

HOUSE REGULATORY AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 305

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

AN ACT

RELATING TO CORRECTIONS; PROVIDING THAT THE CRIMES OF FIRST  
DEGREE MURDER, WHEN THE OFFENDER IS A SERIOUS YOUTHFUL  
OFFENDER, CHILD ABUSE THAT RESULTS IN GREAT BODILY HARM,  
HOMICIDE OR GREAT BODILY HARM BY VEHICLE WHILE UNDER THE  
INFLUENCE OF INTOXICATING LIQUOR OR DRUGS AND INJURY TO  
PREGNANT WOMAN BY VEHICLE ARE SERIOUS VIOLENT OFFENSES FOR THE  
PURPOSE OF CALCULATING EARNED MERITORIOUS DEDUCTIONS IN PRISON;  
PROVIDING RESTRICTIONS ON ELIGIBILITY TO EARN MERITORIOUS  
DEDUCTIONS.

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

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

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

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

6 Meritorious deductions shall not exceed the following amounts:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (2) is in disciplinary segregation;

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

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

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

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

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

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

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

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

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

7 L. As used in this section:

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

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

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

18 (4) "serious violent offense" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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