved
5 programs. A prisoner may not earn meritorious deductions
6 unless the recommendation of the classification supervisor is
7 approved by the warden or the warden's designee.

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

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

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

24 (2) for earning a general education diploma,
25 three months;

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1 (3) for earning an associate's degree, four
2 months;

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

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

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

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

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

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

5 (2) is in disciplinary segregation;

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

9 (4) is not an active participant in programs
10 recommended and approved for the prisoner by the classification
11 supervisor.

12 G. The provisions of this section shall not be
13 interpreted as providing eligibility to earn meritorious
14 deductions from a sentence of life imprisonment or a sentence
15 of [~~death~~] life imprisonment without possibility of release or
16 parole.

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

23 I. A New Mexico prisoner confined in a federal or
24 out-of-state correctional facility is eligible to earn
25 meritorious deductions for active participation in programs on

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1 the basis of the prisoner's conduct and program reports
2 furnished by that facility to the corrections department. All
3 decisions regarding the award and forfeiture of meritorious
4 deductions at such facility are subject to final approval by
5 the director of the adult institutions division of the
6 corrections department or the director's designee.

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

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

25 L. As used in this section:

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

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

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

11 (4) "serious violent offense" means:

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

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

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

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

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

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

25 (g) second and third degree criminal

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1 sexual contact of a minor, as provided in Section 30-9-13 NMSA
2 1978;

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

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

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

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

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

13 (m) assault with intent to commit a
14 violent felony upon a peace officer, as provided in Section
15 30-22-23 NMSA 1978;

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

18 (o) attempt to commit any of the
19 offenses set forth in Subparagraphs (a) through (n) of this
20 paragraph, as provided in Section 30-28-1 NMSA 1978;

21 (p) conspiracy to commit any of the
22 offenses set forth in Subparagraphs (a) through (n) of this
23 paragraph, as provided in Section 30-28-2 NMSA 1978;

24 (q) criminal solicitation to commit any
25 of the offenses set forth in Subparagraphs (a) through (n) of

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1 this paragraph, as provided in Section 30-28-3 NMSA 1978; and
2 [~~(e)~~] (r) any of the following offenses,
3 when the nature of the offense and the resulting harm are such
4 that the court judges the crime to be a serious violent offense
5 for the purpose of this section: 1) involuntary manslaughter,
6 as provided in Section 30-2-3 NMSA 1978; 2) fourth degree
7 aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3)
8 third degree assault with intent to commit a violent felony, as
9 provided in Section 30-3-3 NMSA 1978; 4) fourth degree
10 aggravated assault against a household member, as provided in
11 Section 30-3-13 NMSA 1978; 5) third degree assault against a
12 household member with intent to commit a violent felony, as
13 provided in Section 30-3-14 NMSA 1978; 6) third and fourth
14 degree aggravated stalking, as provided in Section 30-3A-3.1
15 NMSA 1978; 7) second degree kidnapping, as provided in Section
16 30-4-1 NMSA 1978; 8) second degree abandonment of a child, as
17 provided in Section 30-6-1 NMSA 1978; 9) first, second and
18 third degree abuse of a child, as provided in Section 30-6-1
19 NMSA 1978; 10) third degree dangerous use of explosives, as
20 provided in Section 30-7-5 NMSA 1978; 11) third and fourth
21 degree criminal sexual penetration, as provided in Section
22 30-9-11 NMSA 1978; 12) fourth degree criminal sexual contact of
23 a minor, as provided in Section 30-9-13 NMSA 1978; 13) third
24 degree robbery, as provided in Section 30-16-2 NMSA 1978; 14)
25 third degree homicide by vehicle or great bodily [~~injury~~] harm

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1 by vehicle, as provided in Section 66-8-101 NMSA 1978; ~~and~~
2 15) battery upon a peace officer, as provided in Section
3 30-22-24 NMSA 1978; 16) attempt to commit any of the offenses
4 set forth in Items 1) through 15) of this subparagraph, as
5 provided in Section 30-28-1 NMSA 1978; 17) conspiracy to commit
6 any of the offenses set forth in Items 1) through 15) of this
7 subparagraph, as provided in Section 30-28-2 NMSA 1978; and 18)
8 criminal solicitation to commit any of the offenses set forth
9 in Items 1) through 15) of this subparagraph, as provided in
10 Section 30-28-3 NMSA 1978.

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

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1 are serving a parole term on or after July 1, 2004."

2 SECTION 2. APPLICABILITY.--The provisions of this act
3 apply to crimes committed on or after July 1, 2011.

4 SECTION 3. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2011.