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AN ACT

RELATING TO CORRECTIONS; CHANGING THE ADMINISTRATIVE
AUTHORITY FOR EARNED MERITORIOUS DEDUCTIONS FOR PRISONERS;
DECREASING EARNED MERITORIOUS DEDUCTIONS FOR SOME PRISONERS
AND INCREASING THEM FOR OTHERS; PROVIDING ELIGIBILITY FOR
EARNED MERITORIOUS DEDUCTIONS TO OFFENDERS SERVING PAROLE
TERMS ON OR AFTER JULY 1, 2004.

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 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

1 of time served;

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

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

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

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

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

1 C. If a prisoner's active participation in
2 approved programs is interrupted by a lockdown at a
3 correctional facility, the prisoner may continue to be
4 awarded meritorious deductions at the rate the prisoner was
5 earning meritorious deductions prior to the lockdown, unless
6 the warden or the warden's designee determines that the
7 prisoner's conduct contributed to the initiation or
8 continuance of the lockdown.

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

12 (1) for successfully completing an approved
13 vocational, substance abuse or mental health program, one
14 month; except when the prisoner has a demonstrable physical,
15 mental health or developmental disability that prevents the
16 prisoner from successfully earning a general education
17 diploma, in which case, the prisoner shall be awarded three
18 months;

19 (2) for earning a general education diploma,
20 three months;

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

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

25 (5) for earning a graduate qualification,

1 five months; and

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

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

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

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

1 (2) is in disciplinary segregation;

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

5 (4) is not an active participant in programs
6 recommended and approved for the prisoner by the
7 classification supervisor.

8 G. The provisions of this section shall not be
9 interpreted as providing eligibility to earn meritorious
10 deductions from a sentence of life imprisonment or a sentence
11 of death.

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

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

1 of the corrections department or the director's designee.

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

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

20 L. As used in this section:

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

24 (2) "program" means work, vocational,
25 educational, substance abuse and mental health programs,

1 approved by the classification supervisor, that contribute to
2 a prisoner's self-betterment through the development of
3 personal and occupational skills. "Program" does not include
4 recreational activities;

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

7 (4) "serious violent offense" means:

8 (a) second degree murder, as provided
9 in Section 30-2-1 NMSA 1978;

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

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

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

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

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

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

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

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

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

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

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

9 (m) assault with intent to commit a
10 violent felony upon a peace officer, as provided in Section
11 30-22-23 NMSA 1978;

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

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

1 1978; 6) third and fourth degree aggravated stalking, as
2 provided in Section 30-3A-3.1 NMSA 1978; 7) second degree
3 kidnapping, as provided in Section 30-4-1 NMSA 1978; 8)
4 second degree abandonment of a child, as provided in Section
5 30-6-1 NMSA 1978; 9) first, second and third degree abuse of
6 a child, as provided in Section 30-6-1 NMSA 1978; 10) third
7 degree dangerous use of explosives, as provided in Section
8 30-7-5 NMSA 1978; 11) third and fourth degree criminal sexual
9 penetration, as provided in Section 30-9-11 NMSA 1978; 12)
10 fourth degree criminal sexual contact of a minor, as provided
11 in Section 30-9-13 NMSA 1978; 13) third degree robbery, as
12 provided in Section 30-16-2 NMSA 1978; 14) third degree
13 homicide by vehicle or great bodily injury by vehicle, as
14 provided in Section 66-8-101 NMSA 1978; and 15) battery upon
15 a peace officer, as provided in Section 30-22-24 NMSA 1978.

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

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

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

10 "33-2-36. FORFEITURE OF EARNED MERITORIOUS
11 DEDUCTIONS.--

12 A. Meritorious deductions earned by a prisoner may
13 be forfeited in an amount up to ninety days for two or more
14 misconduct violations. Meritorious deductions earned by a
15 prisoner may be forfeited in an amount in excess of ninety
16 days for a major conduct violation. Forfeitures of
17 meritorious deductions of up to ninety days shall only
18 proceed upon the recommendation of the classification
19 supervisor and final approval by the warden or the warden's
20 designee. Forfeitures of meritorious deductions in an amount
21 in excess of ninety days shall only proceed upon the
22 recommendation of the classification supervisor and the
23 warden or the warden's designee and final approval of the
24 director of the adult institutions division of the
25 corrections department or the director's designee. The

1 secretary of corrections may review and revise any decision
2 regarding the forfeiture of meritorious deductions.

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

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

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

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

13 "33-2-37. RESTORATION OF FORFEITED MERITORIOUS
14 DEDUCTIONS.--

15 A. Meritorious deductions forfeited pursuant to
16 Section 33-2-36 NMSA 1978 may be restored in whole or in part
17 to a prisoner who is exemplary in conduct and work
18 performance for a period of not less than six months
19 following the date of forfeiture. Meritorious deductions may
20 be restored upon recommendation of the classification
21 supervisor, approval by the warden or the warden's designee
22 and final approval by the director of the adult institutions
23 division of the corrections department or the director's
24 designee.

25 B. The provisions of this section also apply to

1 the restoration of earned meritorious deductions for a
2 prisoner confined in a:

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

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

8 Section 4. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2006. _____

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