

AN ACT

RELATING TO CORRECTIONS; REQUIRING INMATES TO EARN MERITORIOUS DEDUCTIONS FROM A TERM OF IMPRISONMENT; ENACTING THE CORRECTIONS POPULATION CONTROL ACT; ESTABLISHING THE CORRECTIONS POPULATION CONTROL COMMISSION; PROVIDING FOR THE DUTIES AND AUTHORITY OF THE POPULATION CONTROL COMMISSION; PROVIDING MECHANISMS FOR ADDRESSING INMATE OVERCROWDING; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. 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.--

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. When the court imposes a sentence of imprisonment for a felony offense, the court shall indicate whether or not the offense is a violent offense, as defined in Section 33-2-34 NMSA 1978. The court shall inform the offender that his 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 his 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.

C. 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.

D. 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.

E. 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.

F. 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)."

Section 2. Section 33-1-2 NMSA 1978 (being Laws 1978, Chapter 4, Section 1, as amended) is amended to read:

"33-1-2. DEFINITIONS. --As used in the Corrections Act:

A. "division" or "department" means the corrections department;

B. "director" or "secretary" means the secretary

of corrections;

C. "corrections facility" means any facility or program controlled or operated by the state or any of its agencies or departments and supported wholly or in part by state funds for the correctional care of persons, including but not limited to:

(1) the "penitentiary of New Mexico", which consists of the penitentiary at Santa Fe and other places in the state designated by the secretary; and

(2) the state board of probation and parole, except to the extent delegated to the parole board by the Parole Board Act; and

D. "warden" or "superintendent" means the administrative director of a correctional facility."

Section 3. Section 33-1-4 NMSA 1978 (being Laws 1969, Chapter 226, Section 4, as amended) is amended to read:

"33-1-4. CORRECTIONS DEPARTMENT.--The department is responsible for all matters pertaining to corrections as provided in the Corrections Act or other law."

Section 4. 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. An inmate confined in the penitentiary of New

Mexico or other state correctional facility for committing a violent offense is eligible to earn meritorious deductions of up to four days per month upon recommendation of the classification committee and approval by the warden.

B. An inmate confined in the penitentiary of New Mexico or other state correctional facility for committing a nonviolent offense is eligible to earn meritorious deductions of up to thirty days per month upon recommendation of the classification committee and approval by the warden.

C. In order to earn meritorious deductions, an inmate shall actively participate in a program recommended and approved for him by the classification committee. The classification committee may recommend and approve only education programs, mental health programs, drug or alcohol treatment programs, drug or alcohol counseling programs or work programs.

D. An inmate whose record of conduct shows that he has performed exceptionally meritorious service and whose record of conduct shows that he has otherwise faithfully observed the rules of the institution may be eligible for a lump-sum meritorious deduction award, not to exceed one year per award and not to exceed a total of one year for all lump-sum meritorious deduction awards awarded in any consecutive twelve-month period, which may be deducted from the length of the sentence then remaining unserved. Exceptionally

meritorious service shall include heroic acts of saving life or property, but shall not include acts in performance of normal work duties or program assignments. 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 divisions of the corrections department. Allowance for exceptionally meritorious service shall be in addition to the meritorious deductions provided for in Subsections A and B of this section, and in the event two or more consecutive sentences are being served, the aggregate of the several sentences shall be the basis upon which the deduction shall be computed.

E. The meritorious deductions provided for in Subsections A and B of this section shall pertain to both the basic sentence to be served and any enhanced term of imprisonment pursuant to the provisions of the Criminal Sentencing Act. Meritorious deductions of up to ninety days per occurrence shall be permanently forfeited upon recommendation of the classification committee and approval of the warden if the inmate does not properly maintain the standard upon which the award was based. For those inmates, permanent forfeitures in excess of ninety days may be made upon approval of the director of the adult institutions

division of the corrections department. No inmate shall forfeit more than fifty percent of his meritorious deductions accrued during the previous twelve months; and after forfeiture of any portion of an inmate's accrued meritorious deductions, the remainder shall vest and shall not be subject to further forfeiture. Notwithstanding any other provisions of this section, an inmate may forfeit up to one hundred percent of all accrued meritorious deductions if he commits any of the following:

(1) an act of actual personal violence, as defined by the corrections department, against:

- (a) another inmate;
- (b) corrections department personnel;
- (c) an employee of a contractor

operating on behalf of the corrections department; or

(d) any other person lawfully on the premises of a corrections department facility or other facility where department inmates are housed;

(2) one positive drug test while incarcerated;

(3) escape; or

(4) any felonious act.

F. An inmate is not eligible to earn meritorious deductions if he:

- (1) disobeys an order to perform labor,



pursuant to Section 33-8-4 NMSA 1978;

(2) is in disciplinary segregation;

(3) is not actively participating in a program recommended and approved for him by the classification committee; or

(4) is within the first thirty days' receipt by the corrections department and his record from the county jail reflects that he has committed misconduct in the county jail that in the professional judgment of the corrections department should result in a delay of thirty days to begin earning meritorious deductions.

G. The provisions of this section shall not be interpreted as providing eligibility to earn meritorious deductions to an inmate during the initial thirty years of a sentence imposed pursuant to the provisions of:

(1) Subsection A of Section 30-2-1 NMSA 1978;

(2) Section 31-18-23 NMSA 1978; or

(3) Section 31-18-25 NMSA 1978.

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 every inmate, and every inmate shall receive a quarterly statement of the meritorious deductions he has earned.

I. A New Mexico inmate confined in a federal or out-of-state correctional facility is eligible to earn meritorious deductions in the same manner as an inmate imprisoned in a state-run correctional facility on the basis of his inmate conduct reports furnished by those facilities to the corrections department, subject to approval by the corrections department.

J. An inmate imprisoned in a correctional facility in New Mexico that is operated by a public entity or a private company, pursuant to a contract with the corrections department, is eligible to earn meritorious deductions in the same manner as an inmate imprisoned in a state-run correctional facility, subject to approval by the corrections department.

K. As used in this section:

(1) "nonviolent offense" means any felony offense other than a violent offense; and

(2) "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; and

(i) 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 violent offense for the purposes 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; and 12) third degree homicide by vehicle or great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978. "

Section 5. 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 an inmate may be forfeited by that inmate for any major conduct violation upon the 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 forfeiture of earned meritorious deductions for an inmate imprisoned in a:

(1) correctional facility in New Mexico operated by a public entity or a private company, pursuant to a contract with the corrections department; or

(2) federal or out-of-state correctional facility. "

Section 6. 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 an inmate who is exemplary in conduct and work performance for a period of not less than twelve 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 restoration of earned meritorious deductions for an inmate imprisoned in a:

(1) correctional facility in New Mexico operated by a public entity or a private company, pursuant to a contract with the corrections department; or

(2) federal or out-of-state correctional facility."

Section 7. 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 --An inmate shall not be discharged from the penitentiary of New Mexico or 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 inmate 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 an inmate of any reduction of time to which he may be entitled pursuant to the provisions of Section 33-2-34 NMSA 1978. "

Section 8. Section 33-8-2 NMSA 1978 (being Laws 1981, Chapter 127, Section 2, as amended) is amended to read:

"33-8-2. DEFINITIONS. --As used in the Corrections Industries Act:

A. "commission" means the secretary of corrections;

B. "department" means the corrections department;

C. "enterprise" means a manufacturing, agricultural or service operation or group of closely related operations within the bounds of a facility but does not include standard facility maintenance activities and services;

D. "facility" means any place under the jurisdiction of the department at which individuals are confined pursuant to court order;

E. "fund" means the corrections industries revolving fund;

F. "local public body" means all political subdivisions of the state and their agencies,

instrumentalities and institutions supported wholly or in part by funds derived from public taxation; and

G. "state agency" means the state or any of its branches, agencies, departments, boards, instrumentalities or institutions supported wholly or in part by funds derived from public taxation. "

Section 9. SHORT TITLE.--Sections 9 through 15 of this act may be cited as the "Corrections Population Control Act".

Section 10. FINDINGS--PURPOSE.--

A. The legislature finds that:

(1) for many years, the state of New Mexico has experienced difficulty in managing the size of its inmate population. Often, the number of beds has been insufficient to accommodate the inmate population committed or detained in correctional facilities;

(2) an overcrowded inmate population was a major cause of the disturbance that erupted at the penitentiary of New Mexico in 1980. Moreover, problems caused by overcrowding remain at the center of the ongoing federal litigation involving the corrections department;

(3) a permanent solution to the overcrowded inmate population must be established to ensure that the corrections department is able to effectively operate its facilities, to mitigate public safety concerns and to reduce the likelihood of future litigation;

(4) although the corrections department is responsible for the operation of correctional facilities, it cannot resolve the problem of overcrowding by itself. The department has no control over the admission of inmates into its facilities and has only limited control over the release of inmates from its facilities; and

(5) a permanent solution to the overcrowded inmate population requires participation, commitment and cooperation by the legislative, judicial and executive branches of government and all criminal justice agencies.

B. The purpose of the Corrections Population Control Act is to establish a corrections population control commission that shall operate as an autonomous, nonpartisan body. The commission shall develop and implement mechanisms to prevent the inmate population from exceeding the capacity of correctional facilities and shall take appropriate action when necessary to effect the reduction of the inmate population.

Section 11. DEFINITIONS.--As used in the Corrections Population Control Act:

A. "commission" means the corrections population control commission;

B. "female prison facility" means any female prison facility so designated by the corrections department;

C. "male prison facilities" means:



(1) the penitentiary of New Mexico, located in Santa Fe;

(2) the central New Mexico correctional facility, located in Los Lunas;

(3) the Los Lunas correctional facility, located in Los Lunas;

(4) the southern New Mexico correctional facility, located in Las Cruces;

(5) the western New Mexico correctional facility, located in Grants;

(6) the Roswell correctional facility, located in Hagerman; and

(7) any other male prison facilities so designated by the corrections department;

D. "nonviolent offender" means:

(1) a person not convicted of the following violent offenses:

(a) murder in the first degree or murder in the second degree pursuant to the provisions of Section 30-2-1 NMSA 1978;

(b) aggravated assault, pursuant to the provisions of Section 30-3-2 NMSA 1978;

(c) aggravated battery, pursuant to the provisions of Subsection C of Section 30-3-5 NMSA 1978;

(d) kidnapping, pursuant to the

provisions of Section 30-4-1 NMSA 1978;

(e) abuse of a child, pursuant to the provisions of Subsection C of Section 30-6-1 NMSA 1978;

(f) criminal sexual penetration, pursuant to the provisions of Section 30-9-11 NMSA 1978;

(g) robbery while armed with a deadly weapon, pursuant to the provisions of Section 30-16-2 NMSA 1978;

(h) use of a firearm during the commission of a noncapital felony, pursuant to the provisions of Section 31-18-16 NMSA 1978;

(i) intentional injury to a person sixty years of age or older or to a handicapped person during the commission of a noncapital felony, pursuant to the provisions of Section 31-18-16.1 NMSA 1978;

(j) commission of three violent felonies, pursuant to the provisions of Sections 31-18-23 and 31-18-24 NMSA 1978; or

(k) commission of two violent sex offenses, pursuant to the provisions of Sections 31-18-25 and 31-18-26 NMSA 1978;

(2) a person not convicted of a violent felony, as enumerated in Paragraph (1) of this subsection, from another state, federal jurisdiction or foreign country within the last ten years;

(3) a person not serving a sentence of life imprisonment or a single or combined sentence of more than twenty years involving physical injury, physical violence or great bodily harm or a substantial threat or risk of physical injury, physical violence or great bodily harm to another person, to be determined by the commission; or

(4) a person not classified as a maximum security inmate; and

E. "rated capacity" means the actual general population bed space, including only individual cells and areas designed for the long-term housing of inmates, available in the female prison facility or male prison facilities as certified by the secretary of corrections and subject to applicable state and federal law.

Section 12. COMMISSION--CREATION--MEMBERSHIP.--

A. There is created the "corrections population control commission".

B. The commission shall be appointed for two-year terms and shall be composed of:

(1) the secretary of corrections, who shall serve as chairman;

(2) a member appointed by the New Mexico supreme court;

(3) a member appointed by the speaker of the house of representatives;

(4) a member appointed by the president pro tempore of the senate;

(5) one member each appointed by the minority leader of the house of representatives and the senate, respectively; and

(6) one member appointed by the governor.

C. A majority of the members of the commission constitutes a quorum for the transaction of commission business.

D. The members of the commission shall be paid pursuant to the provisions of the Per Diem and Mileage Act and shall receive no other perquisite, compensation or allowance.

Section 13. COMMISSION--DUTIES--ANNUAL REPORT.--

A. The commission shall study, develop and recommend policies and mechanisms designed to manage the growth of the inmate population by:

(1) reviewing corrections department models to forecast projected growth in the inmate population;

(2) providing information concerning impacts on the inmate population caused by changes in sentencing policies and law enforcement policies;

(3) analyzing the need for future construction of additional correctional facilities;

(4) if necessary, preparing proposed

legislation to further implementation of its policy recommendations; and

(5) considering all of its recommendations in light of public safety concerns.

B. The provisions of Subsection A of Section 33-2-34 NMSA 1978 shall take effect upon certification by the commission that an adequate level of programming is offered by the corrections department to ensure that all inmates who want to earn meritorious deductions have an opportunity to do so. If the commission fails to certify an adequate level of programming, on a semiannual basis, for any reason, the provisions of Subsection B of Section 33-2-34 NMSA 1978 will apply to all inmates.

C. The commission shall submit an annual report of its activities and legislative proposals to the interim legislative committee with jurisdiction over corrections issues. The report shall be filed with the interim legislative committee no later than November 1 of each year.

D. The commission staff support shall be provided by the corrections department.

Section 14. ~~OVERCROWDING--POPULATION CONTROL~~  
~~MECHANISM - PROCEDURES. --~~

A. When the inmate population of the corrections department facilities, exclusive of the inmate population housed in facilities used to relieve interim overcrowding,

exceeds one hundred twelve percent of rated capacity on or before June 30, 1999 or one hundred percent of rated capacity after June 30, 1999, for a period of thirty consecutive days, the following measures shall be taken to reduce capacity:

(1) the corrections department shall engage in all lawful and professionally appropriate efforts to reduce the prison population to one hundred twelve percent or one hundred percent of rated capacity as applicable, including in-state and out-of-state inmate transfers;

(2) if prison population is still in excess of one hundred twelve percent or one hundred percent rated capacity as applicable after sixty consecutive days, the secretary of corrections shall notify the commission. Included in the notification shall be a list of nonviolent offenders who are within one hundred eighty days of their projected release date;

(3) the commission shall convene within ten days to consider the release of nonviolent offenders on the list provided by the corrections department. The commission shall also discuss with the corrections department the impact on population of possible changes in the classification system and expanding incarceration alternatives. Victims of those nonviolent offenders shall receive appropriate notification that the nonviolent offenders may be released before sentence completion. If requested, the commission

shall hear testimony or review the written statement of a victim or relative of a victim, as well as any public official who wishes to object to the release of a particular nonviolent offender. For nonviolent offenders as to whom an objection is made, the commission shall deliberate on the release of the nonviolent offender individually;

(4) for nonviolent offenders approved by the commission for release, the commission shall grant emergency release credits in ten-day increments that will be applied to the sentence or sentences being served by the nonviolent offenders. The commission shall order release of the appropriate number of nonviolent offenders to reduce the prison population to the applicable rated capacity; and

(5) notwithstanding any other provisions of this section, a nonviolent offender shall not be released:

(a) unless the nonviolent offender has a parole plan pursuant to applicable parole board regulations;

(b) if the information concerning the nonviolent offender is discovered to be materially inaccurate;

(c) if the nonviolent offender commits a crime while incarcerated or receives a disciplinary infraction;

(d) if the nonviolent offender fails a

drug screening test within ten days of the scheduled release;  
or

(e) if the effect of releasing nonviolent offenders will result in the loss of federal funds to any agency of the state.

B. If a bill is introduced during a legislative session that proposes to create a new criminal offense, proposes the imposition of mandatory sentencing or proposes an increase to an existing sentence, the corrections department shall provide the legislature with:

(1) a fiscal impact report for a period five years into the future; and

(2) a report regarding the increased number of prison beds that will be needed for a period five years into the future.

Section 15. TERMINATION OF AGENCY LIFE--TRANSFER OF FUNCTIONS.--The corrections population control commission is terminated on June 30, 2003. On July 1, 2003, the secretary of corrections shall assume the duties and responsibilities of the commission.

Section 16. TEMPORARY PROVISION.--

A. Effective immediately, the secretary of corrections shall implement those provisions of the Corrections Population Control Act that provide for the release of nonviolent offenders within one hundred eighty



days of projected release. This release authorization shall be implemented by the secretary of corrections without regard to the creation of the corrections population control commission provided for in the Corrections Population Control Act and without regard to the procedural time frames provided for in that act.

B. The provisions of this section shall remain in effect until July 1, 1998.

Section 17. REPEAL. --Section 33-8-14 NMSA 1978 (being Laws 1981, Chapter 127, Section 14) is repealed.

Section 18. APPLICABILITY. --The provisions of Sections 1 and 4 through 7 of this act apply to persons convicted of a criminal offense committed on or after July 1, 1998. As to persons convicted of a criminal offense committed prior to July 1, 1998, the laws with respect to meritorious deductions in effect at the time the offense was committed shall apply.

Section 19. EMERGENCY. --It is necessary for the public peace, health and safety that this act take effect immediately. \_\_\_\_\_