

HOUSE REGULATORY AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 305

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

AN ACT

RELATING TO CORRECTIONS; PROVIDING THAT THE CRIMES OF FIRST
DEGREE MURDER, WHEN THE OFFENDER IS A SERIOUS YOUTHFUL
OFFENDER, CHILD ABUSE THAT RESULTS IN GREAT BODILY HARM,
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;
PROVIDING RESTRICTIONS ON ELIGIBILITY TO EARN MERITORIOUS
DEDUCTIONS.

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.--

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1 A. To earn meritorious deductions, a prisoner
2 confined in a correctional facility designated by the
3 corrections department must be an active participant in programs
4 recommended for the prisoner by the classification supervisor
5 and approved by the warden or the warden's designee.

6 Meritorious deductions shall not exceed the following amounts:

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

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

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

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

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

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

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

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

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

22 (1) for successfully completing an approved
23 vocational, substance abuse or mental health program, one
24 month; except when the prisoner has a demonstrable physical,
25 mental health or developmental disability that prevents the

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1 prisoner from successfully earning a high school equivalency
2 credential, in which case, the prisoner shall be awarded three
3 months;

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

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

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

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

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

24 E. Lump-sum meritorious deductions, provided in
25 Paragraphs (1) through (6) of Subsection D of this section, may

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1 be awarded in addition to the meritorious deductions provided
2 in Subsections A and B of this section. Lump-sum meritorious
3 deductions shall not exceed one year per award and shall not
4 exceed a total of one year for all lump-sum meritorious
5 deductions awarded in any consecutive twelve-month period.

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

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

10 (2) is in disciplinary segregation;

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

14 (4) is not an active participant in programs
15 recommended and approved for the prisoner by the classification
16 supervisor.

17 G. The provisions of this section shall not be
18 interpreted as providing eligibility to earn meritorious
19 deductions from a sentence of life imprisonment or a sentence
20 of life imprisonment without possibility of release or parole
21 or from a sentence for first degree child abuse that results in
22 the death of the child, as provided in Subsection F, G or H of
23 Section 30-6-1 NMSA 1978.

24 H. The corrections department shall promulgate
25 rules to implement the provisions of this section, and the

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1 rules shall be matters of public record. A concise summary of
2 the rules shall be provided to each prisoner, and each prisoner
3 shall receive a quarterly statement of the meritorious
4 deductions earned.

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

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

23 K. A prisoner confined in a correctional facility
24 in New Mexico that is operated by a private company, pursuant
25 to a contract with the corrections department, is eligible to

1 earn meritorious deductions in the same manner as a prisoner
 2 confined in a state-run correctional facility. All decisions
 3 regarding the award or forfeiture of meritorious deductions at
 4 such facilities are subject to final approval by the director
 5 of the adult institutions division of the corrections
 6 department or the director's designee.

7 L. As used in this section:

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

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

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

18 (4) "serious violent offense" means:

19 (a) first degree murder, when the
 20 offender is a serious youthful offender;

21 ~~(a)~~ (b) second degree murder, as
 22 provided in Section 30-2-1 NMSA 1978;

23 ~~(b)~~ (c) voluntary manslaughter, as
 24 provided in Section 30-2-3 NMSA 1978;

25 ~~(c)~~ (d) third degree aggravated

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1 battery, as provided in Section 30-3-5 NMSA 1978;

2 ~~[(d)]~~ (e) third degree aggravated
3 battery against a household member, as provided in Section
4 30-3-16 NMSA 1978;

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

7 (g) child abuse that results in great
8 bodily harm to the child, as provided in Subsection E of
9 Section 30-6-1 NMSA 1978;

10 ~~[(f)]~~ (h) first and second degree
11 criminal sexual penetration, as provided in Section 30-9-11
12 NMSA 1978;

13 ~~[(g)]~~ (i) second and third degree
14 criminal sexual contact of a minor, as provided in Section
15 30-9-13 NMSA 1978;

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

18 ~~[(i)]~~ (k) second degree aggravated
19 arson, as provided in Section 30-17-6 NMSA 1978;

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

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

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

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1 ~~[(m)]~~ (o) assault with intent to commit
2 a violent felony upon a peace officer, as provided in Section
3 30-22-23 NMSA 1978;

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

6 (q) homicide by vehicle or great bodily
7 harm by vehicle while under the influence of intoxicating
8 liquor or while under the influence of any drug, as provided in
9 Section 66-8-101 NMSA 1978;

10 (r) injury to pregnant woman by vehicle,
11 as provided in Section 66-8-101.1 NMSA 1978; or

12 ~~[(o)]~~ (s) any of the following offenses,
13 when the nature of the offense and the resulting harm are such
14 that the court judges the crime to be a serious violent offense
15 for the purpose of this section: 1) involuntary manslaughter,
16 as provided in Section 30-2-3 NMSA 1978; 2) fourth degree
17 aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3)
18 third degree assault with intent to commit a violent felony, as
19 provided in Section 30-3-3 NMSA 1978; 4) fourth degree
20 aggravated assault against a household member, as provided in
21 Section 30-3-13 NMSA 1978; 5) third degree assault against a
22 household member with intent to commit a violent felony, as
23 provided in Section 30-3-14 NMSA 1978; 6) third and fourth
24 degree aggravated stalking, as provided in Section 30-3A-3.1
25 NMSA 1978; 7) second degree kidnapping, as provided in Section

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1 30-4-1 NMSA 1978; 8) second degree abandonment of a child, as
2 provided in Section 30-6-1 NMSA 1978; 9) [~~first, second and~~
3 ~~third degree~~] abuse of a child, as provided in Section 30-6-1
4 NMSA 1978, that does not result in death or great bodily harm;
5 10) third degree dangerous use of explosives, as provided in
6 Section 30-7-5 NMSA 1978; 11) third and fourth degree criminal
7 sexual penetration, as provided in Section 30-9-11 NMSA 1978;
8 12) fourth degree criminal sexual contact of a minor, as
9 provided in Section 30-9-13 NMSA 1978; 13) third degree
10 robbery, as provided in Section 30-16-2 NMSA 1978; [~~14) third~~
11 ~~degree homicide by vehicle or great bodily harm by vehicle, as~~
12 ~~provided in Section 66-8-101 NMSA 1978; or 15)] or 14) battery
13 upon a peace officer, as provided in Section 30-22-24 NMSA
14 1978.~~

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

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1 offender later fails to comply with the conditions of the
2 offender's parole. The corrections department and the adult
3 parole board shall promulgate rules to implement the provisions
4 of this subsection. This subsection applies to offenders who
5 are serving a parole term on or after July 1, 2004."

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

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