

HOUSE BILL 247

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Zachary J. Cook

AN ACT

RELATING TO CORRECTIONS; PROVIDING THAT FIRST DEGREE MURDER AND THE CRIME OF ABUSE OF A CHILD THAT RESULTS IN DEATH OR GREAT BODILY HARM ARE SERIOUS VIOLENT OFFENSES FOR THE PURPOSE OF CALCULATING EARNED MERITORIOUS DEDUCTIONS IN PRISON.

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

SECTION 1. Section 33-2-34 NMSA 1978 (being Laws 1999, Chapter 238, Section 1, as amended) is amended to read:

"33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS DEDUCTIONS.--

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

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1 Meritorious deductions shall not exceed the following amounts:

2 (1) for a prisoner confined for committing a
3 serious violent offense, up to a maximum of four days per month
4 of time served;

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

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

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

16 (a) up to a maximum of eight days per
17 month of time served during the parole term following
18 revocation, if the prisoner was convicted of a serious violent
19 offense or failed to pass a drug test administered as a
20 condition of parole; or

21 (b) up to a maximum of thirty days per
22 month of time served during the parole term following
23 revocation, if the prisoner was convicted of a nonviolent
24 offense.

25 B. A prisoner may earn meritorious deductions upon

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1 recommendation by the classification supervisor, based upon the
2 prisoner's active participation in approved programs and the
3 quality of the prisoner's participation in those approved
4 programs. A prisoner may not earn meritorious deductions
5 unless the recommendation of the classification supervisor is
6 approved by the warden or the warden's designee.

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

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

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

23 (2) for earning a general education diploma,
24 three months;

25 (3) for earning an associate's degree, four

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1 months;

2 (4) for earning a bachelor's degree, five
3 months;

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

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

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

25 F. A prisoner is not eligible to earn meritorious

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1 deductions if the prisoner:

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

4 (2) is in disciplinary segregation;

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

8 (4) is not an active participant in programs
9 recommended and approved for the prisoner by the classification
10 supervisor.

11 G. The provisions of this section shall not be
12 interpreted as providing eligibility to earn meritorious
13 deductions from a sentence of life imprisonment or a sentence
14 of [~~death~~] life imprisonment without possibility of release or
15 parole.

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

22 I. A New Mexico prisoner confined in a federal or
23 out-of-state correctional facility is eligible to earn
24 meritorious deductions for active participation in programs on
25 the basis of the prisoner's conduct and program reports

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1 furnished by that facility to the corrections department. All
2 decisions regarding the award and forfeiture of meritorious
3 deductions at such facility are subject to final approval by
4 the director of the adult institutions division of the
5 corrections department or the director's designee.

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

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

24 L. As used in this section:

25 (1) "active participant" means a prisoner who

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1 has begun, and is regularly engaged in, approved programs;

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

8 (3) "nonviolent offense" means any offense
9 other than a serious violent offense; and

10 (4) "serious violent offense" means:

11 (a) first and second degree murder, as
12 provided in Section 30-2-1 NMSA 1978;

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

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

17 (d) third degree aggravated battery
18 against a household member, as provided in Section 30-3-16 NMSA
19 1978;

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

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

24 (g) second and third degree criminal
25 sexual contact of a minor, as provided in Section 30-9-13 NMSA

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1 1978;

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

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

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

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

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

12 (m) assault with intent to commit a
13 violent felony upon a peace officer, as provided in Section
14 30-22-23 NMSA 1978;

15 (n) aggravated assault upon a peace
16 officer, as provided in Section 30-22-22 NMSA 1978; [~~and~~]

17 (o) abuse of a child, as provided in
18 Section 30-6-1 NMSA 1978, that results in death or great bodily
19 harm; or

20 [~~(o)~~] (p) any of the following offenses,
21 when the nature of the offense and the resulting harm are such
22 that the court judges the crime to be a serious violent offense
23 for the purpose of this section: 1) involuntary manslaughter,
24 as provided in Section 30-2-3 NMSA 1978; 2) fourth degree
25 aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3)

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1 third degree assault with intent to commit a violent felony, as
2 provided in Section 30-3-3 NMSA 1978; 4) fourth degree
3 aggravated assault against a household member, as provided in
4 Section 30-3-13 NMSA 1978; 5) third degree assault against a
5 household member with intent to commit a violent felony, as
6 provided in Section 30-3-14 NMSA 1978; 6) third and fourth
7 degree aggravated stalking, as provided in Section 30-3A-3.1
8 NMSA 1978; 7) second degree kidnapping, as provided in Section
9 30-4-1 NMSA 1978; 8) second degree abandonment of a child, as
10 provided in Section 30-6-1 NMSA 1978; 9) first, second and
11 third degree abuse of a child, as provided in Section 30-6-1
12 NMSA 1978, that does not result in death or great bodily harm;
13 10) third degree dangerous use of explosives, as provided in
14 Section 30-7-5 NMSA 1978; 11) third and fourth degree criminal
15 sexual penetration, as provided in Section 30-9-11 NMSA 1978;
16 12) fourth degree criminal sexual contact of a minor, as
17 provided in Section 30-9-13 NMSA 1978; 13) third degree
18 robbery, as provided in Section 30-16-2 NMSA 1978; 14) third
19 degree homicide by vehicle or great bodily ~~[injury]~~ harm by
20 vehicle, as provided in Section 66-8-101 NMSA 1978; ~~[and]~~ or
21 15) battery upon a peace officer, as provided in Section
22 30-22-24 NMSA 1978.

23 M. Except for sex offenders, as provided in Section
24 31-21-10.1 NMSA 1978, an offender sentenced to confinement in a
25 correctional facility designated by the corrections department

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1 who has been released from confinement and who is serving a
2 parole term may be awarded earned meritorious deductions of up
3 to thirty days per month upon recommendation of the parole
4 officer supervising the offender, with the final approval of
5 the adult parole board. The offender must be in compliance
6 with all the conditions of the offender's parole to be eligible
7 for earned meritorious deductions. The adult parole board may
8 remove earned meritorious deductions previously awarded if the
9 offender later fails to comply with the conditions of the
10 offender's parole. The corrections department and the adult
11 parole board shall promulgate rules to implement the provisions
12 of this subsection. This subsection applies to offenders who
13 are serving a parole term on or after July 1, 2004."

14 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
15 provisions of this act is July 1, 2012.