

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 305

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

John L. Zimmerman and Alonzo Baldonado

AN ACT

RELATING TO CORRECTIONS; PROVIDING THAT THE CRIMES OF FIRST DEGREE MURDER, WHEN THE OFFENDER IS A SERIOUS YOUTHFUL OFFENDER, HOMICIDE OR GREAT BODILY HARM BY VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS AND INJURY TO PREGNANT WOMAN BY VEHICLE 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

underscoring material = new
~~[bracketed material]~~ = delete

underscoring material = new
~~[bracketed material] = delete~~

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

.203606.1

underscored material = new
~~[bracketed material] = delete~~

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 high school equivalency
24 credential, in which case, the prisoner shall be awarded three
25 months;

.203606.1

underscoring material = new
[bracketed material] = delete

- 1 (2) for earning a high school equivalency
2 credential, three months;
- 3 (3) for earning an associate's degree, four
4 months;
- 5 (4) for earning a bachelor's degree, five
6 months;
- 7 (5) for earning a graduate qualification, five
8 months; and
- 9 (6) for engaging in a heroic act of saving
10 life or property, engaging in extraordinary conduct for the
11 benefit of the state or the public that is at great expense or
12 risk to or involves great effort on the part of the prisoner or
13 engaging in extraordinary conduct far in excess of normal
14 program assignments that demonstrates the prisoner's commitment
15 to self-rehabilitation. The classification supervisor and the
16 warden or the warden's designee may recommend the number of
17 days to be awarded in each case based upon the particular
18 merits, but any award shall be determined by the director of
19 the adult institutions division of the corrections department
20 or the director's designee.

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

.203606.1

1 exceed a total of one year for all lump-sum meritorious
2 deductions awarded in any consecutive twelve-month period.

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

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

7 (2) is in disciplinary segregation;

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

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

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

underscoring material = new
~~[bracketed material] = delete~~

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.

.203606.1

underscored material = new
[bracketed material] = delete

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 degree murder, when the
14 offender is a serious youthful offender;

15 [~~(a)~~] (b) second degree murder, as
16 provided in Section 30-2-1 NMSA 1978;

17 [~~(b)~~] (c) voluntary manslaughter, as
18 provided in Section 30-2-3 NMSA 1978;

19 [~~(c)~~] (d) third degree aggravated
20 battery, as provided in Section 30-3-5 NMSA 1978;

21 [~~(d)~~] (e) third degree aggravated
22 battery against a household member, as provided in Section
23 30-3-16 NMSA 1978;

24 [~~(e)~~] (f) first degree kidnapping, as
25 provided in Section 30-4-1 NMSA 1978;

.203606.1

underscored material = new
[bracketed material] = delete

1 [~~f~~] (g) first and second degree
2 criminal sexual penetration, as provided in Section 30-9-11
3 NMSA 1978;

4 [~~g~~] (h) second and third degree
5 criminal sexual contact of a minor, as provided in Section
6 30-9-13 NMSA 1978;

7 [~~h~~] (i) first and second degree
8 robbery, as provided in Section 30-16-2 NMSA 1978;

9 [~~i~~] (j) second degree aggravated
10 arson, as provided in Section 30-17-6 NMSA 1978;

11 [~~j~~] (k) shooting at a dwelling or
12 occupied building, as provided in Section 30-3-8 NMSA 1978;

13 [~~k~~] (l) shooting at or from a motor
14 vehicle, as provided in Section 30-3-8 NMSA 1978;

15 [~~l~~] (m) aggravated battery upon a
16 peace officer, as provided in Section 30-22-25 NMSA 1978;

17 [~~m~~] (n) assault with intent to commit
18 a violent felony upon a peace officer, as provided in Section
19 30-22-23 NMSA 1978;

20 [~~n~~] (o) aggravated assault upon a
21 peace officer, as provided in Section 30-22-22 NMSA 1978; [~~o~~]

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;

.203606.1

underscored material = new
[bracketed material] = delete

1 (q) injury to pregnant woman by vehicle,
2 as provided in Section 66-8-101.1 NMSA 1978; or

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

.203606.1

underscored material = new
[bracketed material] = delete

1 robbery, as provided in Section 30-16-2 NMSA 1978; ~~[14) third~~
2 ~~degree homicide by vehicle or great bodily harm by vehicle, as~~
3 ~~provided in Section 66-8-101 NMSA 1978; or 15)] or 14) battery~~
4 upon a peace officer, as provided in Section 30-22-24 NMSA
5 1978.

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

22 SECTION 2. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2016.

24 - 10 -

25