

HOUSE BILL 237

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Georgene Louis and Elizabeth "Liz" Thomson and Matthew McQueen
and Joseph L. Sanchez and Kelly K. Fajardo

This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO HUMAN TRAFFICKING; REVISING DEFINITIONS USED IN THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT; EXPANDING THE DEFINITION OF "SEX OFFENDER"; EXPANDING CONVICTIONS THAT ARE CONSIDERED SEX OFFENSES REQUIRING REGISTRATION UNDER THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT; PROVIDING NO STATUTE OF LIMITATIONS FOR THE CRIME OF HUMAN TRAFFICKING; INCREASING THE AGE OF A CHILD FOR THE CRIME OF SEXUAL EXPLOITATION OF CHILDREN BY PROSTITUTION; AMENDING THE CRIME OF HUMAN TRAFFICKING; PROVIDING MANDATORY RESTITUTION; PROVIDING FOR FORFEITURE; EXPANDING THE DEFINITION OF "CRIMINAL OFFENSE" IN THE VICTIMS OF CRIME ACT; EXPANDING THE DEFINITION OF

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"SERIOUS VIOLENT OFFENSE" IN SECTION 33-2-34 NMSA 1978 (BEING LAWS 1999, CHAPTER 238, SECTION 1, AS AMENDED).

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

SECTION 1. Section 29-11A-3 NMSA 1978 (being Laws 1995, Chapter 106, Section 3, as amended) is amended to read:

"29-11A-3. DEFINITIONS.--As used in the Sex Offender Registration and Notification Act:

A. "business day" means a day that is not a Saturday, a Sunday or a state holiday;

B. "conviction" means a conviction in any ~~[court of competent]~~ jurisdiction resulting in a sanction, regardless of whether adjudication is withheld. A sanction includes a fine, probation, community control, parole, conditional release, control release or incarceration and includes a deferred sentence ~~[but does not include a conditional discharge];~~

C. "department" means the department of public safety;

~~[D. "institution of higher education" means a:~~

~~(1) private or public post-secondary educational institution;~~

~~(2) trade school; or~~

~~(3) professional school;~~

~~E.]~~ D. "habitually lives" means any place where a sex offender lives for at least thirty days in any three-

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hundred-sixty-five-day period;

E. "institution of higher education" means a:

(1) private or public post-secondary educational institution;

(2) trade school; or

(3) professional school;

F. "jurisdiction" means:

(1) a state of the United States;

(2) the United States and its territories;

(3) a military tribunal convened by the military of the United States;

(4) the District of Columbia; or

(5) a tribal government;

~~[F.]~~ G. "out-of-state registrant" means any person who establishes a residence in New Mexico while the person is required to register as a sex offender in another state or territory;

~~[G.]~~ H. "registration requirement" means any requirement set forth in Section 29-11A-4 NMSA 1978 that requires a sex offender to register; provide information, including a DNA sample; renew, revise or change registration information; or provide written notice or disclosure regarding the sex offender's status as a sex offender;

~~[H.]~~ I. "sex offender" means a person who:

(1) is a resident of New Mexico who is

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convicted of a sex offense [~~pursuant to state, federal, tribal or military law~~];

(2) changes residence to New Mexico, when that person has been convicted of a sex offense [~~pursuant to state, federal, tribal or military law~~];

(3) does not have an established residence in New Mexico, but owns a residential property in New Mexico, lives in a shelter, halfway house or transitional living facility or stays in multiple locations in New Mexico and who has been convicted of a sex offense [~~pursuant to state, federal, tribal or military law~~]; or

(4) is a resident of another state and who has been convicted of a sex offense pursuant to state, federal, tribal or military law, but who is:

(a) employed full time or part time in New Mexico for a period of time exceeding fourteen days or for an aggregate period of time exceeding thirty days during any calendar year, including any employment or vocation, whether financially compensated, volunteered or for the purpose of government or educational benefit; or

(b) enrolled on a full-time or part-time basis in a private or public school or an institution of higher education in New Mexico;

[F.] J. "sex offense" means any of the following offenses or their equivalents in any other jurisdiction:

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(1) aggravated criminal sexual penetration or criminal sexual penetration in the first, second, third or fourth degree, as provided in Section 30-9-11 NMSA 1978;

(2) criminal sexual contact in the fourth degree, as provided in Section 30-9-12 NMSA 1978;

(3) criminal sexual contact of a minor in the second, third or fourth degree, as provided in Section 30-9-13 NMSA 1978;

(4) sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978;

(5) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978;

(6) kidnapping, as provided in Section 30-4-1 NMSA 1978, when committed with the intent to inflict a sexual offense;

(7) false imprisonment, as provided in Section 30-4-3 NMSA 1978, when committed with the intent to inflict a sexual offense;

(8) aggravated indecent exposure, as provided in Section 30-9-14.3 NMSA 1978;

(9) enticement of child, as provided in Section 30-9-1 NMSA 1978;

(10) incest, as provided in Section 30-10-3 NMSA 1978, when the victim is younger than eighteen years of age;

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(11) child solicitation by electronic communication device, as provided in Section 30-37-3.2 NMSA 1978, for convictions occurring on or after July 1, 2013;

(12) solicitation to commit criminal sexual contact of a minor in the second, third or fourth degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;

(13) human trafficking for commercial sexual activity, as provided in Section 30-52-1 NMSA 1978; [~~or~~

~~(13)]~~ (14) attempt to commit any of the sex offenses set forth in Paragraphs (1) through [(11)] (13) of this subsection, as provided in Section 30-28-1 NMSA 1978; or

(15) any conviction entered by a court of a jurisdiction outside of the state and requiring the individual to register as a sex offender in that jurisdiction; and

[~~J.~~] K. "social networking site" means an internet [~~web site~~] website that facilitates online social interaction by offering a mechanism for communication with other users, where such users are likely to include a substantial number of minors under the age of sixteen, and allowing users, through the creation of web pages, profiles or other means, to provide information about themselves that is available to the public or to other users."

SECTION 2. Section 29-11A-5 NMSA 1978 (being Laws 1995, Chapter 106, Section 5, as amended by Laws 2007, Chapter 68, Section 2 and by Laws 2007, Chapter 69, Section 6) is amended

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to read:

"29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN
THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

A. A county sheriff shall maintain a local registry
of sex offenders in the sheriff's jurisdiction required to
register pursuant to the provisions of the Sex Offender
Registration and Notification Act.

B. The county sheriff shall forward:

(1) registration information obtained from sex
offenders to the department [~~of public safety~~]. The initial
registration information and any new registration information
subsequently obtained from a sex offender shall be forwarded by
the county sheriff no later than ten working days after the
information is obtained from a sex offender. If the department
[~~of public safety~~] receives information regarding a sex
offender from a governmental entity other than a county
sheriff, the department shall send that information to the
sheriff for the county in which the sex offender resides; and

(2) samples of DNA obtained from sex offenders
to the administrative center for the sex offender DNA
identification system pursuant to the provisions of the DNA
Identification Act.

C. The department [~~of public safety~~] shall maintain
a central registry of sex offenders required to register

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pursuant to the provisions of the Sex Offender Registration and Notification Act. The department shall participate in the national sex offender registry administered by the United States department of justice. The department shall send conviction information and fingerprints for all sex offenders registered in New Mexico to the national sex offender registry administered by the United States department of justice and to the federal bureau of investigation.

D. The department [~~of public safety~~] shall retain registration information regarding a sex offender convicted for any of the following sex offenses for the entirety of the sex offender's natural life:

(1) aggravated criminal sexual penetration or criminal sexual penetration in the first, second or third degree, as provided in Section 30-9-11 NMSA 1978;

(2) criminal sexual contact of a minor in the second, third or fourth degree, as provided in Section 30-9-13 NMSA 1978;

(3) sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978;

(4) kidnapping, as provided in Section 30-4-1 NMSA 1978, when the victim is less than eighteen years of age and the offender is not a parent of the victim;

(5) criminal sexual contact in the fourth degree, as provided in Section 30-9-12 NMSA 1978;

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(6) human trafficking for commercial sexual activity, as provided in Section 30-52-1 NMSA 1978;

(7) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978;

HJC→[or←HJC HJC→or←HJC

HJC→[←HJC(6)] (8) attempt to commit any of the sex offenses set forth in Paragraphs (1) through [(5)] (7) of this subsection, as provided in Section 30-28-1 NMSA 1978

HJC→; or

~~(9) any conviction entered by a court of a jurisdiction outside of the state and requiring the individual to register as a sex offender in that jurisdiction~~←HJC.

E. The department [of public safety] shall retain registration information regarding a sex offender convicted for the following offenses for a period of ten years following the sex offender's conviction, release from prison or release from probation or parole, whichever occurs later:

(1) criminal sexual penetration in the fourth degree, as provided in Section 30-9-11 NMSA 1978;

~~[(2) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978;~~

~~(3)]~~ (2) false imprisonment, as provided in Section 30-4-3 NMSA 1978, when the victim is less than eighteen years of age and the offender is not a parent of the victim;

~~[(4)]~~ (3) aggravated indecent exposure, as

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provided in Section 30-9-14.3 NMSA 1978;

[~~(5)~~] (4) enticement of child, as provided in Section 30-9-1 NMSA 1978;

[~~(6)~~] (5) incest, as provided in Section 30-10-3 NMSA 1978, when the victim is less than eighteen years of age;

[~~(7)~~] (6) solicitation to commit criminal sexual contact of a minor in the second, third or fourth degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;

[~~(8)~~] (7) child solicitation by electronic communication device, as provided in Section 30-37-3.2 NMSA 1978; HJC→~~or~~←HJC

HJC→(8) any conviction entered by a court of a jurisdiction outside of the state and requiring the individual to register as a sex offender in that jurisdiction; provided that an individual may petition a court for an order exempting the individual from registering pursuant to the Sex Offender Registration and Notification Act if:

(a) the individual would not have been required to register in New Mexico; and

(b) the court finds good cause to exempt the individual from registering pursuant to the Sex Offender Registration and Notification Act; or←HJC

[~~(9)~~] HJC→~~(8)~~←HJC HJC→~~(9)~~←HJC attempt to commit any of the sex offenses set forth in Paragraphs (1)

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through [~~6~~] 5 of this subsection, as provided in Section 30-28-1 NMSA 1978.

F. Notwithstanding the provisions of Subsection E of this section, if a sex offender is convicted a second or subsequent time for a sex offense set forth in that subsection, the department [~~of public safety~~] shall retain information regarding the sex offender for the entirety of the sex offender's natural life.

G. The department [~~of public safety~~] shall adopt rules necessary to carry out the provisions of the Sex Offender Registration and Notification Act. Rules necessary for the collection of DNA samples and the administration and operation of the sex offender DNA identification system shall be adopted by the DNA identification system oversight committee pursuant to the provisions of the DNA Identification Act."

SECTION 3. Section 30-1-8 NMSA 1978 (being Laws 1963, Chapter 303, Section 1-8, as amended) is amended to read:

"30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--A person shall not be prosecuted, tried or punished in any court of this state unless the indictment is found or information or complaint is filed within the time as provided:

A. for a second degree felony, within six years from the time the crime was committed;

B. for a third or fourth degree felony, within five years from the time the crime was committed;

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C. for a misdemeanor, within two years from the time the crime was committed;

D. for a petty misdemeanor, within one year from the time the crime was committed;

E. for any crime against or violation of Section 51-1-38 NMSA 1978, within three years from the time the crime was committed;

F. for a felony pursuant to Section 7-1-71.3, 7-1-72 or 7-1-73 NMSA 1978, within five years from the time the crime was committed; provided that for a series of crimes involving multiple filing periods within one calendar year, the limitation shall begin to run on December 31 of the year in which the crimes occurred;

G. for an identity theft crime pursuant to Section 30-16-24.1 NMSA 1978, within five years from the time the crime was discovered;

H. for any crime not contained in the Criminal Code or where a limitation is not otherwise provided for, within three years from the time the crime was committed; and

I. for a capital felony or a first degree violent felony or for any crime against or in violation of Section 30-52-1 NMSA 1978, no limitation period shall exist and prosecution for these crimes may commence at any time after the occurrence of the crime."

SECTION 4. Section 30-6A-4 NMSA 1978 (being Laws 1984,

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Chapter 92, Section 4, as amended) is amended to read:

"30-6A-4. SEXUAL EXPLOITATION OF CHILDREN BY
PROSTITUTION.--

A. Any person knowingly receiving any pecuniary profit as a result of a child under the age of [~~sixteen~~] eighteen engaging in a prohibited sexual act with another is guilty of a second degree felony, unless the child is under the age of thirteen, in which event the person is guilty of a first degree felony.

B. Any person knowingly hiring or offering to hire a child under the age of [~~sixteen~~] eighteen to engage in any prohibited sexual act is guilty of a second degree felony.

C. Any parent, legal guardian or person having custody or control of a child under [~~sixteen~~] eighteen years of age who knowingly permits that child to engage in or to assist any other person to engage in any prohibited sexual act or simulation of such an act for the purpose of producing any visual or print medium depicting such an act is guilty of a third degree felony.

D. In a prosecution for sexual exploitation of children by prostitution, it shall not constitute a defense to prosecution that the defendant's intended victim was a peace officer posing as a child under eighteen years of age."

SECTION 5. Section 30-42-3 NMSA 1978 (being Laws 1980, Chapter 40, Section 3, as amended by Laws 2009, Chapter 253,

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Section 7 and by Laws 2009, Chapter 261, Section 7) is amended to read:

"30-42-3. DEFINITIONS.--As used in the Racketeering Act:

A. "racketeering" means any act that is chargeable or indictable under the laws of New Mexico and punishable by imprisonment for more than one year, involving any of the following cited offenses:

(1) murder, as provided in Section 30-2-1 NMSA 1978;

(2) robbery, as provided in Section 30-16-2 NMSA 1978;

(3) kidnapping, as provided in Section 30-4-1 NMSA 1978;

(4) forgery, as provided in Section 30-16-10 NMSA 1978;

(5) larceny, as provided in Section 30-16-1 NMSA 1978;

(6) fraud, as provided in Section 30-16-6 NMSA 1978;

(7) embezzlement, as provided in Section 30-16-8 NMSA 1978;

(8) receiving stolen property, as provided in Section 30-16-11 NMSA 1978;

(9) bribery, as provided in Sections 30-24-1 through 30-24-3.1 NMSA 1978;

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- (10) gambling, as provided in Sections 30-19-3, 30-19-13 and 30-19-15 NMSA 1978;
- (11) illegal kickbacks, as provided in Sections 30-41-1 and 30-41-2 NMSA 1978;
- (12) extortion, as provided in Section 30-16-9 NMSA 1978;
- (13) trafficking in controlled substances, as provided in Section 30-31-20 NMSA 1978;
- (14) arson and aggravated arson, as provided in Subsection A of Section 30-17-5 and Section 30-17-6 NMSA 1978;
- (15) promoting prostitution, as provided in Section 30-9-4 NMSA 1978;
- (16) criminal solicitation, as provided in Section 30-28-3 NMSA 1978;
- (17) fraudulent securities practices, as provided in the New Mexico Uniform Securities Act [~~of 1986~~];
- (18) loan sharking, as provided in Sections 30-43-1 through 30-43-5 NMSA 1978;
- (19) distribution of controlled substances or controlled substance analogues, as provided in Sections 30-31-21 and 30-31-22 NMSA 1978;
- (20) a violation of the provisions of Section 30-51-4 NMSA 1978;
- (21) unlawful taking of a vehicle or motor

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vehicle, as provided in Section 30-16D-1 NMSA 1978;

(22) embezzlement of a vehicle or motor vehicle, as provided in Section 30-16D-2 NMSA 1978;

(23) fraudulently obtaining a vehicle or motor vehicle, as provided in Section 30-16D-3 NMSA 1978;

(24) receiving or transferring stolen vehicles or motor vehicles, as provided in Section 30-16D-4 NMSA 1978;
[and]

(25) altering or changing the serial number, engine number, decal or other numbers or marks of a vehicle or motor vehicle, as provided in Section 30-16D-6 NMSA 1978; and

(26) human trafficking, as provided in Section 30-52-1 NMSA 1978;

B. "person" means an individual or entity capable of holding a legal or beneficial interest in property;

C. "enterprise" means a sole proprietorship, partnership, corporation, business, labor union, association or other legal entity or a group of individuals associated in fact although not a legal entity and includes illicit as well as licit entities; and

D. "pattern of racketeering activity" means engaging in at least two incidents of racketeering with the intent of accomplishing any of the prohibited activities set forth in Subsections A through D of Section 30-42-4 NMSA 1978; provided at least one of the incidents occurred after February

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28, 1980 and the last incident occurred within five years after the commission of a prior incident of racketeering."

SECTION 6. Section 30-52-1 NMSA 1978 (being Laws 2008, Chapter 17, Section 1) is amended to read:

"30-52-1. HUMAN TRAFFICKING.--

A. Human trafficking consists of a person knowingly:

(1) recruiting, soliciting, enticing, transporting, harboring, maintaining, patronizing, providing or obtaining by any means another person with the intent or knowledge that force, fraud or coercion will be used to subject the person to labor, services or commercial sexual activity;

(2) recruiting, soliciting, enticing, transporting, harboring, maintaining, patronizing, providing or obtaining by any means a person under the age of eighteen years with the intent or knowledge that the person will be caused to engage in commercial sexual activity; or

(3) benefiting, financially or by receiving anything of value, from the labor, services or commercial sexual activity of another person with the knowledge that force, fraud or coercion was used to obtain the labor, services or commercial sexual activity.

B. The attorney general and the district attorney in the county of jurisdiction have concurrent jurisdiction to enforce the provisions of this section.

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C. Whoever commits human trafficking is guilty of a [third] second degree felony; except if the victim is under the age of HJC→:

~~(1) sixteen, the person is guilty of a second degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this paragraph shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of the Criminal Sentencing Act; or~~

~~(2) thirteen~~←HJC HJC→eighteen←HJC, the person is guilty of a first degree felony.

D. Prosecution pursuant to this section shall not prevent prosecution pursuant to any other provision of the law when the conduct also constitutes a violation of that other provision. Each violation of this section constitutes a separate offense and shall not merge with any other offense.

E. In a prosecution pursuant to this section, a human trafficking victim shall not be charged with accessory to the crime of human trafficking, or for prostitution as provided in Section 30-9-2 NMSA 1978.

F. A person convicted of human trafficking shall, in addition to any other punishment, be ordered to make

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restitution to the victim for the gross income or value of the victim's labor or services and any other actual damages in accordance with Section 31-17-1 NMSA 1978; provided that, at a minimum, the restitution shall be an amount no less than the value of the victim's labor as guaranteed by state or federal minimum wage and overtime labor laws.

G. As used in this section:

(1) "coercion" means:

(a) causing or threatening to cause harm or physical restraint to any person;

(b) using or threatening to use physical force or physical restraint against any person;

(c) abusing or threatening to abuse the law or legal process;

(d) threatening to report the immigration status of any person to governmental authorities;
or

(e) knowingly destroying, concealing, removing, confiscating or retaining any actual or purported government document of any person; [~~and~~]

(2) "commercial sexual activity" means any sexual act or sexually explicit exhibition for which anything of value is given, promised to or received by any person; and

(3) "harm" means any harm, whether physical or nonphysical, including psychological, financial or reputational

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harm, that is sufficiently serious, under all of the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing compelled labor, services or commercial sexual activity to avoid or attempt to avoid receiving harm.

H. In a prosecution for human trafficking pursuant to this section, evidence of the following facts or conditions shall not constitute a defense to prosecution:

(1) the victim's sexual history or history of commercial sexual activity, specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct;

(2) consent of a minor;

(3) mistake as to the victim's age; and

(4) that the defendant's intended victim was a peace officer posing as a child under eighteen years of age.

I. A person convicted of human trafficking pursuant to this section HJC→, ←HJC shall HJC→, ~~in addition to the penalties prescribed in Subsection C of this section, forfeit to the state:~~

~~(1) any property used or commercial interest acquired or maintained during the commission of human trafficking; and~~

~~(2) any interest in, security of, claim against or property or contractual rights of any kind affording~~

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~~a source of influence over an enterprise that the person has established, operated, controlled, conducted or participated in committing human trafficking.~~

~~The provisions of the Forfeiture Act apply to the seizure, forfeiture and disposal of property described in this section~~←HJC HJC→**be subject to the Forfeiture Act**←HJC."

SECTION 7. Section 31-26-3 NMSA 1978 (being Laws 1994, Chapter 144, Section 3, as amended) is amended to read:

"31-26-3. DEFINITIONS.--As used in the Victims of Crime Act:

A. "court" means magistrate court, metropolitan court, children's court, district court, the court of appeals or the supreme court;

B. "criminal offense" means:

(1) negligent arson resulting in death or bodily injury, as provided in Paragraph (1) of Subsection [B] G of Section 30-17-5 NMSA 1978;

(2) aggravated arson, as provided in Section 30-17-6 NMSA 1978;

(3) aggravated assault, as provided in Section 30-3-2 NMSA 1978;

(4) aggravated battery, as provided in Section 30-3-5 NMSA 1978;

(5) dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978;

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- (6) negligent use of a deadly weapon, as provided in Section 30-7-4 NMSA 1978;
- (7) murder, as provided in Section 30-2-1 NMSA 1978;
- (8) voluntary manslaughter, as provided in Section 30-2-3 NMSA 1978;
- (9) involuntary manslaughter, as provided in Section 30-2-3 NMSA 1978;
- (10) kidnapping, as provided in Section 30-4-1 NMSA 1978;
- (11) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;
- (12) criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;
- (13) armed robbery, as provided in Section 30-16-2 NMSA 1978;
- (14) homicide by vehicle, as provided in Section 66-8-101 NMSA 1978;
- (15) great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978;
- (16) abandonment or abuse of a child, as provided in Section 30-6-1 NMSA 1978;
- (17) stalking or aggravated stalking, as provided in the Harassment and Stalking Act;
- (18) aggravated assault against a household

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member, as provided in Section 30-3-13 NMSA 1978;

(19) assault against a household member with intent to commit a violent felony, as provided in Section 30-3-14 NMSA 1978;

(20) battery against a household member, as provided in Section 30-3-15 NMSA 1978; [✗]

(21) aggravated battery against a household member, as provided in Section 30-3-16 NMSA 1978;

(22) human trafficking, as provided in Section 30-52-1 NMSA 1978; or

(23) sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978;

C. "court proceeding" means a hearing, argument or other action scheduled by and held before a court;

D. "family member" means a spouse, child, sibling, parent or grandparent;

E. "formally charged" means the filing of an indictment, the filing of a criminal information pursuant to a bind-over order, the filing of a petition or the setting of a preliminary hearing;

F. "victim" means an individual against whom a criminal offense is committed. "Victim" also means a family member or a victim's representative when the individual against whom a criminal offense was committed is a minor, is incompetent or is a homicide victim; and

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G. "victim's representative" means an individual designated by a victim or appointed by the court to act in the best interests of the victim."

SECTION 8. 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 and approved by the warden or the warden's designee. Meritorious deductions shall not exceed the following amounts:

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

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

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

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

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

(b) up to a maximum of thirty days per month of time served during the parole term following revocation, if the prisoner was convicted of a nonviolent offense.

B. A prisoner may earn meritorious deductions upon recommendation by the classification supervisor, based upon the prisoner's active participation in approved programs and the quality of the prisoner's participation in those approved programs. A prisoner may not earn meritorious deductions unless the recommendation of the classification supervisor is approved by the warden or the warden's designee.

C. If a prisoner's active participation in approved programs is interrupted by a lockdown at a correctional facility, the prisoner may continue to be awarded meritorious deductions at the rate the prisoner was earning meritorious deductions prior to the lockdown, unless the warden or the warden's designee determines that the prisoner's

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conduct contributed to the initiation or continuance of the lockdown.

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

(1) for successfully completing an approved vocational, substance abuse or mental health program, one month; except when the prisoner has a demonstrable physical, mental health or developmental disability that prevents the prisoner from successfully earning a high school equivalency credential, in which case, the prisoner shall be awarded three months;

(2) for earning a high school equivalency credential, three months;

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

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

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

(6) for engaging in a heroic act of saving life or property, engaging in extraordinary conduct for the benefit of the state or the public that is at great expense or risk to or involves great effort on the part of the prisoner or engaging in extraordinary conduct far in excess of normal

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program assignments that demonstrates the prisoner's commitment to self-rehabilitation. The classification supervisor and the warden or the warden's designee may recommend the number of days to be awarded in each case based upon the particular merits, but any award shall be determined by the director of the adult institutions division of the corrections department or the director's designee.

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

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

- (1) disobeys an order to perform labor, pursuant to Section 33-8-4 NMSA 1978;
- (2) is in disciplinary segregation;
- (3) is confined for committing a serious violent offense and is within the first sixty days of receipt by the corrections department; or
- (4) is not an active participant in programs recommended and approved for the prisoner by the

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classification supervisor.

G. The provisions of this section shall not be interpreted as providing eligibility to earn meritorious deductions from a sentence of life imprisonment or a sentence of life imprisonment without possibility of release or parole.

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

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

J. In order to be eligible for meritorious deductions, a prisoner confined in a federal or out-of-state correctional facility designated by the corrections department must actively participate in programs that are available. If a federal or out-of-state correctional facility does not have

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programs available for a prisoner, the prisoner may be awarded meritorious deductions at the rate the prisoner could have earned meritorious deductions if the prisoner had actively participated in programs.

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

L. As used in this section:

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

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

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

(4) "serious violent offense" means:

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- (a) second degree murder, as provided in Section 30-2-1 NMSA 1978;
- (b) voluntary manslaughter, as provided in Section 30-2-3 NMSA 1978;
- (c) third degree aggravated battery, as provided in Section 30-3-5 NMSA 1978;
- (d) third degree aggravated battery against a household member, as provided in Section 30-3-16 NMSA 1978;
- (e) first degree kidnapping, as provided in Section 30-4-1 NMSA 1978;
- (f) first and second degree criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;
- (g) second and third degree criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;
- (h) first and second degree robbery, as provided in Section 30-16-2 NMSA 1978;
- (i) second degree aggravated arson, as provided in Section 30-17-6 NMSA 1978;
- (j) shooting at a dwelling or occupied building, as provided in Section 30-3-8 NMSA 1978;
- (k) shooting at or from a motor vehicle, as provided in Section 30-3-8 NMSA 1978;
- (l) aggravated battery upon a peace

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

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

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

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

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and fourth degree criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; 12) fourth degree criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978; 13) third degree robbery, as provided in Section 30-16-2 NMSA 1978; 14) third degree homicide by vehicle or great bodily harm by vehicle, as provided in Section 66-8-101 NMSA 1978; [✕] 15) battery upon a peace officer, as provided in Section 30-22-24 NMSA 1978; or 16) human trafficking, as provided in Section 30-52-1 NMSA 1978.

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

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

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