

HOUSE BILL 123

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Zachary J. Cook

AN ACT

RELATING TO CORRECTIONS; PROVIDING THAT FIRST DEGREE MURDER,  
THE CRIME OF ABUSE OF A CHILD THAT RESULTS IN DEATH OR GREAT  
BODILY HARM AND HOMICIDE OR GREAT BODILY HARM BY VEHICLE WHILE  
UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS ARE SERIOUS  
VIOLENT OFFENSES FOR THE PURPOSE OF CALCULATING EARNED  
MERITORIOUS DEDUCTIONS IN PRISON.

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

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1 recommended for the prisoner by the classification supervisor  
2 and approved by the warden or the warden's designee.

3 Meritorious deductions shall not exceed the following amounts:

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

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

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

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

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

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

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1 offense.

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

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

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

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

25 (2) for earning a general education diploma,

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1 three months;

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

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

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

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

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

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1 deductions awarded in any consecutive twelve-month period.

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

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

6 (2) is in disciplinary segregation;

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

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

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

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

24 I. A New Mexico prisoner confined in a federal or  
25 out-of-state correctional facility is eligible to earn

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

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

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

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1 L. As used in this section:

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

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

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

12 (4) "serious violent offense" means:

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

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

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

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

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

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

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1 (g) second and third degree criminal  
2 sexual contact of a minor, as provided in Section 30-9-13 NMSA  
3 1978;

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

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

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

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

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

14 (m) assault with intent to commit a  
15 violent felony upon a peace officer, as provided in Section  
16 30-22-23 NMSA 1978;

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

19 (o) abuse of a child, as provided in  
20 Section 30-6-1 NMSA 1978, that results in death or great bodily  
21 harm;

22 (p) homicide by vehicle or great bodily  
23 harm by vehicle while under the influence of intoxicating  
24 liquor or while under the influence of any drug, as provided in  
25 Section 66-8-101 NMSA 1978; or

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1                   [~~(e)~~] (q) any of the following offenses,  
2 when the nature of the offense and the resulting harm are such  
3 that the court judges the crime to be a serious violent offense  
4 for the purpose of this section: 1) involuntary manslaughter,  
5 as provided in Section 30-2-3 NMSA 1978; 2) fourth degree  
6 aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3)  
7 third degree assault with intent to commit a violent felony, as  
8 provided in Section 30-3-3 NMSA 1978; 4) fourth degree  
9 aggravated assault against a household member, as provided in  
10 Section 30-3-13 NMSA 1978; 5) third degree assault against a  
11 household member with intent to commit a violent felony, as  
12 provided in Section 30-3-14 NMSA 1978; 6) third and fourth  
13 degree aggravated stalking, as provided in Section 30-3A-3.1  
14 NMSA 1978; 7) second degree kidnapping, as provided in Section  
15 30-4-1 NMSA 1978; 8) second degree abandonment of a child, as  
16 provided in Section 30-6-1 NMSA 1978; 9) first, second and  
17 third degree abuse of a child, as provided in Section 30-6-1  
18 NMSA 1978, that does not result in death or great bodily harm;  
19 10) third degree dangerous use of explosives, as provided in  
20 Section 30-7-5 NMSA 1978; 11) third and fourth degree criminal  
21 sexual penetration, as provided in Section 30-9-11 NMSA 1978;  
22 12) fourth degree criminal sexual contact of a minor, as  
23 provided in Section 30-9-13 NMSA 1978; 13) third degree  
24 robbery, as provided in Section 30-16-2 NMSA 1978; 14) third  
25 degree homicide by vehicle or great bodily [~~injury~~] harm by

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1 vehicle, as provided in Section 66-8-101 NMSA 1978; ~~and~~ or  
2 15) battery upon a peace officer, as provided in Section  
3 30-22-24 NMSA 1978.

4 M. Except for sex offenders, as provided in Section  
5 31-21-10.1 NMSA 1978, an offender sentenced to confinement in a  
6 correctional facility designated by the corrections department  
7 who has been released from confinement and who is serving a  
8 parole term may be awarded earned meritorious deductions of up  
9 to thirty days per month upon recommendation of the parole  
10 officer supervising the offender, with the final approval of  
11 the adult parole board. The offender must be in compliance  
12 with all the conditions of the offender's parole to be eligible  
13 for earned meritorious deductions. The adult parole board may  
14 remove earned meritorious deductions previously awarded if the  
15 offender later fails to comply with the conditions of the  
16 offender's parole. The corrections department and the adult  
17 parole board shall promulgate rules to implement the provisions  
18 of this subsection. This subsection applies to offenders who  
19 are serving a parole term on or after July 1, 2004."

20 SECTION 2. EFFECTIVE DATE.--The effective date of the  
21 provisions of this act is July 1, 2013.