

AN ACT

RELATING TO CORRECTIONS; REQUIRING INMATES TO EARN MERITORIOUS DEDUCTIONS FROM A TERM OF IMPRISONMENT; AMENDING, REPEALING AND ENACTING 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 Section 33-2-34 NMSA 1978 (being Laws 1978, Chapter 40, Section 1, as amended) is repealed and a new Section 33-2-34 NMSA 1978 is enacted to read: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 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

(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, up to a maximum of eight days per month of time served during the parole term following revocation.

B. A prisoner may earn meritorious deductions upon recommendation by the classification committee, 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 committee is approved by the warden.

C. If a prisoner's active participation in approved programs is interrupted by a lockdown at a correctional facility, he may continue to be awarded meritorious deductions at the rate he was earning meritorious deductions prior to the lockdown, unless the warden determines that the prisoner's 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 general education diploma, in which case the prisoner shall be awarded three months;

(2) for earning a general education diploma, 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, risk or effort on behalf of the inmate, or engaging in extraordinary conduct far in excess of normal program assignments that demonstrates the prisoner's commitment to rehabilitate himself. The classification committee and the warden 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.

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 within the first sixty days of receipt by the corrections department; or

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

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 death.

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 his 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 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 state-run correctional facilities. 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 his 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 committee, 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:

(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) first degree kidnapping, as provided in Section 30-4-1 NMSA 1978;
- (e) first and second degree criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;
- (f) third degree criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;
- (g) first and second degree robbery, as provided in Section 30-16-2 NMSA 1978;
- (h) second degree aggravated arson, as provided in Section 30-17-6 NMSA 1978;
- (i) shooting at a dwelling or occupied building, as provided in Section 30-3-8 NMSA 1978;
- (j) shooting at or from a motor vehicle, as provided in Section 30-3-8 NMSA 1978;
- (k) aggravated battery upon a peace officer, as provided in Section 30-22-25 NMSA 1978;
- (l) assault with intent to commit a violent felony upon a peace officer, as provided in Section 30-22-23 NMSA 1978;
- (m) aggravated assault upon a peace officer, as provided in Section 30-22-22 NMSA 1978; and
- (n) 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) third and fourth degree aggravated stalking, as provided in Section 30-3A-3.1 NMSA 1978; 5) second degree kidnapping, as provided in Section 30-4-1 NMSA 1978; 6) second degree abandonment of a child, as provided in Section 30-6-1 NMSA 1978; 7) first, second and third degree abuse of a child, as provided in Section 30-6-1 NMSA 1978; 8) third degree dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978; 9) third and fourth degree criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; 10) fourth degree criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978; 11) third degree robbery, as provided in Section 30-16-2 NMSA 1978; 12) third degree homicide by vehicle or great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978; and 13) battery upon a peace officer, as provided in Section 30-22-24 NMSA 1978."

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

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

A. Meritorious deductions earned by a prisoner may be forfeited in an amount up to ninety days for two or

more misconduct violations. Meritorious deductions earned by a prisoner may be forfeited in an amount in excess of ninety days for a major conduct violation. Forfeitures of meritorious deductions of up to ninety days shall only proceed upon the recommendation of the classification committee and final approval by the warden. Forfeitures of meritorious deductions in an amount in excess of ninety days shall only proceed upon the recommendation of the classification committee and the warden and final approval of the director of the adult institutions division of the corrections department. The secretary of corrections may review and revise any decision regarding the forfeiture of meritorious deductions.

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

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

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

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

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

A. Meritorious deductions forfeited under Section 33-2-36 NMSA 1978 may be restored in whole or in part to a prisoner who is exemplary in conduct and work performance for a period of not less than six months following the date of forfeiture. Meritorious deductions may be restored upon recommendation of the classification committee, approval by the warden and final approval by the secretary of corrections.

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

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

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

Section 4. Section 33-2-38 NMSA 1978 (being Laws 1889, Chapter 76, Section 13, as amended) is amended to read:

"33-2-38. COMPUTATION OF TERM.--A prisoner shall not be discharged from the penitentiary of New Mexico or any other correctional facility until he has served the full term for which he was sentenced. The term shall be computed from and include the day on which his sentence took effect and shall exclude any time the convict may have been at large by reason of escape, unless he is pardoned or otherwise released

by legal authority. The provisions of this section shall not be interpreted to deprive a prisoner of any reduction of time to which he may be entitled pursuant to the provisions of Sections 31-20-11, 31-20-12 and 33-2-34 NMSA 1978."

Section 5. Section 31-18-15 NMSA 1978 (being Laws 1977, Chapter 216, Section 4, as amended) is amended to read:

"31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS DEDUCTIONS.--

A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:

(1) for a first degree felony, eighteen years imprisonment;

(2) for a second degree felony resulting in the death of a human being, fifteen years imprisonment;

(3) for a second degree felony, nine years imprisonment;

(4) for a third degree felony resulting in the death of a human being, six years imprisonment;

(5) for a third degree felony, three years imprisonment; or

(6) for a fourth degree felony, eighteen months imprisonment.

B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted of a first, second,

third or fourth degree felony or a second or third degree felony resulting in the death of a human being, unless the court alters such sentence pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

C. The court shall include in the judgment and sentence of each person convicted of a first, second, third or fourth degree felony or a second or third degree felony resulting in the death of a human being and sentenced to imprisonment in a corrections facility designated by the corrections department authority for a period of parole to be served in accordance with the provisions of Section 31-21-10 NMSA 1978 after the completion of any actual time of imprisonment and authority to require, as a condition of parole, the payment of the costs of parole services and reimbursement to a law enforcement agency or local crime stopper program in accordance with the provisions of that section. The period of parole shall be deemed to be part of the sentence of the convicted person in addition to the basic sentence imposed pursuant to Subsection A of this section together with alterations, if any, pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

D. When a court imposes a sentence of imprisonment pursuant to the provisions of Section 31-18-

15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the basic sentence of imprisonment provided pursuant to the provisions of Subsection A of this section, the period of parole shall be served in accordance with the provisions of Section 31-21-10 NMSA 1978 for the degree of felony for the basic sentence for which the inmate was convicted. For the purpose of designating a period of parole, a court shall not consider that the basic sentence of imprisonment was suspended or deferred and that the inmate served a period of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

E. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed:

(1) for a first degree felony, fifteen thousand dollars (\$15,000);

(2) for a second degree felony resulting in the death of a human being, twelve thousand five hundred dollars (\$12,500);

(3) for a second degree felony, ten thousand dollars (\$10,000);

(4) for a third degree felony resulting in the death of a human being, five thousand dollars (\$5,000);

or

(5) for a third or fourth degree felony, five thousand dollars (\$5,000).

F. When the court imposes a sentence of imprisonment for a felony offense, the court shall indicate whether or not the offense is a serious violent offense, as defined in Section 33-2-34 NMSA 1978. The court shall inform an offender that the offender's sentence of imprisonment is subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. If the court fails to inform an offender that the offender's sentence is subject to those provisions or if the court provides the offender with erroneous information regarding those provisions, the failure to inform or the error shall not provide a basis for a writ of habeas corpus.

G. No later than October 31 of each year, the criminal and juvenile justice coordinating council shall provide a written report to the secretary of corrections, all New Mexico criminal court judges, the administrative office of the district attorneys and the chief public defender. The report shall specify the average reduction in the sentence of imprisonment for serious violent offenses and nonviolent offenses, as defined in Section 33-2-34 NMSA 1978, due to meritorious deductions earned by prisoners during the previous fiscal year pursuant to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. The

corrections department shall allow the coordinating council access to documents used by the department to determine earned meritorious deductions for prisoners."

Section 6. Section 31-26-4 NMSA 1978 (being Laws 1994, Chapter 144, Section 4) is amended to read:

"31-26-4. VICTIM'S RIGHTS.--A victim shall have the right to:

A. be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;

B. timely disposition of the case;

C. be reasonably protected from the accused throughout the criminal justice process;

D. notification of court proceedings;

E. attend all public court proceedings the accused has the right to attend;

F. confer with the prosecution;

G. make a statement to the court at sentencing and at any post-sentencing hearings for the accused;

H. restitution from the person convicted of the criminal offense that caused the victim's loss or injury;

I. information about the conviction, sentencing, imprisonment, escape or release of the accused;

J. have the prosecuting attorney notify the victim's employer, if requested by the victim, of the

necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause;

K. promptly receive any property belonging to the victim that is being held for evidentiary purposes by a law enforcement agency or the prosecuting attorney, unless there are compelling evidentiary reasons for retention of the victim's property; and

L. be informed by the court at a sentencing proceeding that the offender is eligible to earn meritorious deductions from the offender's sentence and the amount of meritorious deductions that may be earned by the offender."

Section 7. REPEAL.--Section 33-8-14 NMSA 1978 (being Laws 1981, Chapter 127, Section 14) is repealed.

Section 8. APPLICABILITY.--The provisions of Sections 1 through 5 and Section 7 of this act apply to persons convicted of a criminal offense committed on or after July 1, 1999. As to persons convicted of a criminal offense committed prior to July 1, 1999, the laws with respect to meritorious deductions in effect at the time the offense was committed shall apply.

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999. _____

