

1 AN ACT
2 RELATING TO PROBATION; REMOVING THE PAYMENT OF THE COST OF
3 PAROLE SERVICES; ALLOWING A MINIMUM RISK DEFENDANT TO BE
4 RELEASED FROM PROBATION IN CERTAIN CIRCUMSTANCES; CLARIFYING
5 PROJECTED RELEASE DATES FOR MERITORIOUS DEDUCTIONS UPON
6 ADMISSION TO A CORRECTIONAL FACILITY.

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9 SECTION 1. Section 31-18-15 NMSA 1978 (being Laws 1977,
10 Chapter 216, Section 4, as amended) is amended to read:

11 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
12 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
13 DEDUCTIONS.--

14 A. As used in a statute that establishes a
15 noncapital felony, the following defined felony
16 classifications and associated basic sentences of
17 imprisonment are as follows:

18 FELONY CLASSIFICATION	BASIC SENTENCE
19 first degree felony	
20 resulting in the death	
21 of a child	life imprisonment
22 first degree felony for	
23 aggravated criminal sexual	
24 penetration	life imprisonment
25 first degree felony	eighteen years imprisonment

1 second degree felony
2 resulting in the death of
3 a human being eighteen years imprisonment
4 second degree felony for a
5 sexual offense against a
6 child fifteen years imprisonment
7 second degree felony for
8 sexual exploitation of
9 children twelve years imprisonment
10 second degree felony nine years imprisonment
11 third degree felony resulting
12 in the death of a human being six years imprisonment
13 third degree felony for a
14 sexual offense against a
15 child six years imprisonment
16 third degree felony for sexual
17 exploitation of children eleven years imprisonment
18 third degree felony three years imprisonment
19 fourth degree felony for
20 sexual exploitation of
21 children ten years imprisonment
22 fourth degree felony eighteen months imprisonment.

23 B. The appropriate basic sentence of imprisonment
24 shall be imposed upon a person convicted and sentenced
25 pursuant to Subsection A of this section, unless the court

1 alters the sentence pursuant to the provisions of the
2 Criminal Sentencing Act.

3 C. A period of parole shall be imposed only
4 for felony convictions wherein a person is sentenced to
5 imprisonment of more than one year, unless the parties to a
6 proceeding agree that a period of parole should be imposed.
7 If a period of parole is imposed, the court shall include
8 in the judgment and sentence of each person convicted and
9 sentenced to imprisonment in a corrections facility
10 designated by the corrections department authority for a
11 period of parole to be served in accordance with the
12 provisions of Section 31-21-10 NMSA 1978. If imposed, the
13 period of parole shall be deemed to be part of the sentence
14 of the convicted person in addition to the basic sentence
15 imposed pursuant to Subsection A of this section together
16 with alterations, if any, pursuant to the provisions of the
17 Criminal Sentencing Act.

18 D. When a court imposes a sentence of imprisonment
19 pursuant to the provisions of Section 31-18-15.1, 31-18-16 or
20 31-18-17 NMSA 1978 and suspends or defers the basic sentence
21 of imprisonment provided pursuant to the provisions of
22 Subsection A of this section, the period of parole shall be
23 served in accordance with the provisions of Section 31-21-10
24 NMSA 1978 for the degree of felony for the basic sentence
25 for which the inmate was convicted. For the purpose of

1 designating a period of parole, a court shall not consider
2 that the basic sentence of imprisonment was suspended or
3 deferred and that the inmate served a period of imprisonment
4 pursuant to the provisions of the Criminal Sentencing Act.

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

8 (1) for a first degree felony resulting in
9 the death of a child, seventeen thousand five hundred dollars
10 (\$17,500);

11 (2) for a first degree felony for aggravated
12 criminal sexual penetration, seventeen thousand five hundred
13 dollars (\$17,500);

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

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

19 (5) for a second degree felony for a sexual
20 offense against a child, twelve thousand five hundred dollars
21 (\$12,500);

22 (6) for a second degree felony for sexual
23 exploitation of children, five thousand dollars (\$5,000);

24 (7) for a second degree felony, ten thousand
25 dollars (\$10,000);

1 (8) for a third degree felony resulting in
2 the death of a human being, five thousand dollars (\$5,000);

3 (9) for a third degree felony for a sexual
4 offense against a child, five thousand dollars (\$5,000);

5 (10) for a third degree felony for sexual
6 exploitation of children, five thousand dollars (\$5,000);

7 (11) for a third or fourth degree felony,
8 five thousand dollars (\$5,000); or

9 (12) for a fourth degree felony for sexual
10 exploitation of children, five thousand dollars (\$5,000).

11 F. When the court imposes a sentence of
12 imprisonment for a felony offense, the court shall indicate
13 whether or not the offense is a serious violent offense as
14 defined in Section 33-2-34 NMSA 1978. The court shall inform
15 an offender that the offender's sentence of imprisonment
16 is subject to the provisions of Sections 33-2-34, 33-2-36,
17 33-2-37 and 33-2-38 NMSA 1978. If the court fails to inform
18 an offender that the offender's sentence is subject to those
19 provisions or if the court provides the offender with
20 erroneous information regarding those provisions, the failure
21 to inform or the error shall not provide a basis for a writ
22 of habeas corpus.

23 G. No later than October 31 of each year, the
24 New Mexico sentencing commission shall provide a written
25 report to the secretary of corrections, all New Mexico

1 criminal court judges, the administrative office of the
2 district attorneys and the chief public defender. The
3 report shall specify the average reduction in the sentence
4 of imprisonment for serious violent offenses and
5 nonviolent offenses, as defined in Section 33-2-34 NMSA 1978,
6 due to meritorious deductions earned by prisoners during the
7 previous fiscal year pursuant to the provisions of
8 Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978.
9 The corrections department shall allow the commission access
10 to documents used by the department to determine earned
11 meritorious deductions for prisoners."

12 SECTION 2. Section 31-20-5 NMSA 1978 (being Laws 1963,
13 Chapter 303, Section 29-17, as amended) is amended to read:

14 "31-20-5. PLACING DEFENDANT ON PROBATION.--

15 A. When a person has been convicted of a crime for
16 which a sentence of imprisonment is authorized and when the
17 magistrate, metropolitan or district court has deferred or
18 suspended sentence, it shall order the defendant to be
19 placed on probation for all or some portion of the period
20 of deferment or suspension if the defendant is in need of
21 supervision, guidance or direction that is feasible for the
22 corrections department to furnish. Except for sex offenders
23 as provided in Section 31-20-5.2 NMSA 1978, the total period
24 of probation for district court shall not exceed five years
25 and the total period of probation for the magistrate or

1 metropolitan courts shall be no longer than the maximum
2 allowable incarceration time for the offense or as otherwise
3 provided by law.

4 B. If a defendant is required to serve a period
5 of probation subsequent to a period of incarceration:

6 (1) the period of probation shall be served
7 subsequent to any required period of parole, with the time
8 served on parole credited as time served on the period of
9 probation and the conditions of probation imposed by the
10 court deemed as additional conditions of parole; and

11 (2) in the event that the defendant violates
12 any condition of that parole, the parole board shall cause
13 the defendant to be brought before it pursuant to the
14 provisions of Section 31-21-14 NMSA 1978 and may make any
15 disposition authorized pursuant to that section and, if
16 parole is revoked, the period of parole served in the custody
17 of a correctional facility shall not be credited as time
18 served on probation.

19 C. A defendant shall automatically be released
20 from probation if the defendant:

21 (1) is classified as a minimum level risk
22 by a validated scoring instrument;

23 (2) has met all of the obligations of the
24 defendant's probation; and

25 (3) has completed one-half or more of the

1 period of probation."

2 SECTION 3. Section 31-21-10 NMSA 1978 (being Laws 1980,
3 Chapter 28, Section 1, as amended) is amended to read:

4 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

5 A. Except as provided in Section 31-21-10.2
6 NMSA 1978, an inmate of an institution who was sentenced to
7 life imprisonment becomes eligible for a parole hearing after
8 the inmate has served thirty years of the sentence. Before
9 ordering the parole of an inmate sentenced to life
10 imprisonment, the board shall:

11 (1) interview the inmate at the institution
12 where the inmate is committed;

13 (2) consider all pertinent information
14 concerning the inmate, including:

15 (a) the circumstances of the offense;

16 (b) mitigating and aggravating
17 circumstances;

18 (c) whether a deadly weapon was used
19 in the commission of the offense;

20 (d) whether the inmate is a habitual
21 offender;

22 (e) the reports filed under
23 Section 31-21-9 NMSA 1978; and

24 (f) the reports of such physical and
25 mental examinations as have been made while in an

1 institution;

2 (3) make a finding that a parole is in the
3 best interest of society and the inmate; and

4 (4) make a finding that the inmate is able
5 and willing to fulfill the obligations of a law-abiding
6 citizen.

7 If parole is denied, the inmate sentenced to life
8 imprisonment shall again become entitled to a parole hearing
9 at two-year intervals. The board may, on its own motion,
10 reopen any case in which a hearing has already been granted
11 and parole denied.

12 B. Unless the board finds that it is in the best
13 interest of society and the parolee to reduce the period of
14 parole, a person who was sentenced to life imprisonment shall
15 be required to undergo a minimum period of parole of five
16 years. During the period of parole, the person shall be
17 under the guidance and supervision of the board.

18 C. An inmate of an institution who was sentenced
19 to life imprisonment without possibility of release or parole
20 is not eligible for parole and shall remain incarcerated for
21 the entirety of the inmate's natural life.

22 D. Except for certain sex offenders as provided
23 in Section 31-21-10.1 NMSA 1978, an inmate who was convicted
24 of a first, second or third degree felony and who has served
25 the sentence of imprisonment imposed by the court in an

1 institution designated by the corrections department shall be
2 required to undergo a two-year period of parole. An inmate
3 who was convicted of a fourth degree felony and who has
4 served the sentence of imprisonment imposed by the court in
5 an institution designated by the corrections department shall
6 be required to undergo a one-year period of parole. During
7 the period of parole, the person shall be under the guidance
8 and supervision of the board.

9 E. Every person while on parole shall remain in
10 the legal custody of the institution from which the person
11 was released, but shall be subject to the orders of the
12 board. The board shall furnish to each inmate as a
13 prerequisite to release under its supervision a written
14 statement of the conditions of parole that shall be accepted
15 and agreed to by the inmate as evidenced by the inmate's
16 signature affixed to a duplicate copy to be retained in the
17 files of the board. The board shall also require as a
18 prerequisite to release the submission and approval of a
19 parole plan. If an inmate refuses to affix the inmate's
20 signature to the written statement of the conditions of
21 parole or does not have an approved parole plan, the inmate
22 shall not be released and shall remain in the custody of the
23 institution in which the inmate has served the inmate's
24 sentence, excepting parole, until such time as the period
25 of parole the inmate was required to serve, less meritorious

1 deductions, if any, expires, at which time the inmate shall
2 be released from that institution without parole, or until
3 such time that the inmate evidences acceptance and agreement
4 to the conditions of parole as required or receives approval
5 for the inmate's parole plan or both. Time served from
6 the date that an inmate refuses to accept and agree to the
7 conditions of parole or fails to receive approval for the
8 inmate's parole plan shall reduce the period, if any, to be
9 served under parole at a later date. If the district court
10 has ordered that the inmate make restitution to a victim as
11 provided in Section 31-17-1 NMSA 1978, the board shall
12 include restitution as a condition of parole. The board
13 shall also personally apprise the inmate of the conditions
14 of parole and the inmate's duties relating to those
15 conditions of parole.

16 F. When a person on parole has performed the
17 obligations of the person's release for the period of parole
18 provided in this section, the board shall make a final order
19 of discharge and issue the person a certificate of discharge.

20 G. The provisions of this section shall apply to
21 all inmates except geriatric, permanently incapacitated and
22 terminally ill inmates eligible for the medical and geriatric
23 parole program as provided by the Parole Board Act."

24 SECTION 4. Section 33-2-34 NMSA 1978 (being Laws 1999,
25 Chapter 238, Section 1, as amended) is amended to read:

1 "33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS
2 DEDUCTIONS.--

3 A. A prisoner confined in a correctional facility
4 designated by the corrections department may lose earned
5 meritorious deductions if the prisoner fails to actively
6 participate in programs recommended for the prisoner by the
7 classification supervisor and approved by the warden or the
8 warden's designee.

9 B. Meritorious deductions shall be awarded for
10 the remainder of the sentence, after pre-sentence confinement
11 has been deducted, upon admission to a correctional facility
12 designated by the corrections department.

13 C. Meritorious deductions shall not exceed the
14 following amounts:

15 (1) for a prisoner confined for committing
16 a serious violent offense, four days per month;

17 (2) for a prisoner confined for committing
18 a nonviolent offense, thirty days per month; and

19 (3) for a prisoner confined following
20 revocation of parole, meritorious deductions will be awarded
21 commensurate with the classification of the offense.

22 D. A prisoner may lose meritorious deductions upon
23 recommendation by the classification supervisor, based upon
24 the prisoner's failure to actively participate in approved
25 programs and the quality of the prisoner's participation in

1 those approved programs. A prisoner may not lose meritorious
2 deductions unless the recommendation of the classification
3 supervisor is approved by the warden or the warden's designee.

4 E. If a prisoner's active participation in
5 approved programs is interrupted by a lockdown at a
6 correctional facility, the prisoner may not lose meritorious
7 deductions, unless the warden or the warden's designee
8 determines that the prisoner's conduct contributed to the
9 initiation or continuance of the lockdown.

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

13 (1) for successfully completing an approved
14 vocational, substance abuse or mental health program, thirty
15 days; except when the prisoner has a demonstrable physical,
16 mental health or developmental disability that prevents the
17 prisoner from successfully earning a high school equivalency
18 credential, in which case, the prisoner shall be awarded
19 ninety days;

20 (2) for earning a high school equivalency
21 credential, ninety days;

22 (3) for earning an associate's degree, one
23 hundred twenty days;

24 (4) for earning a bachelor's degree, one
25 hundred fifty days;

1 (5) for earning a graduate qualification,
2 one hundred fifty days; and

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

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

23 H. A prisoner may lose meritorious deductions if
24 the prisoner:

25 (1) disobeys an order to perform labor,

1 pursuant to Section 33-8-4 NMSA 1978;

2 (2) is in disciplinary segregation;

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

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

9 I. The provisions of this section shall not be
10 interpreted as providing eligibility to earn meritorious
11 deductions from a sentence of life imprisonment or a sentence
12 of life imprisonment without possibility of release or parole.

13 J. The corrections department shall promulgate
14 rules to implement the provisions of this section, and the
15 rules shall be matters of public record. A concise summary
16 of the rules shall be provided to each prisoner, and each
17 prisoner shall receive a statement of the meritorious
18 deductions earned upon initial award, if additional awards are
19 given, if meritorious deductions are lost and upon request.

20 K. A New Mexico prisoner confined in a federal
21 or out-of-state correctional facility is eligible to earn
22 meritorious deductions for active participation in programs
23 on the basis of the prisoner's conduct and program reports
24 furnished by that facility to the corrections department.

25 All decisions regarding the award and forfeiture of

1 meritorious deductions at such facility are subject to final
2 approval by the director of the adult institutions division
3 of the corrections department or the director's designee.

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

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

22 N. As used in this section:

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

25 (2) "program" means work, vocational,

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

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

8 (4) "serious violent offense" means:

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

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

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

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

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

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

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

25 (h) first and second degree robbery,

1 as provided in Section 30-16-2 NMSA 1978;

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

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

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

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

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

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

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

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

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

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