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HOUSE BILL 227

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

R. David Pederson

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO CORRECTIONS; REQUIRING INMATES TO EARN MERITORIOUS DEDUCTIONS FROM A TERM OF IMPRISONMENT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 33-2-34 NMSA 1978 (being Laws 1978, Chapter 40, Section 1, as amended) is repealed and a new Section 33-2-34 NMSA 1978 is enacted to read: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. [NEW MATERIAL] ELIGIBILITY FOR EARNED MERITORIOUS DEDUCTIONS. --

A. To earn meritorious deductions, a prisoner confined in the penitentiary of New Mexico or other state correctional facility must be an active participant in programs recommended for the prisoner by the classification committee and approved by the warden. Meritorious deductions

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1 shall be earned according to the number of hours per week that
2 a prisoner participates in approved programs, and are
3 calculated as follows:

4 (1) for a prisoner confined for committing a
5 serious violent offense, the number of hours per week he
6 participates in approved programs, divided by seven and one-
7 half and rounded to the nearest whole number equals the number
8 of earned meritorious deductions in days per month, up to a
9 maximum of four days per month of time served;

10 (2) for a prisoner confined for committing a
11 nonviolent offense, the number of hours per week he
12 participates in approved programs equals the number of earned
13 meritorious deductions in days per month, up to a maximum of
14 thirty days per month of time served;

15 (3) for a prisoner confined following
16 revocation of parole for the alleged commission of a new
17 felony offense or for absconding from parole, the number of
18 hours per week he participates in approved programs, divided
19 by seven and one-half and rounded to the nearest whole number
20 equals the number of earned meritorious deductions in days per
21 month during the parole time that remains to be served, up to
22 a maximum of four days per month of time served; and

23 (4) for a prisoner confined following
24 revocation of parole for a reason other than the alleged
25 commission of a new felony offense or absconding from parole,

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1 the number of hours per week he participates in approved
2 programs, divided by four and rounded to the nearest whole
3 number equals the number of earned meritorious deductions in
4 days per month during the parole time that remains to be
5 served, up to a maximum of eight days per month of time
6 served.

7 B. A prisoner earns meritorious deductions upon
8 recommendation by the classification committee, based upon the
9 prisoner's active participation in approved programs and
10 approval by the warden.

11 C. If a prisoner's active participation in
12 approved programs is interrupted by a lockdown at a
13 correctional facility, he shall continue to earn meritorious
14 deductions at the rate he was earning meritorious deductions
15 prior to the lockdown, until the prisoner resumes active
16 participation in programs following termination of the
17 lockdown.

18 D. A prisoner confined in the penitentiary of New
19 Mexico or other state correctional facility is eligible for
20 lump-sum meritorious deductions as follows:

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

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1 diploma, in which case the prisoner shall be awarded three
2 months;

3 (2) for earning a general education diploma,
4 three months;

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

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

9 (5) for earning a graduate qualification,
10 five months.

11 E. A prisoner is not eligible to earn meritorious
12 deductions if the prisoner:

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

15 (2) is in disciplinary segregation;

16 (3) is within the first sixty days of receipt
17 by the corrections department; or

18 (4) is not an active participant in programs
19 recommended and approved for him by the classification
20 committee.

21 F. The provisions of this section shall not be
22 interpreted as providing eligibility to earn meritorious
23 deductions to a prisoner during the initial thirty years of a
24 sentence imposed pursuant to the provisions of:

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

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

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

G. 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 each prisoner and each prisoner shall receive a quarterly statement of the meritorious deductions earned.

H. If a federal or out-of-state correctional facility does not have work or educational or mental health courses available for a prisoner, the prisoner shall earn meritorious deductions at the average rate earned by prisoners confined in the penitentiary of New Mexico or other state correctional facilities. The average rate of earned meritorious deductions shall be determined by the criminal and juvenile justice coordinating council pursuant to the provisions of Section 31-18-15 NMSA 1978.

I. A New Mexico prisoner confined in a federal or out-of-state correctional facility is eligible to earn meritorious deductions on the basis of the prisoner's conduct and program reports furnished by that facility to the corrections department, subject to final approval by the secretary of corrections.

J. A prisoner confined in a correctional facility in New Mexico that is operated by a private company, pursuant

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1 to a contract with the corrections department, is eligible to
2 earn meritorious deductions in the same manner as a prisoner
3 confined in state-run correctional facilities.

4 K. As used in this section:

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

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

12 (3) "nonviolent offense" means any felony
13 offense other than a serious violent offense; and

14 (4) "serious violent offense" means:

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

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

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

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

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

25 (f) third degree criminal sexual

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1 contact of a minor, as provided in Section 30-9-13 NMSA 1978;

2 (g) first and second degree robbery, as
3 provided in Section 30-16-2 NMSA 1978;

4 (h) second degree aggravated arson, as
5 provided in Section 30-17-6 NMSA 1978; and

6 (i) any of the following offenses, when
7 the nature of the offense and the resulting harm are such that
8 the court judges the crime to be a serious violent offense for
9 the purposes of this section: 1) involuntary manslaughter, as
10 provided in Section 30-2-3 NMSA 1978; 2) fourth degree
11 aggravated assault, as provided in Section 30-3-2 NMSA 1978;
12 3) third degree assault with intent to commit a violent
13 felony, as provided in Section 30-3-3 NMSA 1978; 4) third and
14 fourth degree aggravated stalking, as provided in Section
15 30-3A-3.1 NMSA 1978; 5) second degree kidnapping, as provided
16 in Section 30-4-1 NMSA 1978; 6) second degree abandonment of a
17 child, as provided in Section 30-6-1 NMSA 1978; 7) first,
18 second and third degree abuse of a child, as provided in
19 Section 30-6-1 NMSA 1978; 8) third degree dangerous use of
20 explosives, as provided in Section 30-7-5 NMSA 1978; 9) third
21 and fourth degree criminal sexual penetration, as provided in
22 Section 30-9-11 NMSA 1978; 10) fourth degree criminal sexual
23 contact of a minor, as provided in Section 30-9-13 NMSA 1978;
24 11) third degree robbery, as provided in Section 30-16-2 NMSA
25 1978; and 12) third degree homicide by vehicle or great bodily

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1 injury by vehicle, as provided in Section 66-8-101 NMSA 1978. "

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

4 "33-2-36. FORFEITURE OF EARNED MERITORIOUS DEDUCTIONS. --
5 [~~Any accrued deductions may be forfeited by the convict for~~
6 ~~any major conduct violation upon the recommendation of the~~
7 ~~classification committee, approval by the warden and final~~
8 ~~approval by the secretary of corrections.]~~

9 A. Meritorious deductions earned by a prisoner may
10 be forfeited for a major conduct violation upon the
11 recommendation of the classification committee, approval by
12 the warden and final approval by the secretary of corrections.

13 B. The provisions of this section also apply to
14 the forfeiture of earned meritorious deductions for a prisoner
15 confined in a:

16 (1) federal or out-of-state correctional
17 facility; or

18 (2) correctional facility in New Mexico
19 operated by a private company pursuant to a contract with the
20 corrections department. "

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

23 "33-2-37. RESTORATION OF FORFEITED MERITORIOUS
24 DEDUCTIONS. --

25 A. Meritorious deductions forfeited under Section

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1 33-2-36 NMSA 1978 may be restored in whole or in part to [any]
2 a prisoner who is exemplary in conduct and work performance
3 for a period of not less than six months following the date of
4 forfeiture. Meritorious deductions may be restored upon
5 recommendation of the classification committee, approval by
6 the warden and final approval by the secretary of corrections.

7 B. The provisions of this section also apply to
8 the restoration of earned meritorious deductions for a
9 prisoner confined in a:

10 (1) federal or out-of-state correctional
11 facility; or

12 (2) correctional facility in New Mexico
13 operated by a private company pursuant to a contract with the
14 corrections department. "

15 Section 4. Section 33-2-38 NMSA 1978 (being Laws 1889,
16 Chapter 76, Section 13, as amended) is amended to read:

17 "33-2-38. COMPUTATION OF TERM. -- [Sec. 54. No convict] A
18 prisoner shall not be discharged from the penitentiary of New
19 Mexico or any other correctional facility until he has
20 [remained] served the full term for which he was sentenced.
21 [to be] The term shall be computed from and [including]
22 include the day on which his sentence took effect and
23 [excluding] shall exclude any time the convict may have been
24 at large by reason of escape [therefrom], unless he [may be]
25 is pardoned or otherwise released by legal authority.

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1 ~~[Provided that nothing in]~~ The provisions of this section
2 shall ~~[be so construed as]~~ not be interpreted to deprive ~~[any~~
3 ~~convict]~~ a prisoner of any reduction of time to which he may
4 be entitled ~~[to under § 5070]~~ pursuant to the provisions of
5 Sections 31-20-11, 31-20-12 and 33-2-34 NMSA 1978. "

6 Section 5. Section 31-18-15 NMSA 1978 (being Laws 1977,
7 Chapter 216, Section 4, as amended) is amended to read:

8 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
9 BASIC SENTENCES AND FINES--PAROLE AUTHORITY-- MERITORIOUS
10 DEDUCTIONS. --

11 A. If a person is convicted of a noncapital
12 felony, the basic sentence of imprisonment is as follows:

13 (1) for a first degree felony, eighteen years
14 imprisonment;

15 (2) for a second degree felony resulting in
16 the death of a human being, fifteen years imprisonment;

17 (3) for a second degree felony, nine years
18 imprisonment;

19 (4) for a third degree felony resulting in
20 the death of a human being, six years imprisonment;

21 (5) for a third degree felony, three years
22 imprisonment; or

23 (6) for a fourth degree felony, eighteen
24 months imprisonment.

25 B. The appropriate basic sentence of imprisonment

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1 shall be imposed upon a person convicted of a first, second,
2 third or fourth degree felony or a second or third degree
3 felony resulting in the death of a human being, unless the
4 court alters such sentence pursuant to the provisions of
5 Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA
6 1978.

7 C. The court shall include in the judgment and
8 sentence of each person convicted of a first, second, third or
9 fourth degree felony or a second or third degree felony
10 resulting in the death of a human being and sentenced to
11 imprisonment in a corrections facility designated by the
12 corrections department authority for a period of parole to be
13 served in accordance with the provisions of Section 31-21-10
14 NMSA 1978 after the completion of any actual time of
15 imprisonment and authority to require, as a condition of
16 parole, the payment of the costs of parole services and
17 reimbursement to a law enforcement agency or local crime
18 stopper program in accordance with the provisions of that
19 section. The period of parole shall be deemed to be part of
20 the sentence of the convicted person in addition to the basic
21 sentence imposed pursuant to Subsection A of this section
22 together with alterations, if any, pursuant to the provisions
23 of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA
24 1978.

25 D. When a court imposes a sentence of imprisonment

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1 pursuant to the provisions of Section 31-18-15.1, 31-18-16,
2 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the
3 basic sentence of imprisonment provided pursuant to the
4 provisions of Subsection A of this section, the period of
5 parole shall be served in accordance with the provisions of
6 Section 31-21-10 NMSA 1978 for the degree of felony for the
7 basic sentence for which the inmate was convicted. For the
8 purpose of designating a period of parole, a court shall not
9 consider that the basic sentence of imprisonment was suspended
10 or deferred and that the inmate served a period of
11 imprisonment pursuant to the provisions of Section 31-18-15.1,
12 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

13 E. The court may, in addition to the imposition of
14 a basic sentence of imprisonment, impose a fine not to exceed:

15 (1) for a first degree felony, fifteen
16 thousand dollars (\$15,000);

17 (2) for a second degree felony resulting in
18 the death of a human being, twelve thousand five hundred
19 dollars (\$12,500);

20 (3) for a second degree felony, ten thousand
21 dollars (\$10,000);

22 (4) for a third degree felony resulting in
23 the death of a human being, five thousand dollars (\$5,000); or

24 (5) for a third or fourth degree felony, five
25 thousand dollars (\$5,000).

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1 F. When the court imposes a sentence of
2 imprisonment for a felony offense, the court shall indicate
3 whether or not the offense is a serious violent offense, as
4 defined in Section 33-2-34 NMSA 1978. The court shall inform
5 an offender that the offender's sentence of imprisonment is
6 subject to the provisions of Sections 33-2-34, 33-2-36,
7 33-2-37 and 33-2-38 NMSA 1978. If the court fails to inform
8 an offender that the offender's sentence is subject to those
9 provisions or if the court provides the offender with
10 erroneous information regarding those provisions, the failure
11 to inform or the error shall not provide a basis for a writ of
12 habeas corpus.

13 G. No later than October 31 of each year, the
14 criminal and juvenile justice coordinating council shall
15 provide a written report to the secretary of corrections, all
16 New Mexico criminal court judges, the administrative office of
17 the district attorneys and the chief public defender. The
18 report shall specify the average reduction in the sentence of
19 imprisonment for serious violent offenses and nonviolent
20 offenses, as defined in Section 33-2-34 NMSA 1978, due to
21 meritorious deductions earned by prisoners during the previous
22 fiscal year pursuant to the provisions of Sections 33-2-34,
23 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. The corrections
24 department shall allow the coordinating council access to
25 documents used by the department to determine earned

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1 meritorious deductions for prisoners. "

2 Section 6. REPEAL. -- Section 33-8-14 NMSA 1978 (being
3 Laws 1981, Chapter 127, Section 14) is repealed.

4 Section 7. APPLICABILITY. -- The provisions of Sections 1
5 through 6 of this act apply to persons convicted of a criminal
6 offense committed on or after July 1, 1999. As to persons
7 convicted of a criminal offense committed prior to July 1,
8 1999, the laws with respect to the vesting of meritorious
9 deductions in effect at the time the offense was committed
10 shall apply.

11 Section 8. EFFECTIVE DATE. -- The effective date of the
12 provisions of this act is July 1, 1999.

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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4
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6 February 17, 1999

7
8 Mr. Speaker:

9
10 Your JUDICIARY COMMITTEE, to whom has been referred

11
12 HOUSE BILL 227

13
14 has had it under consideration and reports same with
15 recommendation that it DO NOT PASS, but that

16
17 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
18 HOUSE BILL 227

19 DO PASS, and thence referred to APPROPRIATIONS AND
20 FINANCE COMMITTEE.

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJ/HB 227

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Respectfully submitted,

R. David Pederson, Chairman

Adopted _____

(Chief Clerk)

Not Adopted _____

(Chief Clerk)

Date _____

The roll call vote was 11 For 0 Against

Yes: 11

Excused: Luna

Absent: None

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 227

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

AN ACT

RELATING TO CORRECTIONS; REQUIRING INMATES TO EARN MERITORIOUS
DEDUCTIONS FROM A TERM OF IMPRISONMENT; AMENDING, REPEALING
AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. 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. [NEW MATERIAL] 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
committee and approved by the warden. 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

1 month of time served;

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

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

10 (4) for a prisoner confined following
11 revocation of parole for a reason other than the alleged
12 commission of a new felony offense or absconding from parole,
13 up to a maximum of eight days per month of time served during
14 the parole term following revocation.

15 B. A prisoner may earn meritorious deductions upon
16 recommendation by the classification committee, based upon the
17 prisoner's active participation in approved programs and the
18 quality of the prisoner's participation in those approved
19 programs. A prisoner may not earn meritorious deductions
20 unless the recommendation of the classification committee is
21 approved by the warden.

22 C. If a prisoner's active participation in
23 approved programs is interrupted by a lockdown at a
24 correctional facility, he may continue to be awarded
25 meritorious deductions at the rate he was earning meritorious
deductions prior to the lockdown, unless the warden determines
that the prisoner's conduct contributed to the initiation or
continuance of the lockdown.

1 D. A prisoner confined in a correctional facility
 2 designated by the corrections department whose record of conduct
 3 shows that he has otherwise faithfully observed the rules of the
 4 facility may be eligible for lump-sum meritorious deductions, but
 5 only for engaging in a heroic act of saving life or property,
 6 engaging in extraordinary conduct for the benefit of the state or
 7 the public that is at great expense, risk or effort on behalf of
 8 the inmate, or engaging in extraordinary conduct far in excess of
 9 normal program assignments that demonstrates the prisoner's
 10 commitment to rehabilitate himself. Lump-sum meritorious
 11 deductions may be awarded in addition to the meritorious
 12 deductions provided in Subsections A and B of this section.
 13 Lump-sum meritorious deductions shall not exceed one year per
 14 award and shall not exceed a total of one year for all lump-sum
 15 meritorious deductions awarded in any consecutive twelve-month
 16 period. The classification committee and the warden may
 17 recommend the number of days to be awarded in each case based
 18 upon the particular merits, but any award shall be determined by
 19 the director of the adult institutions division of the
 20 corrections department.

21 E. A prisoner is not eligible to earn meritorious
 22 deductions if the prisoner:

- 23 (1) disobeys an order to perform labor,
 24 pursuant to Section 33-8-4 NMSA 1978;
- 25 (2) is in disciplinary segregation;
- (3) is within the first sixty days of receipt
 by the corrections department; or
- (4) is not an active participant in programs

1 recommended and approved for him by the classification committee.

2 F. The provisions of this section shall not be
3 interpreted as providing eligibility to earn meritorious
4 deductions from a sentence of life imprisonment or a sentence of
5 death.

6 G. The corrections department shall promulgate rules
7 to implement the provisions of this section, and the rules shall
8 be matters of public record. A concise summary of the rules
9 shall be provided to each prisoner, and each prisoner shall
10 receive a quarterly statement of the meritorious deductions
11 earned.

12 H. A New Mexico prisoner confined in a federal or
13 out-of-state correctional facility is eligible to earn
14 meritorious deductions for active participation in programs on
15 the basis of the prisoner's conduct and program reports furnished
16 by that facility to the corrections department. All decisions
17 regarding the award and forfeiture of meritorious deductions at
18 such facility are subject to final approval by the director of
19 the adult institutions division of the corrections department or
20 his designee.

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

1 in programs.

2 J. A prisoner confined in a correctional facility in
3 New Mexico that is operated by a private company, pursuant to a
4 contract with the corrections department, is eligible to earn
5 meritorious deductions in the same manner as a prisoner confined
6 in state-run correctional facilities. All decisions regarding
7 the award or forfeiture of meritorious deductions at such
8 facilities are subject to final approval by the director of the
9 adult institutions division of the corrections department or his
designee.

10 K. As used in this section:

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

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

18 (3) "nonviolent offense" means any offense
19 other than a serious violent offense; and

20 (4) "serious violent offense" means:

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

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

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

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1 (d) first degree kidnapping, as provided
2 in Section 30-4-1 NMSA 1978;

3 (e) first and second degree criminal
4 sexual penetration, as provided in Section 30-9-11 NMSA 1978;

5 (f) third degree criminal sexual contact
6 of a minor, as provided in Section 30-9-13 NMSA 1978;

7 (g) first and second degree robbery, as
8 provided in Section 30-16-2 NMSA 1978;

9 (h) second degree aggravated arson, as
10 provided in Section 30-17-6 NMSA 1978;

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

13 (j) shooting at or from a motor vehicle,
14 as provided in Section 30-3-8 NMSA 1978;

15 (k) aggravated battery upon a peace
16 officer, as provided in Section 30-22-25 NMSA 1978;

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

20 (m) aggravated assault upon a peace
21 officer, as provided in Section 30-22-22 NMSA 1978; and

22 (n) any of the following offenses, when
23 the nature of the offense and the resulting harm are such that
24 the court judges the crime to be a serious violent offense for
25 the purpose 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

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

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

18 "33-2-36. FORFEITURE OF EARNED MERITORIOUS DEDUCTIONS. --
 19 [~~Any accrued deductions may be forfeited by the convict for any
 20 major conduct violation upon the recommendation of the
 21 classification committee, approval by the warden and final
 22 approval by the secretary of corrections.~~]

23 A. Meritorious deductions earned by a prisoner may be
 24 forfeited in an amount up to ninety days for misconduct upon the
 25 recommendation of the classification committee and final approval
by the warden. Meritorious deductions earned by a prisoner may
be forfeited in an amount in excess of ninety days for major
misconduct upon the recommendation of the classification

1 committee and the warden and final approval of the director of
2 the adult institutions division of the corrections department.
3 The secretary of corrections may review and revise any decision
4 regarding the forfeiture of meritorious deductions.

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

8 (1) federal or out-of-state correctional
9 facility; or

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

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

15 "33-2-37. RESTORATION OF FORFEITED MERITORIOUS
16 DEDUCTIONS. --

17 A. Meritorious deductions forfeited under Section
18 33-2-36 NMSA 1978 may be restored in whole or in part to [~~any~~] a
19 prisoner who is exemplary in conduct and work performance for a
20 period of not less than six months following the date of
21 forfeiture. Meritorious deductions may be restored upon
22 recommendation of the classification committee, approval by the
23 warden and final approval by the secretary of corrections.

24 B. The provisions of this section also apply to the
25 restoration of earned meritorious deductions for a prisoner
26 confined in a:

27 (1) federal or out-of-state correctional
28 facility; or

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

4 Section 4. Section 33-2-38 NMSA 1978 (being Laws 1889,
5 Chapter 76, Section 13, as amended) is amended to read:

6 "33-2-38. COMPUTATION OF TERM. -- [~~Sec. 54. No convict~~] A
7 prisoner shall not be discharged from the penitentiary of New
8 Mexico or any other correctional facility until he has [~~remained~~]
9 served the full term for which he was sentenced. [~~to be~~] The term
10 shall be computed from and [~~including~~] include the day on which
11 his sentence took effect and [~~excluding~~] shall exclude any time
12 the convict may have been at large by reason of escape
13 [~~therefrom~~], unless he [~~may be~~] is pardoned or otherwise released
14 by legal authority. [~~Provided that nothing in~~] The provisions of
15 this section shall [~~be so construed as~~] not be interpreted to
16 deprive [~~any convict~~] a prisoner of any reduction of time to
17 which he may be entitled [~~to under § 5070~~] pursuant to the
18 provisions of Sections 31-20-11, 31-20-12 and 33-2-34 NMSA 1978. "

19 Section 5. Section 31-18-15 NMSA 1978 (being Laws 1977,
20 Chapter 216, Section 4, as amended) is amended to read:

21 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
22 BASIC SENTENCES AND FINES--PAROLE AUTHORITY-- MERITORIOUS
23 DEDUCTIONS. --

24 A. If a person is convicted of a noncapital felony,
25 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

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1 death of a human being, fifteen years imprisonment;

2 (3) for a second degree felony, nine years
3 imprisonment;

4 (4) for a third degree felony resulting in the
5 death of a human being, six years imprisonment;

6 (5) for a third degree felony, three years
7 imprisonment; or

8 (6) for a fourth degree felony, eighteen months
9 imprisonment.

10 B. The appropriate basic sentence of imprisonment
11 shall be imposed upon a person convicted of a first, second,
12 third or fourth degree felony or a second or third degree felony
13 resulting in the death of a human being, unless the court alters
14 such sentence pursuant to the provisions of Section 31-18-15.1,
15 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

16 C. The court shall include in the judgment and
17 sentence of each person convicted of a first, second, third or
18 fourth degree felony or a second or third degree felony resulting
19 in the death of a human being and sentenced to imprisonment in a
20 corrections facility designated by the corrections department
21 authority for a period of parole to be served in accordance with
22 the provisions of Section 31-21-10 NMSA 1978 after the completion
23 of any actual time of imprisonment and authority to require, as a
24 condition of parole, the payment of the costs of parole services
25 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

1 sentence imposed pursuant to Subsection A of this section
 2 together with alterations, if any, pursuant to the provisions of
 3 Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

4 D. When a court imposes a sentence of imprisonment
 5 pursuant to the provisions of Section 31-18-15.1, 31-18-16,
 6 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the basic
 7 sentence of imprisonment provided pursuant to the provisions of
 8 Subsection A of this section, the period of parole shall be
 9 served in accordance with the provisions of Section 31-21-10 NMSA
 10 1978 for the degree of felony for the basic sentence for which
 11 the inmate was convicted. For the purpose of designating a
 12 period of parole, a court shall not consider that the basic
 13 sentence of imprisonment was suspended or deferred and that the
 14 inmate served a period of imprisonment pursuant to the provisions
 15 of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA
 16 1978.

17 E. The court may, in addition to the imposition of a
 18 basic sentence of imprisonment, impose a fine not to exceed:

19 (1) for a first degree felony, fifteen thousand
 20 dollars (\$15,000);

21 (2) for a second degree felony resulting in the
 22 death of a human being, twelve thousand five hundred dollars
 23 (\$12,500);

24 (3) for a second degree felony, ten thousand
 25 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

1 thousand dollars (\$5,000).

2 F. When the court imposes a sentence of imprisonment
3 for a felony offense, the court shall indicate whether or not the
4 offense is a serious violent offense, as defined in Section
5 33-2-34 NMSA 1978. The court shall inform an offender that the
6 offender's sentence of imprisonment is subject to the provisions
7 of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. If
8 the court fails to inform an offender that the offender's
9 sentence is subject to those provisions or if the court provides
10 the offender with erroneous information regarding those
11 provisions, the failure to inform or the error shall not provide
12 a basis for a writ of habeas corpus.

13 G. No later than October 31 of each year, the
14 criminal and juvenile justice coordinating council shall provide
15 a written report to the secretary of corrections, all New Mexico
16 criminal court judges, the administrative office of the district
17 attorneys and the chief public defender. The report shall
18 specify the average reduction in the sentence of imprisonment for
19 serious violent offenses and nonviolent offenses, as defined in
20 Section 33-2-34 NMSA 1978, due to meritorious deductions earned
21 by prisoners during the previous fiscal year pursuant to the
22 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA
23 1978. The corrections department shall allow the coordinating
24 council access to documents used by the department to determine
25 earned meritorious deductions for prisoners. "

23 Section 6. Section 31-26-4 NMSA 1978 (being Laws 1994,
24 Chapter 144, Section 4) is amended to read:

"31-26-4. VICTIM S RIGHTS. --A victim shall have the right

1 to:

2 A. be treated with fairness and respect for the
3 victim's dignity and privacy throughout the criminal justice
4 process;

5 B. timely disposition of the case;

6 C. be reasonably protected from the accused
7 throughout the criminal justice process;

8 D. notification of court proceedings;

9 E. attend all public court proceedings the accused
10 has the right to attend;

11 F. confer with the prosecution;

12 G. make a statement to the court at sentencing and at
13 any post-sentencing hearings for the accused;

14 H. restitution from the person convicted of the
15 criminal offense that caused the victim's loss or injury;

16 I. information about the conviction, sentencing,
17 imprisonment, escape or release of the accused;

18 J. have the prosecuting attorney notify the victim's
19 employer, if requested by the victim, of the necessity of the
20 victim's cooperation and testimony in a court proceeding that may
21 necessitate the absence of the victim from work for good cause;

22 [and]

23 K. promptly receive any property belonging to the
24 victim that is being held for evidentiary purposes by a law
25 enforcement agency or the prosecuting attorney, unless there are
26 compelling evidentiary reasons for retention of the victim's
27 property; and

28 L. be informed by the court at a sentencing

1 proceeding that the offender is eligible to earn meritorious
2 deductions from the offender's sentence and the amount of
3 meritorious deductions that may be earned by the offender. "

4 Section 7. REPEAL. --Section 33-8-14 NMSA 1978 (being Laws
5 1981, Chapter 127, Section 14) is repealed.

6 Section 8. APPLICABILITY. --The provisions of Sections 1
7 through 5 and Section 7 of this act apply to persons convicted of
8 a criminal offense committed on or after July 1, 1999. As to
9 persons convicted of a criminal offense committed prior to July
10 1, 1999, the laws with respect to meritorious deductions in
11 effect at the time the offense was committed shall apply.

12 Section 9. EFFECTIVE DATE. --The effective date of the
13 provisions of this act is July 1, 1999.

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999
3

4 February 24, 1999
5

6
7 Mr. Speaker:
8

9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to whom
10 has been referred

11 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
12 HOUSE BILL 227
13

14 has had it under consideration and reports same with
15 recommendation that it DO PASS.
16

17 Respectfully submitted,
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21 _____
22 Max Coll, Chairman
23
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25

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJC/HB 227

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Abeyta, Buffett, Larrañaga, Parsons, Saavedra, Salazar,
Watchman

Absent: None

J: \99BillSWP\H0227

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

March 1, 1999

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 227

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
FINANCE COMMITTEE.

Respectfully submitted,

Michael S. Sanchez, Chairman

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJC/HB 227

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Aragon, Payne

Absent: None

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FORTY- FOURTH LEGI SLATURE
FIRST SESSION, 1999

HB 227/a

March 14, 1999

Mr. President:

Your FINANCE COMMI TTEE, to whom has been referred

HOUSE JUDI CIARY COMMI TTEE SUBSTITUTE FOR
HOUSE BILL 227

has had it under consideration and reports same with
recommmendation that it DO PASS, amended as follows:

1. On page 3, line 8, after "department", strike the
remainder of the line, strike all of lines 9 and 10, on line 11,
strike "only" and insert in lieu thereof:

"is eligible for lump-sum meritorious deductions as follows:

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

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FORTY-FOURTH LEGISLATURE
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- (2) for earning a general education diploma, three months;
- (3) for earning an associate's degree, four months;
- (4) for earning a bachelor's degree, five months;
- (5) for earning a graduate qualification, five months; and
- (6)".

2. On page 3, line 16, after the period insert:

"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 division of the corrections department. "

3. On page 3, line 16, before "Lump-sum" insert the subsection designation "E. "

4. Reletter the succeeding subsections accordingly.

5. On page 3, line 17, after "deductions" insert ", provided

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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in Paragraphs (1) through (6) of Subsection D of this section,".

6. On page 3, line 22, after the period strike the remainder of the line, strike lines 23 through 25 and on page 4, strike line 1.

7. On page 8, line 17, strike "misconduct" and insert in lieu thereof:

"two or more misconduct violations. Meritorious deductions earned by a prisoner may be forfeited in an amount in excess of ninety days for a major conduct violation. Forfeitures of meritorious deductions of up to ninety days shall only proceed".

8. On page 8, lines 19 and 20, strike "Meritorious deductions earned by a prisoner may be forfeited" and insert in lieu thereof "Forfeitures of meritorious deductions".

9. On page 8, lines 20 and 21, strike "for major misconduct" and insert in lieu thereof "shall only proceed".

Respectfully submitted,

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underscored material = new
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HJC/HB 227

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FIRST SESSION, 1999

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Ben D. Altamirano, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Carraro, Eisenstadt, Ingle, Lyons, McKibben, Tsosie

Absent: None

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