CHAPTER 33
Correctional Institutions

ARTICLE 1
Corrections Department

ANNOTATIONS

33-1-1. Short title.

Sections 33-1-1 through 33-1-9 NMSA 1978 may be cited as the "Corrections Act."

History: 1953 Comp., § 42-9-1, enacted by Laws 1969, ch. 226, § 1; 1971, ch. 221, § 1.

ANNOTATIONS

Power to grant parole vested with adult parole hearing board. — The ultimate power to grant or revoke parole is vested in the adult parole hearing board and such powers shall be exercised by the board in accordance with the pertinent provisions of the Probation and Parole Act, 31-21-3 NMSA 1978 et seq. and the Corrections Act, 33-1-1 NMSA 1978 et seq. 1970 Op. Att'y Gen. No. 70-12.

33-1-2. Definitions.

As used in the Corrections Act:

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

B. "director" or "secretary" means the secretary of corrections;

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

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

(2) the parole board to the extent delegated by the Parole Board Act [31-21-22 through 31-21-26 NMSA 1978];

D. "commission" means the corrections industries commission; and

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

History: 1953 Comp., § 42-9-2, enacted by Laws 1978, ch. 4, § 1; 1988, ch. 101, § 31; 2005, ch. 23, § 3.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, changed the definition of corrections facility to include the parole board to the extent delegated by the Parole Board Act; and changed the definition of commission from the corrections commission to mean the corrections industries commission.

33-1-3. Purpose.

It is the purpose of the legislature to create a single, unified corrections department to administer all laws and exercise all functions formerly administered and exercised by the penitentiary of New Mexico and the state board of probation and parole except to the extent delegated to the parole board by the Parole Board Act [31-21-22 through 31-21-26 NMSA 1978].

History: 1953 Comp., § 42-9-3, enacted by Laws 1969, ch. 226, § 3; 1971, ch. 221, § 3; 1975, ch. 194, § 9; 1977, ch. 257, § 98; 1988, ch. 101, § 32.

33-1-4. Repealed.

ANNOTATIONS

Repeals. — Laws 2005, ch. 23, § 7 repealed 33-1-4 NMSA 1978, as enacted by Laws 1969, ch. 226, § 4, relating to the corrections division, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

33-1-4.1. Vulnerable offenders program; prevention of victimization.

A. The corrections department may develop and implement a special program for certain male and female offenders who have been identified by the department as being vulnerable offenders who, if not provided with a special program, would be vulnerable to victimization by inmates and subject to unusual or extraordinary mental or physical harassment, intimidation, harm or injury.

B. Vulnerability shall be determined by factors such as age, mental health or special education needs. If an offender is less than twenty-one years of age, there shall be a rebuttable presumption that the offender is vulnerable. A vulnerable offenders program shall not result in the diminution of civil rights for vulnerable offenders.

History: Laws 1993, ch. 77, § 230; 1995, ch. 206, § 46.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, deleted "youthful" following "vulnerable" in the section heading, deleted "youthful" preceding "offenders" and made a minor stylistic change in Subsection A, and rewrote Subsection B.

33-1-4.2. Restraints on pregnant prisoners.

A. An adult or juvenile correctional facility, detention center or local jail shall use the least restrictive restraints necessary when the facility has actual or constructive knowledge that an inmate is in the second or third trimester of pregnancy. No restraints of any kind shall be used on an inmate who is in labor, delivering her baby or recuperating from the delivery unless there are compelling grounds to believe that the inmate presents:

(1) an immediate and serious threat of harm to herself, staff or others; or

(2) a substantial flight risk and cannot be reasonably contained by other means.

B. If an inmate who is in labor or who is delivering her baby is restrained, only the least restrictive restraints necessary to ensure safety and security shall be used.

History: Laws 2009, ch. 73, § 1.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 73 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

33-1-5. Director of corrections; employment.

The administrative head of the division is the "director of corrections" who shall be employed by the secretary of the criminal justice department [secretary of corrections] to serve at the pleasure of the secretary of the criminal justice department [secretary of corrections]. The director shall possess a degree from an accredited university and a minimum of five years' experience in the corrections field, including supervisory and managerial experience; or a minimum of ten years' experience in the corrections field, including a minimum of five years' supervisory and managerial experience. He shall receive compensation as provided by law.

History: 1953 Comp., § 42-9-5, enacted by Laws 1969, ch. 226, § 5; 1971, ch. 221, § 5; 1977, ch. 257, § 100.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1981, ch. 73, § 8 provided that all references in law to the secretary of criminal justice be construed as references to the secretary of corrections.

Cross references. — For definition of "division", *see* 33-1-2A NMSA 1978.

For appointment of director, *see* 9-3-5B(10), 9-3-6 NMSA 1978.

33-1-6. Powers and duties of secretary.

The secretary of corrections and criminal rehabilitation [secretary of corrections] shall:

A. employ administrative, professional and clerical personnel in accordance with the Personnel Act [Chapter 10, Article 9 NMSA 1978] as necessary to carry out the work of the corrections and criminal rehabilitation department [corrections department];

B. adopt rules and regulations necessary for administration of the Corrections Act, and enforce and administer those so adopted;

C. collect and compile statistical, social and financial data pertaining to the operation of the department and the incidence of crime and delinquency, obtain related reports from the courts, law enforcement agencies and other agencies having this information;

D. cooperate with federal, state and local officials and agencies, public and private, in the furtherance of the purposes of the Corrections Act;

E. act as state administrator, or designate a representative to act as state administrator, for any interstate correctional compacts where another person is not designated by law to act as administrator;

F. establish in cooperation with the correctional training academy a mandatory training program for correctional officers and guards as a prerequisite to officer certification;

G. institute programs for the training and development of professional skills for all personnel within the department in conjunction with the education and training division; and

H. encourage and promote the rehabilitation, education, employment and reintegration into society of persons adjudicated delinquents or convicted of a crime and sentenced to a corrections facility.

History: 1953 Comp., § 42-9-6, enacted by Laws 1969, ch. 226, § 6; 1971, ch. 221, § 6; 1977, ch. 257, § 101; 1981, ch. 132, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1981, ch. 73, § 8 provided that all references in law to the secretary of corrections and criminal rehabilitation be construed as references to the secretary of corrections.

Cross references. — For the prison-based drug rehabilitation program, *see* 9-3-3.1 NMSA 1978.

33-1-7. Construction of applicable laws.

Wherever, under any statute which was administered or enforced prior to July 1, 1969, by the penitentiary of New Mexico board, the state board of probation and parole or by the boards of the New Mexico boys' school or the girls' welfare home or by the juvenile probation services division of the administrative office of the courts, or by their officers or employees, reference is made to any such officers, employees or agencies, the reference shall be construed to mean the corrections division [corrections department], except as powers and duties are designated to the parole board by the Parole Board Act [31-21-22 through 31-21-26 NMSA 1978].

History: 1953 Comp., § 42-9-9, enacted by Laws 1969, ch. 226, § 9; 1971, ch. 221, § 9; 1975, ch. 194, § 10; 1977, ch. 257, § 102.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1981, ch. 73, § 8 provided that all references in law to the corrections division be construed as references to the corrections department.

Power to grant parole vested with adult parole hearing board. — The ultimate power to grant or revoke parole is vested in the adult parole hearing board and such powers shall be exercised by the board in accordance with the pertinent provisions of the Probation and Parole Act, 31-21-3 NMSA 1978 et seq. and the Corrections Act, 33-1-1 NMSA 1978 et seq. 1970 Op. Att'y Gen. No. 70-12.

33-1-8. Earmarked funds.

Property or funds held in trust or earmarked for use by a specific correctional facility shall be kept for that use.

History: 1953 Comp., § 42-9-10, enacted by Laws 1971, ch. 221, § 10.

ANNOTATIONS

Repeals and reenactments. — Laws 1971, ch. 221, § 10, repealed 42-9-10, 1953 Comp., relating to transitional provisions concerning rules, employees, property, etc., of those agencies affected by the Corrections Act, and enacted a new section.

33-1-9. Liberal interpretation.

The Corrections Act shall be liberally construed to carry out its purposes.

History: 1953 Comp., § 42-9-11, enacted by Laws 1969, ch. 226, § 11.

33-1-10. Correctional officers; employees; acting as peace officers.

A. Correctional officers of the corrections department, or any employee of the corrections department who has at the particular time the principal duty to hold in custody or supervise any person accused or convicted of a criminal offense or placed in the legal custody or supervision of the corrections department, shall have the power of a peace officer with respect to arrests and enforcement of laws when on the premises of a New Mexico correctional facility or while transporting a person committed to or under the supervision of the corrections department; when supervising any person committed to or under the supervision of the corrections department anywhere within the state; or when engaged in any effort to pursue or apprehend any such person. No correctional officer or other employee of the corrections department shall be convicted or held liable for any act performed pursuant to this section if a peace officer could lawfully have performed the same act in the same circumstances.

B. Crimes against a correctional officer or an employee of the corrections department while in the lawful discharge of duties which confer peace officer status pursuant to this section shall be deemed the same crimes and shall bear the same penalties as crimes against a peace officer.

C. As used in this section, "supervising" includes the performance of the following official duties by probation and parole officers of the corrections department:

(1) field investigations;

(2) surveillance;

(3) searches and seizures conducted alone or in cooperation with a state or local law enforcement agency; and

(4) security during the course of a probation or parole revocation hearing or proceeding or any other hearing or appearance required by law.

D. The provisions of Section 31-1-10 NMSA 1978 [33-1-10 NMSA 1978] shall apply to all pending applications and pending cases.

History: 1953 Comp., § 42-9-12, enacted by Laws 1973, ch. 119, § 1; 1977, ch. 257, § 103; 1984, ch. 18, § 1; 1986, ch. 35, § 1; 1987, ch. 210, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. As there is no 31-1-10 NMSA 1978, the apparent intended reference is 33-1-10 NMSA 1978 (this section).

Cross references. — For when wounding or killing of penitentiary prisoner is justified, *see* 33-2-30, 33-2-31 NMSA 1978.

For crimes against a peace officer, *see* Chapter 30, Article 22 NMSA 1978.

Legislative intent. — Section 31-20A-5A NMSA 1978 concerns a penalty for a crime against a peace officer, and therefore, this section and 33-3-28 NMSA 1978 serve as powerful indicators of the legislature's intent in 31-20A-5A NMSA 1978. State v. Young, 2004-NMSC-015, 135 N.M. 458, 90 P.3d 477.

"Peace officer" in 31-20A-5A NMSA 1978 includes jailers and corrections officers while they are engaged in the duties for which the legislature designated them to be peace officers as in 33-3-28 NMSA 1978 and this section. State v. Young, 2004-NMSC-015, 135 N.M. 458, 90 P.3d 477.

Legislature intended its reference to "enforcement of laws" in 33-3-28A NMSA 1978 and Subsection A of this section to apply to the duty of corrections officers to maintain order in a correctional facility. State v. Young, 2004-NMSC-015, 135 N.M. 458, 90 P.3d 477.

Prison guards in the department of corrections are not law enforcement officers for purposes of 41-4-3D NMSA 1978, because: (1) the principal duties of prison guards are to hold in custody persons who have already been convicted rather than merely accused of a criminal offense; (2) maintenance of public order relates to a public not a penitentiary setting; and (3) although prison guards may have the supplemental power to arrest pursuant to the guidelines of this section, their principal statutory duties are those set forth in 33-2-15 NMSA 1978. Callaway v. N.M. Dep't of Corr., 1994-NMCA-049, 117 N.M. 637, 875 P.2d 393, cert. denied, 118 N.M. 90, 879 P.2d 91.

Juvenile correctional officer is a peace officer for purposes of the battery on a peace officer statute, despite the fact that JCOs are no longer under the control of the New Mexico corrections department. State v. Gutierrez, 1993-NMCA-058, 115 N.M. 551, 854 P.2d 878, cert. denied, 115 N.M. 545, 854 P.2d 872.

33-1-11. Correctional officer qualifications.

Members of the corrections department correctional officer force, excluding correctional specialists, shall:

A. at the time of their appointment, be citizens of the United States;

B. at the time of their appointment, have reached age of majority;

C. have at least a high school education or its equivalent;

D. be of good moral character and not have been convicted of a felony or any infamous crime in the courts of this or any other state or in the federal courts; and

E. successfully pass any physical and aptitude examination the department may require.

History: Laws 1981, ch. 132, § 2; 1986, ch. 40, § 1.

33-1-12. Corrections department; group life insurance.

Notwithstanding the provisions of Section 10-7-4 NMSA 1978 and in addition to all other benefits provided adult correctional officers and correctional officer specialists, the corrections department shall provide life insurance coverage in the amount of twenty-five thousand dollars ($25,000) for each adult correctional officer and correctional officer specialist to be paid to his designated beneficiary. The coverage shall include double indemnity provisions for death incurred in the line of duty. The coverage shall be provided by a group term insurance policy, the premium for which shall be paid out of state funds appropriated to the department.

History: Laws 1981, ch. 311, § 1; 1990, ch. 29, § 2.

ANNOTATIONS

Cross references. — For group insurance by state departments and institutions and all political subdivisions of the state, *see* 10-7-4 NMSA 1978.

The 1990 amendment, effective May 16, 1990, substituted "corrections department" for "corrections and criminal rehabilitation department" in the catchline and the first sentence, deleted "and juvenile correctional officers" following "specialists" and "specialist" in the first sentence, deleted "corrections and criminal rehabilitation" preceding "department" at the end of the third sentence, and made minor stylistic changes.

33-1-13 to 33-1-16. Terminated.

ANNOTATIONS

Terminations. — Laws 1981, ch. 339, §§ 1 to 4 (33-1-13 to 33-1-16 NMSA 1978), which related to the corrections personnel board within the corrections and criminal rehabilitation department (now corrections department), are terminated by virtue of § 4 of that act (33-1-16 NMSA 1978) which provided that the corrections personnel board would terminate on December 31, 1982, unless otherwise extended, and that employees of the department would thereafter be covered by the Personnel Act unless excluded from coverage under 10-9-4 NMSA 1978. *See* 10-9-1 NMSA 1978 et seq.

33-1-17. Private contract.

A. The corrections department may contract for the operation of any adult female facility or for housing adult female inmates in a private facility with a person or entity in the business of providing correctional or jail services to government entities.

B. The corrections department may contract with a person or entity in the business of providing correctional or jail services to government entities for:

(1) a correctional facility in Guadalupe county of not less than five hundred fifty and not more than two thousand two hundred beds;

(2) a correctional facility in Lea, Chaves or Santa Fe county of not less than one thousand two hundred and not more than two thousand two hundred beds;

(3) design and construction of a support services building, a laundry and an infirmary at the penitentiary of New Mexico in Santa Fe; or

(4) construction of a public facility to house a special incarceration alternative program for adult male and adult female felony offenders.

C. The authorization in Subsection B of this section for a correctional facility in Guadalupe county and a correctional facility in Lea, Chaves or Santa Fe county is contingent upon construction of both facilities, so that one of the facilities shall not be constructed unless both of the facilities are constructed, as nearly as practicable, simultaneously.

D. The corrections department shall solicit proposals and award any contract under this section in accordance with the provisions of the Procurement Code [13-1-28 through 13-1-199 NMSA 1978]. The contract shall include such terms and conditions as the corrections department may require after consultation with the general services department; provided that the terms and conditions shall include provisions:

(1) setting forth comprehensive standards for conditions of incarceration;

(2) that the contractor assumes all liability caused by or arising out of all aspects of the provision or operation of the facility;

(3) for liability insurance or other proof of financial responsibility acceptable to the general services department covering the contractor and its officers, employees and agents in an amount sufficient to cover all liability caused by or arising out of all aspects of the provision or operation of the facility;

(4) for termination for cause upon ninety days' notice to the contractor for failure to meet contract provisions when such failure seriously affects the availability or operation of the facility;

(5) that venue for the enforcement of the contract shall be in the district court for Santa Fe county;

(6) that continuation of the contract is subject to the availability of funds; and

(7) that compliance with the contract shall be monitored by the corrections department and the contract may be terminated for noncompliance.

E. When the contractor begins operation of a facility for which private contractor operation is authorized, the contractor's employees performing the functions of correctional officers shall be deemed correctional officers for the purposes of Sections 33-1-10 and 33-1-11 NMSA 1978 but for no other purpose of state law, unless specifically stated.

F. Any contract awarded pursuant to this section may include terms to provide for the renovation of the facility or for the construction of new buildings. Work performed pursuant to such terms and conditions shall not be considered a capital project or a state public works project as defined in Section 13-1-91 NMSA 1978 nor shall it be subject to the requirements of Section 13-1-150 NMSA 1978, review by the staff architect of the facilities management division of the general services department or regulation by the director of that division pursuant to Section 15-3B-6 NMSA 1978.

G. Any contract entered into by the corrections department with a private contractor to operate an existing facility shall include a provision securing the right of all persons employed by that facility prior to the effective date of that contract to be employed by that contractor in any position for which they qualify before that position is offered to any person not employed by that facility prior to that date.

History: Laws 1985, ch. 149, § 1; 1988, ch. 79, § 1; 1990, ch. 51, § 2; 1995, ch. 215, § 3; 2013, ch. 115, § 23.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; in Subsection F, deleted "property control" and added "facilities management" before "division", and in the second sentence, after "considered a capital project", deleted "as defined in Section 15-3-23.3 NMSA 1978", after "Section 13-1-150 NMSA 1978", deleted "or of the Capital Program Act", and after "general services department", deleted "pursuant to Section 15-3-20 NMSA 1978".

The 1995 amendment, effective June 16, 1995, rewrote Subsection B which read "The corrections department may contract for the construction of a private facility to house a special incarceration alternative program for adult male and adult female felony offenders with a person or entity in the business of providing correctional or jail services to government entities"; added Subsection C; redesignated former Subsections C through F as Subsections D through G; in Subsection D, substituted "or operation" for "and operation" near the end of Paragraphs (2) and (3) and inserted "availability or" near the end of Paragraph (4); substituted "a facility for which private contractor operation is authorized" for "the facility" in Subsection E; and substituted "public works project" for "capital project" in Subsection F.

The 1990 amendment, effective May 16, 1990, added present Subsection B; designated former Subsection A, beginning with the second sentence, as Subsection C; redesignated former Subsections B to D as present Subsections D to F; substituted "any contract under this section" for "the contract in" near the beginning of present Subsection C; and substituted "this section" for "Section 33-1-17 NMSA 1978" in the first sentence of present Subsection E.

This section does not require individual officer compliance with training requirements in order for the independent contractor employee to be considered a peace officer. State v. Young, 2004-NMSC-015, 135 N.M. 458, 90 P.3d 477.

Employee of corrections contractor not "public employee". — The employee of an independent corrections contractor is not a "public employee" immune from tort liability under the New Mexico Tort Claims Act, 41-4-1 NMSA 1978 et seq. Giron v. Corr. Corp. of Am., 14 F. Supp. 2d 1245 (D.N.M. 1998).

Law reviews. — For note and comment, "The Constitutionality of Faith-Based Prison Programs: A Real World Analysis Based in New Mexico," see 37 N.M. L. Rev. 487 (2007).

33-1-18. Funds created.

There are created in the state treasury special funds to be known as the "corrections department building fund", the "Guadalupe county prison fund" and the "New Mexico prison fund". The funds shall consist of money appropriated by the legislature, from year to year, from the income of the permanent fund and land income of which the penitentiary of New Mexico is the beneficiary and any other revenues that are

appropriated to the funds, other than revenues derived from property taxes or general fund revenues. Income from investment of each special fund created by this section shall be credited to that fund.

History: Laws 1990 (1st S.S.), ch. 5, § 1; 1995, ch. 214, § 1.

ANNOTATIONS

The 1995 amendment, effective April 7, 1995, substituted "Funds" for "Fund" in the section heading; rewrote the first sentence which read "There is created in the state treasury a special fund to be known as the 'corrections department building fund'"; substituted "The funds" for "The fund" at the beginning of the second sentence and added the language beginning "and any other revenues" at the end thereof; and rewrote the third sentence which read "No other funds of the state shall be deposited or paid into the corrections department building fund".

Appropriations. — Laws 1998 (1st S.S.), ch. 8, § 1, effective May 11, 1998, appropriated $4,400,000 of the distribution of the land grant permanent funds of which the penitentiary of New Mexico was the beneficiary to the corrections department for expenditure in fiscal year 1999 for operations of the penitentiary of New Mexico, contingent upon the corrections department negotiating and entering into a contract or an amendment to the contract with Wackenhut, whereby the parties agree that in addition to programs already contracted for, a prison industries program, a three hundred-bed therapeutic substance abuse program and family visitation as provided statutorily shall be provided.

33-1-19. Use of funds.

A. The funds created in or pursuant to Section 33-1-18 NMSA 1978 shall be used by the corrections department or the board of finance for the purpose of acquiring, designing, constructing or equipping, by lease or lease-purchase, or by financing the ownership by the corrections department through the issuance of bonds or other obligations by the corrections department or the board of finance, or other means, a corrections department central office complex, a personnel training academy, a special incarceration alternative facility, correctional facilities or any combination of these facilities, and for paying the expenses relating to the lease, lease-purchase or financing of these facilities. Before any of the funds created in Section 33-1-18 NMSA 1978 may be used for any such purpose, the state board of finance shall approve the proposed facility and the proposed use of the funds.

B. The funds created in or pursuant to Section 33-1-18 NMSA 1978 shall be used so that available appropriations are devoted to the following projects:

(1) payment for the corrections department central office complex;

(2) a correctional facility in Guadalupe county of not less than five hundred fifty and not more than two thousand two hundred beds;

(3) a correctional facility in Lea, Chaves or Santa Fe county of not less than one thousand two hundred and not more than two thousand two hundred beds; and

(4) design and construction of a support services building, a laundry and an infirmary at the penitentiary of New Mexico in Santa Fe.

C. The use of funds designated in Subsection B of this section for a correctional facility in Guadalupe county and a correctional facility in Lea, Chaves or Santa Fe county is contingent upon construction of both facilities, so that one of the facilities shall not be constructed unless both of the facilities are constructed, as nearly as possible, simultaneously.

D. Any balance at the end of any fiscal year in the special funds created in Section 33-1-18 NMSA 1978 that are not needed to pay leases, loans, bonds or other financing instruments in that fiscal year may be appropriated by the legislature for expenditure in succeeding fiscal years by the corrections department for corrections purposes.

History: Laws 1990 (1st S.S.), ch. 5, § 2; 1995, ch. 43, § 1; 1995, ch. 215, § 4.

ANNOTATIONS

The 1995 amendments. — Laws 1995, ch. 215, § 4, effective June 16, 1995, and approved April 6, 1995, substituted "funds" for "fund" in the section heading, designated the existing language as Subsection A, rewrote Subsection A, and added Subsections B, C and D.

This section was also amended by Laws 1995, ch. 43, § 1, effective June 16, 1995, and approved April 5, 1995, which inserted "loan, issuance of bonds" and "a penitentiary, a prison" and deleted the former second sentence, which read "No other funds from any source whatsoever shall be used for the acquisition of such facilities". The section was set out as amended by Laws 1995, ch. 215, § 4. *See* 12-1-8 NMSA 1978.

33-1-20. Transfers authorized.

Division transfers are specifically authorized for the administrative services division and the personnel and training division of the corrections department for purposes necessitated by the provisions of Sections 1 and 2 [33-1-18 and 33-1-19 NMSA 1978] of this act. Such transfers shall not be restricted by the four-percent limitation on division transfers as set forth in Section 3 of Chapter 131 of Laws 1990 of the second regular session of the thirty-ninth legislature.

History: Laws 1990 (1st S.S.), ch. 5, § 3.

33-1-21. Corrections department required to accept and redispense unused prescriptions; conditions of acceptance and redispensing.

A. A pharmacy operated by the corrections department or under contract with the department shall accept for the purpose of redispensing a prescription drug that has been dispensed and has left the control of the pharmacist if the prescription drug is being returned by a corrections facility that has a registered professional nurse or a licensed practical nurse who is responsible for the security, handling and administration of prescription drugs within that corrections facility and if all of the following conditions are met:

(1) the pharmacist is satisfied that the conditions under which the prescription drug has been delivered, stored and handled before and during its return were such as to prevent damage, deterioration or contamination that would adversely affect the identity, strength, quality, purity, stability, integrity or effectiveness of the prescription drug;

(2) the pharmacist is satisfied that the prescription drug did not leave the control of the registered professional nurse or licensed practical nurse responsible for the security, handling and administration of that prescription drug and that the prescription drug did not come into the physical possession of the individual for whom it was prescribed;

(3) the pharmacist is satisfied that the labeling and packaging of the prescription drug are accurate, have not been altered, defaced or tampered with and include the identity, strength, expiration date and lot number of the prescription drug; and

(4) the prescription drug was dispensed in a unit-dose package or unit-of-issue package.

B. A pharmacy operated by the corrections department or under contract with the department shall not accept for return prescription drugs as provided pursuant to this section until the pharmacist in charge develops a written set of protocols for accepting, returning to stock, repackaging, labeling and redispensing prescription drugs. The written protocols shall be maintained on the premises of any pharmacy dispensing prescriptions for the department and shall be readily accessible to each pharmacist on duty. The written protocols shall include, at a minimum, each of the following:

(1) methods for ensuring that damage, deterioration or contamination has not occurred during the delivery, handling, storage or return of the prescription drugs such that it would adversely affect the identity, strength, quality, purity, stability, integrity or effectiveness of the prescription drugs or otherwise render the drugs unfit for distribution;

(2) methods for accepting, returning to stock, repackaging, labeling and redispensing the prescription drugs returned pursuant to this section; and

(3) a uniform system of recording and tracking prescription drugs that are returned to stock, repackaged, labeled and redistributed pursuant to this section.

C. If the condition of a prescription drug and its package meets the standards set forth in Subsection B of this section, a prescription drug shall be returned to stock and redistributed as follows:

(1) a prescription drug that was originally dispensed in the manufacturer's unit-dose package or unit-of-issue package that is returned in that same package may be returned to stock, repackaged and redispensed as needed; and

(2) a prescription drug that is repackaged into a unit-dose package or a unit-of-issue package by the pharmacy, dispensed and returned to that pharmacy in that unit-dose package or unit-of-issue package may be returned to stock, but it shall not be repackaged. A unit-dose package or unit-of-issue package prepared by the pharmacist and returned to stock shall only be redispensed in that same unit-dose package or unit-of-issue package and shall only be redispensed once. A pharmacist shall not add unit-dose package drugs to a partially used unit-of-issue package.

D. This section does not apply to any of the following:

(1) a controlled substance;

(2) a prescription drug that is dispensed as part of a customized patient medication package;

(3) a prescription drug that is not dispensed as a unit-dose package or a unit-of-issue package; or

(4) a prescription drug that is not properly labeled with the identity, strength, lot number and expiration date.

E. As used in this section:

(1) "customized patient medication package" means a package that is prepared by a pharmacist for a specific patient and that contains two or more prescribed solid oral dosage forms;

(2) "repackaging" means the process by which the pharmacy prepares a prescription it accepts pursuant to this section in a unit-dose package, unit-of-issue package or customized patient medication package for immediate dispensing in accordance with a current prescription;

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

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

(b) the parole board to the extent delegated by the Parole Board Act [31-21-22 through 31-21-26 NMSA 1978];

(4) "unit-dose package" means a package that contains a single-dose drug with the name, strength, control number and expiration date of that drug on the label; and

(5) "unit-of-issue package" means a package that provides multiple doses of the same drug, but each drug is individually separated and includes the name, lot number and expiration date of the drug.

History: Laws 2009, ch. 236, § 1.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 236 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

ARTICLE 1A
Correctional Facilities Housing

33-1A-1. Lease of real property for correctional facility housing.

The facilities management division of the general services department is authorized to lease a portion of the real property of the state on which a correctional facility is located, but not to include Grants, New Mexico, for a period not to exceed twenty-five years, to a private entity in consideration for the construction on the real property of low-rent housing units for correctional officers of the corrections department, their families and such other corrections department personnel or other state employees as the secretary of corrections may designate; provided the low-rent housing units are rented only to state employees.

History: Laws 1983, ch. 186, § 1; 2013, ch. 115, § 24.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; deleted "property control" and added "facilities management" before "division", changed "department of finance and administration" to "general services department"; after "correctional officers of the", added "corrections", after "families and such other", added "corrections", after "low-rent housing units", changed "shall not be rented to non-state employees" to "are rented only to state employees".

33-1A-2. Long-term lease of correctional facility housing by facilities management division; sublease to correctional officers and others.

In connection with and as part of the real property lease authorized in Section 33-1A-1 NMSA 1978, the facilities management division of the general services department is authorized to negotiate and execute a long-term lease, for a period not to exceed twenty-five years, of the low-rent housing units constructed pursuant to Chapter 33, Article 1A NMSA 1978 and to sublease them to correctional officers of the corrections department, their families and such other department personnel or other state employees as the secretary of corrections may designate.

History: Laws 1983, ch. 186, § 2; 2013, ch. 115, § 25.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; in the catchline, deleted "property control" and added "facilities management"; deleted "property control" and added "facilities management" before "division"; after "division", added "of the general services department"; and after "correctional officers of the", added "corrections".

33-1A-3. Long-term correctional facility housing lease suspense fund established.

The facilities management division of the general services department shall establish a schedule of sublease rental fees for the low-rent housing units constructed pursuant to Chapter 33, Article 1A NMSA 1978. Sublease rental fee payments shall be paid to the general services department and deposited in the "long-term correctional facility housing lease suspense fund", hereby established, which shall be administered by the secretary of general services or the secretary's designee. Payments shall be made from the long-term correctional facility housing lease suspense fund to satisfy the long-term correctional facility housing lease terms, including rent, maintenance and replacement costs, insurance, management fees, taxes and all applicable costs. No other fund shall be liable for or available to satisfy the long-term correctional facility housing lease authorized in Chapter 33, Article 1A NMSA 1978.

History: Laws 1983, ch. 186, § 3; 2013, ch. 115, § 26.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; in the first sentence, deleted "property control" and added "facilities management" before "division"; after "division", added "of the general services department"; and in the second sentence, changed "department of finance and administration" to "general services department"; and after "administered by the secretary of", deleted "finance and administration" and added "general services".

33-1A-4. Lease terms.

A. Upon expiration of the long-term housing lease, the low-rent housing units constructed pursuant to Chapter 33, Article 1A NMSA 1978 shall become the exclusive property of the state, free of any encumbrances of any kind arising from the construction or leasing of the housing units.

B. The low-rent housing units constructed pursuant to Chapter 33, Article 1A NMSA 1978 shall conform to all applicable building codes, and the plans and specifications for the housing units shall be approved by the facilities management division of the general services department prior to commencement of construction.

C. The state shall be indemnified against any judgment awarding monetary damages due to the construction or safety of the low-rent housing units constructed pursuant to Chapter 33, Article 1A NMSA 1978.

History: Laws 1983, ch. 186, § 4; 2013, ch. 115, § 27.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; in Subsection B, deleted "property control" and added "facilities management" before "division"; and after "division", added "of the general services department".

33-1A-5. Board of finance approval.

No lease of low-rent housing units constructed pursuant to Chapter 33, Article 1A NMSA 1978 shall be binding against the facilities management division of the general services department until it has been approved by the state board of finance.

History: Laws 1983, ch. 186, § 5; 2013, ch. 115, § 28.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division.

ARTICLE 2
State Correctional Facilities

33-2-1. Adoption of rules.

The corrections division [corrections department] shall adopt such rules concerning all prisoners committed to the penitentiary as shall best accomplish their confinement and rehabilitation.

History: 1953 Comp., § 42-1-1.1, enacted by Laws 1955, ch. 149, § 1; 1977, ch. 257, § 62.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1980, ch. 150, § 3, renamed the former criminal justice department as the corrections and criminal rehabilitation department and renamed the former corrections division within that department as the adult institutions division.

Laws 1981, ch. 73, § 3 and Laws 1981, ch. 127, § 16 renamed the former corrections and criminal rehabilitation department as the corrections department and retained the adult institutions division.

Laws 1981, ch. 73, § 4, provided that the chief officer of the corrections department shall be the secretary of corrections. *See* 9-3-4 NMSA 1978.

Laws 1981, ch. 73, § 8, provided that, as of March 31, 1981, all references to the corrections division of the criminal justice department or the corrections and criminal rehabilitation department shall be construed to be references to the corrections department. The functions formerly performed by the corrections division are now performed by various divisions of the corrections department. *See* 9-3-3 NMSA 1978 and compiler's notes thereto.

No power to authorize cash awards to employees. — The board of penitentiary commissioners (now corrections department) does not have authority to itself authorize, or to delegate to the superintendent (now secretary of corrections) the power to authorize, meritorious awards to employees by way of cash benefits. 1957-58 Op. Att'y Gen. No. 57-21.

No power to authorize cash awards to inmates of penitentiary. — The board of penitentiary commissioners (now corrections department) does not have authority, nor may it delegate to the superintendent (now secretary of corrections) the power, to authorize cash awards to inmates of the penitentiary for exceptionally outstanding acts of benefit to other inmates, employees of the penitentiary, or of general benefit to the state. 1957-58 Op. Att'y Gen. No. 57-21.

Law reviews. — For note and comment, “The Constitutionality of Faith-Based Prison Programs: A Real World Analysis Based in New Mexico”, see 37 N.M. L. Rev. 487 (2007).

Am. Jur. 2d, A.L.R. and C.J.S. references. — State regulation of conjugal or overnight familial visits in penal or correctional institutions, 29 A.L.R.4th 1216.

Validity and construction of prison regulation of inmates' possession of personal property, 66 A.L.R.4th 800.

State prisoner's right to personally appear at civil trial to which he is a party - state court cases, 82 A.L.R.4th 1063.

Validity, construction, and application of state statute requiring inmate to reimburse government for expense of incarceration, 13 A.L.R.5th 872.

Constitutional right of prisoners to abortion services and facilities - federal cases, 90 A.L.R. Fed. 683.

33-2-2. [Present penitentiary identified as one referred to in constitution as a beneficiary; rights and titles.]

The penitentiary of New Mexico as herein established as a body politic and corporate, is hereby declared to be the same institution enumerated in Section 1 of Article XIV of the constitution of New Mexico, and the same institution which is one of the beneficiaries of the lands donated by the United States government to the state of New Mexico in trust for said institution, and as such body politic and corporate is hereby vested with the absolute legal right and title to all real estate, personal property and other assets and things of value heretofore held, used and operated by the board of commissioners of the penitentiary [corrections department] of New Mexico before incorporation, and all appropriations heretofore made, including the right to receive the benefits and proceeds of permanent and current funds pursuant to the Enabling Act.

History: Laws 1939, ch. 55, § 2; 1941 Comp., § 45-102; 1953 Comp., § 42-1-2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1977, ch. 257, § 102, amending Laws 1969, ch. 226, § 9, provided that reference made under any statute, which was administered and enforced prior to July 1, 1969 by the penitentiary or its officers or employees, to any such officers, employees or agency, shall be construed to mean the corrections division. *See* 33-1-7 NMSA 1978. However, the functions formerly performed by the corrections division are now performed by various divisions of the corrections department. *See* compiler's note to 33-2-1 NMSA 1978.

Cross references. — For the penitentiary at Santa Fe being confirmed as a state institution, *see* N.M. Const., art. XIV, § 1.

For the Enabling Act, *see* Pamphlet 3.

Title to section gave ample notice it concerned title to property. — The title to this section is broad enough to meet the test enunciated by this court in State v. Aragon, 1951-NMSC-052, 55 N.M. 423, 234 P.2d 358, and State v. Ingalls, 1913-NMSC-068, 18 N.M. 211, 135 P. 1177, and gave ample notice to those interested that it was concerned with "titles and rights" to penitentiary property. It could not have contributed to logrolling or fraud, and it was not necessary for the title of the act to set forth the source of the titles to the property which it directed be transferred to the penitentiary. State v. Thomson, 1969-NMSC-006, 79 N.M. 748, 449 P.2d 656.

If property transferred to penitentiary, then right to repurchase lost. — Sections 33-2-2 and 33-2-4 NMSA 1978 are applicable to penitentiary property; and if the property was, by the provisions of these sections, transferred to the penitentiary, then the right of repurchase created by Laws 1939, ch. 203 (since repealed) either never came into existence or was lost long prior to the quitclaim deed from grantor to grantee. State v. Thomson, 1969-NMSC-006, 79 N.M. 748, 449 P.2d 656.

Prison honor farm is integral part and parcel of state penitentiary, and escape therefrom is an escape from the state penitentiary. State v. Peters, 1961-NMSC-160, 69 N.M. 302, 366 P.2d 148, cert. denied, 369 U.S. 831, 82 S. Ct. 849, 7 L. Ed. 2d 796 (1962).

Public corporation's power to be sued does not authorize tort suit. — The power to sue and be sued as used in statutes conferring such power on public corporations did not mean the power of suing the public corporation, which in fact was a division of the state, in a tort action. Vigil v. Penitentiary of N.M., 1948-NMSC-032, 52 N.M. 224, 195 P.2d 1014.

Meaning of "held, used and operated" and "is hereby vested". — The words "held, used and operated" used in this section must have implied the legislative intention to mean something different than being restricted to "ownership." The very fact that the statute used the terminology "is hereby vested" in connection with the words "held, used and operated" must have intended to include property which the institution "had physical

possession of" as such a meaning follows when all of the words of the statute are considered together. State v. Thomson, 1969-NMSC-006, 79 N.M. 748, 449 P.2d 656.

Meaning of "held" with respect to property with improvements. — The word "held" has no primary or technical meaning and its meaning is determined largely by the connection in which it is used. So viewed, it must follow that the statute vested in the penitentiary all the property that it was then holding, using and operating, and this naturally included the property upon which barns and other improvements had been constructed. State v. Thomson, 1969-NMSC-006, 79 N.M. 748, 449 P.2d 656.

Misnomer in reference to penitentiary affects no substantial rights. — Prisoners were denied habeas corpus where they were sentenced to the "New Mexico penitentiary" instead of "to the penitentiary of New Mexico" because the misnomer, if one existed, was a clerical error which did not affect any substantial right of the appellants. Carter v. New Mexico, 358 F.2d 710 (10th Cir.), cert. denied, 385 U.S. 873, 87 S. Ct. 146, 17 L. Ed. 2d 100 (1966).

Commissioners had authority to move penitentiary. — Under the broad powers of the statute (Section 42-1-1, 1953 Comp., since repealed; see now Section 42A-1-1) to sell real, personal or mixed property, the penitentiary commissioners (now corrections department) have the authority to move the penitentiary out of the county of Santa Fe if in their judgment they deem it necessary and proper for the operation and management of the penitentiary. 1953-54 Op. Att'y Gen. No. 53-5628.

Law reviews. — For comment, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

33-2-3. [Previous matters unimpaired.]

That nothing in this act contained is intended to alter or in any manner affect the validity of the commitment, imprisonment, parole or discharge of any and all prisoners now confined in said penitentiary, or in any way to alter the rules and regulations thereof, except as herein specifically provided.

History: Laws 1939, ch. 55, § 3; 1941 Comp., § 45-103; 1953 Comp., § 42-1-3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler’s notes. — The term "this act", referred to in this section, means Laws 1939, ch. 55, §§ 1 to 19, which appears as 31-21-2, 33-2-2 to 33-2-5, 33-2-12, 33-2-17 and 33-2-18 NMSA 1978.

33-2-4. [Transfer of title to new corporation.]

That the governor of the state of New Mexico is hereby authorized and empowered upon the application of the penitentiary of New Mexico, as a body corporate, to execute in the name of the state of New Mexico any necessary deed or deeds, or other conveyances or assurances of title to vest in the penitentiary of New Mexico, as a corporation, complete legal title to any and all real, personal or mixed property heretofore held, used and possessed by the state of New Mexico for the board of penitentiary commissioners [corrections department], and by the board of penitentiary commissioners [department] and their predecessors in office, and the secretary of state is authorized and directed to attest the signature of the governor to any such document and to affix the great seal of the state of New Mexico thereto.

History: Laws 1939, ch. 55, § 4; 1941 Comp., § 45-104; 1953 Comp., § 42-1-4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

See compiler's notes to 33-2-1 NMSA 1978.

If property transferred to penitentiary, then right to repurchase lost. — Sections 33-2-2 and 33-2-4 NMSA 1978 are applicable to penitentiary property; and if the property was, by the provisions of these sections, transferred to the penitentiary, then the right of repurchase created by Laws 1939, ch. 203 (since repealed) either never came into existence or was lost long prior to the quitclaim deed from grantor to grantee. State v. Thomson, 1969-NMSC-006, 79 N.M. 748, 449 P.2d 656.

33-2-5. Disposition of unneeded property.

A. If the penitentiary of New Mexico, as a body corporate, possesses any real, personal or mixed property of any kind that, in the judgment of the secretary of corrections is no longer required for the use of the penitentiary, then the penitentiary of New Mexico has the right to sell, trade, mortgage or otherwise alienate any real, personal or mixed property for such price and upon such terms as seems just and proper to the secretary of corrections, and the proceeds to be derived from any such transaction shall become the property of the penitentiary of New Mexico; provided, however, that in all cases of the sale, trade, mortgage or other alienation of real property belonging to the penitentiary of New Mexico, the same shall not take effect until approved by the department of finance and administration.

B. K-9 dogs are exempt from the provisions of Subsection A of this section. If the secretary of corrections finds that the K-9 dog presents no threat to public safety, the K-9 dog shall be released from public ownership as provided in this subsection. The K-9 dog shall first be offered to its trainer or handler free of charge. If the trainer or handler does not want to take ownership of the K-9 dog, then the K-9 dog shall be offered to an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 free

of charge. If both of the above fail, the K-9 dog shall only be sold to a qualified individual found capable of providing a good home to the animal.

History: Laws 1939, ch. 55, § 5; 1941 Comp., § 45-105; Laws 1951, ch. 61, § 2; 1953 Comp., § 42-1-5; Laws 1977, ch. 257, § 63; 2013, ch. 9, § 2.

ANNOTATIONS

Cross references. — For Section 501(c)(3) of the Internal Revenue Code of 1986, *see* 26 U.S.C.S. § 501(c)(3).

The 2013 amendment, effective June 14, 2013, provided for the disposition of state-owned K-9 dogs and added Subsection B.

When state has fee simple title, use of property irrelevant. — When state has fee simple title, the fact that the property is no longer used for the purposes to which it was put for almost 60 years (penitentiary purposes) makes no difference, and the provisions of this section become operative and authorize the disposition of the same as unneeded property. State v. Thomson, 1969-NMSC-006, 79 N.M. 748, 449 P.2d 656.

Department of finance and administration approves disposition of moneys received. — Moneys received from the sale of penitentiary lands and deposited with the state treasurer may not be spent without prior approval of the state board of finance (now department of finance and administration). 1955-56 Op. Att'y Gen. No. 55-6141.

Expenses of prior sales reimbursable to building fund from subsequent sales. — Expenses incurred for abstracts, legal fees and quiet title suits on lands previously sold by the penitentiary and paid from the severance tax building and improvement fund of 1953 are reimbursable to the building fund from the proceeds from the sale of other property. 1955-56 Op. Att'y Gen. No. 55-6141.

33-2-6. Improvements in penitentiary; labor by convicts.

The corrections division [corrections department] shall decide what improvements shall be made in the penitentiary and on property owned by the penitentiary, whether the same shall be enlarged, or the erection of the extension of the prison or prison walls, the erection of workshops or other buildings or improvements shall be made; provided that the corrections division [corrections department] shall not make any improvements that will require an expenditure of money in excess of the appropriations made by the legislature for that purpose, which improvements shall be made under the direction of the warden on plans furnished by the division [department] and he shall employ such number of convicts in making such improvements as the division [department] may deem advisable, and shall employ the remainder of the convicts as may be most advantageous to the state or the penitentiary.

All amounts received by the penitentiary of New Mexico from the sale or mortgaging of any real property is [are] hereby appropriated to be used for the purchase of equipment for prison industries, or for the construction of buildings or structures for prison industries, or used to pay interest on, or to retire any bonds issued by the penitentiary commissioners or the corrections division [corrections department].

History: Laws 1889, ch. 76, § 29; C.L. 1897, § 3518; Code 1915, § 5041; C.S. 1929, § 130-124; 1941 Comp., § 45-111; Laws 1951, ch. 61, § 3; 1953 Comp., § 42-1-11; Laws 1955, ch. 238, § 1; 1963, ch. 168, § 1; 1977, ch. 257, § 64.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

See compiler's notes to 33-2-1 NMSA 1978.

Compiler's notes. — The 1915 Code compilers, in conformity to N.M. Const., art. XX, § 18, deleted from the end of the present first paragraph the following: "provided, however, that he shall classify the convicts, and if it shall be more in the interest of the penitentiary or the territory to hire out the labor of the convicts to be worked under the control of the superintendent, he may hire out such labor with the consent of the board of penitentiary commissioners."

Two methods for handling funds for improvements to penitentiary. — If the penitentiary has legal title to the land upon which the buildings or improvements are to be placed, then additional appropriation is not necessary and either of two methods may be utilized for handling the funds: (1) payment into the state treasury and disbursement therefrom under state treasury procedure, or (2) 6-10-54 NMSA 1978 provides that penal institutions of the state may be exempt from the provisions of 6-10-3 NMSA 1978, which requires that the moneys be paid into the state treasury. Section 6-10-54 NMSA 1978 provides that the funds of such institutions may be deposited in a qualified depository to the account of the board of such institution. By implication, disbursement thereof under this section shall be made by the treasurer upon authority of the board. In this connection it may be stated that the treasurer of the state of New Mexico is the ex-officio treasurer of the board of directors of the state penitentiary, and therefore no new bond would be required of the treasurer since he is already bonded. 1955-56 Op. Att'y Gen. No. 55-6079.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60 Am. Jur. 2d Penal and Correctional Institutions §§ 162 to 173.

33-2-7. Penitentiary; conflict of interest[; penalties].

Should any member or employee of the corrections division [corrections department], officer or other employee of the penitentiary, become interested in any

manner in any contract for providing provisions, clothing or other necessaries for the use of said penitentiary, or become in any way interested in any contract for buildings or the construction of any buildings of any kind connected with said penitentiary or for furnishing materials for any such building, such member, officer or employee so interested, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be removed from office, or employment and shall forfeit any interest he may have in such contract, and shall be fined not more than two thousand dollars ($2,000) nor less than five hundred dollars ($500).

History: Laws 1889, ch. 76, § 20; C.L. 1897, § 3509; Code 1915, § 5035; C.S. 1929, § 130-118; 1941 Comp., § 45-116; 1953 Comp., § 42-1-16; Laws 1977, ch. 257, § 65.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

See compiler's notes to 33-2-1 NMSA 1978.

Employees being interested in contracts or furnishing supplies prohibited. — Members of boards of state institutions, their employees and officials, or employees of the state or of any institution or agency thereof are prohibited from becoming interested in any contract for expenditure of public money or for furnishing supplies to institutions of which they are board members or employees, and are liable to penalty imposed by appropriation acts. 1931-32 Op. Att'y Gen. No. 32-373.

33-2-8. [Accepting compensation from contractor; aiding escape of prisoner; penalties.]

No officer or other person employed in or about the penitentiary shall be permitted to receive any compensation or reward from any contractor, under penalty of dismissal from office, and forfeiture of all pay due, and if any officer procure the escape of any convict, or connive at, aid or assist in the escape of any convict from the penitentiary, whether such convict escape or not, he shall be guilty of felony and shall, upon conviction thereof, be sentenced to hard labor in the penitentiary for any term not less than one year, nor more than three years.

History: Laws 1889, ch. 76, § 25; C.L. 1897, § 3514; Code 1915, § 5039; C.S. 1929, § 130-122; 1941 Comp., § 45-117; 1953 Comp., § 42-1-17.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For penalty for officer or jailer permitting or allowing escape, *see* 30-22-11 NMSA 1978.

33-2-9. Corrections department; contracts; gifts; penalties.

No officer or employee of the corrections department shall enter into any business venture or contract with or, under any pretense whatever, receive from any inmate or parolee any sum of money, emolument or reward or any article of value under the penalty of being discharged from service or from office and forfeiting all money, of whatever kind, due him, from the department or state, and being disqualified from ever holding that position in the future.

History: Laws 1889, ch. 76, § 28; C.L. 1897, § 3517; Code 1915, § 5040; C.S. 1929, § 130-123; 1941 Comp., § 45-118; 1953 Comp., § 42-1-18; Laws 1977, ch. 257, § 66; 1982, ch. 43, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 C.J.S. Prisons and Rights of Prisoners §§ 20 to 22, 25, 26, 28, 29, 31, 35, 41, 42, 45 to 49, 63, 99, 105, 130.

33-2-10. Penitentiary; rules and regulations.

The corrections division [corrections department] shall make such rules and regulations for the government, discipline and police of the penitentiary, and for the punishment of the prisoners confined therein, not inconsistent with the law, as it may deem expedient, and until such regulations are made, the regulations now in force shall continue in force. The division [department] shall exercise a general superintendence and control over the government and discipline of the penitentiary, cause such rules and regulations as it may prescribe for the government and discipline of the penitentiary to be printed and placed in some conspicuous place therein, and shall visit the said penitentiary once in each month, and inspect the same.

History: Laws 1889, ch. 76, § 8; C.L. 1897, § 3498; Code 1915, § 5031; C.S. 1929, § 130-114; 1941 Comp., § 45-119; 1953 Comp., § 42-1-19; Laws 1977, ch. 257, § 67.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

See compiler's notes to 33-2-1 NMSA 1978.

Cross references. — For duty of warden to keep record of infractions, *see* 33-2-32 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability for death of or injury to prisoner, 46 A.L.R. 94, 50 A.L.R. 268, 61 A.L.R. 569.

Constitutionality of statutes in relation to treatment or discipline of convicts, 50 A.L.R. 104.

Sterilization of criminals or defectives, 53 A.L.R.3d 960.

Propriety of telephone testimony or hearings in prison proceedings, 9 A.L.R.5th 451.

Validity under federal law of prison regulations relating to inmates' hair length and style, 62 A.L.R. Fed. 479.

72 C.J.S. Prisons and Rights of Prisoner § 75.

33-2-11. Corrections department powers; complaints.

A. The corrections department has the power and the duty to examine and inquire into all matters connected with the government, discipline and police of the corrections facilities and the punishment and treatment of the prisoners; the department, shall inspect the corrections facilities and listen to any complaints of oppression or misconduct on the part of the warden or any of the other employees under him; and for that purpose, the secretary of corrections has the power to issue subpoenas and compel attendance of witnesses and to administer oaths.

B. No court of this state shall acquire subject-matter jurisdiction over any complaint, petition, grievance or civil action filed by any inmate of the corrections department with regard to any cause of action pursuant to state law that is substantially related to the inmate's incarceration by the corrections department until the inmate exhausts the corrections department's internal grievance procedure. Upon exhaustion of this administrative remedy, the first judicial proceeding shall be a de novo hearing, unless otherwise provided by law.

C. In any action brought by an inmate of the corrections department pursuant to Section 1979 of the Revised Statutes of the United States, 42 U.S.C. Section 1983, the court shall, if the court believes that such a requirement would be appropriate and in the interests of justice, continue the case for a period of ninety days for the purpose of exhaustion by the inmate of any available plain, speedy and effective administrative remedies, but the exhaustion of those remedies shall not be required unless the court has determined, or the attorney general of the United States has certified, that the administrative remedies are in substantial compliance with the minimum acceptable standards adopted under 42 U.S.C. Section 1997e(b).

History: Laws 1889, ch. 76, § 9; C.L. 1897, § 3499; Code 1915, § 5032; C.S. 1929, § 130-115; 1941 Comp., § 45-120; 1953 Comp., § 42-1-20; Laws 1977, ch. 257, § 68; 1990, ch. 9, § 1.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, substituted "Corrections department" for "Penitentiary - Division" in the catchline; designated the former section as Subsection A; in Subsection A, substituted "department has the power and the duty" for "division shall have power and it shall be its duty", "the corrections facilities" for "said penitentiary", "department" for "division", and "secretary of corrections has the" for "division director shall have"; inserted "in conjunction with the standards and inspection bureau" preceding "shall inspect"; and made a minor stylistic change; and added Subsections B and C.

Failure to pursue administrative remedy bars mandamus suit against warden. — Since appellant, a prison inmate, had failed to pursue the administrative remedy provided by this section, he was barred from obtaining a writ of mandamus against warden. Birdo v. Rodriguez, 1972-NMSC-062, 84 N.M. 207, 501 P.2d 195.

Expert testimony is required to establish the standard of care for monitoring inmates in prisons. — Where plaintiff, who was an inmate at a county detention center and who was assaulted and raped by three inmates, sued defendants for failing to protect plaintiff from the assault; plaintiff claimed that the area in which plaintiff was assaulted was an architectural blind spot that could not be covered by video surveillance, as well as not being directly monitored by guards, and that jurors could use common knowledge to find that it is negligence to allow inmates in an area that was not properly subject to surveillance or monitoring, either due to the existence of a blind spot or lack of guards; and defendant did not offer any testimony as to the standard of care for monitoring of inmates, jail design, video surveillance or any other factors that underlie those standards; the district court properly granted summary judgment for defendants because expert testimony was required in order for a jury to make a decision regarding the standard of care of the monitoring by prison officials and the mere fact that plaintiff was assaulted did not prove that prison monitoring fell below the required standard of care. Villalobos v. Doña Ana Bd. of Cnty. Comm’rs, 2014-NMCA-044.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Right of state prison authorities to administer neuroleptic or antipsychotic drugs to prisoner without his or her consent - state cases, 75 A.L.R.4th 1124.

72 C.J.S. Prisons and Rights of Prisoners § 129.

33-2-12. Visitors.

The following persons are authorized to visit the penitentiary at pleasure: the governor, judges of the supreme court and the secretary of the criminal justice department [corrections department] or his duly authorized representative; and no other persons shall be permitted to go within the walls of the penitentiary where the convicts are confined except by permission of the warden.

History: Laws 1889, ch. 76, § 18; C.L. 1897, § 3507; Code 1915, § 5033; C.S. 1929, § 130-116; Laws 1939, ch. 55, § 11; 1941 Comp., § 45-121; 1953 Comp., § 42-1-21; Laws 1977, ch. 257, § 69.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

See compiler's notes to 33-2-1 NMSA 1978.

Strip searches of prison visitors can be justified on basis of reasonable suspicion, but only if such searches are conducted as part of a prison procedure that informs visitors before being searched that they have the right to refuse to be searched, in which case they will be escorted off the prison grounds. State v. Garcia, 1993-NMCA-105, 116 N.M. 87, 860 P.2d 217.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60 Am. Jur. 2d Penal and Correctional Institutions §§ 78, 80, 84.

Right of jailed or imprisoned parent to visit from minor child, 15 A.L.R.4th 1234.

72 C.J.S. Prisons and Rights of Prisoners § 105.

33-2-12.1. Corrections; family visits.

The secretary of corrections may promulgate rules and regulations providing for family visits between minimum or medium security inmates confined at state correctional facilities and their families. As used in this section:

A. "family" means the inmate's legal spouse, natural parents, adoptive parents, if the adoption occurred and a family relationship existed prior to the inmate's incarceration, stepparents or foster parents, grandparents, brothers and sisters, natural and adoptive children, stepchildren and grandchildren. The term does not include the inmate's aunts, uncles and cousins unless a bona fide foster relationship exists, nor does it include persons with only a common law relationship to the inmate; and

B. "family visit" means extended and overnight visitation between eligible inmates and their families with all necessary accommodations provided by the corrections department for this purpose at a reasonable charge to the inmate or his family to defray the costs of the accommodations. Families shall be required to provide food for the visit or, if security requires, to purchase all food for the visit from the department.

History: Laws 1983, ch. 97, § 1.

ANNOTATIONS

Withdrawal of visitation privileges. — Where the inmate's visitation privileges were withdrawn; the inmate was not given notice of any kind or an opportunity to be heard or present evidence; the inmate was not given a written statement prepared by an impartial fact finder regarding the evidence and reasons for the deprivation; and because there was no hearing, the inmate was not able to confront the inmate's accusors or cross-examine witnesses, the inmate's due process rights were violated. Cordova v. LeMaster, 2004-NMSC-026, 136 N.M. 217, 96 P.3d 778.

Am. Jur. 2d, A.L.R. and C.J.S. references. — State regulation of conjugal or overnight familial visits in penal or correctional institutions, 29 A.L.R.4th 1216.

Federal and state constitutions as protecting prison visitor against unreasonable searches and seizures, 85 A.L.R.5th 261.

Admissibility in sex offense case, under Rule 412 of federal Rules of Evidence, of evidence of victim's past sexual behavior, 166 A.L.R. Fed. 639.

33-2-13. Physician, physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice; rules; prisoner's disability; records.

A physician or a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice, when visiting the penitentiary of New Mexico, shall conform to its rules and regulations. The physician or the physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice shall express no opinion as to the disability of any prisoner except in records kept in the penitentiary.

History: Laws 1889, ch. 76, § 44; C.L. 1897, § 3533; Code 1915, § 5025; C.S. 1929, § 130-108; 1941 Comp., § 45-122; 1953 Comp., § 42-1-22; 2015, ch. 116, § 13.

ANNOTATIONS

Cross references. — For physical examination of entering prisoners, *see* 33-2-16 NMSA 1978.

For notifying relatives of deceased persons, *see* 24-12-1 NMSA 1978.

For when it is unlawful to furnish drugs or liquor to prisoner, *see* 30-22-13 NMSA 1978.

The 2015 amendment, effective June 19, 2015, included other health care professionals with each reference to "physician" as it relates to complying with rules and regulations in correctional facilities and keeping records of prisoners' disabilities; added the catchline; in the first sentence, deleted "The" and added "A", after "physician", added "or a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice", after "penitentiary", added "of

New Mexico", after "conform to", deleted "the" and added "its", after "rules and regulations.", deleted "thereof. He" and added "The physician or the physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice", and after "any prisoner except in", deleted "his record which he shall keep" and added "records kept".

Temporary provisions. — Laws 2015, ch. 116, § 16 provided that by January 1, 2016, every cabinet secretary, agency head and head of a political subdivision of the state shall update rules requiring an examination by, a certificate from or a statement of a licensed physician to also accept such examination, certificate or statement from an advanced practice registered nurse, certified nurse-midwife or physician assistant working within that person's scope of practice.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60 Am. Jur. 2d Penal and Correctional Institutions § 91.

Medical or surgical services to prisoners, liability for, 44 A.L.R. 1285.

72 C.J.S. Prisons and Rights of Prisoners §§ 80 to 90.

33-2-14. Penitentiary; fire.

The corrections division [corrections department] shall take precaution to protect the penitentiary and all property connected therewith against fire, as far as possible, and shall procure such conveniences and the standards and inspection bureau shall prescribe such rules as will enable the convicts to be evacuated in the shortest possible time and secure their safety and custody in case of fire.

History: Laws 1889, ch. 76, § 46; C.L. 1897, § 3535; Code 1915, § 5047; C.S. 1929, § 130-130; 1941 Comp., § 45-123; 1953 Comp., § 42-1-23; Laws 1977, ch. 257, § 70.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

See compiler's notes to 33-2-1 NMSA 1978.

33-2-15. Penitentiary; duties.

The employees of the penitentiary shall perform such duties in the charge and oversight of the penitentiary, care of the property belonging thereto, and in the custody, government, employment and discipline of the convicts as shall be required of them by the corrections division [corrections department] or the warden, in conformity with law and rules and regulations prescribed for the government of the penitentiary.

History: 1953 Comp., § 42-1-25.1, enacted by Laws 1955, ch. 151, § 2; 1977, ch. 257, § 71.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

See compiler's notes to 33-2-1 NMSA 1978.

Prison guards in the department of corrections are not law enforcement officers for purposes of 41-4-3D NMSA 1978, because: (1) the principal duties of prison guards are to hold in custody persons who have already been convicted rather than merely accused of a criminal offense; (2) maintenance of public order relates to a public not a penitentiary setting; and (3) although prison guards may have the supplemental power to arrest pursuant to the guidelines of 33-1-10 NMSA 1978, their principal statutory duties are those set forth in this section. Callaway v. N.M. Dep't of Corr., 1994-NMCA-049, 117 N.M. 637, 875 P.2d 393, cert. denied, 118 N.M. 90, 879 P.2d 91.

33-2-16. [Record on admission of prisoner; physical data; improvement or deterioration record.]

When any prisoner shall be received into said penitentiary, the superintendent [warden] shall cause to be entered into a register the date of such admission, the name, age, nativity, nationality, with such other facts as can be ascertained of parentage, education, occupation, and early social influences as seem to indicate the constitutional and acquired defects and tendencies of the prisoner. Based upon these, an estimate shall be made of the present condition of the prisoner, and the best probable plan of treatment.

The physician of said penitentiary shall carefully examine each prisoner when received and shall enter in a register to be kept by him, the name, nationality or race, the weight, stature and family history of each prisoner, also a statement of the condition of the heart, lungs, and other leading organs, the rate of the pulse and respiration, the measurement of the chest and abdomen, and any existing disease or deformity, or other disability, acquired or inherited.

Upon the superintendent's [warden's] register shall be entered from time to time minutes of observed improvement or deterioration of character, and notes as to the method and treatment employed; also all alterations affecting the standing or situation of such prisoner, and any subsequent facts or personal history which may be brought officially to his knowledge bearing upon the question of the parole or final release of the prisoner.

History: 1953 Comp., § 42-1-31.2, enacted by Laws 1955, ch. 149, § 3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

The references to "warden" in the first and third paragraphs were inserted by the compiler, as the 1977 amendments to a number of sections of this article, found in Laws 1977, ch. 257, §§ 64, 66, 69, 71, 76, 77 to 79, compiled as 33-2-6, 33-2-9, 33-2-12, 33-2-15, 33-2-32, 33-2-36, 33-2-37 NMSA 1978, substituted "warden" for "superintendent" so that retention of reference to "superintendent" in this section may have been a legislative oversight. But see, however, 33-1-2 NMSA 1978 defining "superintendent."

Cross references. — For physician's opinion on inmate's disability, *see* 33-2-13 NMSA 1978.

Section does not require entry of prisoner's release date on any record. Rather it requires the keeping of records regarding matters which bear upon the question of final release. Apodaca v. Rodriguez, 1972-NMSC-067, 84 N.M. 338, 503 P.2d 318.

Records of state penitentiary are public records and should be made available for public inspection in accordance with the provisions of Laws 1947, ch. 130. 1951-52 Op. Att'y Gen. No. 51-5342.

33-2-17. Id.; accounts; paying over funds.

The superintendent [warden] shall keep, or cause to be kept, in suitable books, regular and complete accounts of all income, business and concerns of the penitentiary, a true account of all money received for labor, or from other sources, and shall turn over said moneys to the state treasurer to be placed to the credit of the penitentiary convicts' earning fund.

History: Laws 1889, ch. 76, § 37; C.L. 1897, § 3526; Code 1915, § 5060; C.S. 1929, § 130-143; Laws 1939, ch. 55, § 15; 1941 Comp., § 45-134; 1953 Comp., § 42-1-34.

ANNOTATIONS

Compiler's notes. — The word "Id." in the catchline refers to the catchline "Superintendent; powers and duties" in the section which preceded this section in the 1915 Code.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

See notes to 33-2-16 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 C.J.S. Prisons and Rights of Prisoners § 6.

33-2-18. Id.; collection and disbursement of funds.

The superintendent [warden] shall collect all moneys due to the penitentiary, except appropriations from the state, and shall pay the same over to the state treasury, to be placed to the credit of the penitentiary convicts' earning fund, taking a receipt for the same.

History: Laws 1889, ch. 76, § 40; C.L. 1897, § 3529; Code 1915, § 5061; C.S. 1929, § 130-144; Laws 1939, ch. 55, § 16; 1941 Comp., § 45-135; 1953 Comp., § 42-1-35.

ANNOTATIONS

Compiler's notes. — The word "Id." in the catchline refers to the catchline "Superintendent; powers and duties" in the section which preceded this section in the 1915 Code.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

See notes to 33-2-16 NMSA 1978.

33-2-19. What convicts to be confined.

Convicts sentenced to the corrections department for life or any term for which they may be confined in a corrections facility by any court having jurisdiction to try causes under the laws of the United States, held within this state, shall be received into the corrections facility by the secretary of corrections or his designee when delivered by the authority of the United States and shall be kept in the corrections facility in pursuance of their sentences. All persons convicted of any crime where the punishment is imprisonment for a term of one year or more, after accounting for any period of the sentence being suspended or deferred and any credit for presentence confinement, shall be imprisoned in a corrections facility, unless otherwise provided by law, and judgments shall be issued accordingly. All persons convicted of any crime punishable with death who are pardoned on condition of being imprisoned, either for life or a term of years, or whose sentences are commuted for imprisonment for life or a term of years shall be so imprisoned in a corrections facility. All persons imprisoned or confined in a corrections facility shall be subject to its rules and regulations.

History: Laws 1889, ch. 76, § 11; C.L. 1897, § 3500; Code 1915, § 5062; C.S. 1929, § 130-145; 1941 Comp., § 45-137; 1953 Comp., § 42-1-37; 1990, ch. 8, § 1.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, added the catchline; divided the former first sentence into the present first three sentences; substituted "corrections facility" for "penitentiary" throughout the section; in the present first sentence, substituted "the corrections department" for "hard labor in the penitentiary", "shall be received" for "must be received", and "secretary of corrections or his designee" for "superintendent thereof"; rewrote the provisions of the present second sentence which read "All persons convicted of any crime where the punishment is imprisonment for a term or time exceeding six months shall be imprisoned in the penitentiary, and all courts in which such convictions shall be had shall give judgment accordingly"; and made minor stylistic changes.

Penitentiary place of confinement when maximum sentence one year. — Since defendant has a valid maximum sentence of not more than one year, he may be confined, under that sentence, up to one full year. Thus, under either 31-20-2 or 33-2-19 NMSA 1978 the proper place of his confinement is the state penitentiary. State v. Sawyers, 1968-NMCA-051, 79 N.M. 557, 445 P.2d 978 (decided under prior law).

Calculation of sentence. — Under this section, defendant's sentence to one year would be calculated as a sentence of less than one year after crediting his pre-sentence time served; thus, the law did not require the court to sentence him to prison, and his sentence to jail was legal. State v. Brown, 1999-NMSC-004, 126 N.M. 642, 974 P.2d 136.

Error in mittimus not grounds for discharge. — A prisoner who has been legally and properly sentenced to prison cannot obtain his discharge simply because there is an imperfection or error in the mittimus. Shankle v. Woodruff, 1958-NMSC-054, 64 N.M. 88, 324 P.2d 1017.

Section impliedly repealed as to sentences under a year. — There is a repugnancy between 31-20-2 NMSA 1978 (which requires penitentiary imprisonment only for sentences of one year or more) and this section, and between 31-19-1 NMSA 1978 (which requires that Criminal Code misdemeanors be imprisoned in a county jail) and this section, and therefore, this section has been repealed insofar as it provides that sentences exceeding six months (but less than one year) must be served in the state penitentiary because both 31-19-1 and 31-20-2 NMSA 1978 were enacted after this section. 1973 Op. Att'y Gen. No. 73-67 (decided prior to 1990 amendment) (rendered under prior law).

Section has never been used to combine short jail sentences to make the convicted person eligible to serve his time in the penitentiary, and its utilization for such a purpose cannot be justified. 1973 Op. Att'y Gen. No. 73-67.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 C.J.S. Convicts §§ 10, 11; 72 C.J.S. Prisons and Rights of Prisoners §§ 4, 21, 130.

33-2-20 to 33-2-25. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 127, § 20, repealed 33-2-20 through 33-2-25 NMSA 1978, relating to the performance of labor by prison inmates, effective June 19, 1981.

33-2-26. Payment of prisoners for services.

The corrections and criminal rehabilitation department [corrections department] may, by appropriate rules and regulations, establish and administer a plan for the payment of prisoners who perform useful services as prison labor. The payment shall be at a rate depending on the skill and efficiency of the prisoner.

History: 1953 Comp., § 42-1-49.1, enacted by Laws 1955, ch. 145, § 1; 1973, ch. 262, § 1; 1975, ch. 203, § 1; 1977, ch. 257, § 73; 1981, ch. 122, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

See compiler's notes to 33-2-1 NMSA 1978.

Cross references. — For inmate pay under the Corrections Industries Act, *see* 33-8-8 NMSA 1978.

For payment of convict's net earnings to his family, *see* N.M. Const., art. XX, § 15.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60 Am. Jur. 2d Penal and Correctional Institutions §§ 168, 169.

18 C.J.S. Convicts §§ 13 to 15.

33-2-27, 33-2-28. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 127, § 20, repealed 33-2-27 and 33-2-28 NMSA 1978, relating to payment of prisoners' earnings, effective June 19, 1981.

33-2-29. Penitentiary; disease.

In case of any pestilence or contagious sickness breaking out among the convicts, the corrections division [corrections department] may cause the convicts confined therein or any of them to be removed to some suitable place of security where such of them as may be sick shall receive necessary medical attention and such convicts must

be returned as soon as may be to the penitentiary to be confined according to their respective sentences, if the same be unexpired.

History: Laws 1889, ch. 76, § 16; C.L. 1897, § 3505; Code 1915, § 5066; C.S. 1929, § 130-149; 1941 Comp., § 45-150; 1953 Comp., § 42-1-50; Laws 1977, ch. 257, § 75.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

See compiler's notes to 33-2-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 C.J.S. Prisons and Rights of Prisoners § 85.

33-2-30. [Enforcing commands to prisoners; when wounding or killing justified.]

If a convict sentenced to the penitentiary resist the authority of any officer, or refuse to obey his lawful commands, it shall be the duty of such officer immediately to enforce obedience by the use of such weapons or other aid as may be effectual, and if in so doing, any convict thus resisting be wounded or killed by any such officer or his assistant, or any guard or other employe, they shall be justified and shall be held guiltless; but such officer, assistant, guard or other employe shall not be excusable for using greater force than the emergency of the case demands.

History: Laws 1889, ch. 76, § 14; C.L. 1897, § 3503; Code 1915, § 5064; C.S. 1929, § 130-147; 1941 Comp., § 45-151; 1953 Comp., § 42-1-51.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For peace officer powers of guards, *see* 33-1-10 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60 Am. Jur. 2d Penal and Correctional Institutions §§ 174, 175, 177 to 179, 181 to 188, 190, 191, 195 to 207, 209, 210.

72 C.J.S. Prisons and Rights of Prisoners § 128.

33-2-31. [Suppressing disorder; escape and arrest; when wounding or killing justified.]

It shall be the duty of all the officers and other citizens of the state, by every means in their power, to suppress any insurrection, mutiny or disorder among convicts sentenced to the penitentiary and to prevent the escape or rescue of any such convicts therefrom, or from any other legal confinement, or from any person in whose legal custody they may be, and if in so doing or arresting any convict who may have escaped, such officer or other person should wound or kill such convict or other person aiding or assisting such convict, they shall be justified and held guiltless, but they shall not be excusable for using greater force than the emergency of the case demands.

History: Laws 1889, ch. 76, § 15; C.L. 1897, § 3504; Code 1915, § 5065; C.S. 1929, § 130-148; 1941 Comp., § 45-152; 1953 Comp., § 42-1-52.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For escape from penitentiary, *see* 30-22-9 NMSA 1978.

For assisting escape of prisoner, *see* 30-22-11 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Homicide § 24; 60 Am. Jur. 2d Penal and Correctional Institutions § 138.

Prosecutions of inmates of state or local penal institutions for crime of riot, 39 A.L.R.4th 1170.

6A C.J.S. Assault and Battery §§ 96-98; 40 C.J.S. Homicide §§ 104 to 106.

33-2-32. Penitentiary; record of misconduct.

It shall be the duty of the warden to keep a record book of all infractions of prison rules and regulations prescribed by the corrections division [corrections department].

History: Laws 1889, ch. 76, § 51; C.L. 1897, § 3540; Code 1915, § 5068; C.S. 1929, § 130-151; 1941 Comp., § 45-153; 1953 Comp., § 42-1-53; Laws 1977, ch. 257, § 76.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

See compiler's notes to 33-2-1 NMSA 1978.

Records need not be made open for public inspection. 1945-46 Op. Att'y Gen. No. 45-4823.

33-2-33. Repealed.

ANNOTATIONS

Repeals. — Laws 1977, ch. 216, § 17, repealed 42-1-54, 1953 Comp. (33-2-33 NMSA 1978), relating to deduction from sentence for good behavior, effective July 1, 1979. For provisions of the present Criminal Sentencing Act, *see* 31-18-12 NMSA 1978 et seq.

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. 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 month of time served;

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

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

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

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

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

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

C. If a prisoner's active participation in approved programs is interrupted by a lockdown at a correctional facility, the prisoner may continue to be awarded meritorious deductions at the rate the prisoner was earning meritorious deductions prior to the

lockdown, unless the warden or the warden's designee determines that the prisoner's conduct contributed to the initiation or continuance of the lockdown.

D. A prisoner confined in a correctional facility designated by the corrections department 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 high school equivalency credential, in which case, the prisoner shall be awarded three months;

(2) for earning a high school equivalency credential, 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) for engaging in a heroic act of saving life or property, engaging in extraordinary conduct for the benefit of the state or the public that is at great expense or risk to or involves great effort on the part of the prisoner or engaging in extraordinary conduct far in excess of normal program assignments that demonstrates the prisoner's commitment to self-rehabilitation. The classification supervisor and the warden or the warden's designee 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 or the director's designee.

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

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

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

(2) is in disciplinary segregation;

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

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

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

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

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

J. In order to be eligible for meritorious deductions, a prisoner confined in a federal or out-of-state correctional facility designated by the corrections department must actively participate in programs that are available. If a 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 in programs.

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

L. As used in this section:

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

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

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

(4) "serious violent offense" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(o) any of the following offenses, when the nature of the offense and the resulting harm are such that the court judges the crime to be a serious violent offense for 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 Section 30-3-3 NMSA 1978; 4) fourth degree aggravated assault against a household member, as provided in Section 30-3-13 NMSA 1978; 5) third degree assault against a household member with intent to commit a violent felony, as provided in Section 30-3-14 NMSA 1978; 6) third and fourth degree aggravated stalking, as provided in Section 30-3A-3.1 NMSA 1978; 7) second degree kidnapping, as provided in Section 30-4-1 NMSA 1978; 8) second degree abandonment of a child, as provided in Section 30-6-1 NMSA 1978; 9) first, second and third degree abuse of a child, as provided in Section 30-6-1 NMSA 1978; 10) third degree dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978; 11) third and fourth degree criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; 12) fourth degree criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978; 13) third degree robbery, as provided in Section 30-16-2 NMSA 1978; 14) third degree homicide by vehicle or great bodily harm by vehicle, as provided in Section 66-8-101 NMSA 1978; or 15) battery upon a peace officer, as provided in Section 30-22-24 NMSA 1978.

M. Except for sex offenders, as provided in Section 31-21-10.1 NMSA 1978, an offender sentenced to confinement in a correctional facility designated by the corrections department who has been released from confinement and who is serving a parole term may be awarded earned meritorious deductions of up to thirty days per month upon recommendation of the parole officer supervising the offender, with the final approval of the adult parole board. The offender must be in compliance with all the conditions of the offender's parole to be eligible for earned meritorious deductions. The adult parole board may remove earned meritorious deductions previously awarded if the offender later fails to comply with the conditions of the offender's parole. The corrections department and the adult parole board shall promulgate rules to implement the provisions of this subsection. This subsection applies to offenders who are serving a parole term on or after July 1, 2004.

History: 1978 Comp., § 33-2-34, enacted by Laws 1999, ch. 238, § 1; 2003 (1st S.S.), ch. 1, § 13; 2004, ch. 75, § 1; 2006, ch. 82, § 1; 2015, ch. 122, § 17.

ANNOTATIONS

Repeals and reenactments. — Laws 1978, ch. 40, § 1, repealed 42-1-55, 1953 Comp. (former 33-2-34 NMSA 1978), relating to meritorious deductions, and enacted a new 33-2-34 NMSA 1978.

Laws 1999, ch. 238, § 1 repealed 33-2-34 NMSA 1978, as amended by 1988, ch. 78, § 4, and enacted a new section, effective July 1, 1999.

The 2015 amendment, effective July 1, 2015, replaced the term "general education diploma" with "high school equivalency credential" in the provision relating to meritorious deductions for prisoners confined in a correctional facility, clarified that this section shall not be interpreted as to provide earned meritorious deductions for a life sentence without the possibility of parole, and removed the reference to "a sentence of death" relating to earned meritorious deductions; in Paragraph (1) of Subsection D, after

"successfully earning a", deleted "general education diploma" and added "high school equivalency credential"; in Paragraph (2) of Subsection D, after "for earning a", deleted "general education diploma" and added "high school equivalency credential"; in Paragraph (6) of Subsection D, after "great expense", added "or", after "risk", added "to", after "or", added "involves great", and after "effort on", deleted "behalf" and added "the part"; in Subsection G, after "life imprisonment or a sentence of", deleted "death" and added "life imprisonment without possibility of release or parole"; in Subparagraph L(4)(n), after "NMSA 1978", deleted "and" and added "or"; and in Subparagraph L(4)(o), after "third degree homicide by vehicle or great bodily", deleted "injury" and added "harm", and after "Section 66-8-101 NMSA 1978;", deleted "and" and added "or".

The 2006 amendment, effective July 1, 2006, changed "committee" to "supervisor"; changes "warden" to "warden or the warden's designee" and changes "corrections department" to "corrections department or the director's designee" throughout the section; provided in Subparagraph (a) of Paragraph (4) of Subsection A that meritorious deductions shall not exceed eight days per month if the prisoner was convicted of a serious violent offense or failed to pass a drug test administered as a condition of parole; added Subparagraph (b) of Paragraph (4) of Subsection A to provide that meritorious deductions shall not exceed eight days per month up to a maximum of thirty days per month of time served during parole following revocation if the prisoner was convicted of a nonviolent offense; provided in Paragraph (3) of Subsection F that a prisoner is not eligible to earn deductions if the prisoner is confined for committing a serious violent offense; added Subparagraph (d) of Paragraph (4) of Subsection L to provide aggravated battery against a household member; provided in Subparagraph (o) (formerly Subparagraph (n)) of Paragraph (4) of Subsection L aggravated assault against a household member; and provided in Subsection M that this subsection applies to offenders who are serving a parole term on or after July 1, 2004.

The 2004 amendment, effective July 1, 2004, added Subsection M.

The 2003 (1st S.S.) amendment, effective February 3, 2004, substituted "the director's" for "his" preceding "designee" near the end of the last sentences of Subsections I and K, and added "second and" at the beginning of Subparagraph (4)(f) of Subsection L.

I. GENERAL CONSIDERATION.

Notice. — The statute itself provides notice to a defendant that he could be subject to that provision of the Earned Meritorious Deduction Act (EMDA) statute. State v. Cooley, 2003-NMCA-149, 134 N.M. 717, 82 P.3d 84, cert. quashed, 135 N.M. 789, 93 P.3d 1294.

Application to incarceration for probation revocation. — Earned meritorious deductions are applicable to the period of incarceration for revocation of probation. Garcia v. Dorsey, 2006-NMSC-052, 140 N.M. 746, 149 P.3d 62.

The crime of attempted first degree criminal sexual penetration is not subject to earned credit diminution. State v. Loretto, 2006-NMCA-142, 140 N.M. 705, 147 P.3d 1138.

The meritorious deduction rate for the underlying felony applies to the entire enhanced sentence imposed under the Habitual Offender Act. Vallejos v. Marquez, 2008-NMSC-003, 143 N.M. 357, 176 P.3d 1089.

Factors allowing judge to limit credit. — The factors that the Earned Meritorious Deduction Act allows the judge to find in order to limit credit under Subsection L(4)(n) (now L(4)(o) of this section do not have to be found by the jury beyond a reasonable doubt. State v. Montoya, 2005-NMCA-078, 137 N.M. 713, 114 P.3d 393, cert. denied, 2005-NMCERT-006, 137 N.M. 766, 115 P.3d 229.

Conviction as accessory. — Where defendant was convicted of violating 30-3-8 NMSA 1978 as an accessory to the crime and the crime is one enumerated in Subsection L(4)(j) (now L(4)(o)of this section, the fact that he pleaded guilty as an accessory and not as a principal is irrelevant for purposes of the Earned Meritorious Deductions Act. State v. Flores, 2005-NMCA-092, 138 N.M. 61, 116 P.3d 852, cert. denied, 2005-NMCERT-007, 138 N.M. 145, 117 P.3d 951.

Because this section does not increase the maximum sentence but rather specifies how it may be decreased by good conduct, the court's failure to inform the defendant of the possible application of this section during the plea hearing was not a failure to advise him of his maximum possible sentence. State v. Andazola, 2003-NMCA-146, 134 N.M. 710, 82 P.3d 77.

Mitigation concerns the manner of the commission of an offense, not the nature of the offense itself and factors that support mitigating a sentence do not alter the nature of the offense. The existence of mitigating factors concerning the manner in which the crime was committed is separate from the determination that the offense is a serious violent offense. A finding of mitigating factors that causes the district court to reduce defendant's sentence does not preclude the district court from finding that the crime was a serious violent offense. State v. Ayala, 2006-NMCA-088, 140 N.M. 126, 140 P.3d 547, cert. denied, 2006-NMCERT-007, 140 N.M. 279, 142 P.3d 360.

Discretion of administrators. — Deduction of good time credits from an inmate's sentence is a discretionary matter entrusted not to the courts but to the administrators of the corrections department or the county jails. State v. Aqui, 1986-NMSC-048, 104 N.M. 345, 721 P.2d 771, cert. denied, 479 U.S. 917, 107 S. Ct. 321, 93 L. Ed. 2d 294 (1986).

Effect of change of law. — Where defendant was charged with nine counts of criminal sexual penetration over a period from June 1997 through December 1999, none of the counts was specifically limited to a particular time, the state was unable to specify a time period for particular acts during the guilt phase, and the jury was presented with evidence of a number of acts that occurred over two and a half years and was not

asked to specify that one act occurred after July 1, 1999, the verdict was inadequate to support a conclusion that defendant committed an act occurring after July 1, 1999 when an amendment to the statute decreasing the earned meritorious deduction became effective. State v. Salazar, 2006-NMCA-066, 139 N.M. 603, 136 P.3d 1013, cert. quashed, 2007-NMCERT-004, 141 N.M. 568, 158 P.3d 458.

II. GOOD TIME CREDIT.

Good time credit for serious youthful offender. — The district court may limit good time credit eligibility under the Earned Meritorious Deductions Act when sentencing a serious youthful offender to less than a life sentence upon a conviction for first degree murder. State v. Tafoya, 2010-NMSC-019, 148 N.M. 391, 237 P.3d 693.

Where defendant pled guilty to first degree murder and was sentenced as a serious youthful offender to thirty years imprisonment, with ten years suspended, the court had the discretion to limit defendant's good time credit eligibility to four days per month. State v. Tafoya, 2010-NMSC-019, 148 N.M. 391, 237 P.3d 693.

Determination of good time credit by the court. — Where the defendant was convicted of first-degree murder, attempted first-degree murder and tampering with evidence, the trial court improperly provided in its judgment that the defendant "must serve eighty-five percent (85%) of the above sentence pursuant to Section 33-2-34L(4)". There is no provision in the EMDA or any other New Mexico statute that requires a prisoner to serve 85% of any sentence, although the EMDA's four days per month limit on good time awards relating to serious violent offenses results in a prisoner having to serve between 86.85% and 100% of his stated sentence. State v. Rudolfo, 2008-NMSC-036, 144 N.M. 305, 187 P.3d 170.

Constitutionality of good time credit scheme. — New Mexico's good time credit statutory scheme does not offend the constitutional guarantee of equal protection of the law; it is reasonable not to award good time credits for presentence confinement to detainees who are presumed innocent and therefore are not yet subject to rehabilitation efforts or to compulsory labor requirements, especially when they are held without systematic evaluation in county jails lacking rehabilitation programs. State v. Aqui, 1986-NMSC-048, 104 N.M. 345, 721 P.2d 771, cert. denied, 479 U.S. 917, 107 S. Ct. 321, 93 L. Ed. 2d 294 (1986).

New Mexico's statutory scheme making prisoners eligible for awards of good time credits for the periods of their post-sentencing confinement in correction department facilities and county jails but not for the periods of their presentence confinement in county jails does not offend the due process guarantees of the New Mexico and United States constitutions. State v. Aqui, 1986-NMSC-048, 104 N.M. 345, 721 P.2d 771, cert. denied, 479 U.S. 917, 107 S. Ct. 321, 93 L. Ed. 2d 294 (1986).

This section serves a rational purpose of rehabilitating criminals, and is not unconstitutional. Lemieux v. Kerby, 931 F.2d 1391 (10th Cir. 1991).

Good-time credits apply only to noncapital crimes. – The legislature intended that only inmates convicted of noncapital crimes receive the benefit of good-time credits, inasmuch as this section describes meritorious deductions as pertaining to "basic" and "enhanced" sentences, and the relevant provisions of the Criminal Sentencing Act only describe noncapital felonies as having basic and enhanced sentences. Compton v. Lytle, 2003-NMSC-031, 134 N.M. 586, 81 P.3d 39, superseded by statute, State v. Tafoya, 2010-NMSC-019, 148 N.M. 391, 237 P.3d 693.

"Good time" credits deducted from maximum unsuspended portion of sentence. — "Good time" credits shall be allowed to be deducted from the maximum unsuspended portion of a sentence for purposes of determining entitlement of right to release from imprisonment where other provisions of the law do not circumscribe the minimum imprisonment to be served. Coutts v. Cox, 1966-NMSC-027, 75 N.M. 761, 411 P.2d 347.

"Good time" credits deducted from minimum sentence for parole purposes. — "Good time" credits shall be allowed to be deducted from the minimum sentence for purposes of determining eligibility for parole. Coutts v. Cox, 1966-NMSC-027, 75 N.M. 761, 411 P.2d 347.

Service of an inmate's minimum sentence, less "good time," merely renders him eligible to parole, but does not entitle him to final discharge. Owens v. Swope, 1955-NMSC-079, 60 N.M. 71, 287 P.2d 605, cert. denied, 350 U.S. 954, 76 S. Ct. 343, 100 L. Ed. 830 (1956).

Good conduct credits deducted from maximum sentence. — Credits for good conduct are to be deducted from the maximum rather than the minimum sentence in determining when a prisoner is entitled to a full release as a matter of right. Owens v. Swope, 1955-NMSC-079, 60 N.M. 71, 287 P.2d 605, cert. denied, 350 U.S. 954, 76 S. Ct. 343, 100 L. Ed. 830 (1956).

Earned meritorious deductions do not apply to reduce probation sentences. — The plain language of the Earned Meritorious Deductions Act only directly manifests a legislative intent that meritorious deductions be earned by offenders who are currently incarcerated, incarcerated following parole revocation, or who have been released on parole. State v. Ortiz, 2015-NMCA-020, cert. denied, 2015-NMCERT-001.

Where defendant was serving probation on one sentence while he was serving a period of incarceration on another sentence, the district court did not err in determining that the Earned Meritorious Deductions Act did not apply to probation, and that defendant was not entitled to earned meritorious deductions while serving a period of probation, even if he was serving the period of probation during a period of incarceration on another sentence. State v. Ortiz, 2015-NMCA-020, cert. denied, 2015-NMCERT-001.

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Forfeiture of credits. — This section and 33-2-36 NMSA 1978 confer an entitlement to good-time credits, and this entitlement may be divested only when the statutory and administrative procedures relating to those credits have been followed. Brooks v. Shanks, 1994-NMSC-113, 118 N.M. 716, 885 P.2d 637.

The language of this section and in 33-2-36 NMSA 1978 gives prisoners the right not to be subjected to a forfeiture or termination of good-time credits unless the appropriate procedures are followed. If those procedures, which include obtaining the committee's recommendation and the warden's approval, are circumvented, a due process violation occurs. Brooks v. Shanks, 1994-NMSC-113, 118 N.M. 716, 885 P.2d 637.

Application of good time credits. — Deleting the references to “basic” and “enhanced” in this section after 1999 does not appear to change how good time credits are applied. On their face, now as then, good time credits are applied to the entire sentence. LaVoy v. Snedeker, ____ F.Supp. ____ (D.N.M. 2004).

This section does not create a liberty interest. LaVoy v. Snedeker, ____ F.Supp. ____ (D.N.M. 2004).

III. SERIOUS VIOLENT OFFENSE.

Negligent child abuse as a serious violent offense. — Negligent child abuse qualifies as a serious violent offense where there is grossly negligent conduct that poses a substantial risk of serious harm to children. State v. Schoonmaker, 2005-NMCA-012, 136 N.M. 749, 105 P.3d 302, *rev’d on other grounds*, 2008-NMSC-010, 143 N.M. 373, 176 P.3d 1105.

Failure to stop and render aid after vehicular homicide. — Where defendant, who was driving under the influence of alcohol, struck a pedestrian at night on a busy street, knocking the pedestrian into oncoming lanes of traffic; defendant immediately left the scene; defendant plead guilty to vehicular homicide; there was no evidence of speeding or reckless driving before the accident, the court did not abuse its discretion in determining that the offense was a serious violent offense based solely on the fact that by failing to stop and render aid, defendant had left the victim in danger of being hit by other vehicles at a time when defendant did not know the victim’s condition. State v.

Lavone, 2011-NMCA-084, 150 N.M. 473, 261 P.3d 1105, cert. denied, 2011-NMCERT-007, 268 P.3d 46.

Third degree vehicular homicide as a serious violent offense. — Where defendant drove recklessly while intoxicated and struck and killed the victim with defendant's vehicle, the district court found that defendant had a history of alcohol abuse along with a prior criminal history involving alcohol-related offenses and that defendant recklessly crossed the center line and struck the victim who was on a bicycle with sufficient force to propel the victim through the air and into the bed of defendant's truck, the district court's findings were sufficient to support a serious violent offender offense designation. State v. Solano, 2009-NMCA-098, 146 N.M. 831, 215 P.3d 769, cert. denied, 2009-NMCERT-007, 147 N.M. 361, 223 P.3d 358.

Where defendant drove recklessly while intoxicated, crossed the center line and struck the victim on a bicycle at such a rate of speed that the victim was thrown over defendant's truck and into the bed of the truck; defendant had a long history of alcohol abuse and previous experience with injuring a person because of alcohol impairment; and defendant disregarded advice to refrain from driving while under the influence, the evidence was sufficient to establish that defendant committed the homicide in a physically violent manner with recklessness in the face of knowledge that defendant's acts were reasonably likely to result in serious harm and to support a serious violent offense designation. State v. Solano, 2009-NMCA-098, 146 N.M. 831, 215 P.3d 769, cert. denied, 2009-NMCERT-007, 147 N.M. 361, 223 P.3d 358.

Homicide by vehicle. — Where defendant drove a pickup on a residential street toward a group of children who were trick-or-treating on Halloween; the chaperone pushed the children out of the way but was struck and killed; defendant stopped the vehicle and then left the scene of the accident; the group was visible to motorists; defendant altered defendant's course and drove toward the group and increased defendant's speed; defendant was driving on a suspended license; defendant had been drinking; defendant had four previous convictions of DWI; and defendant was convicted of homicide by vehicle, the district court did not err in determining that the conviction was a serious offense. State v. Melendrez, 2014-NMCA-062, cert. denied, 2014-NMCERT-006.

Required findings. — Findings that merely set forth facts, without connecting the facts to the requirement that the offense was committed in a physically violent manner either with an intent to do serious harm or with recklessness in the face of knowledge that one's acts are reasonably likely to result in serious harm, do not satisfy the statutory requirement and do not justify a determination that an offense is a serious violent offense. State v. Scurry, 2007-NMCA-064, 141 N.M. 591, 158 P.3d 1034.

Findings required to support determination that an offense is a serious violent offense. — The district court's determination that an offense is a serious violent offense must be supported by findings that reflect that the crime was committed in a physically violent manner and that defendant either intended to do serious harm or that

defendant's actions involved recklessness in the face of knowledge that his acts were reasonably likely to result in serious harm. State v. Loretto, 2006-NMCA-142, 140 N.M. 705, 147 P.3d 1138.

No right to jury trial on serious violent offense determination. — Defendant, whose sentence was designated as a serious violent offense under 31-18-15 and 66-8-101 NMSA 1978, was not entitled to a jury trial to determine whether the offense was a serious violent offense because the serious violent offense statute imposes a mandatory increased minimum sentence, not the maximum sentence for the offense. State v. Worrick, 2006-NMCA-035, 139 N.M. 247, 131 P.3d 97, cert. quashed 2007-NMCERT-008, 142 N.M. 434, 166 P.3d 1088.

Constitutionality of procedure. — It is constitutional under the *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), standard for a judge, rather than a jury, to make the finding that an offense is a "serious violent offense" under this section. State v. Morales, 2002-NMCA-016, 131 N.M. 530, 39 P.3d 747, cert. denied, 131 N.M. 738, 42 P.3d 843.

Where defendant pleaded no contest to the offense of intentional child abuse resulting in death, the district court could classify defendant's acts as a "serious violent offense" without violating the United States Supreme Court opinions in *Apprendi* and *Blakely*. State v. Bravo, 2006-NMCA-019, 139 N.M. 93, 128 P.3d 1070, cert. quashed, 2006-NMCERT-011, 140 N.M. 845, 149 P.3d 942.

Standard to find a "serious violent offense". — In order for a judge to make a finding qualifying an offense as seriously violent the judge must find the intent to do serious harm or knowledge that the acts were reasonably likely to cause serious harm. State v. Morales, 2002-NMCA-016, 131 N.M. 530, 39 P.3d 747, cert. denied, 131 N.M. 738, 42 P.3d 843.

District court must make specific findings to qualify an offense as seriously violent. — A district court must make express findings to demonstrate that the crime was committed in a physically violent manner either with an intent to do serious harm or with recklessness in the face of knowledge that one's acts are reasonably likely to result in serious harm, so where defendant was convicted of aggravated assault with a deadly weapon, the district court's failure to make specific findings that defendant's offense was seriously violent was error. State v. Branch, 2016-NMCA-071, cert. granted, 2016-NMCERT-____.

Crime not listed in definition may not be considered "serious violent offense." — Conspiracy to commit armed robbery is neither an enumerated offense that satisfies the definition of "serious violent offense" as a matter of law, nor is it one of the additional offenses that a judge may determine to be a serious violent offense. Therefore, a district court is not authorized to limit a defendant's good time credit for a conviction of conspiracy to commit armed robbery. State v. McDonald, 2003-NMCA-123, 134 N.M.

486, 79 P.3d 830, *aff'd in part, rev'd in part*, 2004-NMSC-033, 136 N.M. 417, 99 P.3d 667.

Aggravated battery on household member not "serious violent offense". — Because the district court's authority to classify a defendant as a serious violent offender derives from this section and this section does not list aggravated battery on a household member, 30-3-16 NMSA 1978 (now 33-2-34L(4)(d) NMSA 1978), as such an offense, the court erred in classifying defendant's conviction under that section as a serious violent offense. State v. Bennett, 2003-NMCA-147, 134 N.M. 705, 82 P.3d 72, cert. granted, 2003-NMCERT-003, 135 N.M. 51, 84 P.3d 668 (decided under prior law).

Vehicular homicide. — The trial court could reasonably conclude that vehicular homicide in violation of 66-8-101 NMSA 1978 was a serious violent offense where, in addition to other evidence, it considered information contained in the presentence report that the vehicular homicide was the fourth time that the defendant had been arrested for an alcohol-related driving offense and that he had two previous convictions for DWI. State v. Wildgrube, 2003-NMCA-108, 134 N.M. 262, 75 P.3d 862, cert. denied, 134 N.M. 179, 74 P.3d 1071.

Where victim of vehicular homicide was a teenager, defendant's breath alcohol level was three times the presumptive level of intoxication, defendant admitted to police that he should be arrested because he was drunk, defendant announced at the scene of the accident that he intended to drive away, and defendant was either too intoxicated to notice the headlights of victim's automobile or he was being untruthful by claiming that the headlights of victim's automobile were off, district court properly concluded that defendant acted with recklessness in the face of knowledge that his acts were reasonably likely to result in serious harm and designated defendant's crime as a serious violent offense. State v. Worrick, 2006-NMCA-035, 139 N.M. 247, 131 P.3d 97, cert. quashed 2007-NMCERT-008, 142 N.M. 434, 166 P.3d 1088.

"Good time" earned under these statutes may only be deducted from the maximum and not the minimum of the sentence. 1955-56 Op. Att'y Gen. No. 55-6156.

"Good time" applied for purposes of final discharge. — The "good time" statute is still in effect but it is to be applied only for purposes of final discharge and only as a deduction from the maximum sentence. Release, therefore, may be only upon parole and upon action of the parole board. 1955-56 Op. Att'y Gen. No. 55-6156.

Prisoners transferred to penitentiary given "good time" credit. — Prisoners transferred from the reform school to the penitentiary are to be given good time credit on the whole time of sentence. 1929-30 Op. Att'y Gen. No. 29-99.

"Good time" deductions allowed while on parole. — Until finally discharged, a prisoner is upon parole, and deductions for good time may be allowed while the prisoner is on parole. 1937-38 Op. Att'y Gen. 37-1653.

Law reviews. — For comment, "Definitive Sentencing in New Mexico: The 1977 Criminal Sentencing Act," see 9 N.M.L. Rev. 131 (1978-79).

33-2-35. [Application of law to convicts in penitentiary; relation back; escapers and revolters excepted.]

The provisions of this article shall apply to convicts in the penitentiary, excepting such convicts as have escaped from the penitentiary, or been concerned in any revolt whereby any convict has escaped, and shall operate back to the commencement of any such sentence of such convict.

History: Laws 1889, ch. 76, § 50; C.L. 1897, § 3539; Code 1915, § 5074; C.S. 1929, § 130-162; 1941 Comp., § 45-156; 1953 Comp., § 42-1-56.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The 1915 Code compilers deleted "now" after "shall apply to convicts" and substituted "this article" for "this act." The words "this article" refer to Code 1915, ch. CI, art. 1, being §§ 5018 to 5087.

33-2-36. Forfeiture of earned meritorious deductions.

A. Meritorious deductions earned by a prisoner may be forfeited in an amount up to ninety days for 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 upon the recommendation of the classification supervisor and final approval by the warden or the warden's designee. Forfeitures of meritorious deductions in an amount in excess of ninety days shall only proceed upon the recommendation of the classification supervisor and the warden or the warden's designee and final approval of the director of the adult institutions division of the corrections department or the director's designee. The secretary of corrections may review and revise any decision regarding the forfeiture of meritorious deductions.

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

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

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

History: 1978 Comp., § 33-2-36, enacted by Laws 1988, ch. 78, § 6; 1999, ch. 238, § 2; 2006, ch. 82, § 2.

ANNOTATIONS

Repeals and reenactments. — Laws 1988, ch. 78, § 6 repealed 33-2-36 NMSA 1978, as amended by Laws 1977, ch. 257, § 78, relating to the forfeiture of earned meritorious deductions by prison inmates, and enacted a new section, effective July 1, 1990.

Cross references. — For applicability of Laws 1988, ch. 78, *see* 33-2-49 NMSA 1978.

The 2006 amendment, effective July 1, 2006, changed "committee" to "supervisor"; changed "warden" to "warden or the warden's designee"; and changed "corrections department" to "corrections department or the director's designee" in Subsection A.

The 1999 amendment, effective July 1, 1999, rewrote the section, which formerly read: "Any accrued deductions may be forfeited by the convict for any major conduct violation upon the recommendation of the classification committee, approval by the warden and final approval by the secretary of corrections."

Forfeiture of credits. — Section 33-2-34 NMSA 1978 and this section confer an entitlement to good-time credits, and this entitlement may be divested only when the statutory and administrative procedures relating to those credits have been followed. Brooks v. Shanks, 1994-NMSC-113, 118 N.M. 716, 885 P.2d 637.

The language in 33-2-34 NMSA 1978 and in this section gives prisoners the right not to be subjected to a forfeiture or termination of good-time credits unless the appropriate procedures are followed. If those procedures are circumvented, a due process violation occurs. Brooks v. Shanks, 1994-NMSC-113, 118 N.M. 716, 885 P.2d 637.

Continuous sentence provision not limited to "good time" situations. — The obvious intent of the sections of the 1889 law was to provide for the reduction of a sentence because of "good time." In so providing, § 49, the present 33-2-39 NMSA 1978 stated that separate sentences were to be construed as one continuous sentence. However, the statute is not limited to "good time" situations; it is general in its effect and applies in considering eligibility for parole under 31-21-10 NMSA 1978. Deats v. State, 1972-NMCA-155, 84 N.M. 405, 503 P.2d 1183.

When conduct warrants, "good time" may be forfeited and parolee returned. — "Good time" earned may be canceled under this section at any time prior to the service of sentence. If prior to that date a parolee's conduct warrants forfeiture of "good time" earned, a warrant may be issued under the procedure set out in 31-21-14 NMSA 1978 to return that convict to the penitentiary even though it is proposed to return him subsequent to the date when his original parole agreement indicates that the sentence imposed would have been served. 1955-56 Op. Att'y Gen. No. 56-6378.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Withdrawal, forfeiture, modification or denial of good time allowance to prisoner, 95 A.L.R.2d 1265.

33-2-37. Restoration of forfeited meritorious deductions.

A. Meritorious deductions forfeited pursuant to Section 33-2-36 NMSA 1978 may be restored in whole or in part to a prisoner who is exemplary in conduct and work performance for a period of not less than six months following the date of forfeiture. Meritorious deductions may be restored upon recommendation of the classification supervisor, approval by the warden or the warden's designee and final approval by the director of the adult institutions division of the corrections department or the director's designee.

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

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

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

History: 1978 Comp., § 33-2-37, enacted by Laws 1988, ch. 78, § 7; 1999, ch. 238, § 3; 2006, ch. 82, § 3.

ANNOTATIONS

Repeals and reenactments. — Laws 1988, ch. 78, § 7 repealed 33-2-37 NMSA 1978, as amended by Laws 1977, ch. 257, § 79, relating to the restoration of forfeited meritorious deductions by prison inmates, and enacted a new section, effective July 1, 1990.

Cross references. — For applicability of Laws 1988, ch. 78, *see* 33-2-49 NMSA 1978.

The 2006 amendment, effective July 1, 2006, changed "committee" to "supervisor"; changed "warden" to "warden or the warden’s designee"; and changed "secretary of corrections" to "director of the adult institutions division of the corrections department or the director’s designee" in Subsection A.

The 1999 amendment, effective July 1, 1999, designated the formerly undesignated paragraph as Subsection A, and, in that subsection, added "Meritorious" at the beginning of the first sentence and added the second sentence; and added Subsection B.

33-2-38. Computation of term.

A prisoner shall not be discharged from the penitentiary of New Mexico or any other correctional facility until he has served the full term for which he was sentenced. The term shall be computed from and include the day on which his sentence took effect and shall exclude any time the convict may have been at large by reason of escape, unless he is pardoned or otherwise released by legal authority. The provisions of this section shall not be interpreted to deprive a prisoner of any reduction of time to which he may be entitled pursuant to the provisions of Sections 31-20-11, 31-20-12 and 33-2-34 NMSA 1978.

History: Laws 1889, ch. 76, § 13; C.L. 1897, § 3502; Code 1915, § 5071; C.S. 1929, § 130-159; 1941 Comp., § 45-158; 1953 Comp., § 42-1-58; Laws 1999, ch. 238, § 4.

ANNOTATIONS

Cross references. — For pardon upon discharge, *see* 31-20-8 NMSA 1978.

For money, clothing and transportation being furnished to discharged prisoners, *see* 31-21-2 NMSA 1978.

The 1999 amendment, effective July 1, 1999, added the section heading; substituted "prisoner" for "convict" twice; inserted "of New Mexico or any other correctional facility" in the first sentence; and substituted the present last sentence for "provided, that nothing in this section shall be so construed as to deprive any convict of any reduction in time which he may be entitled to under Section 33-2-33 NMSA 1978."

Applicability. — Laws 1999, ch. 238, § 8, provided that the provisions of §§ 1 to 5 and 7 of the act are applicable to persons convicted of a criminal offense committed on or after July 1, 1999; and further provided that as to persons convicted of a criminal offense committed prior to July 1, 1999, the laws with respect to meritorious deductions in effect at the time the offense was committed shall apply.

Compiler's notes. — The following notes were rendered pursuant to Laws 1969, ch. 50, § 1.

Prisoner entitled to credit for time from first conviction. — A prisoner, after being awarded a new trial and having again been convicted of the crime originally charged, is entitled to credit for time he spent in custody from the time of his first conviction. 1969 Op. Att'y Gen. No. 69-114.

Credit given retroactively to prisoners incarcerated on effective date. — Laws 1969, ch. 50, § 1, made the giving of credit retroactive insofar as prisoners in the penitentiary on or after the effective date of the act were concerned and insofar as post-conviction incarceration was concerned. 1969 Op. Att'y Gen. No. 69-114.

Credit given for time spent under original invalid sentence. — One who has his conviction set aside, is retried and again convicted and sentenced for the same offense,

is entitled to credit for the time he was actually confined in the penal institution under the original invalid sentence and not credit prorated to the entire sentence. 1969 Op. Att'y Gen. No. 69-114.

Credit given for time prior to posting bond. — A person free on bond pending a decision of an appellate court is entitled to credit for time incarcerated prior to posting bond if the appeal results in affirmance of the conviction or if, after remand, a new and valid sentence for the commission of the same crime is imposed and he is again confined in the penitentiary. 1969 Op. Att'y Gen. No. 69-114.

33-2-39. [Separate sentences construed as cumulative.]

Whenever any convict shall have been committed under several convictions with separate sentences, they shall be construed as one continuous sentence for the full length of all the sentences combined.

History: Laws 1889, ch. 76, § 49; C.L. 1897, § 3538; Code 1915, § 5073; C.S. 1929, § 130-161; 1941 Comp., § 45-159; 1953 Comp., § 42-1-59.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For rule of construction of statutes prescribing sentences, *see* 31-21-1 NMSA 1978.

Applicability of section not limited to "good time" situations. — The obvious intent of the sections of the 1889 law was to provide for the reduction of a sentence because of "good time." In so providing, § 49, this section, stated that separate sentences were to be construed as one continuous sentence. However, the statute is not limited to "good time" situations; it is general in its effect and applies in considering eligibility for parole under 31-21-10 NMSA 1978. Deats v. State, 1972-NMCA-155, 84 N.M. 405, 503 P.2d 1183.

Under section two sentences construed as one. — Where district court sentenced defendant on each of two convictions of second degree murder, the two sentences were "one continuous sentence." State v. Miller, 1968-NMSC-103, 79 N.M. 392, 444 P.2d 577, cert. denied sub nom. Miller v. Baker, 394 U.S. 1002, 89 S. Ct. 1597, 22 L. Ed. 2d 779 (1969).

But sentences under separate commitments treated differently. — This section means that separate sentences under one commitment are to be treated as one continuous sentence, but it does not mean that sentences under separate commitments are to be so treated. Deats v. State, 1972-NMCA-155, 84 N.M. 405, 503 P.2d 1183.

For purposes of parole administration only. — The holding in Deats v. State, 1972-NMCA-155, 84 N.M. 405, 503 P.2d 1183, that this section means that separate sentences under one commitment are to be treated as one continuous sentence but that separate sentences under separate commitments are not to be treated as continuous, is limited strictly to purposes of parole administration. State v. Davis, 2003-NMSC-022, 134 N.M. 172, 74 P.3d 1064.

Eight sentences construed as one. — Where a person received eight consecutive sentences each for a term of not less than one nor more than five years, it has been held that the sentence must be considered one continuous sentence of not less than eight nor more than 40 years. State v. Martinez, 1978-NMSC-083, 92 N.M. 256, 586 P.2d 1085; Deats v. State, 1972-NMCA-155, 84 N.M. 405, 503 P.2d 1183.

Previous sentences served before serving under more recent ones. — This section applied to the eight consecutive sentences imposed on defendant in 1969 and required that they be considered as one continuous sentence of not less than eight nor more than 40 years for reduction of sentence for good time but previous 1967 sentences must have been served before defendant began serving under the 1969 sentences. Deats v. State, 1972-NMCA-155, 84 N.M. 405, 503 P.2d 1183.

Sentence for more than one year in custody of corrections department, not county. — Defendant whose continuous sentence was for more than one year was properly sentenced to the custody of the corrections department rather than the county jail, as the place of confinement, under 31-19-1 and 31-20-2A NMSA 1978 and this section, depends on the length of confinement. State v. Musgrave, 1984-NMCA-127, 102 N.M. 148, 692 P.2d 534.

Recent sentence cannot be made consecutive with prior sentence. — The sentence in a cause which appellant had begun to serve could not be changed so as to make the service consecutive to that required to be served under the sentence in a previous cause. State v. Verdugo, 1969-NMSC-008, 79 N.M. 765, 449 P.2d 781.

Sentence may be amended to shorten but not to augment. — During the term during which a sentence was imposed, it could be amended so as to shorten it, but not so that the punishment would be augmented. State v. Verdugo, 1969-NMSC-008, 79 N.M. 765, 449 P.2d 781.

When two commitments no more than 30 days sentence for fines. — Inmates at the New Mexico state penitentiary are not required to serve more than 30 days for fines or costs attached to sentences when the inmates are sentenced on two or more commitments. 1959-60 Op. Att'y Gen. No. 59-31.

Penitentiary must follow requirements of section unless sentence specifies otherwise by showing its intention that the sentences are each to be served separately, one after the other. 1963-64 Op. Att'y Gen. No. 63-165.

Maximum and minimum terms cannot be combined. — Where a judge specifically requires one sentence to be served prior to starting service on another, the maximum and minimum of the specific sentences cannot be combined. Where the sentencing court specifies which sentence is "to be served first" or that one sentence is to "begin after the completion of a previous sentence," it has generally been held that each sentence must be served in order. 1963-64 Op. Att'y Gen. No. 63-165.

Where a prisoner is given strictly consecutive sentences, each sentence must be construed as a unit and so served; thus the minimum for parole eligibility is the minimum of each sentence taken in order, and the maximum is the maximum of each separate sentence. 1963-64 Op. Att'y Gen. No. 63-165.

Consequences of alternative construction upon 31-21-11 NMSA 1978. — If it were mandatory upon a penitentiary to construe cumulative sentences as one continuous sentence, the provisions of 31-21-11 NMSA 1978 would not be effective. 1963-64 Op. Att'y Gen. No. 63-165.

Minimum terms added to establish when eligible for parole. — When a person is committed under separate sentences each of which has a minimum term and maximum term, the minimum terms should be added together in establishing the parole hearing eligibility date. 1961-62 Op. Att'y Gen. No. 61-59; 1963-64 Op. Att'y Gen. No. 63-165.

Credit not given for time in federal penitentiary. — A convict who has served time in a federal penitentiary may not be given credit for such time under a different sentence in serving out a New Mexico sentence. 1945-46 Op. Att'y Gen. No. 45-4792.

When "outside" or "in custody" parole may be given. — As a practical matter a person committed under two life sentences cannot be granted an "outside" parole until he has served 20 years but he can be granted an "in custody" parole after serving 10 years. 1961-62 Op. Att'y Gen. No. 61-59.

Law reviews. — For annual survey of New Mexico criminal procedure, see 16 N.M.L. Rev. 25 (1986).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 21 Am. Jur. 2d Criminal Law §§ 551-556.

Sentences by different courts as concurrent, 57 A.L.R.2d 1410.

Effect of invalidation of sentence upon which separate sentence runs consecutively, 68 A.L.R.2d 712.

24 C.J.S. Criminal Law §§ 1518, 1519, 1521.

33-2-40. [Imprisonment for nonpayment of fine or costs attached to prison sentence; maximum.]

All convicts sentenced to the state penitentiary who have a fine or costs or both attached to such sentence shall not be required to serve more than thirty days for such fine or costs.

History: Laws 1913, ch. 50, § 2; Code 1915, § 5085; C.S. 1929, § 130-173; 1941 Comp., § 45-160; 1953 Comp., § 42-1-60.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For the nonpayment of fines or costs of those committed to jail, *see* 33-3-11 NMSA 1978.

Defendant may not be imprisoned beyond maximum statutory sentence because of his inability to pay the costs assessed against him as to do such would deprive defendant of equal protection of the law. State v. Chavez, 1974-NMCA-021, 86 N.M. 199, 521 P.2d 1040, cert. denied, 86 N.M. 189, 521 P.2d 1030.

Maximum of 30 days served even if two or more commitments. — Inmates at the New Mexico state penitentiary are not required to serve more than 30 days for fines or costs attached to sentences when the inmates are sentenced on two or more commitments. 1959-60 Op. Att'y Gen. No. 59-31.

Maximum of 30 days to satisfy fine or costs or both. — An inmate committed to serve one or more sentences in the New Mexico state penitentiary can satisfy a fine by serving not more than 30 days. Court costs should be satisfied by payment if the inmate or his relatives have the necessary funds available. If it is necessary for the inmate to serve time in order to satisfy either a fine or costs, or both, such time served should not exceed 30 days. 1959-60 Op. Att'y Gen. No. 59-31.

Payment of costs condition precedent to parole. — The term necessary for the payment of costs is largely within the discretion of the prison board (now corrections department); also it makes such payment a condition precedent to a parole. 1923-24 Op. Att'y Gen. No. 23-3678.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Indigency of offender as affecting validity of imprisonment as alternative to payment of fine, 31 A.L.R.3d 926.

33-2-41, 33-2-42. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 127, § 20, repealed 33-2-41 and 33-2-42 NMSA 1978, relating to the use of inmates for conservation and development work and the

jurisdiction of the warden over discipline and control of prisoners, effective June 19, 1981.

33-2-43. Penitentiary inmate-release program; establishment.

The superintendent [warden] of the penitentiary of New Mexico may institute an inmate-release program and allow penitentiary inmates to attend school or to be employed in private business while under sentence of confinement in the penitentiary if:

A. employment of a prisoner does not result in the displacement of employed workers or impair existing contracts for services and is not in a skill, craft or trade in which a surplus of available gainful labor exists in the locality;

B. rates of pay and other conditions of employment are not less than those paid or provided for work of a similar nature in the locality in which the work is performed;

C. prisoners authorized to work at paid employment under the inmate-release program are required to pay appropriate and reasonable costs incident to the program and to their confinement as prescribed by the superintendent; and

D. prisoners participating in the inmate-release program are volunteers who meet standards prescribed by law.

History: 1953 Comp., § 42-1-78, enacted by Laws 1969, ch. 166, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

See notes to 33-2-16 NMSA 1978.

Cross references. — For the constitutional authorization of labor by penitentiary inmates, *see* N.M. Const., art. XX, § 15.

Injured prisoner entitled to workers' compensation. — A prisoner who voluntarily participated in a work-release program and was injured while under the direction of a private business was an "employee" of that business and thus entitled to workers' compensation benefits. Benavidez v. Sierra Blanca Motors, 1995-NMCA-140, 120 N.M. 837, 907 P.2d 1018, *rev'd in part on other grounds*, 1996-NMSC-045, 122 N.M. 209, 922 P.2d 1205.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Denial of state prisoner's application for, or revocation of, participation in work or study release program or furlough program as actionable under Civil Rights Act of 1871 (42 USCS § 1983), 55 A.L.R. Fed. 208.

33-2-44. Inmate-release program; standards for participation.

The superintendent [warden] may, under the inmate-release program and at the request of a prisoner, extend the limits of confinement beyond the penitentiary by authorizing the prisoner to work at paid employment in private business or in public employment, or to attend a school while continuing as a prisoner, if the prisoner:

A. is a trusty or a minimum-custody inmate;

B. has physical and mental ability to fully perform the proposed assignment consistent with his capacities and free from any outpatient care that would interfere with full performance;

C. is not afflicted with any serious emotional or personality defect;

D. has not been convicted of a crime involving assaultive sexual conduct nor violence to a child, nor has been linked with organized criminal activity; and

E. would not, in the opinion of the superintendent, be likely to evoke an adverse public reaction by his presence in the community.

History: 1953 Comp., § 42-1-79, enacted by Laws 1969, ch. 166, § 2; 1971, ch. 281, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

See notes to 33-2-16 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Denial of state prisoner's application for, or revocation of, participation in work or study release program or furlough program as actionable under Civil Rights Act of 1871 (42 USCS § 1983), 55 A.L.R. Fed. 208.

33-2-45. Inmate-release program; visitation privileges.

The superintendent [warden] may authorize any prisoner volunteering for the inmate-release program to visit specifically designated places for a period not exceeding thirty days and to return to the penitentiary. This extension of the limits of confinement may be granted only for the purpose of contacting prospective employers, attendance at job or school interviews or any other reason consistent with pre-parole analysis and parole prediction, the inmate-release program and the public interest.

History: 1953 Comp., § 42-1-80, enacted by Laws 1969, ch. 166, § 3; 1971, ch. 281, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

See notes to 33-2-16 NMSA 1978.

Prisoner release programs. — Prisoner release programs, developed by local jails, are not subject to the 30-day limitation of this section. State v. Frost, 2003-NMCA-002, 133 N.M. 45, 60 P.3d 492, cert. denied, 133 N.M. 126, 61 P.3d 835.

33-2-46. Inmate-release program; escape.

Any prisoner whose limits of confinement have been extended, or who has been granted a visitation privilege under the inmate-release program, who willfully fails to return to the designated place of confinement within the time prescribed, with the intent not to return, is guilty of an escape.

Whoever is convicted of an escape under the provisions of this section is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: 1953 Comp., § 42-1-81, enacted by Laws 1969, ch. 166, § 4; 1975, ch. 210, § 1; 1980, ch. 22, § 1.

ANNOTATIONS

Willfulness. — Willfulness is an essential element of the crime of escape from the inmate-release program, and the term means a conscious, purposeful failure to return within the time fixed as distinguished from an involuntary failure to return. State v. Rosaire, 1996-NMCA-115, 123 N.M. 250, 939 P.2d 597, *aff'd*, 1997-NMSC-034, 123 N.M. 701, 945 P.2d 66.

Burden of proof. — A defendant may be guilty under this section if he or she intends not to return at the time fixed, but the state must prove beyond a reasonable doubt that the failure to return at the time fixed is not only purposeful but also without justification or excuse. State v. Rosaire, 1997-NMSC-034, 123 N.M. 701, 945 P.2d 66.

Crime of specific intent. — The crime described by this section, escape from an inmate-release program, is a specific intent crime. State v. Tarango, 1987-NMCA-027, 105 N.M. 592, 734 P.2d 1275, cert. denied 105 N.M. 521, 734 P.2d 761, *overruled on other grounds by* Zurla v. State, 1990-NMSC-011, 109 N.M. 640, 789 P.2d 588.

Jury instructions. — Jury instruction based on UJI 14-2228 was defective because it did not contain the element of "willfulness" as required by this section. State v. Rosaire, 1997-NMSC-034, 123 N.M. 701, 945 P.2d 66 (decided under prior law).

Habitual offender enhancement of an escape conviction does not constitute double jeopardy. State v. Najar, 1994-NMCA-098, 118 N.M. 230, 880 P.2d 327, cert. denied, 118 N.M. 90, 879 P.2d 91.

33-2-47. Inmate-release program; conditions of employment.

The state labor commissioner shall exercise the same supervision over conditions of employment for prisoners working under the inmate-release program as he does over conditions of employment for free persons. A prisoner working under the inmate-release program is not entitled to any benefits under the Employment Security Act [Unemployment Compensation Law] during the term of his sentence. No prisoner under the provisions of the inmate-release program is an agent, employee or involuntary servant of the penitentiary of New Mexico while attending school, working in private business or going to or from such assignment.

History: 1953 Comp., § 42-1-82, enacted by Laws 1969, ch. 166, § 5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

The reference to the "Employment Security Act" apparently means the Unemployment Compensation Law. *See* Chapter 51 NMSA 1978.

33-2-48. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 210, § 4 repealed 33-2-48 NMSA 1978, as amended by Laws 1985, ch. 63, § 1, relating to notification upon escape of an inmate, effective July 1, 1989.

33-2-49. Applicability of Laws 1988, Chapter 78.

The provisions of this act apply only to persons convicted of crimes committed on or after the effective date of this act. A person convicted of a crime committed prior to the effective date of this act shall be subject to the law in effect at the time the crime was committed.

History: Laws 1988, ch. 78, § 9.

ANNOTATIONS

Compiler’s notes. — The phrase "this act" means Laws 1988, ch. 78, which appears as 33-11-1 to 33-11-3, 33-2-34, 33-2-36, and 33-2-37 NMSA 1978.

The phrase "effective date of this act" means May 18, 1988, the effective date of Laws 1988, ch. 78.

33-2-50. Pilot minimum security inmate work crew program created; purpose; administration of program.

There is created a "pilot minimum security inmate work crew program" in the park and recreation division of the energy, minerals and natural resources department. The pilot program shall be implemented in state parks within close proximity to state minimum security correctional facilities. The purpose of the pilot program is to utilize minimum security inmate work crews for assistance with litter and trash pick-up, masonry, construction, painting, grounds maintenance and overall beautification efforts in state parks. The park and recreation division of the energy, minerals and natural resources department shall develop policies and procedures for administration of the pilot minimum security inmate work crew program.

History: Laws 1991, ch. 88, § 1.

33-2-51. Discharge; opioid use disorder; opioid overdose education; naloxone.

A. As corrections department funding and department supplies of naloxone permit, upon discharge of an inmate who has been diagnosed with an opioid use disorder from a corrections facility, regardless of whether that inmate has received treatment for that disorder, the corrections department shall:

(1) ensure that the inmate is provided with opioid overdose education that:

(a) conforms to department of health or federal substance abuse and mental health services administration guidelines for opioid overdose education;

(b) explains the causes of an opioid overdose;

(c) instructs when and how to administer in accordance with medical best practices: 1) life-saving rescue techniques; and 2) an opioid antagonist; and

(d) explains how to contact appropriate emergency medical services; and

(2) provide the inmate, as the inmate leaves the correctional facility, with:

(a) two doses of naloxone in either a generic form or in a form approved by the federal food and drug administration; and

(b) a prescription for naloxone.

B. As used in this section:

(1) "corrections facility" means a prison or other detention facility, whether operated by a government or private contractor, that is used for confinement of adult or juvenile persons who are charged with or convicted of a violation of a law or an ordinance; and

(2) "naloxone" means naloxone hydrochloride, which is an opioid antagonist for the treatment of an opioid overdose.

History: Laws 2017, ch. 59, § 3.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 59 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

ARTICLE 2A
Corrections Population Control

33-2A-1. Short title.

This act [33-2A-1 through 33-2A-8 NMSA 1978] may be cited as the "Corrections Population Control Act".

History: Laws 2002, ch. 8, § 1.

ANNOTATIONS

Effective dates. — Laws 2002, ch. 8 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2002, 90 days after adjournment of the legislature.

33-2A-2. Purpose.

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

History: Laws 2002, ch. 8, § 2.

ANNOTATIONS

Effective dates. — Laws 2002, ch. 8 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2002, 90 days after adjournment of the legislature.

33-2A-3. Definitions.

As used in the Corrections Population Control Act:

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

B. "female correctional facilities" means:

(1) the women's correctional facility, located in Grants; and

(2) any other female correctional facility so designated by the corrections department;

C. "male correctional facilities" means:

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

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

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

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

(5) the Roswell correctional facility, located in Hagerman;

(6) the Guadalupe county correctional facility, located in Santa Rosa;

(7) the Lea county correctional facility, located in Hobbs; and

(8) any other male correctional facility so designated by the corrections department;

D. "nonviolent offender" means:

(1) a person convicted only of possession of a controlled substance, pursuant to the provisions of Section 30-31-23 NMSA 1978;

(2) a person incarcerated for violating the conditions of his parole plan due to use or possession of a controlled substance whose original conviction was for commission of a nonviolent offense; or

(3) an inmate designated by the commission as a nonviolent offender; provided that the offender was convicted for the commission of a nonviolent offense, as that term is defined in Subsection L of Section 33-2-34 NMSA 1978; and

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

History: Laws 2002, ch. 8, § 3.

ANNOTATIONS

Effective dates. — Laws 2002, ch. 8 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2002, 90 days after adjournment of the legislature.

33-2A-4. Repealed.

ANNOTATIONS

Repeals. — Laws 2002, ch. 8, § 8 terminated the corrections population control commission, effective June 30, 2007. The duties and responsibilities of the commission were assumed by the secretary of corrections on July 1, 2007. For provisions of former section relating to the creation and membership of the corrections population control commission, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

33-2A-5. Repealed.

ANNOTATIONS

Repeals. — Laws 2002, ch. 8, § 8 terminated the corrections population control commission, effective June 30, 2007. The duties and responsibilities of the commission were assumed by the secretary of corrections on July 1, 2007. For provisions of former section relating to the duties of the corrections population control commission, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

33-2A-6. Overcrowding; population control mechanism; procedures.

When the inmate population of female correctional facilities or male correctional facilities exceeds one hundred percent of rated capacity for a period of thirty consecutive days, the following measures shall be taken to reduce capacity:

A. the corrections department shall engage in all lawful and professionally appropriate efforts to reduce the inmate population to one hundred percent of rated capacity;

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

C. the commission shall convene within ten days to consider the release of nonviolent offenders on the list provided by the secretary of corrections. The commission shall also discuss with the corrections department the impact on the inmate population of possible changes in the classification system and expanding incarceration alternatives;

D. for nonviolent offenders approved by the commission for release, the commission shall grant emergency release credits in ten-day increments that will be applied to the sentences being served by the nonviolent offenders. The commission shall order release of the appropriate number of nonviolent offenders to reduce the inmate population; and

E. notwithstanding any other provisions of this section, a nonviolent offender shall not be released:

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

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

(3) if the nonviolent offender committed a crime while incarcerated;

(4) if the nonviolent offender fails a drug screening test within ten days of his scheduled release; or

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

History: Laws 2002, ch. 8, § 6.

ANNOTATIONS

Effective dates. — Laws 2002, ch. 8 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2002, 90 days after adjournment of the legislature.

33-2A-7. Additional population control mechanisms.

A. The governor may order the commission to convene at any time to consider the release of nonviolent offenders who are within one hundred eighty days of their projected release date. When the governor orders the commission to convene, the commission shall comply with the provisions of Subsections C through E of Section 6 [33-2A-6 NMSA 1978] of the Corrections Population Control Act.

B. The commission may order itself to convene at any time to consider the release of nonviolent offenders who are within one hundred eighty days of their projected release date, upon a two-thirds' vote by members who are appointed. When the commission orders itself to convene, the commission shall comply with the provisions of Subsection C through E of Section 6 of the Corrections Population Control Act.

History: Laws 2002, ch. 8, § 7.

ANNOTATIONS

Effective dates. — Laws 2002, ch. 8 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2002, 90 days after adjournment of the legislature.

33-2A-8. Termination of agency life; transfer of functions.

The corrections population control commission is terminated on June 30, 2007. On July 1, 2007, the secretary of corrections shall assume the duties and responsibilities of the commission.

History: Laws 2002, ch. 8, § 8.

ANNOTATIONS

Effective dates. — Laws 2002, ch. 8 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2002, 90 days after adjournment of the legislature.

ARTICLE 3
Jails

33-3-1. Common jails; operation by sheriff, jail administrator or independent contractor.

A. The common jails shall be under the control of the respective sheriffs, independent contractors or jail administrators hired by the board of county

commissioners or other local public body or combination thereof, and the same shall be used as prisons in the respective counties.

B. Contracts between local public bodies and private independent contractors for the operation, or provision and operation, of a jail are specifically authorized by this section; provided that prior to July 1, 1987, no more than two pilot projects involving private independent contractors are authorized in New Mexico, pursuant to Section 33-3-26 NMSA 1978.

History: Laws 1865-1866, ch. 19, § 1; C.L. 1884, § 468; C.L. 1897, § 821; Code 1915, § 3033; C.S. 1929, § 75-101; 1941 Comp., § 45-201; 1953 Comp., § 42-2-1; Laws 1983, ch. 181, § 3; 1984, ch. 22, § 4.

ANNOTATIONS

Compiler's notes. — The 1915 Code compilers, in Subsection A, deleted "now standing or that may hereafter be built in the different counties of the territory" after "common jails" and deleted "for the purposes in this act provided" from the end of the section.

Cross references. — For the definition of jail administrator, *see* 4-44-19 NMSA 1978.

For bond issues for jails, *see* 4-49-1 to 4-49-21 NMSA 1978.

Guadalupe County correctional facility's contract with the board of commissioners of Guadalupe County, a contract which is specifically authorized by law, vested the facility's employees with the authority to act as jailers. State v. Young, 2004-NMSC-015, 135 N.M. 458, 90 P.3d 477.

Transportation of prisoners housed at a county jail or other detention facility is not the exclusive responsibility of the local sheriff's department; jail administrators and independent contractors may also transport inmates at their facilities. 2000 Op. Att'y Gen. No. 00-02.

Municipal jail not "common jail" even if only one. — When a municipal jail is the only jail in a county, this does not cause it to become a "common jail" within the meaning of this section. Therefore, it is not subject to the control of the county sheriff. 1976 Op. Att'y Gen. No. 76-18.

No authority to refuse prisoners. — County jail administrators have no authority to refuse to accept persons who have been properly committed to their custody by state or federal authorities. 1994 Op. Att'y Gen. No. 94-08.

County commissioners may not arbitrarily decide how sheriff's space used. — While Sections 4-38-13 and 4-38-18 NMSA 1978 grant the board of county commissioners the authority to control and manage county property, this does not mean

the board may arbitrarily decide how space assigned to the county sheriff may be used. 1969 Op. Att'y Gen. No. 69-50.

Jails are under sheriff's control, irrespective of duty to inspect. — While the county commissioners have the duty to inspect jails at least twice a year, the jails are under the control of the sheriffs of the respective counties. 1969 Op. Att'y Gen. No. 69-50.

Sheriff may provide quarters for jailer and his family in space assigned to the sheriff, for that purpose, convenient to the jail. 1969 Op. Att'y Gen. No. 69-50.

No authority to contract with independent contractors for jail services. — This section, which is the basic authorization for county jails, does not authorize counties to contract with private independent contractors for jail services, as it does not authorize anyone other than a sheriff or hired jail administrator to control a county jail. 1983 Op. Att'y Gen. No. 83-5 (rendered prior to 1984 amendment).

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60 Am. Jur. 2d Penal and Correctional Institutions §§ 22 to 24.

Sheriff's liability for negligence causing injury to prisoner, 60 A.L.R.2d 873.

Validity and construction of prison regulation of inmates' possession of personal property, 66 A.L.R.4th 800.

Constitutional right of prisoners to abortion services and facilities - federal cases, 90 A.L.R. Fed. 683.

72 C.J.S. Prisons and Rights of Prisoners §§ 20 to 26.

33-3-2. Joint agreements for the construction, management and operation of correctional and detention facilities and jails.

A. Notwithstanding the provisions of Subsection A of Section 33-3-1 NMSA 1978, the board of county commissioners of a county may enter into an agreement with other counties and municipalities to provide for the construction, maintenance or operation of one or more jails or correctional or detention facilities for confinement of persons charged with crimes, violations of municipal or county ordinances or committed to jail.

B. The agreement authorized in Subsection A of this section may provide for the control of the indicated facilities by the sheriff of the county in which the facility is located or by a jail administrator as defined in Section 4-44-19 NMSA 1978 or by an independent contractor, and the agreement shall state the manner in which the person in control shall be selected if it is other than the sheriff.

C. In a class A county utilizing a joint city and county jail, municipalities shall pay a fee to the board of county commissioners for each prisoner housed in the county jail charged with municipal offenses or arrested by municipal officers. The fee shall be a reasonable fee established by the board of county commissioners and approved by the local government division of the department of finance and administration.

D. No agreement or an amendment to an agreement authorized by this section is effective until it is approved by the local government division of the department of finance and administration.

History: 1953 Comp., § 42-2-1.1, enacted by Laws 1972, ch. 69, § 1; 1983, ch. 181, § 4; 1984, ch. 22, § 5; 1989, ch. 277, § 1.

ANNOTATIONS

Cross references. — For use of county jail by municipality, *see* 3-18-20 NMSA 1978.

The 1989 amendment, effective June 16, 1989, inserted "as defined in Section 4-44-19 NMSA 1978" and "by an" in Subsection B, added present Subsection C, and redesignated former Subsection C as present Subsection D.

Board of commissioners may impose fee for each municipal prisoner incarcerated in county jail. 1979 Op. Att'y Gen. 79-41.

"Other qualified individuals" formerly referred to in Subsection B must be public officers or employees, not private persons acting as independent contractors. 1983 Op. Att'y Gen. No. 83-05 (rendered prior to 1984 amendment).

33-3-3. Confinement of prisoners in county where offense committed.

The jail or jails in each county shall be used or be available for the detention of every person who, within the same county, is charged with any crime or properly committed for trial or for the imprisonment of every person who in conformity with sentence, upon conviction of an offense, may have been sentenced, and for the safekeeping of every person who shall be committed by competent authority according to law.

History: Laws 1865-1866, ch. 19, § 2; C.L. 1884, § 469; C.L. 1897, § 822; Code 1915, § 3034; C.S. 1929, § 75-102; 1941 Comp., § 45-202; 1953 Comp., § 42-2-2; Laws 2001, ch. 51, § 1.

ANNOTATIONS

Compiler's notes. — The 1915 Code compilers deleted "or for the imprisonment of every person or persons who shall be sentenced to imprisonment in the penitentiary, until a penitentiary shall be built" after "may have been sentenced" and deleted

"provided, that each prisoner shall be kept in the county in which the offense may have been committed" from the end of the section.

Cross references. — For exception to section in cases of magistrate courts more than 50 miles from county seat, *see* 33-3-21, 33-3-22 NMSA 1978.

For duty of sheriff to notify relatives of deceased person, *see* 24-12-1 NMSA 1978.

For protective custody of intoxicated person pursuant to Detoxification Act, *see* 43-2-19 to 43-2-21 NMSA 1978.

The 2001 amendment, effective June 15, 2001, added the section heading; substituted "The jail or jails in each county shall be used or be available for the detention" for "The jail in each county shall be used for the retention"; deleted "or persons" after "person" in two places, and substituted "is charged" for "shall be charged".

Duty of sheriff to keep prisoners in custody pending appeal. — The district court has no power to commit prisoners awaiting trial or pending an appeal, which operates to stay execution of sentence in criminal cases, to state penitentiary for safekeeping, for the sheriff alone is authorized to remove such prisoners from the county jail to another jail or place of safety, and pending the determination of an appeal, it is the duty of the sheriff to keep them in custody. Parks v. Hughes, 1918-NMSC-094, 24 N.M. 421, 174 P. 425.

County may refuse use of jail by city without arrangement. — Neither the sheriff nor the county commissioners may limit use of the facilities of the county jail if the city has been using the jail with the county commissioners' consent, but if no such consent has ever been obtained by the city, then the county commissioners may refuse until some satisfactory arrangement is made by the county commissioners and the city. 1951-52 Op. Att'y Gen. No. 52–5608.

Persons violating state law confined to county jail pending appeal. — Those persons convicted of violation of state laws are to be committed to the county jail, and a municipality should not be forced to accept or pay for their upkeep while they are appealing to the district court. 1969 Op. Att'y Gen. No. 68-21.

Responsibility for expenses and upkeep of prisoners. — A county becomes responsible for paying the expenses and upkeep of prisoners arrested by municipal police on state charges at such times as the prisoners are delivered to the actual custody of the county jail, along with any necessary paperwork; a county becomes responsible for medical costs of indigent prisoners at the same time and in the same circumstances. 1985 Op. Att'y Gen. No. 85-03.

33-3-4. Inspection of jails and detention centers; report.

Each governing body of a county or municipality shall conduct an annual site visit to the jail or detention center under its jurisdiction to inspect the overall conditions at the facility. Following a site visit, an inspection report shall be presented at a regular meeting of the governing body.

History: Laws 1865-1866, ch. 19, § 3; C.L. 1884, § 470; C.L. 1897, § 823; Code 1915, § 3035; C.S. 1929, § 75-103; 1941 Comp., § 45-203; 1953 Comp., § 42-2-3; Laws 1983, ch. 181, § 5; 1984, ch. 22, § 6; repealed and reenacted by Laws 2011, ch. 142, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 2011, ch. 142, § 1 repealed former 33-3-4 NMSA 1978 and enacted a new section, effective June 17, 2011.

Cross references. — For the definition of jail administrator, *see* 4-44-19 NMSA 1978.

County liability. — Where a county has contracted with a private, independent contractor to operate a county jail, but pursuant to this section, the county retains oversight responsibilities over the operation of its detention center and has, therefore, not delegated complete authority to the contractor for the operation of the jail, the county retains liability under 42 U.S.C.S. § 1983 for any unconstitutional policies or customs the contractor may have adopted or created. Herrera v. County of Santa Fe, 213 F. Supp. 2d 1288 (D.N.M. 2002).

Irrespective of duty to inspect, sheriffs have control of jail. — While the county commissioners have the duty to inspect jails at least twice (now once) a year, the jails are under the control of the sheriffs of the respective counties. 1969 Op. Att'y Gen. No. 69-50.

Commissioners to report violations to district court only. — In the event the county commissioners discover some violations of law during an inspection of the jails, this section limits the action they may take reporting any violations they find to the district court. 1969 Op. Att'y Gen. No. 69-50 (rendered under prior law).

Commissioners to decide whether prisoner freedom policy improper. — The county commissioners should make the determination of whether or not a sheriff's policy regarding prisoner freedom during the term of confinement amounts to an application of improper discipline, and if the board determines that such is the case it should report the same to the district court. 1963-64 Op. Att'y Gen. No. 63-142 (rendered under prior law).

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 C.J.S. Prisons and Rights of Prisoners §§ 7 to 19.

33-3-5. Cleanliness and feeding prisoners.

It shall be the duty of the sheriff, jail administrator or independent contractor of each jail of the several counties of this state to keep the jails of their respective counties clean and healthy, and they shall observe special care as to the personal cleanliness of all prisoners under their charge.

History: Laws 1865-1866, ch. 19, § 7; C.L. 1884, § 474; C.L. 1897, § 827; Code 1915, § 3040; C.S. 1929, § 75-108; 1941 Comp., § 45-204; 1953 Comp., § 42-2-4; Laws 1983, ch. 181, § 6; 1984, ch. 22, § 7.

ANNOTATIONS

Compiler's notes. — The 1915 Code compilers deleted from the end of this section a provision which read: "and when said sheriff is required by law to feed prisoners, he shall see that the diet furnished them is healthy, furnished at proper hours and in sufficient quantities, which shall be given them three times a day," possibly as superseded by 33-3-6 NMSA 1978.

Cross references. — For the definition of jail administrator, *see* 4-44-19 NMSA 1978.

Sheriff to make available medical care to indigents and nonindigents. — Sheriffs and persons charged with custody of county prisoners should make available medical care, where necessary, for prisoners out of funds available in the indigent fund of the county, if in fact such persons are indigent within the provisions of the laws, and if such prisoners are not indigent persons but have such means to provide for their own expenses, the county is not liable for such expense. 1953-54 Op. Att'y Gen. No. 54-5928.

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60 Am. Jur. 2d Penal and Correctional Institutions §§ 22 to 24.

72 C.J.S. Prisons and Rights of Prisoners §§ 63 to 79.

33-3-6. Food for prisoners.

The sheriffs, jail administrators or independent contractors of each county in the state shall supply with food the prisoners in their jails, and at all times all food so furnished shall be of a good and wholesome quality and sufficient in quantity for the proper maintenance of life.

History: Laws 1891, ch. 57, § 1; C.L. 1897, § 828; Code 1915, § 3041; C.S. 1929, § 75-109; 1941 Comp., § 45-205; 1953 Comp., § 42-2-5; Laws 1983, ch. 181, § 7; 1984, ch. 22, § 8.

ANNOTATIONS

Cross references. — For the definition of jail administrator, *see* 4-44-19 NMSA 1978.

For allowances for feeding prisoners and guards, *see* 4-44-19, 4-44-20 NMSA 1978.

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

33-3-7. Record of prisoners; escapes.

It shall be the duty of the sheriffs, jail administrators or independent contractors of the various jails to keep a faithful and true statement of all the prisoners detained and under their charge. The statement shall set forth the name of each person committed to jail, stating his place of residence, the date of his imprisonment, the cause of confinement and the authority committing him; provided that if the person who shall have been committed to jail shall afterwards obtain his liberty, the same shall be so stated in said book, setting forth the authority by which he was set at liberty; and in like manner, should any prisoner make his escape, the time thereof shall be stated, and the manner in which the escape was made.

History: Laws 1865-1866, ch. 19, § 8; C.L. 1884, § 475; C.L. 1897, § 829; Code 1915, § 3042; C.S. 1929, § 75-110; 1941 Comp., § 45-206; 1953 Comp., § 42-2-6; Laws 1983, ch. 181, § 8; 1984, ch. 22, § 9.

ANNOTATIONS

Cross references. — For the definition of jail administrator, *see* 4-44-19 NMSA 1978.

33-3-8. Rules for punishment.

The sheriffs, jail administrators or independent contractors in charge of the respective jails shall submit proposed rules and regulations which shall be effective upon being adopted by the local governing body or bodies responsible for the jail for the punishment of persons violating the rules of the jail.

History: Laws 1865-1866, ch. 19, § 10; C.L. 1884, § 477; C.L. 1897, § 830; Code 1915, § 3043; C.S. 1929, § 75-111; 1941 Comp., § 45-207; 1953 Comp., § 42-2-7; Laws 1983, ch. 181, § 9; 1984, ch. 22, § 10.

ANNOTATIONS

Cross references. — For the definition of jail administrator, *see* 4-44-19 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60 Am. Jur. 2d Penal and Correctional Institutions §§ 138, 141, 143.

72 C.J.S. Prisons and Rights of Prisoners § 8.

33-3-9. County jails; deduction of time for good behavior.

A. The sheriff or jail administrator of any county, with the approval of the committing judge or presiding judge, may grant any person imprisoned in the county jail a deduction of time from the term of his sentence for good behavior and industry and shall establish rules for the accrual of "good time". Deductions of time shall not exceed one-half of the term of the prisoner's original sentence. If a prisoner is under two or more cumulative sentences, the sentences shall be treated as one sentence for the purpose of deducting time for good behavior.

B. A prisoner shall not accrue good time for the mandatory portion of a sentence imposed pursuant to the provisions of:

(1) Sections 66-8-102 and 66-5-39 NMSA 1978; or

(2) a county or municipal ordinance that prohibits driving while under the influence of intoxicating liquor or drugs, or driving with a revoked or suspended driver's license.

C. A part or all of the prisoner's accrued deductions may be forfeited for any conduct violation. The sheriff or jail administrator shall establish rules and procedures for the forfeiture of accrued deductions and keep a record of all forfeitures of accrued deductions and the reasons for the forfeitures. In addition, any independent contractor shall also keep a duplicate record of such forfeitures.

D. No other time allowance or credits in addition to deductions of time permitted under this section may be granted to any prisoner.

E. If a private independent contractor operates a jail, he shall make reports of disciplinary violations and good behavior to the sheriff of the county in which the jail is located. All action on such reports and awards or forfeitures of good time shall be made by the sheriff. The independent contractor shall not have the power to award or cause the forfeiture of good time pursuant to this section.

History: 1953 Comp., § 42-2-7.1, enacted by Laws 1969, ch. 207, § 1; 1983, ch. 181, § 10; 1984, ch. 22, § 11; 1993, ch. 134, § 1; 1995, ch. 112, § 1.

ANNOTATIONS

Cross references. — For the definition of jail administrator, *see* 4-44-19 NMSA 1978.

The 1995 amendment, effective July 1, 1995, in Subsection A, substituted "of any county, with the approval of the committing judge or presiding judge, may" for "as defined in Section 4-44-19 NMSA 1978 of any county shall" in the first sentence, deleted "except when a prisoner is being credited with good time due to community service work that he is performing" from the end of the second sentence, and deleted the third through fifth sentences regarding deductions for community services; added Subsection B; and redesignated former Subsections B through D as Subsections C through E.

The 1993 amendment, effective July 1, 1993, in Subsection A, in the first sentence, inserted "as defined in Section 4-44-19 NMSA 1978", deleted "with the approval of the district judge or committing judge, may" following the first occurrence of "county" and made two stylistic changes, in the second sentence, substituted "one-half" for "one-third" and added the language following "original sentence", and inserted the third, fourth, and fifth sentences; and, in Subsection B, inserted "establish rules and procedures for the forfeiture of accrued deductions and" in the second sentence.

This section does not require a sentencing judge to grant a convicted person the opportunity to earn good time credits while in jail. State v. Wyman, 2008-NMCA-113, 144 N.M. 701, 191 P.3d 559, cert. quashed, 2009-NMCERT-012, 147 N.M. 600, 227 P.3d 90.

Constitutionality of good time credit scheme. — New Mexico's good time credit statutory scheme does not offend the constitutional guarantee of equal protection of the law; it is reasonable not to award good time credits for presentence confinement to detainees who are presumed innocent and therefore are not yet subject to rehabilitation efforts or to compulsory labor requirements, especially when they are held without systematic evaluation in county jails lacking rehabilitation programs. State v. Aqui, 1986-NMSC-048, 104 N.M. 345, 721 P.2d 771, cert. denied, 479 U.S. 917, 107 S. Ct. 321, 93 L. Ed. 2d 294 (1986).

New Mexico's statutory scheme making prisoners eligible for awards of good time credits for the periods of their post-sentencing confinement in Correction Department facilities and county jails but not for the periods of their presentence confinement in county jails does not offend the due process guarantees of the New Mexico and United States constitutions. State v. Aqui, 1986-NMSC-048, 104 N.M. 345, 721 P.2d 771, cert. denied, 479 U.S. 917, 107 S. Ct. 321, 93 L. Ed. 2d 294 (1986).

Failure to allow good time credit for presentence confinement does not subject a prisoner to double jeopardy. Enright v. State, 1986-NMSC-070, 104 N.M. 672, 726 P.2d 349.

New Mexico's statutory scheme, which does not allow good time credit for presentence confinement, does not offend the equal protection and due process guarantees of the

New Mexico and United States constitutions. Enright v. State, 1986-NMSC-070, 104 N.M. 672, 726 P.2d 349.

Applicability of good time credits. — Good time credits are available only to convicted and sentenced prisoners and did not apply to the defendant who was incarcerated between the date of the crime and the trial. State v. Landgraf, 1996-NMCA-024, 121 N.M. 445, 913 P.2d 252, cert. denied, 121 N.M. 375, 911 P.2d 883.

Discretion of administrators. — Deduction of good time credits from an inmate's sentence is a discretionary matter entrusted not to the courts but to the administrators of the corrections department or the county jails. State v. Aqui, 1986-NMSC-048, 104 N.M. 345, 721 P.2d 771, cert. denied, 479 U.S. 917, 107 S. Ct. 321, 93 L. Ed. 2d 294 (1986).

Court of sentencing no effect upon good behavior credit. — The fact that one prisoner committed to the county jail was sentenced in the municipal court and another was sentenced in a district court does not provide sufficient basis for classifying those two prisoners differently for purposes of granting credit for good behavior. 1972 Op. Att'y Gen. No. 72-57.

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60 Am. Jur. 2d Penal and Correctional Institutions §§ 222 to 235.

Withdrawal, forfeiture, modification or denial of good time allowance to prisoner, 95 A.L.R.2d 1265.

72 C.J.S. Prisons and Rights of Prisoners §§ 144 to 153.

33-3-10. Repealed.

ANNOTATIONS

Repeals. — Laws 1983, ch. 181, § 19, repealed 33-3-10 NMSA 1978, as enacted by Laws 1865-1866, ch. 19, § 11, relating to supplies for jails, effective March 19, 1983.

33-3-11. Jail for nonpayment of fine.

A. Whenever any person is committed to jail for nonpayment of any fine or costs or both, he shall be credited with eight times the federal hourly minimum wage a day in reduction thereof for each day or portion of a day of incarceration. When the person has remained incarcerated a sufficient length of time to extinguish the fine or cost or both, computed at this rate, or has paid to the sentencing court the amount of the fine or costs or both, remaining after deducting credit allowed by this section and obtaining from the

court an order of release from commitment, the officer having the prisoner in custody shall discharge him from custody under commitment.

B. If the person in custody makes an affidavit that he has no property out of which he can pay the fine and costs, either or any part, the prisoner shall not be retained in custody longer than sixty days even though the fine and costs or either exceeds the amount credited toward repayment during those sixty days. The affidavit shall be delivered to the sheriff or jail administrator as defined in Section 4-44-19 NMSA 1978 having custody of the prisoner.

History: Laws 1889, ch. 9, § 1; C.L. 1897, § 832; Code 1915, § 3045; C.S. 1929, § 75-113; 1941 Comp., § 45-209; 1953 Comp., § 42-2-9; Laws 1961, ch. 48, § 1; 1967, ch. 153, § 1; 1983, ch. 181, § 11; 2001, ch. 170, § 1.

ANNOTATIONS

Cross references. — For the nonpayment of fines or costs of those sentenced to the state penitentiary, *see* 33-2-40 NMSA 1978.

The 2001 amendment, effective July 1, 2001, in Subsection A, substituted "jail" for "prison", increased the credit amount from five dollars per day to eight times the federal hourly minimum wage per day, substituted "incarceration" for "imprisonment" and "incarcerated" for "imprisoned"; in Subsection B, changed the amount of time a prisoner may be retained in custody from three months to sixty days, and substituted "the amount credited toward repayment during those sixty days" for "four hundred fifty dollars ($450)".

Maximum of 30 days served in penitentiary to pay fines. — Inmates at the New Mexico State Penitentiary are not required to serve more than 30 days for fines or costs attached to sentences when the inmates are sentenced on two or more commitments. 1959-60 Op. Att'y Gen. No. 59-31.

Maximum of 30 days to satisfy fine or costs or both. — An inmate committed to serve one or more sentences in the New Mexico state penitentiary can satisfy a fine by serving not more than 30 days. Court costs should be satisfied by payment if the inmate or his relatives have the necessary funds available. If it is necessary for the inmate to serve time in order to satisfy either a fine or costs, or both, such time served should not exceed 30 days. 1959-60 Op. Att'y Gen. No. 59-31.

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Indigency of offender as affecting validity of imprisonment as alternative to payment of fine, 31 A.L.R.3d 926.

33-3-12. Commitments to be furnished; orders of release; penalty.

A. Every public officer who has power to order the imprisonment of any person for violation of law shall, on making such order, transmit to the sheriff, jail administrator or independent contractor of his respective county a true copy of the order so that the person imprisoned may be considered under his custody until expiration of the commitment or until further steps, as provided by law, are taken to obtain the prisoner's liberty, of which he shall, in due time, notify the sheriff, jail administrator or independent contractor in writing.

B. Any jailer who deliberately and knowingly releases a prisoner without an order of release as provided in this section, except upon expiration of the prisoner's term of commitment, is guilty of a misdemeanor and shall be removed from office.

History: Laws 1863-1864, p. 96; C.L. 1865, ch. 92, § 22; C.L. 1884, § 484; C.L. 1897, § 835; Code 1915, § 3048; C.S. 1929, § 75-116; 1941 Comp., § 45-210; 1953 Comp., § 42-2-10; Laws 1968, ch. 62, § 155; 1983, ch. 181, § 12; 1984, ch. 18, § 2; 1984, ch. 22, § 12.

ANNOTATIONS

Cross references. — For the definition of jail administrator, *see* 4-44-19 NMSA 1978.

Responsibility for expenses and upkeep of prisoners. — A county becomes responsible for paying the expenses and upkeep of prisoners arrested by municipal police on state charges at such times as the prisoners are delivered to the actual custody of the county jail, along with any necessary paperwork; a county becomes responsible for medical costs of indigent prisoners at the same time and in the same circumstances. 1985 Op. Att'y Gen. No. 85-03.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 C.J.S. Prisons and Rights of Prisoners § 155.

33-3-13. Prisoners waiting [awaiting] trial; confinement in county jail.

All persons charged with crime committed in the state, while awaiting indictment or trial on such charge, shall be incarcerated in the county jail of the county wherein such crime is alleged to have been committed or any facility operated by agreement between such counties or municipalities, except that such persons may be temporarily imprisoned in other places of confinement while being conveyed or awaiting conveyance to the jail of the proper county; provided that the sheriff or jail administrator of any county, having the custody of anyone charged with the commission of crime, shall be authorized to remove such person to another county jail or any other place of safety when in the opinion of the sheriff or jail administrator the life of such person or others is in imminent danger; provided further that this section shall not prevent a person being confined in a jail other than the one belonging to the county in which the

crime charged is alleged to have been committed, when such person is confined in such other jail in consequence of having taken a change of venue to such other county.

History: Laws 1889, ch. 8, § 1; C.L. 1897, § 837; Code 1915, § 3049; C.S. 1929, § 75-117; 1941 Comp., § 45-211; 1953 Comp., § 42-2-11; Laws 1983, ch. 181, § 13.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For the definition of jail administrator, *see* 4-44-19 NMSA 1978.

Responsibility for expenses and upkeep of prisoners. — A county becomes responsible for paying the expenses and upkeep of prisoners arrested by municipal police on state charges at such times as the prisoners are delivered to the actual custody of the county jail, along with any necessary paperwork; a county becomes responsible for medical costs of indigent prisoners at the same time and in the same circumstances. 1985 Op. Att'y Gen. No. 85-03.

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

33-3-14. [Confinement in county other than in which crime committed; expense borne by county; exception.]

Whenever any person shall be imprisoned in any county other than the county in which the crime is alleged to have been committed, in violation of this chapter, the expense of such imprisonment shall be borne by the county in which such person is so imprisoned; provided, that whenever any prisoner shall be removed to another county under the provisions of the preceding section [33-3-13 NMSA 1978] then, and in such case, the expense of removal and keeping such prisoner shall be paid by the county from which such prisoner was so removed.

History: Laws 1889, ch. 8, § 2; C.L. 1897, § 838; Code 1915, § 3050; C.S. 1929, § 75-119; 1941 Comp., § 45-212; 1953 Comp., § 42-2-12.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The 1915 Code compilers substituted "this chapter" for "this act". "This act" refers to Laws 1889, ch. 8, compiled herein as 33-3-13, 33-3-14, 33-3-18 NMSA 1978. "This chapter" refers to 1915 Code, ch. 62, §§ 3033 to 3069, compiled

herein as 29-1-3 to 29-1-6, 33-3-1, 33-3-3 to 33-3-8, 33-3-11 to 33-3-14, 33-3-16 to 33-3-19, 33-3-21, 33-3-22 NMSA 1978.

The 1915 Code compilers also substituted "the preceding section" for "section one of this act".

33-3-15. Transfer of prisoner to another county or the penitentiary for safekeeping; expense.

Whenever the public welfare or the safe custody of a prisoner shall require, any district judge in the state of New Mexico in his discretion may order any person charged with the commission of a crime, or any person in the custody of the sheriff of any county in the district of the said judge, to be removed to another county jail, or to the state penitentiary, or to any other place of safety, when, in the opinion of the said district judge, it is advisable that such person or persons shall be removed for any purpose whatsoever.

Where a person, on the order of any district judge has been placed in the state penitentiary or a county jail for safekeeping, the expense incurred by said penitentiary or the sheriff of any county for the maintenance of said prisoner, shall be borne by the county from which said prisoner has been ordered, and said bill of expense shall be made a preferential bill of expense and shall be paid in full before any bill, fees or salaries of such county are paid; provided, however, that the said state penitentiary or sheriff shall only charge for the maintenance of said prisoner the legal rate now allowed by law. This section shall not authorize a charge against a county for expenses relating to any prisoner committed to the penitentiary as a result of a criminal conviction.

History: Laws 1919, ch. 92, § 1; C.S. 1929, § 75-118; 1941 Comp., § 45-213; 1953 Comp., § 42-2-13; Laws 1955, ch. 105, § 1.

ANNOTATIONS

Person in penitentiary deemed county prisoner until sentencing. — Person received at state penitentiary for safekeeping, under an order of the district judge made pursuant to this section, was a county prisoner from the time he was admitted to the time he was sentenced to the penitentiary, the sentence having been made retroactive to the date he was originally received at the penitentiary. State v. Board of Cnty. Comm'rs, 1935-NMSC-048, 39 N.M. 310, 46 P.2d 669.

County liable for maintenance pending appeal even where inadvertently committed. — County was liable for maintenance of one confined in penitentiary pending appeal from felony conviction, although district court inadvertently committed him to the penitentiary instead of ordering his confinement therein for safekeeping, and although he was required to labor as a convict. State v. Board of Cnty. Comm'rs, 1928-NMSC-026, 33 N.M. 340, 267 P. 72.

Cost of keeping in penitentiary pending appeal chargeable to county. — The cost of keeping a prisoner in the state penitentiary while his appeal is pending in the supreme court is chargeable to the county when the district court has not entered order transferring the prisoner to the penitentiary for safekeeping. 1947-48 Op. Att'y Gen. No. 47-5094.

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60 Am. Jur. 2d Penal and Correctional Institutions § 218.

72 C.J.S. Prisons and Rights of Prisoners §§ 21, 130.

33-3-16. United States prisoners.

It shall be the duty of the sheriff of each county, his deputy, jailer, jail administrator or independent contractor, to whom any person shall be remitted in conformity with a legal process issued by or under the authority of the United States, and he is hereby required, to receive such person or persons into his custody and keep them safely until they shall be placed at liberty according to the laws of the United States; provided that the United States shall be responsible for the payment of the fee which shall be established from time to time by the sheriff, jail administrator or independent contractor in charge of the operation of a jail.

History: Laws 1865-1866, ch. 19, § 15; C.L. 1884, § 482; C.L. 1897, § 833; Code 1915, § 3046; C.S. 1929, § 75-114; 1941 Comp., § 45-214; 1953 Comp., § 42-2-14; Laws 1984, ch. 22, § 13.

ANNOTATIONS

Cross references. — For definition of jail administrator, *see* 4-44-19 NMSA 1978.

Compensation for keeping federal prisoners to be fixed by agreement. — The keeping of prisoners for the federal government should be fixed by agreement between the county commissioners and the government to fairly compensate the county for such services. 1937-38 Op. Att'y Gen. No. 38-2034.

Board of county commissioners proper party for negotiating contract. — The proper party for the purpose of negotiating a contract with the federal government for keeping the federal prisoners in the Bernalillo county jail is the board of county commissioners. 1957-58 Op. Att'y Gen. No. 57-234.

No authority to refuse prisoners. — County jail administrators have no authority to refuse to accept persons who have been properly committed to their custody by state or federal authorities. 1994 Op. Att'y Gen. No. 94-08.

County may contract to maintain federal prisoners from other counties. — If the condition of the jail and the population of the jail is such that, in the opinion of the sheriff, it will not impair discipline, cleanliness and health, a contract may be negotiated for maintaining federal prisoners from other counties. The decision of the sheriff, of course, cannot be arbitrary. It must be based upon reasonable standards of cleanliness, health and discipline. 1957-58 Op. Att'y Gen. No. 57-234.

County contract cannot work to exclude county's own prisoners. — The board of county commissioners can lodge federal prisoners from surrounding counties if adequate facilities for their care and custody are not available in that particular county; however, the sheriff of the county wherein the jail is situated has, even in the case of a contract between two counties within the state of New Mexico, the right to maintain the standards of cleanliness, health and discipline, and such a contract cannot work to the exclusion of the prisoners of the county wherein the jail is situated. 1957-58 Op. Att'y Gen. No. 57-234.

Sheriff not obligated to accept federal prisoners. — The statute obviously does not mean that the sheriff must accept federal prisoners, even from his own county, in the event such acceptance of those prisoners would so overcrowd the jail as to exclude county prisoners. This statute is an accommodation to the federal authority and their interest is secondary to the interest of the county involved. 1957-58 Op. Att'y Gen. No. 57-234.

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60 Am. Jur. 2d Penal and Correctional Institutions §§ 10, 15 to 17.

72 C.J.S. Prisons and Rights of Prisoners § 4.

33-3-17. [Reports of federal prisoners presented to federal court; account of expenses; approval by court.]

The sheriffs of the different counties of this state, whenever they shall have under their charge any prisoner as set forth in the foregoing section [33-3-16 NMSA 1978], shall at each regular term of the district court for the United States, submit to said court a list of all the prisoners under their charge by authority of the United States, for the information of said court, setting forth the date of their imprisonment, by whom delivered into their custody and for what offense, accompanied with a just and correct account of all the expenses of their maintenance and detention, for the consideration of said district court of the United States, and for the approval and order of said court for the payment of the sum.

History: Laws 1865-1866, ch. 19, § 16; C.L. 1884, § 483; C.L. 1897, § 834; Code 1915, § 3047; C.S. 1929, § 75-115; 1941 Comp., § 45-215; 1953 Comp., § 42-2-15.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

33-3-18. Counties without jails; arrangements with other counties.

In case any county in this state lacks a jail or proper place of confinement for its prisoners, the board of county commissioners of that county shall make contractual arrangements with other counties, municipalities or independent contractors for the incarceration and care of its prisoners, and that jail so designated by any board of county commissioners of any county not having a jail or other proper place of confinement shall be the legal place of confinement of the prisoners of said county.

History: Laws 1889, ch. 8, § 4; C.L. 1897, § 840; Code 1915, § 3051; C.S. 1929, § 75-120; 1941 Comp., § 45-216; 1953 Comp., § 42-2-16; Laws 1983, ch. 181, § 14; 1984, ch. 22, § 14.

ANNOTATIONS

Cross references. — For joint agreements for construction, management and operation of correctional and detention facilities and jails, *see* 33-3-2 NMSA 1978.

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

33-3-19. Prisoners in jails; work.

It is the duty of the sheriffs, jail administrators as defined in Section 4-44-19 NMSA 1978 or independent contractors in charge of the jails of the state to compel the prisoners who are sentenced to imprisonment in the jails to work on public projects without pay or remuneration whatsoever. A prisoner may be compelled to work a maximum of eight hours in a twenty-four-hour period; provided that a work period is followed by a rest period of a minimum of eight hours. No prisoner shall be compelled to work on Sundays and legal holidays. This work may be considered for good time reduction as provided in Section 33-3-9 NMSA 1978.

History: Laws 1909, ch. 89, § 1; Code 1915, § 3052; C.S. 1929, § 75-121; 1941 Comp., § 45-217; 1953 Comp., § 42-2-17; Laws 1983, ch. 181, § 15; 1984, ch. 22, § 15; 1985, ch. 24, § 1.

ANNOTATIONS

Cross references. — For the constitutional prohibition of leasing of convict labor by the state, *see* N.M. Const., art. XX, § 18.

Constitutionality of good time credit scheme. — New Mexico's good time credit statutory scheme does not offend the constitutional guarantee of equal protection of the law; it is reasonable not to award good time credits for presentence confinement to detainees who are presumed innocent and therefore are not yet subject to rehabilitation efforts or to compulsory labor requirements, especially when they are held without systematic evaluation in county jails lacking rehabilitation programs. State v. Aqui, 1986-NMSC-048, 104 N.M. 345, 721 P.2d 771, cert. denied, 479 U.S. 917, 107 S. Ct. 321, 93 L. Ed. 2d 294 (1986).

Constitutionality of disallowing presentence good time credit. — Failure to allow good time credit for presentence confinement does not subject a prisoner to double jeopardy. Enright v. State, 1986-NMSC-070, 104 N.M. 672, 726 P.2d 349.

New Mexico's statutory scheme, which does not allow good time credit for presentence confinement, does not offend the equal protection and due process guarantees of the New Mexico and United States constitutions. Enright v. State, 1986-NMSC-070, 104 N.M. 672, 726 P.2d 349.

Escape from work detail. — Where defendant was assigned to a work detail at a county fairgrounds while serving a lawful sentence at a county jail, and it was while so assigned that the defendant escaped, the defendant is guilty of escape from jail. State v. Gilman, 1981-NMCA-123, 97 N.M. 67, 636 P.2d 886, cert. denied, 97 N.M. 483, 641 P.2d 514.

When county and board members not liable for injuries to prisoners. — In the absence of a statute whereby liability and permission to sue a creature of the state is provided, neither the county nor individual members of a board of county commissioners are liable for injuries sustained by prisoners engaged in maintenance work of courthouse grounds. 1957-58 Op. Att'y Gen. No. 57-220.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60 Am. Jur. 2d Penal and Correctional Institutions §§ 162 to 173.

18 C.J.S. Convicts §§ 13 to 15; 72 C.J.S. Prisons and Rights of Prisoners §§ 124 to 129.

33-3-20. Repealed.

ANNOTATIONS

Repeals. — Laws 1983, ch. 181, § 19, repealed 33-3-20 NMSA 1978, as enacted by Laws 1909, ch. 89, § 2, relating to duty of sheriffs to enforce provisions for labor, effective March 19, 1983.

33-3-21. Commitments by magistrates; confinement in town jail.

Whenever in any incorporated town or village situated more than fifty miles from the county seat of the county in which such town or village is situated any person shall be tried before any magistrate whose precinct or any part thereof is embraced within such town or village for any offense against the laws of the state amounting to a misdemeanor and who shall be convicted thereof and be sentenced to be confined in the county jail, either as a part of the punishment inflicted for such offense or for the nonpayment of the fine and costs that may be assessed against the person, it shall be lawful for the sheriff receiving the order of commitment to confine the defendant in the jail belonging to such town or village for the period or term directed in the judgment or order of commitment. For the purposes of this [section] and Section 33-3-22 NMSA 1978, the jail of such town or village is hereby declared to be a county jail.

History: Laws 1893, ch. 35, § 1; C.L. 1897, § 3233; Code 1915, § 3054; C.S. 1929, § 75-123; 1941 Comp., § 45-219; 1953 Comp., § 42-2-19; Laws 1983, ch. 181, § 16.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Section exception to 33-3-3 NMSA 1978. — Those convicted of state laws are to be committed to the county jail except in cases where such persons are convicted of such an offense by a justice of the peace (now magistrate) whose precinct is within a town or village more than 50 miles from the county seat. However, the county is still liable for upkeep of the prisoner. 1968 Op. Att'y Gen. No. 68-21.

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

33-3-22. Town or village jails.

The boards of county commissioners in the several counties of the state are authorized and empowered to care for the feeding and guarding of the prisoners confined in the jail of any such town or village and to pay out of the county treasury to the trustees of such town or village for the feeding and guarding of such prisoners.

History: Laws 1893, ch. 35, § 2; C.L. 1897, § 3234; Code 1915, § 3055; C.S. 1929, § 75-124; 1941 Comp., § 45-220; 1953 Comp., § 42-2-20; Laws 1983, ch. 181, § 17.

ANNOTATIONS

Cross references. — For allowance for feeding jail prisoners, *see* 4-44-19, 4-44-20 NMSA 1978.

33-3-23. Confinement of prisoners committed by Indian government; cost.

A. Subject to the payment by the Indian tribe, band or pueblo or the United States of the fees established for the jail, the sheriff of each county, his deputy, jailer, jail administrator or independent contractor is required to receive any person committed to his custody in conformity with a regular process issued by or under the authority of any Indian tribe, band or pueblo in New Mexico and is further required to retain custody until such person is placed at liberty according to the laws of the United States or of the Indian tribe, band or pueblo.

B. No sheriff, jail administrator or independent contractor shall be required to receive any such committed person if to do so would exceed the capacity of the facility. The sheriff, jail administrator or independent contractor may also return any prisoner received by him under this section to the committing authority if the capacity of the facility is exceeded.

History: 1953 Comp., § 42-2-21, enacted by Laws 1959, ch. 104, § 1; 1983, ch. 181, § 18; 1984, ch. 22, § 16.

ANNOTATIONS

Cross references. — For the definition of jail administrator, *see* 4-44-19 NMSA 1978.

33-3-24. Prisoner-release program.

The sheriff of any county or the jail administrator of any jail with the approval of the board of county commissioners and the governing body of the municipality, as applicable, may establish a prisoner-release program in accordance with the provisions of Sections 33-2-43 and 33-2-44 NMSA 1978. The labor and industrial commission shall exercise the same supervision over conditions of employment for prisoners working under a prisoner-release program as it does over conditions of employment for free persons. A prisoner working under a prisoner-release program is not entitled to any benefits under the Unemployment Compensation Law [Chapter 51 NMSA 1978] during the term of his sentence. No prisoner involved in a prisoner-release program is an agent, employee or involuntary servant of a county jail while attending school, working in private business or going to or from such assignment.

History: Laws 1981, ch. 4, § 1.

ANNOTATIONS

No 30-day limit on local prisoner release programs. — Local program providing for electronic monitoring of prisoners is not limited to 30 days or less because Section 33-2-45 NMSA 1978 was not included in the authorizing statute, Section 33-3-24 NMSA 1978; therefore, a repeat driving while impaired offender was permitted to serve four months on electronic monitoring because it constituted official confinement. State v. Frost, 2003-NMCA-002, 133 N.M. 45, 60 P.3d 492, cert. denied, 133 N.M. 126, 61 P.3d 835.

33-3-25. Local government corrections fund created; administration; distribution.

A. There is created in the state treasury the "local government corrections fund" to be administered by the administrative office of the courts.

B. All balances in the local government corrections fund are appropriated to the administrative office of the courts for payment to counties for county jailer or juvenile detention officer training; for the construction planning, construction, maintenance and operation of the county detention facility, jail or juvenile detention facility; for paying the cost of housing county prisoners or juveniles in any detention facility in the state; for alternatives to incarceration; or for complying with match or contribution requirements for the receipt of federal funds relating to detention facilities, jails or juvenile detention facilities. Payments shall be made quarterly upon certification by the magistrate court or metropolitan court and the motor vehicle division of the taxation and revenue department of eligible amounts as provided in Subsection C of this section.

C. Each county shall be eligible for a payment in an amount equal to the costs and fees collected by a magistrate court or a metropolitan court and the motor vehicle division pursuant to offenses committed within the county and deposited in the local government corrections fund.

D. Payments from the local government corrections fund shall be made upon vouchers issued and signed by the director of the administrative office of the courts upon warrants drawn by the secretary of finance and administration.

E. All money received by a county pursuant to this section shall be deposited in a special fund in the county treasury and shall be used solely for:

(1) county jailer or juvenile detention officer training;

(2) the construction planning, construction, maintenance and operation of the county detention facility, jail or juvenile detention facility;

(3) paying the cost of housing county prisoners or juveniles in any detention facility in the state;

(4) alternatives to incarceration; or

(5) complying with match or contribution requirements for the receipt of federal funds relating to detention facilities, jails or juvenile detention facilities.

History: Laws 1983, ch. 134, § 1; 1985, ch. 27, § 1; 1987, ch. 251, § 1; 1989, ch. 133, § 2; 2003, ch. 424, § 1; 2011, ch. 173, § 1.

ANNOTATIONS

Cross references. — For police ordinances and county jails, *see* 3-18-20 NMSA 1978.

For joint agreements for the construction, management and operation of correctional and detention facilities and jails, *see* 33-3-2 NMSA 1978.

For the duties of the director of the administrative office of the courts, *see* 34-9-3 NMSA 1978.

The 2011 amendment, effective July 1, 2011, eliminated payments of the local government corrections fund to municipalities.

The 2003 amendment, effective July 1, 2003, rewrote the section.

The 1989 amendment, effective June 16, 1989, in Subsection B deleted "solely" following "those municipalities" in the first sentence, inserted "or juvenile detention officer", "or juvenile detention facility", "or juveniles", and "a juvenile detention facility" in the first sentence, and substituted "taxation and revenue department" for "transportation department" in the second sentence; and in Subsection E inserted "or juvenile detention training, for", "or juvenile detention facility", and "or juveniles", and substituted "or for contribution" for "or contribution".

33-3-26. Agreements for jails or for jail services; pilot programs.

A. Any county or municipality may enter into an agreement, including an agreement with an independent contractor, to operate, or to provide and operate, jail facilities for the care and housing of prisoners; provided that, prior to July 1, 1987, no more than two pilot projects for operation, or provision and operation, of a jail by private independent contractors are hereby authorized in New Mexico; and further provided that the attorney general shall select, authorize and approve such pilot projects.

B. The attorney general shall monitor any pilot project and shall report to the first and second sessions of the thirty-seventh legislature and to the first session of the thirty-eighth legislature with analyses of the pilot projects, their success or failure, recommendations for modification or repeal of the law and suggestions for change in any future projects.

History: 1978 Comp., § 33-3-26, enacted by Laws 1984, ch. 22, § 17.

ANNOTATIONS

Guadalupe County correctional facility's contract with the board of commissioners of Guadalupe County, a contract which is specifically authorized by law, vested the facility's employees with the authority to act as jailers. State v. Young, 2004-NMSC-015, 135 N.M. 458, 90 P.3d 477.

Exemptions from Procurement Code. — A construction agreement that is entered into as part of an overall agreement for operation and provision of a jail pursuant to this section and Section 33-3-27 NMSA 1978 is exempt from the Procurement Code's requirements. The "financing and design" of a jail facility are also exempt from the Procurement Code, as long as the local public body does not have a direct contractual relationship with the parties responsible for designing and financing the facility. 1987 Op. Att'y Gen. No. 87-47.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60 Am. Jur. 2d Penal and Correctional Institutions §§ 8, 9, 11, 14.

72 C.J.S. Prisons and Rights of Prisoners § 3.

33-3-27. Jail agreements; approval; liability; termination; venue.

A. Agreements with a private independent contractor for the operation of a jail or for the incarceration of prisoners shall be made for a period of up to five years, but those agreements may allow for additional one-year, two-year or three-year extensions not to exceed a total of six extensions. Agreements binding on future governing bodies for construction, purchase or lease of a jail facility for not more than fifteen years are authorized.

B. All agreements with private independent contractors for the operation or provision and operation of jails shall include a performance bond and be approved in writing, prior to their becoming effective, by the local government division of the department of finance and administration and the office of the attorney general. Disapproval may be based on any reasonable grounds, including adequacy or appropriateness of the proposed plan or standards; suitability or qualifications of the proposed contractor or the contractor's employees; absence of required or desirable contract provisions; unavailability of funds; or any other reasonable grounds. No agreement shall be valid or enforceable without prior approval.

C. All agreements with private independent contractors for the operation or provision and operation of jails shall provide for the independent contractor to provide and pay for training for jailers to meet minimum training standards, which shall be specified in the contract.

D. All agreements with private independent contractors for the operation or provision and operation of jails shall set forth comprehensive standards for conditions of incarceration, either by setting them forth in full as part of the contract or by reference to known and respected compilations of those standards.

E. All agreements with private independent contractors for the operation or provision and operation of jails shall be approved in writing, prior to their becoming effective, by the risk management division of the general services department. Approval

shall be conditioned upon contractual arrangements satisfactory to the risk management division for:

(1) the contractor's assumption of all liability caused by or arising out of all aspects of the provision and operation of the jail; and

(2) liability insurance covering the contractor and its officers, jailers, employees and agents in an amount sufficient to cover all liability caused by or arising out of all aspects of the provision and operation of the jail. A copy of the proposed insurance policy for the first year shall be submitted for approval with the contract.

F. All agreements with private independent contractors for the operation or provision and operation of jails shall provide for termination for cause by the local public body parties upon ninety days' notice to the independent contractor. A termination shall be allowed for at least the following reasons:

(1) failure of the independent contractor to meet minimum standards and conditions of incarceration, which standards and conditions shall be specified in the contract; or

(2) failure to meet other contract provisions when the failure seriously affects the operation of the jail.

The reasons for termination set forth in this subsection are not exclusive and may be supplemented by the parties.

G. Venue for the enforcement of any agreement entered into pursuant to the provisions of this section shall be in the district court of the county in which the facility is located or in Santa Fe county.

History: 1978 Comp., § 33-3-27, enacted by Laws 1984, ch. 22, § 18; 2001, ch. 153, § 1; 2007, ch. 222, § 1; 2015, ch. 137, § 1.

ANNOTATIONS

Cross references. — For the risk management division, *see* 15-7-2 NMSA 1978.

The 2015 amendment, effective June 19, 2015, provided that agreements with private independent contractors for the operation of a jail may be extended for up to three but may not exceed a total of six extensions; and in Subsection A, after "additional one-year", deleted "or" after "two-year", added "or three-year", and after "exceed a total of", deleted "five" and added "six".

The 2007 amendment, effective June 15, 2007, increased the term of additional extensions from one year to two years.

The 2001 amendment, effective July 1, 2001, extended the number of years that an agreement may be made with an independent contractor from no more than three years to five years with the option adding one-year extensions, not to exceed five extensions.

County liability. — Where a county has contracted with a private, independent contractor to operate a county jail, but pursuant to Section 33-3-4 NMSA 1978, the county retains oversight responsibilities over the operation of its detention center and has, therefore, not delegated complete authority to the contractor for the operation of the jail, the county retains liability under 42 U.S.C.S. § 1983 for any unconstitutional policies or customs the contractor may have adopted or created. Herrera v. County of Santa Fe, 213 F. Supp. 2d 1288 (D.N.M. 2002).

Exemptions from Procurement Code. — A construction agreement that is entered into as part of an overall agreement for operation and provision of a jail pursuant to this section and Section 33-3-26 NMSA 1978 is exempt from the Procurement Code's requirements. The "financing and design" of a jail facility are also exempt from the Procurement Code, as long as the local public body does not have a direct contractual relationship with the parties responsible for designing and financing the facility. 1987 Op. Att'y Gen. No. 87-47.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60 Am. Jur. 2d Penal and Correctional Institutions § 188.

72 C.J.S. Prisons and Rights of Prisoners §§ 124 to 129.

33-3-28. Jailers; peace officer powers.

A. Jailers and any employee of a local jail who has, at the particular time, the principal duty to hold in custody any person accused or convicted of a criminal offense or placed in the legal custody or supervision of a local jail shall have the power of a peace officer with respect to arrests and enforcement of laws when on the premises of a local jail, while transporting a person committed to or under the supervision of a local jail, while supervising any person committed to or under the supervision of a local jail anywhere within the state or when engaged in any effort to pursue or apprehend such a person. No jailer shall be convicted or held liable for any act performed pursuant to this subsection if a peace officer could lawfully have performed the same act in the same circumstance. Jailers, while acting within the scope of such law enforcement duties, shall be deemed law enforcement officers for purposes of the Tort Claims Act [41-4-1 through 41-4-27 NMSA 1978]; provided that coverage of liability of jailers employed by private independent contractors shall be made by the independent contractor.

B. Jailers who are employees of an independent contractor shall not be required to attend the basic training program for law enforcement officers at the New Mexico law enforcement academy.

C. Crimes against a jailer, including those persons employed by an independent contractor, shall be deemed the same crimes and shall bear the same penalties as crimes against a peace officer.

D. As used in this section:

(1) "jailer" means any employee of a local jail who has inmate custodial responsibilities, including those persons employed by private independent contractors who have been designated as jailers by the sheriff; and

(2) "local jail" means a facility operated by a county, municipality or combination of such local governments or by a private independent contractor pursuant to an agreement with a county, municipality or combination of such local governments and used for the confinement of persons charged with or convicted of violation of a law or ordinance.

History: 1978 Comp., § 33-3-28, enacted by Laws 1984, ch. 22, § 19; 1985, ch. 110, § 1.

ANNOTATIONS

Cross references. — For assault upon peace officer, *see* 30-22-21 NMSA 1978.

For assisting in assault upon peace officer, *see* 30-22-26 NMSA 1978.

Plain language of Subsection A indicates that the legislature did not intend for the failure of the sheriff to perform the ministerial act of designating the guards of independent contractors as jailers to strip the guards of local jails of the powers of a peace officer. State v. Young, 2004-NMSC-015, 135 N.M. 458, 90 P.3d 477.

Legislature intended its reference to "enforcement of laws" in Subsection A of this section and Section 33-1-10A NMSA 1978 to apply to the duty of corrections officers to maintain order in a correctional facility. State v. Young, 2004-NMSC-015, 135 N.M. 458, 90 P.3d 477.

Legislature deemed key factors for peace officer status to be the performance of the functions of correctional officers and the existence of a contract between the employer and the public body responsible for the operation of a corrections facility. State v. Young, 2004-NMSC-015, 135 N.M. 458, 90 P.3d 477.

"Peace officer" in 31-20A-5A NMSA 1978 includes jailers and corrections officers while they are engaged in the duties for which the legislature designated them to be peace officers in this section and Section 33-1-10 NMSA 1978. State v. Young, 2004-NMSC-015, 135 N.M. 458, 90 P.3d 477.

Designation by sheriff not necessary. — The legislature did not make designation as a jailer by the sheriff a necessary condition for peace officer status. State v. Young, 2004-NMSC-015, 135 N.M. 458, 90 P.3d 477.

Legislative intent. — Section 31-20A-5A NMSA 1978 concerns a penalty for a crime against a peace officer, and therefore, Section 33-1-10 NMSA 1978 and this section serve as powerful indicators of the legislature's intent in Section 31-20A-5A NMSA 1978. State v. Young, 2004-NMSC-015, 135 N.M. 458, 90 P.3d 477.

Corrections officer's failure to retake failed rifle test does not nullify his status as a peace officer under Section 33-3-28 NMSA 1978 as a matter of law. State v. Young, 2004-NMSC-015, 135 N.M. 458, 90 P.3d 477.

Guadalupe county correctional facility is a local jail under Subsection D of this section, and its guards are "employees of a local jail" who have the powers of a peace officer under the circumstances specified in Subsection A of this section. State v. Young, 2004-NMSC-015, 135 N.M. 458, 90 P.3d 477.

Guadalupe county correctional facility is a penal institution. — Guadalupe county correctional facility is a penal institution within the plain language of Section 31-20A-5 NMSA 1978. The fact that the correctional facility housed inmates from the department of corrections rather than county inmates is immaterial both for the definition of "local jail" in this section and the definition of "penal institution" in Section 31-20A-5 NMSA 1978. State v. Young, 2004-NMSC-015, 135 N.M. 458, 90 P.3d 477.

County liability. — Where a county has contracted with a private, independent contractor to operate a county jail, but pursuant to Section 33-3-4 NMSA 1978, the county retains oversight responsibilities over the operation of its detention center and has, therefore, not delegated complete authority to the contractor for the operation of the jail, the county retains liability under 42 U.S.C.S. § 1983 for any unconstitutional policies or customs the contractor may have adopted or created. Herrera v. County of Santa Fe, 213 F. Supp. 2d 1288 (D.N.M. 2002).

Transportation of prisoners housed at a county jail or other detention facility is not the exclusive responsibility of the local sheriff's department; jail administrators and independent contractors may also transport inmates at their facilities. 2000 Op. Att'y Gen. No. 00-02.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60 Am. Jur. 2d Penal and Correctional Institutions §§ 174, 175, 177, 178.

72 C.J.S. Prisons and Rights of Prisoners § 16.

ARTICLE 3A
DWI Alternative Facility

33-3A-1. Alternative sentencing facility; purpose; establishment; provisions.

A. The legislature recognizes that among individuals who drive under the influence of intoxicating liquor or drugs, there is a growing problem of recidivism, a lack of available space in present jail facilities and a need for alcohol and narcotics abuse counseling. Therefore, the legislature mandates the implementation of an alternative sentencing facility pilot program. The pilot program would incarcerate the repeat offender in a minimum security facility while allowing him to maintain his job and receive counseling for his disease.

B. The metropolitan court and the Bernalillo county detention center, under the supervision of the programs manager of the Bernalillo county detention center, with input from universities and community organizations, shall establish a pilot program that provides for an alternative sentencing facility in Bernalillo county for individuals convicted two or more times of driving under the influence of intoxicating liquor or drugs. The Bernalillo county detention center shall develop, adopt and enforce rules that establish minimum program standards for an alternative sentencing facility program.

C. Prior to sentencing a person convicted of a second or subsequent offense of driving under the influence of intoxicating liquor or drugs, the metropolitan court judge shall request the metropolitan court probation office to prepare a presentence report which shall include information and documentation regarding the offender's prior arrests and convictions for driving under the influence of intoxicating liquor or drugs and his level of alcohol or drug abuse.

D. Notwithstanding any provision of Section 66-8-102 NMSA 1978 to the contrary, a metropolitan court judge may order a person convicted of a second or subsequent offense of driving under the influence of intoxicating liquor or drugs to serve his sentence specified in Subsection E of Section 66-8-102 NMSA 1978 at the alternative sentencing facility.

E. Any person ordered to serve his sentence at the alternative sentencing facility shall be permitted to continue his employment if he is employed. The person shall be allowed out of the facility only long enough to complete his actual hours of employment. Any person not employed at the time of sentencing or while completing his sentence at the facility shall perform community service primarily in the community where the facility is located.

F. An offender ordered to serve his sentence at the alternative sentencing facility who is employed shall pay the cost of his imprisonment according to a sliding fee scale established by the Bernalillo county detention center. All fees collected shall be used to offset the costs of implementing the alternative sentencing facility. An offender ordered to serve his sentence at the alternative sentencing facility who is unemployed or determined to be indigent by the court shall not pay the cost of his imprisonment.

G. During the time of imprisonment, the offender shall undergo substance abuse counseling, educational counseling and lifeskills counseling, under the approved program at the alternative sentencing facility.

H. The metropolitan court and the Bernalillo county detention center shall report to the appropriate legislative interim committee by November 30, 1992 on the progress of the pilot program and any recommendations they may have concerning the continuation of the pilot program or implementation of it in other areas of New Mexico.

I. The provisions of Section 30-22-8 NMSA 1978 shall apply to any person who escapes from an alternative sentencing facility.

History: Laws 1992, ch. 81, § 1.

ARTICLE 3B
County Detention Facility Reimbursement Act

33-3B-1. Short title.

This act [33-3B-1 through 33-3B-4 NMSA 1978] may be cited as the "County Detention Facility Reimbursement Act".

History: Laws 2007, ch. 333, § 1.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 333, § 5 made the County Detention Facility Reimbursement Act effective July 1, 2007.

33-3B-2. Definitions.

As used in the County Detention Facility Reimbursement Act:

A. "county detention facility" means a facility that is owned, operated or under contract of operation by a board of county commissioners and that is used for the incarceration of prisoners charged with or convicted of a violation of local, state, tribal, federal or international law;

B. "division" means the local government division of the department of finance and administration;

C. "dual supervision offender" means an individual who is serving a probation term and a parole term;

D. "eligible county" means a county that provides information to the New Mexico sentencing commission regarding costs incurred by the county for the incarceration of felony offenders;

E. "felony offender" means an individual who is convicted of a felony and sentenced to confinement in a correctional facility designated by the corrections department and who:

(1) has been released from confinement and is a dual supervision offender and:

(a) has violated parole or is charged with a parole violation;

(b) has violated probation or is charged with a probation violation; or

(c) while on probation or parole, is charged with a violation of local, state, tribal, federal or international law;

(2) has been released from confinement and is serving a parole term and:

(a) has violated parole or is charged with a parole violation; or

(b) while on parole, is charged with a violation of local, state, tribal, federal or international law; or

(3) is awaiting transportation and commitment to the corrections department following the revocation of parole or a sentencing hearing for a felony conviction; and

F. "fund" means the county detention facility reimbursement fund.

History: Laws 2007, ch. 333, § 2.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 333, § 5 made the County Detention Facility Reimbursement Act effective July 1, 2007.

33-3B-3. Incarceration of felony offenders in county detention facilities; rate of reimbursement.

A. The distribution amount for each eligible county each fiscal year shall be derived by multiplying the total amount of money available in the fund for distribution pursuant to this section by the felony offender incarceration percentage for that county. The felony offender incarceration percentage shall be equal to a fraction:

(1) the numerator of which is the rolling average of the number of felony offenders incarcerated in an eligible county on June 30 of each of the three fiscal years immediately preceding the fiscal year in which the distribution is to be made pursuant to Section 4 [33-3B-4 NMSA 1978] of the County Detention Facility Reimbursement Act; and

(2) the denominator of which is the rolling average of the number of felony offenders incarcerated in all eligible counties on June 30 of each of the three fiscal years immediately preceding the fiscal year in which the distribution is to be made pursuant to Section 4 of the County Detention Facility Reimbursement Act.

B. Annually, on or before December 1, the New Mexico sentencing commission shall:

(1) determine the felony offender incarceration percentage for each eligible county;

(2) calculate the distribution amount for each eligible county by applying the formula in Subsection A of this section; and

(3) certify to the division the felony incarceration percentage and the distribution amount for each eligible county.

History: Laws 2007, ch. 333, § 3.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 333, § 5 made the County Detention Facility Reimbursement Act effective July 1, 2007.

33-3B-4. County detention facility reimbursement fund created; distribution.

A. The "county detention facility reimbursement fund" is created in the state treasury. The fund consists of appropriations, gifts, grants, donations and bequests made to the fund. Money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year, and income from investment of the fund shall be credited to the fund. The division shall administer the fund, and money in the fund is appropriated to the division to make distributions to counties in accordance with Subsection B of this section. Disbursements from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the director of the division. No money in the fund shall be expended by the division for the purpose of administering the fund.

B. Annually, on or before January 30 and to the extent money in the fund is available for such purposes, money in the fund shall be distributed by the state treasurer as follows:

(1) an amount equal to seventy percent of the fund less thirty thousand dollars ($30,000) to eligible counties in the amounts certified to the division in accordance with Section 3 [33-3B-3 NMSA 1978] of the County Detention Facility Reimbursement Act;

(2) thirty thousand dollars ($30,000) to the New Mexico sentencing commission to fund the annual calculation of the felony offender incarceration percentage and the distribution amount for each eligible county; and

(3) the remainder of the fund to counties other than class A counties that are designated by the division as needing additional resources due to inadequate base revenues.

History: Laws 2007, ch. 333, § 4.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 333, § 5 made the County Detention Facility Reimbursement Act effective July 1, 2007.

Cross references. — For the local government corrections fund, *see* 33-3-25 NMSA 1978.

ARTICLE 4
New Mexico Boys' School

33-4-1 to 33-4-6. Repealed.

ANNOTATIONS

Repeals. — Laws 1988, ch. 101, § 51 repealed 33-4-1 through 33-4-6 NMSA 1978 as amended by Laws 1975, ch. 320, § 6 and Laws 1977, ch. 257, §§ 80 to 82, and as enacted by Laws 1921, ch. 193, §§ 3, 4, effective July 1, 1989.

ARTICLE 5
Girls' Welfare Home

33-5-1, 33-5-2. Repealed.

ANNOTATIONS

Repeals. — Laws 1988, ch. 101, § 51 repealed 33-5-1 and 33-5-2 NMSA 1978, as amended by Laws 1977, ch. 257, § 83 and Laws 1975, ch. 320, § 7, effective July 1, 1989.

ARTICLE 6
Juvenile Detention Homes

33-6-1. Juvenile detention homes in counties; establishment; equipment; enlargement; bond issues.

A. The board [boards] of county commissioners of counties in this state are hereby authorized and empowered to establish and equip juvenile detention homes and for that purpose to issue bonds of such counties in any sum necessary. Such juvenile detention homes are hereby declared to be necessary public buildings. In counties in this state where juvenile detention homes have been established, the board [boards] of county commissioners of those counties are hereby authorized and empowered to add rooms onto the original structure or erect additional buildings and for that purpose to issue bonds of such counties in any sum necessary.

B. Whenever there is more than one county within a judicial district, the board of county commissioners of each such county is hereby authorized to enter into an agreement with one or more of the counties within the same judicial district providing for the establishment and equipment of one juvenile detention home to be located in said judicial district, to spend funds of the county for establishment and equipment of such juvenile detention home and to allocate the cost thereof among the participating counties on such basis as may be agreed upon by each board of county commissioners. For the purpose of providing funds for a juvenile detention home to be established and equipped under the provisions of this section, each participating county is hereby authorized to issue the bonds of its county in any sum necessary to meet such county's share of the cost.

History: Laws 1939, ch. 75, § 1; 1941 Comp., § 45-602; 1953 Comp., § 42-6-2; Laws 1953, ch. 12, § 1; 1976, ch. 42, § 3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For the children, youth and families department, *see* 9-2A-1 NMSA 1978 et seq.

For detention facilities under Children's Code, *see* 32A-2-4 and 32A-2-12 NMSA 1978.

Juvenile detention home for county of first class was necessary public building within provision of constitution (N.M. Const., art. IX, § 10), that no county shall borrow money except for purpose of erecting necessary public buildings. Hutcheson v. Atherton, 1940-NMSC-001, 44 N.M. 144, 99 P.2d 462.

Characterization of detention homes as necessary entitled great weight. — Legislative characterization of juvenile detention homes for first class counties as necessary public buildings is entitled to great weight when the question comes before court for determination. Hutcheson v. Atherton, 1940-NMSC-001, 44 N.M. 144, 99 P.2d 462.

Meaning of "necessary". — In constitutional provision that no county shall borrow money except for purpose of erecting necessary public buildings, the word "necessary" is construed not as meaning "indispensable," but as synonymous with "needful." Hutcheson v. Atherton, 1940-NMSC-001, 44 N.M. 144, 99 P.2d 462.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60 Am. Jur. 2d Penal and Correctional Institutions §§ 8, 9, 11.

33-6-2. [Laws governing bond issues.]

The proceedings for calling, holding and canvassing the results of an election to determine whether such bonds are to be issued, the manner of issuance and the terms and provisions of such bonds, the sale thereof, the levy of taxes for the payment thereof and the manner and time of payment thereof shall all be the same as is now or may hereafter be provided by law with respect to bonds issued for the purpose of building courthouses and, in general, all of the provisions of law with respect to county courthouse bonds shall, so far as applicable, apply to the bonds herein authorized.

History: Laws 1939, ch. 75, § 2; 1941 Comp., § 45-603; 1953 Comp., § 42-6-3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For bonds for courthouses, jails and bridges, *see* 4-49-1, 4-49-6 NMSA 1978.

33-6-3. [Obtaining federal aid; donations for home.]

The respective boards of county commissioners are authorized and empowered to seek and obtain, if possible, from the United States government, or any department or agency thereof, financial aid and assistance to carry into effect the purposes hereof. Such boards are also authorized and empowered in their discretion to accept gifts and donations of any kind or character from any source whatsoever, including, but not limited to, a site for such juvenile detention homes.

History: Laws 1939, ch. 75, § 3; 1941 Comp., § 45-604; 1953 Comp., § 42-6-4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

33-6-4. [Contracts; general power of commissioners.]

The boards of county commissioners of the several counties are hereby authorized and empowered to enter into any and all contracts and do and perform any and all things necessary and proper to carry into effect the provisions hereof.

History: Laws 1939, ch. 75, § 5; 1941 Comp., § 45-606; 1953 Comp., § 42-6-6.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

33-6-5. Maintenance and supervision of homes; rules.

When erected, such juvenile detention homes shall be maintained at the expense of the counties wherein they are located. The board of county commissioners of the county wherein such juvenile detention home is located shall have supervisory control of such juvenile detention home and for that purpose such board of commissioners shall have power to make reasonable rules governing the conduct of such juvenile detention home.

History: Laws 1939, ch. 75, § 6; 1941 Comp., § 45-607; 1953 Comp., § 42-6-7; Laws 1976, ch. 42, § 4.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60 Am. Jur. 2d Penal and Correctional Institutions §§ 5, 10.

33-6-6. Budget for maintenance of homes in counties; fund; disbursements.

For the purpose of maintaining juvenile detention homes in counties that have them, there may be appropriated by the board of county commissioners of the county sufficient funds to provide for the maintenance, upkeep, repair and improvement of a juvenile detention home.

History: Laws 1939, ch. 151, § 2; 1941 Comp., § 45-609; 1953 Comp., § 42-6-9; Laws 1953, ch. 9, § 1; 1973, ch. 258, § 142; 1976, ch. 42, § 5.

33-6-7. Home in one county keeping juveniles transferred from other counties; maintenance of juvenile.

In those counties without juvenile detention homes, if the district judges of such counties shall determine it advisable that a juvenile within such counties should be transferred to a juvenile detention home for safekeeping or detention, and the board of county commissioners of the county in which the juvenile detention home is located agree [agrees] to said transfer, the county from which said juvenile is transferred shall bear the expense of the maintenance and upkeep of said juvenile in the juvenile detention home, which upkeep and maintenance of such juvenile shall be the sum computed by adding the actual per diem cost of housing said juvenile to an amount equal to fifty percent of such per diem housing cost to cover administrative and amortization expense.

History: Laws 1939, ch, 151, § 4; 1941 Comp., § 45-610; 1953 Comp., § 42-6-10; Laws 1953, ch. 58, § 1; 1976, ch. 42, § 6.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

33-6-8. Budget for payment of charges; fund; disbursements.

When it is deemed advisable by the judge of the district court of a county that does not have a juvenile detention home, that juvenile delinquents in his county be transferred for safekeeping or detention to juvenile detention homes located in other counties, then for the purpose of maintaining them in the juvenile detention homes there shall be budgeted by the county commissioners of the county in each year, sufficient funds to provide for the keeping of such juvenile delinquents in juvenile detention homes. The amount to be budgeted shall be determined and fixed by the district court. On or before May 1 of each year the district judge shall make an estimate of revenue required for the ensuing year for the maintenance of juvenile delinquents in the juvenile detention homes and shall certify the estimate to the board of county commissioners in the county without a juvenile detention home. The budget allowance shall be known as the "juvenile maintenance fund." The county treasurer collecting money for the fund shall make disbursements from the fund to the county treasurer in the county in which the juveniles have been detained, upon certificate of the clerk of the district court in which the juveniles are detained, stating that the amount is due for their maintenance. The certificate shall be approved by the district judge of the county from which the juvenile was transferred before it is paid. Upon the payment to the county treasurer where the juvenile is detained the county treasurer shall place the amount paid in the juvenile detention home maintenance fund.

History: Laws 1939, ch. 151, § 5; 1941 Comp., § 45-611; Laws 1953, ch. 58, § 2; 1953 Comp., § 42-6-11; Laws 1973, ch. 258, § 143.

33-6-9. [Limitations on levies under 33-6-6, 33-6-8.]

The levy herein provided shall be within the limitations provided for all county purposes and uses under Chapter 140 of the Session Laws of 1921, and all amendments thereto.

History: Laws 1939, ch. 151, § 6; 1941 Comp., § 45-612; 1953 Comp., § 42-6-12.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The statute referred to, Laws 1921, ch. 140, § 1, compiled as 72-4-11, 1953 Comp., was repealed by Laws 1974, ch. 92, § 34 (amending Laws 1973, ch. 258, § 156), effective January 1, 1975. For present provision concerning the tax rates authorized for county purposes, *see* 7-37-7 NMSA 1978.

33-6-10. Board of county commissioners; power to appoint personnel.

The board [boards] of county commissioners of those counties which operate juvenile detention homes shall have the power and authority to appoint and employ such personnel as they may deem necessary to provide supervision, education, maintenance, training, discipline and subsistence for persons detained therein and to administer and maintain the juvenile detention home facility.

History: 1953 Comp., § 42-6-13, enacted by Laws 1976, ch. 42, § 7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

ARTICLE 7
Prison Industries

33-7-1 to 33-7-12. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 127, § 20, repealed 33-7-1 through 33-7-12 NMSA 1978, relating to prison industries, effective June 19, 1981. For present comparable provisions, *see* 33-8-1 to 33-8-16 NMSA 1978.

ARTICLE 8
Corrections Industries

33-8-1. Short title.

Sections 1 through 15 of this act may be cited as the "Corrections Industries Act".

History: Laws 1981, ch. 127, § 1.

ANNOTATIONS

Compiler's notes. — The term "Sections 1 through 15 of this act," referred to in this section, means Laws 1987, ch. 127, §§ 1 to 15, which appear as 33-8-1 to 33-8-4, 33-8-6, 33-8-7 to 33-8-9, 33-8-12, and 33-8-13 to 33-8-15 NMSA 1978.

33-8-2. Definitions.

As used in the Corrections Industries Act:

A. "commission" means the corrections industries commission;

B. "department" means the corrections department;

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

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

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

F. "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions supported wholly or in part by funds derived from public taxation; and

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

History: Laws 1981, ch. 127, § 2; 1987, ch. 75, § 1; 2005, ch. 23, § 4.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, changed the definition of commission to mean the corrections industries commission.

Work in the prison kitchen. — The legislature promulgated the Corrections Industries Act, 33-8-1 through 33-8-15 NMSA 1978, "to enhance the rehabilitation, education and vocational skills of inmates through productive involvement in enterprises and public works of benefit to state agencies and local public bodies and to minimize inmate idleness". Given the plain language of the Corrections Industries Act, which involves inmates working in enterprises and public works, it does not appear that it encompasses labor in the prison kitchen, which better fits within the scope of "standard facility maintenance and services", an exception to "enterprise" as defined in the act. Lymon v. Aramark, 728 F. Supp. 2d 1222 (D.N.M. 2010).

33-8-3. Purpose.

The purpose of the Corrections Industries Act is to enhance the rehabilitation, education and vocational skills of inmates through productive involvement in enterprises and public works of benefit to state agencies and local public bodies and to minimize inmate idleness.

History: Laws 1981, ch. 127, § 3.

33-8-4. Prisoners to labor.

All persons convicted of crime and confined in a facility under the laws of the state except such as are precluded by the terms of the judgment and sentence under which they may be imprisoned shall perform labor under such rules and regulations as have been or may hereafter be prescribed by the department.

History: Laws 1981, ch. 127, § 4.

ANNOTATIONS

Article not in conflict with inmate release program. — The statutory schemes of the Corrections Industries Act and the inmate-release program do not conflict, and prisoners may legally enter into voluntary contracts of hire under the inmate-release program. Benavidez v. Sierra Blanca Motors, 1996-NMSC-045, 122 N.M. 209, 922 P.2d 1205.

Work release injured prisoner entitled to workers' compensation. — Although a prisoner may have been compelled generally to labor under this section, he was not compelled to work for a private business under a work-release program and, when the prisoner voluntarily participated in a work-release program and was injured while under the direction of a private business, he was an "employee" of that business and thus entitled to workers' compensation benefits. Benavidez v. Sierra Blanca Motors, 1995-

NMCA-140, 120 N.M. 837, 907 P.2d 1018, *rev'd in part on other grounds*, 1996-NMSC-045, 122 N.M. 209, 922 P.2d 1205.

A person's status as an inmate does not preclude the existence of an employer-employee relationship for the purpose of receiving worker's compensation benefits. Benavidez v. Sierra Blanca Motors, 1996-NMSC-045, 122 N.M. 209, 922 P.2d 1205.

Inmates not "employees" for health and safety complaint purposes. — Notwithstanding the fact that prison industries must comply with occupational health and safety standards, inmates engaged in prison operated industries or enterprises are not "employees" of the penitentiary for purposes of filing an occupational health and safety complaint with the environmental improvement division. 1981 Op. Att'y Gen. No. 81-23.

33-8-5. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 75, § 4 repealed 33-8-5 NMSA 1978, as amended by Laws 1983, ch. 301, § 74, relating to the creation of the "corrections industries commission" and appointment of its members, effective June 19, 1987.

Laws 1987, ch. 75, § 2 provided that the terms of the members of the former corrections industries commission expired June 19, 1987.

Laws 1987, ch. 75, § 3 provided that the act shall not alter or affect the validity of any action taken by the corrections industry commission prior to June 19, 1987.

33-8-5.1. Corrections industries commission.

The "corrections industries commission" is created. The commission consists of seven members appointed by the governor with the advice and consent of the senate for staggered terms of four years or less in a manner that the terms of one or two members expire as the case may be on June 30 each year. Four members of the commission constitute a quorum for the transaction of business. Not more than four members shall be of the same political party. Any member who fails to attend three consecutive meetings of the commission without being excused by the commission shall be automatically removed. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term. Members of the commission shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: Laws 2005, ch. 23, § 1.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 23, § 8, made Laws 2005, ch. 23, § 1 effective July 1, 2005.

Temporary provisions. — Laws 2005, ch. 23, § 6 provided that corrections commission members serving on July 1, 2005, shall continue to serve as corrections industries commission members until their terms expire and their replacements are appointed and qualified.

33-8-6. Commission; powers and duties.

The commission has the following powers and duties to:

A. determine those enterprises to be conducted in facilities in such volume, kind and place as to eliminate unnecessary inmate idleness at all facilities and to provide diversified work activities that will serve as a means of enhancing vocational skills;

B. determine whether any enterprise should be established, expanded, diminished or discontinued;

C. establish policy with respect to the conduct of all enterprises;

D. approve the prices at which all services and products provided, manufactured, produced or harvested by enterprises shall be furnished; provided that the prices shall be as near the prevailing market price as possible. As used in this subsection, "prevailing market price" means the prevailing price that an equivalent product or service would have if purchased by a state agency or local public body from community sources. The commission shall include data provided by the purchasing division of the general services department in the price determination process. Compensation paid to inmates shall be included as an item of the cost in fixing prices;

E. consult regularly and continuously with state agencies and local public bodies in order to develop new enterprise products, adapt existing enterprise products and establish new service functions to meet their needs;

F. act as liaison with private industry, organized labor, the legislature and the general public;

G. obtain and provide technical assistance for enterprise programs;

H. hold meetings at such times and for such periods as it deems essential, but not less than quarterly;

I. recommend to the department the adoption of rules necessary to carry out the provisions of the Corrections Industries Act;

J. notwithstanding any other provision of law, adopt policies and procedures that permit an enterprise to make a single purchase of raw materials involving the expenditure of twelve thousand dollars ($12,000) or less without bids and at the best obtainable price whether or not the provider is the holder of a preexisting state contract for the particular product. Records of such purchases shall be maintained for auditor's inspection and reported at the next scheduled commission meeting. Separate purchases of the same or similar materials from the same or different suppliers at the same time or about the same time where each purchase does not exceed twelve thousand dollars ($12,000), but the aggregate of such purchases exceeds twelve thousand dollars ($12,000), shall be considered a single purchase involving more than twelve thousand dollars ($12,000);

K. notwithstanding any other provision of law, adopt policies and procedures that permit an enterprise to make a single purchase of a product or service other than raw materials involving the expenditure of two thousand dollars ($2,000) or less without bids and at the best obtainable price whether or not the provider is the holder of a preexisting state contract for the particular product or service. Records of such purchases shall be maintained for auditor's inspection and reported at the next scheduled commission meeting. Separate purchases of the same or similar materials or services from the same or different suppliers at the same time or about the same time where each purchase does not exceed two thousand dollars ($2,000), but the aggregate of such purchases exceeds two thousand dollars ($2,000), shall be considered a single purchase involving more than two thousand dollars ($2,000);

L. review, approve, adopt and monitor an annual budget for all enterprises. The budget process shall include a projected profit analysis, sales forecast and anticipated year-end financial forecast;

M. submit and recommend the names of one or more qualified individuals to the secretary of corrections for appointment as director of the corrections industries division;

N. advise the director of the corrections industries division in the management and control of the corrections industries division;

O. assist in the process of inmate occupational placement upon release from confinement by coordination with the parole board and the field services division; and

P. prepare an annual report to the governor and the legislature that contains:

(1) a detailed financial statement for each enterprise in each facility;

(2) a detailed financial statement of the fund;

(3) reasons for establishing or terminating enterprises;

(4) a summary of plans to develop additional enterprises;

(5) the number of inmates employed in each enterprise;

(6) the number of idle inmates available for work at each facility; and

(7) any further information requested by the governor or the legislature.

History: Laws 1981, ch. 127, § 6; 1985 (1st S.S.), ch. 7, § 1; 2005, ch. 23, § 5.

ANNOTATIONS

Cross references. — For procurements pursuant to the Corrections Industries Act, *see* 13-1-189 NMSA 1978.

The 2005 amendment, effective July 1, 2005, provided that the commission has the duty to advise the director of the corrections industries division in the management and control of the corrections industries division.

33-8-6.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1985 (1st S.S.), ch. 7, § 6 repealed 33-8-6.1 NMSA 1978, as enacted by Laws 1985 (1st S.S.), ch. 7, § 4, relating to exemptions from the Procurement Code, effective June 30, 1986.

Laws 1987, ch. 5, § 3 attempted to revive this section by repealing laws 1985 (1st S.S.), ch. 7, § 6. However, because this reviver was constitutionally questionable and because Laws 1987, ch. 6, § 1 contained language identical to former 33-8-6.1, the reviver was not given effect. *See* 13-1-98 NMSA 1978 for similar provisions.

33-8-7. Corrections industries revolving fund created.

There is created in the state treasury a fund which shall be administered by the department secretary as directed by the commission and which shall be known as the "corrections industries revolving fund." All income, receipts and earnings from the operation of enterprises shall be credited to the fund. Money deposited in the fund shall be used only to meet necessary expenses incurred in the maintenance, operation and expansion of existing enterprises and in the establishment, maintenance, operation and expansion of new enterprises. All interest earned on money in the fund shall be credited to the fund. No part of the fund shall revert at the end of any fiscal year.

History: Laws 1981, ch. 127, § 7.

33-8-8. Inmate compensation.

A. The commission shall establish and periodically review a plan for compensation to inmates engaged in enterprise programs and public works. The compensation shall be in accordance with a graduated schedule based on work conduct, performance, experience, skills and responsibilities. Compensation shall be paid from the fund and credited to the general account of the inmate except as provided by Subsection C of this section. An inmate may draw against his general account during his confinement through the use of coupons, canteen checks or similar plans.

B. Pursuant to the provisions of Article 20, Section 15 of the constitution of New Mexico, if an inmate has a dependent family, his net compensation shall be paid to his family if necessary for its support. The department shall make diligent effort to determine those inmates who have dependent families in need of support.

C. The department shall promulgate necessary rules and regulations:

(1) to implement the provisions of Subsection B of this section in a thorough and equitable manner; and

(2) to provide for deductions from inmate compensation for victim restitution, reasonable costs incident to confinement and for discharge money upon release from confinement. The deductions provided by this subsection shall apply to inmate compensation, including payments pursuant to Section 33-2-26 NMSA 1978, wages earned pursuant to the provisions of Section 33-8-13 NMSA 1978, wages earned in work projects certified pursuant to the federal private-sector prison industry enhancement certification program and to wages earned in inmate-release programs; provided that the deductions provided by this paragraph shall not exceed fifty percent of net compensation, payment or wages and that the deduction for victim restitution shall be not less than fifteen percent of net compensation, payment or wages. If the court has not ordered victim restitution, the deduction for victim restitution shall be transmitted to the state treasurer for credit to the crime victims reparation fund.

History: Laws 1981, ch. 127, § 8; 1986, ch. 71, § 1; 1991, ch. 35, § 1.

ANNOTATIONS

Cross references. — For crime victims reparation fund, *see* 31-22-21 NMSA 1978.

The 1991 amendment, effective June 14, 1991, in the second sentence in Subsection C(2), substituted "fifteen percent" for "five percent".

33-8-9. Enterprises; working day.

The working hours of all enterprises shall be established in a manner approximate to a standard free enterprise working day with as many work shifts as necessary. The department shall make every effort to minimize the disruption of working hours by adjusting the institutional schedule to avoid conflicting activities. Other program

activities shall not be denied to inmates engaged in enterprise programs and shall be available during nonworking hours consistent with available staff.

History: Laws 1981, ch. 127, § 9.

33-8-10. Repealed.

ANNOTATIONS

Repeals. — Laws 1984, ch. 65, § 175, repealed 33-8-10 NMSA 1978, as amended by Laws 1983, ch. 92, § 1, relating to purchase by state agencies and local public bodies under the Corrections Industries Act. For present comparable provisions, *see* 13-1-189 NMSA 1978.

Laws 1984, ch. 65, contained no effective date provision applicable to § 175, but was enacted at the session which adjourned on February 16, 1984. *See* N.M. Const., art. IV, § 23.

Compiler's notes. — Laws 1984, ch. 64, § 24, purportedly amended 33-8-10 NMSA 1978. The amendment was not given effect because of the later repeal of 33-8-10 NMSA 1978 by Laws 1984, ch. 65, § 175. *See* 12-1-8 NMSA 1978.

33-8-11. Repealed.

ANNOTATIONS

Repeals. — Laws 1985 (1st S.S.), ch. 7, § 5 repealed 33-8-11 NMSA 1978, as enacted by Laws 1981, ch. 127, § 11, relating to a catalogue of goods and services available under the Corrections Industries Act, effective May 23, 1985. For present provisions relating to marketing of goods and services available through corrections industries division, *see* 33-8-12.2 NMSA 1978.

33-8-12. Products; sale; labeling requirement; penalty; exceptions.

A. Except as otherwise provided in this section, no product or service manufactured or provided in whole or in part by inmate labor shall be sold or furnished except to a qualified purchaser; provided that such products may be resold by the user for purposes of salvage. As used in this subsection, "qualified purchaser" means:

(1) a state agency;

(2) local public bodies;

(3) the state agencies of other states and their local public bodies;

(4) agencies of the federal government;

(5) tribal and pueblo governments;

(6) nonprofit organizations properly registered under state law and supported wholly or in part by funds derived from public taxation;

(7) persons, partnerships, corporations or associations that provide public school transportation services to a state agency or local public body pursuant to contract;

(8) any business engaged primarily in the manufacture or resale of the same type of product;

(9) a person, partnership, corporation or association that provides correctional services to the department pursuant to a contract; and

(10) a person, partnership, corporation or association that houses inmates on behalf of the department.

B. Every product manufactured pursuant to the provisions of the Corrections Industries Act shall be distinctively identified as inmate-made by brand, label or mark consistent with the type and character of the product. Every product manufactured pursuant to the provisions of the Corrections Industries Act may be certified pursuant to the federal private sector prison industry enhancement certification program.

C. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and upon conviction shall be sentenced to imprisonment in the county jail for a definite term not to exceed six months or to the payment of a fine of not more than one thousand dollars ($1,000) or to both imprisonment and fine in the discretion of the judge.

D. The provisions of this section shall not apply to products produced pursuant to Section 33-8-13 NMSA 1978.

E. Notwithstanding the provisions of Subsection A of this section, to assure the most effective use of state-owned land, produce from agricultural and animal husbandry enterprises may be sold to commercial sources upon review and recommendation of the commission and pursuant to procedures, including audit, established by the secretary of finance and administration.

F. The corrections industries division of the department may sell products manufactured pursuant to the provisions of the Corrections Industries Act to the general public; provided that all inmate labor used in the production of any products offered to the general public is voluntary and not compelled. All sales to the general public shall take place on corrections industries division property. Sales to the general public shall not be conducted online or by mail order. Proceeds from the sales shall be placed into the corrections industries revolving fund; a portion of the proceeds placed into the

corrections industries revolving fund pursuant to this subsection shall be placed into the crime victims reparation fund.

History: Laws 1981, ch. 127, § 12; 1992, ch. 62, § 1; 1999, ch. 22, § 1; 2014, ch. 29, § 1; 2017, ch. 88, § 1.

ANNOTATIONS

Cross references. — For procurements pursuant to the Corrections Industries Act, *see* 13-1-189 NMSA 1978.

For the crime victims reparation fund, *see* 31-22-21 NMSA 1978.

The 2017 amendment, effective July 1, 2017, removed the price limit for products sold by the corrections industries division of the corrections department pursuant to the Corrections Industries Act, removed the limit of twice-yearly sales of these products, and added certain limitations on the sale of products manufactured pursuant to the provisions of the Corrections Industries Act to the general public; in Subsection F, after "Corrections Industries Act", deleted "valued at a prevailing market price of three hundred dollars ($300) or less", after "general public", deleted "twice a year" and added "provided that all inmate labor used in the production of any products offered to the general public is voluntary and not compelled. All sales to the general public shall take place on corrections industries division property. Sales to the general public shall not be conducted online or by mail order."

The 2014 amendment, effective July 1, 2014, permitted the corrections industries division to sell products valued under three hundred dollars twice a year; in Subsection A, at the beginning of the first sentence, added "Except as otherwise provided in this section"; and added Subsection F.

The 1999 amendment, effective July 1, 1999, in Subsection A, added the Paragraph (1) through (8) designations and added Paragraphs (9) and (10).

The 1992 amendment, effective March 9, 1992, added all of the present language of the second sentence of Subsection A following "contract"; added the second sentence of Subsection B; and made minor stylistic changes throughout the section.

33-8-12.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 5, § 4 repealed 33-8-12.1 NMSA 1978, as amended by Laws 1987, ch. 5, § 2, relating to furniture, fiberglass and plastic products sales, effective July 1, 1991.

33-8-12.2. Corrections industries sales representatives.

A. The secretary of corrections may employ individuals necessary to serve as sales representatives for the marketing of goods and services produced or assembled through the corrections industries division who shall be classified personnel and be paid in accordance with a commission-based incentive compensation plan approved by the personnel board for sales to purchasers other than state agencies and local public bodies not to exceed two percent (2%).

B. The secretary of corrections may contract with persons or business entities to serve on an independent contractor basis as sales representatives for marketing goods or services produced or assembled through the corrections industries division.

History: 1978 Comp., § 33-8-12.2, enacted by Laws 1985 (1st S.S.), ch. 7, § 3.

33-8-13. Private industry on facility grounds.

A. The department secretary, upon recommendation of the commission, may lease real property on the grounds of any facility and may provide for reasonable access to and egress from the leased property to a private commercial industry for the purpose of establishing and operating a factory for the manufacture and processing of products or to any other commercial industry deemed by the commission to be consistent with the purposes of the Corrections Industries Act.

B. Any agreement entered into pursuant to this section shall provide that:

(1) all persons employed in the enterprise, except administrative, supervisory and training personnel, shall be inmates of the facility where the leased property is located who volunteer for employment and who are approved for such employment by the superintendent of that facility;

(2) the enterprise shall at all times observe practices and procedures regarding security as the lease may specify or as the facility superintendent may temporarily stipulate during periods of emergency; and

(3) the enterprise shall be deemed a private enterprise and subject to all laws governing the operation of similar private business enterprises; provided that the provisions of the Unemployment Compensation Law [Chapter 51 NMSA 1978] shall not apply to inmate employees.

History: Laws 1981, ch. 127, § 13.

33-8-14. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 238, § 7 repealed 33-8-14 NMSA 1978, as enacted by Laws 1981, ch. 127, § 14, relating to industrial good time deductions for inmates,

effective July 1, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 33-2-34 NMSA 1978.

33-8-15. Public works.

A. The department shall provide for the utilization of available inmate labor on public works by any state agency or local public body. The department shall have full jurisdiction at all times over the discipline and control of inmates performing labor pursuant to this section and shall promulgate rules and regulations governing the selection, transportation, deportment and security of inmates and for the submission and screening of applications for the use of such labor. All expenses, including inmate compensation, incurred by the department in the provision of inmate labor pursuant to this section shall be reimbursed by the benefiting state agency or local public body.

B. Inmate labor pursuant to this section shall not be used to reduce or displace employees but to supplement the work of employees, especially in areas where necessary public works are not otherwise being performed. Insofar as practicable, all labor pursuant to this section shall be of a nature and design to assist in the rehabilitation of inmates. As used in this section, "public works" means work that is solely for a public or state purpose and includes but is not limited to the construction, maintenance and improvement of state and local lands, roads, highways and buildings.

History: Laws 1981, ch. 127, § 15.

33-8-16. Corrections; handiwork products.

The secretary of corrections and criminal rehabilitation [secretary of corrections] shall promulgate rules and regulations providing for the production of small articles of handiwork by inmates from raw materials furnished by the corrections and criminal rehabilitation department [corrections department] at inmate expense and for the deposit of all or a portion of the sale price of such articles to the general account of the inmate who manufactured the article. Articles of handiwork may be sold to the public at correctional facilities and in public buildings.

History: Laws 1981, ch. 167, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1980, ch. 150, § 3, renamed the former criminal justice department as the corrections and criminal rehabilitation department and renamed the former corrections division within that department as the adult institutions division. Laws 1981, ch. 73, § 3 renamed the former corrections and criminal rehabilitation department as the corrections department. Laws 1981, ch. 73, § 4, provided that the chief officer of the

corrections department shall be the secretary of corrections. *See* 9-3-3 and 9-3-4 NMSA 1978 and notes thereto.

ARTICLE 9
Adult Community Corrections

33-9-1. Short title.

Chapter 33, Article 9 NMSA 1978 may be cited as the "Adult Community Corrections Act".

History: Laws 1983, ch. 202, § 1; 1989, ch. 219, § 1.

ANNOTATIONS

The 1989 amendment, effective July 1, 1989, substituted "Chapter 33, Article 9 NMSA 1978" for "This act" and inserted "Adult".

Am. Jur. 2d, A.L.R. and C.J.S. references. — Constitutional right of prisoners to abortion services and facilities - federal cases, 90 A.L.R. Fed. 683.

33-9-2. Definitions.

As used in the Adult Community Corrections Act:

A. "department" means the corrections department;

B. "fund" means the community corrections grant fund;

C. "program" means a community-based program that is operated by a county, municipality, the department or a private organization, individually or jointly, with the purpose of providing services to criminal offenders;

D. "criminal offender" means any person convicted of a felony; and

E. "volunteer services" means services provided by individuals or organizations without compensation.

History: Laws 1983, ch. 202, § 2; 1987, ch. 341, § 1; 1988, ch. 101, § 33; 1989, ch. 219, § 2.

ANNOTATIONS

The 1989 amendment, effective July 1, 1989, inserted "Adult" in the undesignated introductory paragraph.

33-9-3. Community corrections grant fund; established; co-payments.

A. There is created in the state treasury a special fund to be known as the "community corrections grant fund". All money appropriated to the fund or accruing to it as a result of gift, deposit, investments or other sources shall not be transferred to another fund or encumbered or disbursed in any manner except as provided in the Adult Community Corrections Act. The fund shall be for the purpose of providing programs and services for the diversion of criminal offenders to community-based settings.

B. The department shall require criminal offenders who participate in a program and who receive services to make a co-payment to offset the cost of the services. The amount of the co-payment shall be based upon the offender's ability to pay. The department shall collect the co-payments and on a monthly basis deliver them to the state treasurer for deposit in the community corrections grant fund.

History: Laws 1983, ch. 202, § 3; 1988, ch. 101, § 34; 1989, ch. 219, § 3; 2004, ch. 38, § 3.

ANNOTATIONS

The 2004 amendment, effective July 1, 2004, added Subsection B and made the previous section Subsection A.

33-9-4. Fund; administration.

The department shall administer the fund and make grants to counties, municipalities or private organizations, individually or jointly, pursuant to the provisions of the Adult Community Corrections Act; provided that a grant shall not be made to a private organization which is not a nonprofit organization without the approval of the secretary of corrections. The department may also utilize the fund to contract directly for programs. The department shall use no more than ten percent of the fund for administration and monitoring purposes by the state. In addition, the department shall allow no more than ten percent of a grant from the fund to be used for administrative costs incurred by counties, municipalities and private organizations. After proper notice and public hearings, the department shall adopt regulations which provide standards for qualifications for grants, priorities for awarding of funds and other standards regarding community corrections and shall review and approve or disapprove all applications submitted pursuant to the provisions of the Adult Community Corrections Act. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of corrections.

History: Laws 1983, ch. 202, § 4; 1986, ch. 68, § 1; 1987, ch. 341, § 2; 1990, ch. 53, § 1.

ANNOTATIONS

Cross references. — For secretary of corrections, *see* 9-3-4 NMSA.

For secretary of finance and administration, *see* 9-6-4 NMSA 1978.

The 1990 amendment, effective May 16, 1990, substituted "Adult Community Corrections Act" for "Community Corrections Act" in two places, substituted "secretary of corrections" for "department secretary" at the end of the first sentence, and substituted "ten percent" for "five percent" in the third sentence.

33-9-5. Criteria for applications.

A. Counties, municipalities or private organizations, individually or jointly, may apply for grants from the fund, including grants for counties or municipalities to purchase contractual services from private organizations, provided that:

(1) the application is for funding a program with priority use being for criminal offenders;

(2) the applicant certifies that it is willing and able to operate the program according to standards provided by the department;

(3) the applicant demonstrates the support of key components of the criminal justice system;

(4) the applicant, if a private organization, demonstrates the support of the county and municipality where the program will provide services;

(5) the applicant certifies that it will utilize volunteer services as an integral portion of the program to the maximum extent feasible; and

(6) no class A county as defined in Section 4-44-1 NMSA 1978, alone or in conjunction with any municipality within a class A county, shall receive more than forty-nine percent of any money appropriated to the fund.

B. The department may use the fund to place individuals eligible for probation or parole in community-based settings. The department may also use the fund to place criminal offenders within twelve months of eligibility for parole in community-based settings; provided that the criminal offender has never been convicted of a felony offense involving the use of a firearm. The adult parole board may, in its discretion, require participation by a criminal offender in a program as a condition of parole pursuant to the provisions of Section 31-21-10 NMSA 1978.

C. The department may authorize use of the fund for adults who are not criminal offenders with prior department approval, if the priority use does not result in full use of

the fund or the capacity of a program, or the department may authorize additional programs or additional funding for existing programs.

D. The department may contract directly for programs, including programs for New Mexico Indian tribes and pueblos for diversion of state law offenders, and may establish and operate adult community corrections programs.

E. The department shall establish additional guidelines for allocation of funds under the Adult Community Corrections Act.

History: Laws 1983, ch. 202, § 5; 1986, ch. 68, § 2; 1987, ch. 341, § 3; 1988, ch. 101, § 35; 1989, ch. 219, § 4; 1991, ch. 201, § 1; 1997, ch. 11, § 1; 2013, ch. 165, § 1.

ANNOTATIONS

Cross references. — For adult parole board, *see* 9-3-11 NMSA 1978.

The 2013 amendment, effective July 1, 2013, eliminated the state selection panel and the local selection panel; in Paragraph (1) of Subsection A, after "criminal offenders", deleted "selected pursuant to the provisions of Section 33-9-7 NMSA 1978"; in Paragraph (2) of Subsection A, after "provided by the department" deleted the remainder of the sentence, which provided for the negotiation of contracts between the offender and the program staff for deduction from the offender's income for the benefit of the victim and deleted the second sentence, which provided for community service; in Subsection B, at the beginning of the paragraph, deleted "Notwithstanding the provisions of Subsection A of this section", in the first sentence, after "eligible for", added "probation or"; in Subsection C, after "The department may", deleted "utilize not more than twenty-five percent of the fund to", after "state law offenders", deleted "or to" and added "and may", after "may establish", added "and operate adult community corrections", and after "community corrections programs", deleted the remainder of the sentence, which authorized the department to use part of the community corrections grant fund to operate adult community corrections programs if it does not receive satisfactory proposals from a community; and in Subsection D, deleted the second sentence, which authorized an applicant to accept or reject any person in a program.

The 1997 amendment, effective July 1, 1997, in Paragraph B(1), deleted "or within twelve months of eligibility" following "eligible" in the the first sentence, added the second sentence, and made a minor stylistic change.

The 1991 amendment, effective June 14, 1991, deleted "the amount requested is for not more than ninety-five percent of total program costs for the proposed program. The five percent of total program costs provided by the applicant may consist of in-kind administrative services" at the beginning of Paragraph (6) in Subsection A.

The 1989 amendment, effective July 1, 1989, deleted "or 32-2-6 NMSA 1978" following "31-12-10" in the second sentence of Subsection B(1), substituted "sixty percent" for "an

additional ten percent" near the middle of Subsection C, and inserted "Adult" in the first sentence of Subsection D.

33-9-6. Application review panel.

The department shall establish a panel to review all applications for grants under the Adult Community Corrections Act. The panel shall make recommendations to the secretary of corrections regarding each application.

History: Laws 1983, ch. 202, § 6; 1989, ch. 219, § 5; 1994, ch. 20, § 1; 2013, ch. 165, § 2.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, modified the application review panel; in the first sentence, after "all applications for", deleted "funding" and added "grants", deleted the former third and fourth sentences, which provided for the appointment of the panel by the secretary of corrections, the composition of the panel, and the duties of the panel.

The 1994 amendment, effective July 1, 1994, substituted "shall" for "may" in the last sentence.

The 1989 amendment, effective July 1, 1989, inserted "Adult" in the first sentence, and added the last sentence.

33-9-7. Repealed.

ANNOTATIONS

Repeals. — Laws 2013, ch. 165, § 4 repealed 33-9-7 NMSA 1978, as enacted by Laws 1983, ch. 202, § 7, relating to state selection panel, effective July 1, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

33-9-8. Repealed.

ANNOTATIONS

Repeals. — Laws 2013, ch. 165, § 4 repealed 33-9-8 NMSA 1978, as enacted by Laws 1983, ch. 202, § 8, relating to local selection panel, effective July 1, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

33-9-9. Sentencing; placement of offender.

A. In every case where the commitment of a person to the department is contemplated by a sentencing judge and the offender meets criteria for placement in community corrections, the adult probation and parole division of the department shall, at the request of the judge, prepare a report containing a recommendation regarding a community corrections placement or complete a diagnostic evaluation containing the recommendation of the department regarding that placement, including a statement that the criminal offender has been approved for a program. The sentencing judge shall consider the report or evaluation prior to making the commitment.

B. At a sentencing hearing, if a judge of a court of competent jurisdiction determines that placement in community corrections is appropriate, the judge shall defer or suspend the sentence and, as a condition of probation, require an individual to serve a period of time in a community corrections program.

History: Laws 1983, ch. 202, § 9; 1987, ch. 341, § 4; 1988, ch. 101, § 38; 1989, ch. 219, § 8; 2013, ch. 165, § 3.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, clarified provisions relating to placement of offenders; in the title, added "placement of offender"; and in Subsection A, after "community corrections", deleted "a report shall be prepared by", after "division of the department", added "shall, at the request of the judge, prepare a report", after "corrections placement or", added "complete", after "diagnostic evaluation", deleted "shall be completed by the department", and after "approved for a program", deleted "by the state or local selection committee".

The 1989 amendment, effective July 1, 1989, in Subsection A restructured the former single sentence into two sentences, and substituted "adult probation and parole division" for "field services division" in the first sentence while adding all of the language of that sentence beginning with "including".

33-9-9.1. Community corrections; return of certain participants.

At any time during the period an inmate not on parole is assigned to a community corrections program, the warden of the institution from which he was released may issue a warrant for his arrest for violation of any of the conditions of his release. The warrant shall authorize the warden or any officer with power of arrest to return the inmate to the actual custody of the institution or to any other suitable detention facility. If it is found that the warrant cannot be served, the inmate is a fugitive from justice. If the inmate is out of the state, the warrant shall authorize the warden to return him to the state.

History: Laws 1986, ch. 30, § 1.

33-9-10. Annual report.

The department shall submit an annual report to the governor and the legislature not later than December 15 of each year. The report shall include but not be limited to funding awards, program effectiveness, monitoring efforts and future recommendations.

History: Laws 1983, ch. 202, § 10.

ARTICLE 9A
Juvenile Community Corrections

33-9A-1. Short title.

Chapter 33, Article 9A NMSA 1978 may be cited as the "Juvenile Community Corrections Act".

History: Laws 1988, ch. 101, § 39; 1989, ch. 219, § 9.

ANNOTATIONS

The 1989 amendment, effective July 1, 1989, substituted "Chapter 33, Article 9A NMSA 1978" for "Sections 39 through 44 of this act".

33-9A-2. Definitions.

As used in the Juvenile Community Corrections Act:

A. "delinquent" means a child adjudicated delinquent pursuant to the Children's Code [Chapter 32A NMSA 1978];

B. "department" means the children, youth and families department;

C. "fund" means the juvenile community corrections grant fund;

D. "secretary" means the secretary of children, youth and families; and

E. "volunteer services" means services provided by individuals or organizations without compensation.

History: Laws 1988, ch. 101, § 40; 1989, ch. 219, § 10; 1992, ch. 57, § 47.

ANNOTATIONS

Cross references. — For secretary of children, youth and families, *see* 9-2A-6 NMSA 1978.

The 1992 amendment, effective July 1, 1992, deleted former Subsection A, which read: "'authority' means the youth authority"; redesignated former Subsection B as present Subsection A; added present Subsection B; and substituted "secretary of children, youth and families" for "secretary of the authority" in Subsection D.

The 1989 amendment, effective July 1, 1989, added present Subsection B, and redesignated former Subsections B through D as present Subsections C through E.

33-9A-3. Juvenile community corrections grant fund created; purpose; administration; report.

A. There is created in the state treasury the "juvenile community corrections grant fund" to be administered by the department. All balances in the fund are appropriated to the department to carry out the purposes of the fund, and no money shall be transferred to another fund or be encumbered or disbursed in any manner except as provided in the Juvenile Community Corrections Act. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of children, youth and families.

B. Money in the fund shall be used by the department to make grants to counties, municipalities or private organizations, individually or jointly, to provide community corrections programs and services for the diversion of adjudicated delinquents to community-based settings. No grant shall be made to a private organization that is not a nonprofit organization without the approval of the secretary. The department may also use money in the fund to contract directly for or operate juvenile community corrections programs.

C. No more than ten percent of the money in the fund shall be used by the department for administration and program monitoring by the department. No more than ten percent of any grant from the fund shall be used for administrative costs incurred by the grantee.

D. After notice and public hearing as required by law, the secretary shall adopt regulations that provide standards for qualifications for grants, priorities for awarding of grants and other standards regarding juvenile community corrections programs deemed necessary. The department shall review and approve or disapprove all applications submitted pursuant to the Juvenile Community Corrections Act for a grant of funds from the fund.

E. The department shall submit an annual report to the governor and legislature not later than December 15 providing information on grant awards, program effectiveness and monitoring efforts and making recommendations as necessary to carry out the purpose of the fund.

F. The department may accept donations, payments, contributions, gifts or grants from whatever source for the benefit of the fund.

History: Laws 1988, ch. 101, § 41; 1989, ch. 324, § 26; 1990, ch. 53, § 2; 1992, ch. 57, § 48.

ANNOTATIONS

Cross references. — For secretary of children, youth and families, *see* 9-2A-6 NMSA 1978.

The 1992 amendment, effective July 1, 1992, added "of children, youth and families" at the end of the last sentence of Subsection A; substituted "that" for "which" in the second sentence of Subsection B and in the first sentence of Subsection D; and substituted "department" for "authority" several times throughout the section.

The 1990 amendment, effective May 16, 1990, substituted "ten percent" for "five percent" in the second sentence of Subsection C.

The 1989 amendment, effective April 7, 1989, in Subsection A, deleted the former second sentence which read "Income earned from investment of the fund shall be credited to the fund".

33-9A-4. Applications; criteria.

A. Counties, municipalities or private organizations, individually or jointly, may apply for grants from the fund, including grants for counties or municipalities to purchase contractual services from private organizations; provided that:

(1) the application is for funding a program with priority use being for delinquents selected pursuant to the provisions of Section 33-9A-5 NMSA 1978;

(2) the applicant certifies that it is willing and able to operate the program according to standards provided by the department, which may include the negotiation of a contract between the delinquent and program staff with provisions such as deductions from employment income for applicable victim restitution, family support, room and board, savings and weekly allowance. In addition to monetary restitution, to the extent practical, or if monetary restitution is not applicable, the contract may include provision for community service restitution for a specific number of hours;

(3) the applicant demonstrates the support of key components of the criminal justice system;

(4) the applicant, if a private organization, demonstrates the support of the county and municipality where the program will provide services;

(5) the applicant certifies that it will utilize volunteer services as an integral portion of the program to the maximum extent feasible; and

(6) no class A county alone or in conjunction with any municipality within a class A county shall receive more than forty-nine percent of any money appropriated to the fund.

B. Notwithstanding the provisions of Subsection A of this section, the department may utilize the fund to place individuals eligible, or within twelve months of eligibility, for parole in community-based settings. The department may, in its discretion, require participation by a delinquent in a program as a condition of supervised release.

C. The department may utilize not more than twenty-five percent of the fund to contract directly for community corrections programs or to establish programs operated by the department; provided, however, that the department may utilize up to an additional ten percent of the fund to operate juvenile community corrections programs if, after a reasonable effort to solicit proposals, there are no satisfactory proposals from a community where it is determined that a program is necessary or if it becomes necessary to cancel a program as provided in the contract.

D. The department shall establish additional guidelines for allocation of funds under the Juvenile Community Corrections Act. An applicant shall retain the authority to accept or reject the placement of any delinquent in a program.

History: Laws 1988, ch. 101, § 42; 1989, ch. 219, § 11; 1991, ch. 201, § 2; 1992, ch. 57, § 49; 1994, ch. 20, § 2; 2005, ch. 234, § 1; 2009, ch. 239, § 67.

ANNOTATIONS

The 2009 amendment, effective July 1, 2009, in Subsection B, in the second sentence, after "The", deleted "juvenile parole board" and added "department" and after "as a condition of", deleted "parole pursuant to the provisions of Section 32A-7-6 NMSA 1978" and added "supervised".

Applicability. — Laws 2009, ch. 239, § 71, provided that the provisions of this act apply to all children who, on July 1, 2009, are on release or are otherwise eligible to be placed on release as if the Juvenile Public Safety Advisory Board Act had been in effect at the time they were placed on release or became eligible to be released.

The 2005 amendment, effective June 17, 2005, deleted former Subsection E, which provided for the establishment of a panel to review applications for grants.

The 1994 amendment, effective July 1, 1994, substituted "shall" for "may" in the last sentence in Subsection E.

The 1992 amendment, effective July 1, 1992, substituted "department" for "authority" several times throughout the section.

The 1991 amendment, effective June 14, 1991, deleted "the amount requested is for not more than ninety-five percent of total program costs for the proposed program. The five percent of total program costs provided by the applicant may consist of in-kind administrative services" at the beginning of Paragraph (6) in Subsection A.

The 1989 amendment, effective July 1, 1989, added the last sentence of Subsection E, deleted "adjudicated" preceding "delinquent" several times throughout the section, and made minor stylistic changes throughout the section.

33-9A-5. Selection panels.

A. The department shall establish a state panel whose duties shall be to immediately screen and identify delinquents sentenced to a juvenile correctional facility of the department and transferred to the legal custody of the department, except individuals who are sentenced or transferred from a judicial district that has established a local panel to exercise these duties pursuant to the provisions of this section and who meet the following criteria:

(1) the offense involved is one for which community service or reasonable restitution may be made using a payment schedule compatible with the total amount of restitution to be paid and the time the offender is to participate in a program; and

(2) the child is willing to enter into a contract that establishes objectives that shall be achieved before release from the program.

B. The department may establish criteria in addition to those established in Subsection A of this section for the screening of delinquents who would benefit from participation in a program and who would not pose a threat to the community.

C. If the state panel determines that a child is suitable for placement in a program, a recommendation to that effect and for modification of disposition shall be presented as soon as possible to the sentencing judge or the department, which may, notwithstanding any provision of law, accept, modify or reject the recommendation. The determination shall be presented to the county, municipality or private nonprofit organization, as applicable, for approval or rejection.

D. A county, municipality or private nonprofit organization, individually or jointly, may establish a local panel to exercise the duties and responsibilities of the state panel pursuant to the provisions of Subsection A of this section and, using the same criteria as the state panel, the local panel may screen and identify delinquents. The composition of a local panel shall include, to the maximum extent possible, representatives of the judiciary, the administrative office of the district attorneys, the public defender department, the children, youth and families department, the county sheriff or the municipal police department, individuals representing local programs and private citizens.

History: Laws 1988, ch. 101, § 43; 1989, ch. 219, § 12; 1992, ch. 57, § 50; 2009, ch. 239, § 68.

ANNOTATIONS

Cross references. — For children, youth and families department, *see* 9-2A-1 NMSA 1978 et seq.

The 2009 amendment, effective July 1, 2009, in Subsection C, after "sentencing judge or the", deleted "juvenile parole board" and added "department".

Applicability. — Laws 2009, ch. 239, § 71, provided that the provisions of this act apply to all children who, on July 1, 2009, are on release or are otherwise eligible to be placed on release as if the Juvenile Public Safety Advisory Board Act had been in effect at the time they were placed on release or became eligible to be released.

The 1992 amendment, effective July 1, 1992, substituted "that" for "which" near the end of the introductory paragraph of Subsection A and in Subsection A(2); substituted "children, youth and families department" for "community services division of the authority" in the second sentence of Subsection D and substituted "department" for "authority" several times throughout the section.

The 1989 amendment, effective July 1, 1989, deleted "adjudicated" preceding "delinquent" several times throughout the section; in Subsection A substituted "transferred to the legal custody of the authority" for "children adjudicated delinquent and transferred to the legal custody of the department", deleted former Paragraph (1), which read: "the child has not been found delinquent for an offense involving the use of a firearm", redesignated former Paragraphs (2) and (3) as present Paragraphs (1) and (2), and made minor stylistic changes throughout the subsection; and in Subsection C inserted "sentencing judge or the" in the first sentence.

33-9A-6. Sentencing.

A. In every case where the commitment to the authority of a child adjudicated delinquent is contemplated by a judge, a predisposition report shall be prepared containing the recommendation of the juvenile probation officer regarding a community corrections placement or a diagnostic evaluation shall be completed by the authority containing the recommendation of the authority regarding that placement and the judge shall consider that report or evaluation prior to making that commitment. A juvenile probation officer shall consult with the authority prior to making a recommendation pursuant to this subsection.

B. At a sentencing hearing, if a judge of a court of competent jurisdiction determines placement in community corrections is appropriate, he shall defer or suspend the sentence and, as a condition of probation, require an individual to serve a period of time in a community corrections program.

History: Laws 1988, ch. 101, § 44.

ARTICLE 10
Native American Counseling

33-10-1. Short title.

This act [33-10-1 through 33-10-4 NMSA 1978] may be cited as the "Native American Counseling Act".

History: Laws 1983, ch. 276, § 1.

33-10-2. Purpose [of Native American Counseling Act].

It is the purpose of the Native American Counseling Act to provide a program of counseling for native Americans confined in penal institutions in New Mexico, to teach good work habits and develop motivation through work; to develop and instill cultural pride and improve the self-image of native Americans; to develop an understanding of the cultural differences between native Americans and other ethnic groups and assist the native American in relating and adjusting to such differences; to train the native American and his family to develop attitudes of mutual trust, mutual respect and an interdependence based on mutual understanding; to increase the availability of Indian spiritual leaders for teaching native Americans in the areas of Indian history, cultural sensitivity and Indian religion; and to generally involve native Americans in those aspects of the penal system that will assist in their rehabilitation and adjustment to a fuller life after their release from confinement.

History: Laws 1983, ch. 276, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The heading of Laws 1983, ch. 276, purported to enact certain provisions, relating to developing a pilot program for the counseling of native Americans confined in state penal institutions, which do not appear in the act.

33-10-3. Definitions.

As used in the Native American Counseling Act:

A. "native American" means any person who is descended from or is a member of an American Indian tribe, pueblo or band or is a native Hawaiian or Alaskan native; and

B. "native American religion" means any religion or religious belief that is practiced by a native American, the origin and interpretation of which is from a traditional native American culture or community, and includes the native American church.

History: Laws 1993, ch. 108, § 1.

33-10-4. Freedom of worship.

A. Native American religions shall be afforded by the corrections department the same standing and respect as Judeo-Christian religions. The practice of native American religion shall be permitted at each state corrections facility, including women's corrections facilities, to the extent that it does not threaten the reasonable security of the corrections facility.

B. Upon the request of any native American inmate or group of native American inmates, a state corrections facility shall permit access on a regular basis, for at least six consecutive hours per week, to:

(1) native American spiritual advisers;

(2) items and materials used in religious ceremonies provided by the inmate or a spiritual advisor, including cedar, corn husks, corn pollen, eagle and other feathers, sage, sweet grass, tobacco, willow, drums, gourds, lava rock, medicine bundles, bags or pouches, pipes, staffs and other traditional items and materials, except that the sacramental use of peyote by an inmate while incarcerated is prohibited in conformance with the religious and spiritual beliefs and policies of the Native American church; and

(3) a sweat lodge on the grounds of the corrections facility.

C. A secure place at the site of worship in which to store the items and materials used to conduct the religious ceremonies shall be provided. Any native American inmate may possess items and materials used in religious ceremonies as defined in Section 2 Subsection B of this Act [Subsection B of this section] as long as this possession does not threaten the reasonable security of the corrections facility.

D. Native American spiritual advisers shall be afforded by the administration of a state corrections facility the same stature, respect and inmate contact as is afforded the clergy of any Judeo-Christian religion.

E. No native American inmate shall be required to cut his hair if it conflicts with his traditional native American religious beliefs.

History: Laws 1993, ch. 108, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

ARTICLE 11
Inmate Literacy

33-11-1. Short title.

Sections 1 through 3 [33-11-1 through 33-11-3 NMSA 1978] of this act may be cited as the "Inmate Literacy Act".

History: Laws 1988, ch. 78, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1990, ch. 15, § 1 repealed Laws 1988, ch. 78, § 10, which had repealed the Inmate Literacy Act, effective July 1, 1990.

For applicability of Laws 1988, ch. 78, *see* 33-2-49 NMSA 1978.

33-11-2. Purpose of act.

The purpose of the Inmate Literacy Act is to require the corrections department to adopt certain regulations to require inmates to meet specified educational levels under certain circumstances.

History: Laws 1988, ch. 78, § 2.

ANNOTATIONS

Compiler's notes. — Laws 1990, ch. 15, § 1 repealed Laws 1988, ch. 78, § 10, which had repealed the Inmate Literacy Act, effective July 1, 1990.

For applicability of Laws 1988, ch. 78, *see* 33-2-49 NMSA 1978.

33-11-3. Regulations.

A. The corrections department, by July 1, 1988, shall adopt regulations for all adult correctional institutions operated by the department for the implementation of a mandatory education program for all inmates to attain a minimum education standard as set forth in this section.

B. The regulations shall apply only to any inmate who:

(1) commits a crime after the effective date of the Inmate Literacy Act; and

(2) has eighteen months or more remaining to be served on the inmate's sentence of incarceration; and who:

(a) is not exempted due to a medical, developmental or learning disability; or

(b) does not possess a high school equivalency credential or a high school diploma.

C. The regulations adopted shall require that:

(1) a minimum education standard shall be met beginning in 1988 and in all subsequent years as follows:

(a) in 1988, the education standard shall be the equivalent of grade six in reading and math on the test of adult basic education;

(b) in 1989, the education standard shall be the equivalent of grade seven in reading and math on the test of adult basic education;

(c) in 1990, the education standard shall be the equivalent of grade eight in reading and math on the test of adult basic education; and

(d) in 1991, the education standard shall be a high school diploma or a high school equivalency credential;

(2) inmates who meet the criteria in Subsection B of this section shall be required to participate in education programs for ninety days. After ninety days, inmates may choose to withdraw from educational programs but will be subject to the provisions of Paragraph (3) of this subsection; and

(3) notwithstanding any other provision of law, inmates who are subject to these regulations but who refuse or choose not to participate shall not be eligible for monetary compensation for work performed or for meritorious deduction as set forth in Subsection D of Section 33-2-34 NMSA 1978.

D. The regulations may:

(1) exclude any inmate who has been incarcerated for less than ninety days in an institution controlled by the corrections department;

(2) exclude any inmate who is assigned a minimum custody classification; or

(3) defer educational requirements for inmates with sentences longer than ten years.

History: Laws 1988, ch. 78, § 3; 2015, ch. 122, § 18.

ANNOTATIONS

Compiler's notes. — Laws 1990, ch. 15, § 1 repealed Laws 1988, ch. 78, § 10, which had repealed the Inmate Literacy Act, effective July 1, 1990.

For applicability of Laws 1988, ch. 78, *see* 33-2-49 NMSA 1978.

The phrase "effective date of the Inmate Literacy Act", means May 15, 1988, the effective date of Laws 1988, Chapter 78.

The 2015 amendment, effective July 1, 2015, replaced the term "general education diploma" with "high school equivalency credential" in the provision relating to corrections department regulations; designated the previously undesignated introductory sentence as Subsection A and redesignated former Subsections A, B and C as Subsections B, C and D, respectively; in Paragraph (2) of Subsection B, after "to be served on", deleted "his" and added "the inmate's", and after "and", deleted "either" and added "who"; redesignated former Paragraphs (3) and (4) of Subsection A as Subparagraphs B(2)(a) and B(2)(b); in Subparagraph B(2)(b), after "does not possess a", deleted "general education diploma" and added "high school equivalency credential"; in Paragraph (1) of Subsection C, after "subsequent years", added "as follows"; in Subparagraph C(1)(d), after "high school diploma or a", deleted "general education diploma" and added "high school equivalency credential"; in Paragraph (2) of Subsection C, after "Subsection", deleted "A" and added "B", and after "Paragraph (3) of", deleted "Subsection B of this section" and added "this subsection"; and in Paragraph (3) of Subsection C, after "Subsection", deleted "A" and added "D".

ARTICLE 12
Regional Juvenile Services

33-12-1. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 351, § 3 repealed 33-12-1 NMSA 1978, as enacted by Laws 1994, ch. 16, § 1, relating to the short title of the Regional Juvenile Services Act, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

33-12-2. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 351, § 3 repealed 33-12-2 NMSA 1978, as enacted by Laws 1994, ch. 16, § 2, relating to the purpose of the Regional Juvenile Services Act,

effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

33-12-3. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 351, § 3 repealed 33-12-3 NMSA 1978, as enacted by Laws 1994, ch. 16, § 3, relating to the regional juvenile services grant fund, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

33-12-4. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 351, § 3 repealed 33-12-4 NMSA 1978, as enacted by Laws 1994, ch. 16, § 4, relating to administration of regional juvenile services grant fund, regulations and disbursements from fund, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

33-12-5. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 351, § 3 repealed 33-12-5 NMSA 1978, as enacted by Laws 1994, ch. 16, § 5, relating to criteria for grant applications, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

33-12-6. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 351, § 3 repealed 33-12-6 NMSA 1978, as enacted by Laws 1994, ch. 16, § 6, relating to the criteria for approval of applications, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

33-12-7. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 351, § 3 repealed 33-12-7 NMSA 1978, as enacted by Laws 1994, ch. 16, § 7, relating to expenditure limitation, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

ARTICLE 13
Inmate Forestry Work Camp

33-13-1. Short title.

This act [33-13-1 through 33-13-8 NMSA 1978] may be cited as the "Inmate Forestry Work Camp Act".

History: Laws 1998, ch. 57, § 1.

ANNOTATIONS

Effective dates. — Laws 1998, ch. 57 contained no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, was effective May 20, 1998, 90 days after adjournment of the legislature.

33-13-2. Definitions.

As used in the Inmate Forestry Work Camp Act:

A. "department" means the corrections department;

B. "forestry division" means the forestry division of the energy, minerals and natural resources department;

C. "program" means the inmate forestry work camp program; and

D. "work camp" means a minimum security facility operated by the department that houses inmates training or working in the program.

History: Laws 1998, ch. 57, § 2.

ANNOTATIONS

Effective dates. — Laws 1998, ch. 57 contained no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, was effective May 20, 1998, 90 days after adjournment of the legislature.

33-13-3. Inmate forestry work camp program; purpose; limitation.

A. The department and the forestry division shall jointly establish the "inmate forestry work camp program" to provide inmate labor for natural resource work planned by the forestry division. The purpose of the program is to use minimum security male and female inmates to work on natural resource projects on public lands, fire

suppression and emergency response activities as directed in an emergency declaration issued by the governor.

B. The program is not an inmate-release program pursuant to the provisions of Sections 33-2-43 through 33-2-47 NMSA 1978.

History: Laws 1998, ch. 57, § 3.

ANNOTATIONS

Effective dates. — Laws 1998, ch. 57 contained no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, was effective May 20, 1998, 90 days after adjournment of the legislature.

33-13-4. Inmate eligibility.

The department shall screen and classify applicants for the program. To be eligible, an applicant must meet all of the standards provided in Section 33-2-44 NMSA 1978 and not be serving a sentence for first or second degree murder.

History: Laws 1998, ch. 57, § 4.

ANNOTATIONS

Effective dates. — Laws 1998, ch. 57 contained no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, was effective May 20, 1998, 90 days after adjournment of the legislature.

33-13-5. Work camps.

The department may establish work camps as needed for the custody of inmates participating in the program.

History: Laws 1998, ch. 57, § 5.

ANNOTATIONS

Effective dates. — Laws 1998, ch. 57 contained no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, was effective May 20, 1998, 90 days after adjournment of the legislature.

33-13-6. Inmates not employees.

An inmate participating in the program shall not be considered an employee of the state or of any other person deriving benefits from inmate services pursuant to the program. An inmate participating in the program shall not be covered by the provisions

of the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] or be entitled to benefits pursuant to that act, whether on behalf of himself or another person. Inmates participating in the program may be compensated as provided in Section 33-2-26 NMSA 1978.

History: Laws 1998, ch. 57, § 6.

ANNOTATIONS

Effective dates. — Laws 1998, ch. 57 contained no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, was effective May 20, 1998, 90 days after adjournment of the legislature.

33-13-7. Forestry division; interagency cooperation; program participation.

The forestry division shall cooperate with the department in the development and implementation of the program and shall:

A. plan and develop natural resource projects and provide technical direction and supervision for activities carried out by inmates participating in the program;

B. provide instruction in forestry and natural resource issues to inmates participating in the program; and

C. provide direction and instruction in the use of tools and equipment and conduct safety training for inmates participating in the program.

History: Laws 1998, ch. 57, § 7.

ANNOTATIONS

Effective dates. — Laws 1998, ch. 57 contained no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, was effective May 20, 1998, 90 days after adjournment of the legislature.

33-13-8. Inmate forestry work camp fund.

The "inmate forestry work camp fund" is created in the state treasury. All money received by the department or the forestry division from public land management agencies for work performed by inmates in the program shall be deposited in the fund. Money in the fund shall not revert at the end of a fiscal year. Money in the fund is appropriated to the forestry division to administer the program, including acquisition of tools and equipment and expenses incurred by the forestry division or the department in planning and supervising program projects. Disbursements from the fund shall be made

upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the director of the forestry division or his authorized representative.

History: Laws 1998, ch. 57, § 8.

ANNOTATIONS

Effective dates. — Laws 1998, ch. 57 contained no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, was effective May 20, 1998, 90 days after adjournment of the legislature.

ARTICLE 14
Telecommunications Services

33-14-1. Contract to provide inmates with access to telecommunications services in a correctional facility or jail; conditions.

A. A contract to provide inmates with access to telecommunications services in a correctional facility or jail shall be negotiated and awarded to an entity that meets the correctional facility's or jail's technical and functional requirements for services, and that provides the lowest cost of service to inmates or any person who pays for inmate telecommunication services.

B. A contract to provide inmates with access to telecommunications services in a correctional facility or jail shall not include a commission or other payment to the operator of the correctional facility or jail based upon amounts billed by the telecommunications provider for telephone calls made by inmates in the correctional facility or jail.

C. As used in this section:

(1) "correctional facility" means a state correctional facility or a privately operated correctional facility; and

(2) "jail" means a county jail, a municipal jail or a privately operated jail.

History: Laws 2001, ch. 33, § 1 and Laws 2001, ch. 115, § 1.

ANNOTATIONS

Compiler's notes. — Laws 2001, ch. 33, § 1 and Laws 2001, ch. 115, § 1 enacted identical new sections of law, effective June 15, 2001. Both have been compiled as 33-14-1 NMSA 1978.

ARTICLE 15
Privately Operated Correctional Facilities Oversight

33-15-1. Short title.

This act [33-15-1 through 33-15-4 NMSA 1978] may be cited as the "Privately Operated Correctional Facilities Oversight Act".

History: Laws 2001, ch. 169, § 1.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 169, § 5 made the Privately Operated Correctional Facilities Oversight Act effective July 1, 2001.

33-15-2. Definitions.

As used in the Privately Operated Correctional Facilities Oversight Act:

A. "out-of-state inmate" means a person incarcerated in a privately operated correctional facility within this state who is being incarcerated on behalf of a state other than New Mexico or a governmental entity whose jurisdiction is outside the state of New Mexico. "Out-of-state inmate" does not include a person who is being incarcerated on behalf of an Indian tribe or pueblo whose lands are located wholly or partially within New Mexico, or on behalf of the United States;

B. "privately operated correctional facility" means a correctional facility or jail that has all or substantially all of its security operations performed by persons employed by, or engaged by, a private entity to perform security functions; and

C. "secretary" means the secretary of corrections or his designee.

History: Laws 2001, ch. 169, § 2.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 169, § 5 made the Privately Operated Correctional Facilities Oversight Act effective July 1, 2001.

33-15-3. Incarceration of out-of-state inmates in privately operated correctional facilities; minimum standards; secretary's authority to adopt rules.

A. A privately operated correctional facility shall have statutory authority, other than this section, in order to operate or house inmates. In addition to satisfying requirements set forth in a statute other than this section, a privately operated correctional facility shall meet the following minimum standards before housing ten or more out-of-state inmates:

(1) all correctional officers and other persons, employed or engaged by a privately operated correctional facility, whose primary function is to provide security shall, before being assigned to provide the security functions, successfully complete a screening, background check and training course approved by the secretary. The secretary may offer to provide services to the privately operated correctional facility, including qualifying screening, background checks and a training program at the corrections academy at a reasonable cost;

(2) a privately operated correctional facility shall provide immediate oral notice, followed by a written report, to the secretaries of public safety and corrections, the local county sheriff and the chief of police of the municipality in which the facility is located, or the chief of police of the nearest municipality, or their designees, whenever any of the following events occur at the privately operated correctional facility:

(a) discharge of a firearm other than for training purposes;

(b) discharge of a chemical agent, gas or munitions to control the behavior of two or more inmates;

(c) a hostage situation;

(d) the death of an inmate, staff member, visitor or other person;

(e) a disturbance involving five or more inmates;

(f) an escape or attempted escape; or

(g) the commission of a felony offense;

(3) a privately operated correctional facility shall obtain and maintain current accreditation by the American correctional association regarding standards for prisons or standards for jails. As to any new privately operated correctional facility, the secretary may allow the facility a period of two years from the date the facility becomes operational to obtain accreditation or may require the facility to apply for and receive provisional accreditation;

(4) a privately operated correctional facility shall prepare an emergency response plan deemed satisfactory by the secretary. A copy of the emergency response plan shall be provided to the secretaries of public safety and corrections, the local

county sheriff and the chief of police of the municipality in which the facility is located, or the chief of police of the nearest municipality, or their designees;

(5) a privately operated correctional facility shall ensure that an out-of-state inmate released from the privately operated correctional facility is released to his state of origin; and

(6) the owner or operator of a privately operated correctional facility shall enter into a written contract with the entity that proposes to house ten or more out-of-state inmates in the facility, and the contract shall contain provisions that require compliance with the minimum standards set forth in this subsection.

B. The secretary shall review all contracts and proposed contracts between the owner or operator of a privately operated correctional facility and the entity that proposes to house ten or more out-of-state inmates in the facility. The secretary shall prepare and submit to the county a written report summarizing his review of each contract.

C. The secretary shall inspect and monitor a privately operated correctional facility that houses or proposes to house ten or more out-of-state inmates to ensure compliance with the minimum standards set forth in this section and to ensure compliance with standards and rules adopted by the secretary pursuant to this section. The secretary shall be provided with the classification records and other relevant records pertaining to the out-of-state inmates who are proposed to be incarcerated at the privately operated correctional facility. The secretary shall have subpoena authority as to all present and former employees and other personnel of the privately operated correctional facility, as well as to all records pertaining to the facility, for the purposes of inspecting and monitoring the facility. Upon completion of an inspection, the secretary shall submit a report with findings and recommendations to the privately operated correctional facility, the board of county commissioners for the county where the facility is located, the county sheriff of the county where the facility is located and the legislative corrections oversight committee. The secretary shall allow the facility a reasonable period of time to address any deficiencies and recommendations set forth in the report. The secretary may conduct additional inspections to determine compliance with minimum standards, rules and any recommendations. If a privately operated correctional facility that houses or proposes to house out-of-state inmates fails to comply with the standards and rules authorized pursuant to this section, the secretary shall notify the county of the deficiencies and recommend corrective action.

History: Laws 2001, ch. 169, § 3.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 169, § 5 made the Privately Operated Correctional Facilities Oversight Act effective July 1, 2001.

33-15-4. Classification review of out-of-state inmates in privately operated correctional facilities; assessing a fee.

A. An out-of-state inmate shall not be incarcerated in a privately operated correctional facility in New Mexico unless the privately operated correctional facility is designed to meet or exceed the appropriate classification level for the out-of-state inmate.

B. The operator of a privately operated correctional facility that houses out-of-state inmates shall pay a fee, on a quarterly basis, to the county in which the privately operated correctional facility is located. The amount of the fee shall be a minimum of two dollars ($2.00) per inmate per day for each out-of-state inmate who is incarcerated in the privately operated correctional facility.

History: Laws 2001, ch. 169, § 4; 2003, ch. 64, § 1.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, in Subsection B, substituted "two dollars ($2.00)" for "seventy-five cents ($0.75)" following "minimum of" in the second sentence.