

# CHAPTER 33

## CORRECTIONAL INSTITUTIONS

### ARTICLE 1

### CORRECTIONS DIVISION

#### ANNOTATIONS

**Compiler's note.** - The functions formerly performed by the corrections division are now performed by various divisions of the corrections department. See note to 33-1-4.

#### **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.

**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 and the Corrections Act. 1970 Op. Att'y Gen. No. 70-12.

#### **33-1-2. Definitions.**

As used in the Corrections Act [33-1-1 to 33-1-9 NMSA 1978]:

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 state board of probation and parole except to the extent delegated to the parole board by the Parole Board Act [31-21-22 to 31-21-26 NMSA 1978];

D. "commission" means the corrections 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.

### **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 to 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. Corrections division [Corrections department; corrections commission].**

A. There is created within the criminal justice department [corrections department] the "corrections division." The division is responsible for all matters pertaining to corrections as provided in the Corrections Act [33-1-1 to 33-1-9 NMSA 1978] or other law.

B. There is created the "corrections commission," consisting of seven members appointed by the governor with the advice and consent of the senate for staggered terms, one ending June 30, 1972, and two ending June 30 of each of the following three years. Thereafter, appointments shall be made for 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. Members of the commission shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance. 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. Four of the members shall be persons who have displayed interest in juvenile correction and rehabilitation matters, and three shall be persons who have displayed interest in adult correction and rehabilitation matters. Any member who fails to attend any three consecutive meetings of the commission without being excused by the commission shall be automatically removed.

C. The commission shall advise the director in the management and control of the division.

**History:** 1953 Comp., § 42-9-4, enacted by Laws 1969, ch. 226, § 4; 1971, ch. 221, § 4; 1977, ch. 257, § 99.

**Cross-references.** - As to corrections division, see 33-1-4 NMSA 1978 and notes thereto.

As to detention facilities under Children's Code, see 32-1-6, 32-1-25 NMSA 1978.

**Bracketed material.** - The bracketed reference to "corrections department" was inserted by the compiler, as 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 rename the former corrections and criminal rehabilitation department as the corrections department and retain the adult institutions division. Laws 1981, ch. 73, § 8, provides 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 notes thereto. Laws 1981, ch. 73, § 4, provides that the chief officer of the corrections department shall be the secretary of corrections. See 9-3-4 NMSA 1978. The bracketed insertion was not enacted by the legislature and is not part of the law.

### **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.

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

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

**Bracketed material.** - See same catchline in notes to 33-1-4 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 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 [33-1-1 to 33-1-9 NMSA 1978], 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 [33-1-1 to 33-1-9 NMSA 1978];

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.

**Bracketed material.** - See same catchline in notes to 33-1-4 NMSA 1978.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

### **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 to 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.

**Bracketed material.** - See same catchline in notes to 33-1-4 NMSA 1978.

**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 and the Corrections Act. 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.

**Repeals and reenactments.** - Laws 1971, ch. 221, § 10, repeals 42-9-10, 1953 Comp., relating to transitional provisions concerning rules, employees, property, etc., of those agencies affected by the Corrections Act, and enacts the above section.

### **33-1-9. Liberal interpretation.**

The Corrections Act [33-1-1 to 33-1-9 NMSA 1978] 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.

**Cross-references.** - As to crimes against a peace officer, see Article 22 of Chapter 30.

As to when wounding or killing of penitentiary prisoner is justified, see 33-2-30, 33-2-31 NMSA 1978.

**Bracketed material.** - The bracketed material in Subsection D was inserted by the compiler as there is no 31-1-10 NMSA 1978. The apparent intended reference is 33-1-10 NMSA 1978 (this section). The bracketed material was not enacted by the legislature and is not part of the law.

### **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.

**Cross-references.** - As to 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. For provisions of former sections, see 1982 cumulative supplement.

### **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 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.

C. The department shall solicit proposals and award any contract under this section in accordance with the provisions of the Procurement Code. The contract shall include such terms and conditions as the 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 and 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 and 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 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.

D. When the contractor begins operation of the facility, his 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.

E. 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 as defined in Section 15-3-23.3 NMSA 1978 or a state capital project [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, or of the Capital Program Act [15-3-21 to 15-3-23, 15-3-24 NMSA 1978], review by the staff architect of the property control division of the general services department pursuant to Section 15-3-20 NMSA 1978 or regulation by the director of that division pursuant to Section 15-3-11 NMSA 1978.

F. 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.

**Bracketed material.** - The bracketed material in the second sentence in Subsection E was inserted by the compiler. Section 13-1-91 NMSA 1978 was amended in 1989 and now defines "state public works project". The bracketed material was not enacted by the legislature and is not part of the law.

**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.

**Appropriations.** - Laws 1988, ch. 79, § 2, effective May 18, 1988, appropriates \$1,003,300 from the general fund to the corrections department for expenditure in the seventy-seventh fiscal year to contract for the operation of a two hundred-bed facility for housing female inmates during the last quarter of the seventy-seventh fiscal year, and provides that any unexpended or unencumbered balance remaining at the end of the seventy-seventh fiscal year shall revert to the general fund.

**Procurement Code.** - See 13-1-28 NMSA 1978 and notes thereto.

### **33-1-18. Fund created.**

There is created in the state treasury a special fund to be known as the "corrections department building fund". The fund 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. No other funds of the state shall be deposited or paid into the corrections department building fund.

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

**Emergency clauses.** - Laws 1990 (1st S.S.), ch. 5, § 4 makes the act effective immediately. Approved April 5, 1990.

### **33-1-19. Use of fund.**

The corrections department building fund shall be used by the corrections department solely for the purpose of acquiring, by lease or other means, a corrections department central office complex, a personnel training academy, a special incarceration alternative facility or any combination of these facilities. No other funds from any source whatsoever shall be used for the acquisition of such facilities.

**History:** Laws 1990 (1st S.S.), ch. 5, § 2.

**Emergency clauses.** - Laws 1990 (1st S.S.), ch. 5, § 4 makes the act effective immediately. Approved April 5, 1990.

### **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.

**Emergency clauses.** - Laws 1990 (1st S.S.), ch. 5, § 4 makes the act effective immediately. Approved April 5, 1990.

## **ARTICLE 1A CORRECTIONAL FACILITIES HOUSING**

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

The property control division of the department of finance and administration [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 such 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 such low-rent housing units shall not be rented to non-state employees.

**History:** Laws 1983, ch. 186, § 1.

**Bracketed material.** - The bracketed reference to "general service department" in the first sentence was inserted by the compiler, as Laws 1983, ch. 301, transferred the property control division from the department of finance and administration to the newly created general services department. (See 9-17-3 NMSA 1978 and notes thereto.) The bracketed reference to "corrections" near the middle of this section was inserted by the compiler, as it is apparently a reference to the corrections department. (See 9-3-3 NMSA 1978.) The bracketed insertions were not enacted by the legislature and are not part of the law.

### **33-1A-2. Long-term lease of correctional facility housing by property control division; sublease to correctional officers and others.**

In connection with and as part of the real property lease authorized in Section 1 [33-1A-1 NMSA 1978] of this act, the property control division 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 this act [33-1A-1 to 33-1A-5 NMSA 1978] and to sublease them to 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.

**History:** Laws 1983, ch. 186, § 2.

**Bracketed material.** - See same catchline in notes to 33-1A-1 NMSA 1978.

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

The property control division shall establish a schedule of sublease rental fees for the low-rent housing units constructed pursuant to this act [33-1A-1 to 33-1A-5 NMSA 1978]. Sublease rental fee payments shall be paid to the department of finance and administration and deposited in the "long-term correctional facility housing lease suspense fund" hereby established, which shall be administered by the secretary of finance and administration or his 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 this act.

**History:** Laws 1983, ch. 186, § 3.

### **33-1A-4. Lease terms.**

A. Upon expiration of the long-term housing lease, the low-rent housing units constructed pursuant to this act [33-1A-1 to 33-1A-5 NMSA 1978] shall become the exclusive property of the state, free of any encumbrances of any kind arising from the construction or leasing of such housing units.

B. The low-rent housing units constructed pursuant to this act [33-1A-1 to 33-1A-5 NMSA 1978] shall conform to all applicable building codes, and the plans and specifications for such housing units shall be approved by the property control division 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 this act.

**History:** Laws 1983, ch. 186, § 4.

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

No lease of low-rent housing units constructed pursuant to this act [33-1A-1 to 33-1A-5 NMSA 1978] shall be binding against the property control division until it has been approved by the state board of finance.

**History:** Laws 1983, ch. 186, § 5.

## **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.

**Bracketed material.** - The bracketed material in this section was inserted by the compiler, as 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, § 8, provides 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 notes thereto. Laws 1981, ch. 73, § 4, provides that the chief officer of the corrections department shall be the secretary of corrections. See 9-3-4 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

**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 the power to authorize, meritorious awards to employees by way of cash benefits. 1957-58 Op. Att'y Gen. No. 57-21.

**Or to inmates of penitentiary.** - The board of penitentiary commissioners (now corrections department) does not have authority, nor may it delegate to the superintendent 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.

**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.

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.

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

For Enabling Act, see Pamphlet 3.

**Bracketed material.** - The bracketed reference to the corrections department was inserted by the compiler, as Laws 1977, ch. 257, § 102, amending Laws 1969, ch. 226, § 9, provides 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 note

to 33-2-1 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

**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*, 55 N.M. 423, 234 P.2d 358 (1951) and *State v. Ingalls*, 18 N.M. 211, 135 P. 1177 (1913), 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*, 79 N.M. 748, 449 P.2d 656 (1969).

**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*, 79 N.M. 748, 449 P.2d 656 (1969).

**Prison honor farm is integral part and parcel of state penitentiary,** and escape therefrom is an escape from the state penitentiary. *State v. Peters*, 69 N.M. 302, 366 P.2d 148 (1961), 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.*, 52 N.M. 224, 195 P.2d 1014 (1948).

**Commissioners had authority to move penitentiary.** - Under the broad powers of the statute (42-1-1, 1953 Comp., since repealed) to sell real, personal or mixed property, the penitentiary commissioners 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. 5628 (rendered under former law).

**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*, 79 N.M. 748, 449 P.2d 656 (1969).

**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, 79 N.M. 748, 449 P.2d 656 (1969).

**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).

**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.

**Meaning of "this act".** - 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.

**Bracketed material.** - See same catchline in 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, 79 N.M. 748, 449 P.2d 656 (1969).

### **33-2-5. Disposition of unneeded property.**

If and when the penitentiary of New Mexico, as such body corporate, shall be possessed of any real, personal or mixed property of whatsoever kind or nature which, in the judgment of the director of the corrections division [corrections department] of said body corporate, shall no longer be required for the use of said penitentiary, then in such event the penitentiary of New Mexico shall have the right to sell, trade, mortgage or otherwise alienate any such real, personal or mixed property for such price and upon such terms as to the director of the corrections division [corrections department] shall seem just and proper, and the proceeds to be derived from any such transaction shall become the property of said corporation; 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.

**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.

**Bracketed material.** - See same catchline in notes to 33-2-1 NMSA 1978.

**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, 79 N.M. 748, 449 P.2d 656 (1969).

**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. 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. 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.

**Bracketed material.** - See same catchline in notes to 33-2-1 NMSA 1978.

**Compiler's note.** - 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. 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 necessities 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.

**Bracketed material.** - See same catchline in 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. 134.

### **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.

**Cross-references.** - As to 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.

**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.

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

**Bracketed material.** - See same catchline in notes to 33-2-1 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.

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.

**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", "division" for "department", 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. *Birido v. Rodriguez*, 84 N.M. 207, 501 P.2d 195 (1972).

**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.

**Bracketed material.** - See same catchline in notes to 33-2-1 NMSA 1978.

**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.

**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.

Fourth amendment as protecting prison visitor against unreasonable searches and seizures, 69 A.L.R. Fed. 856.

### **33-2-13. [Physician; obedience to rules; opinion on disability; record.]**

The physician, when visiting the penitentiary, shall conform to the rules and regulations thereof; he shall express no opinion as to the disability of any prisoner except in his record, which he shall keep 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.

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

As to notifying relatives of deceased persons, see 24-12-1 NMSA 1978.

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

**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.

**Bracketed material.** - See same catchline in 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.

**Bracketed material.** - See same catchline in notes to 33-2-1 NMSA 1978.

### **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.

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

**Bracketed material.** - The bracketed 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." The bracketed insertions were not enacted by the legislature and are not part of the law.

**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*, 84 N.M. 338, 503 P.2d 318 (1972).

**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. 5342 (rendered under former provisions).

### **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.

**Bracketed material.** - See same catchline in notes to 33-2-16 NMSA 1978.

**Compiler's note.** - 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.

**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.

**Bracketed material.** - See same catchline in notes to 33-2-16 NMSA 1978.



**Compiler's note.** - 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.

### **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.

**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.

**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).

**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*, 79 N.M. 557, 445 P.2d 978 (Ct. App. 1968).

**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*, 64 N.M. 88, 324 P.2d 1017 (1958).

**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, repeals 33-2-20 through 33-2-25 NMSA 1978, relating to the performance of labor by prison inmates. For provisions of former sections, see 1978 original pamphlet.

Laws 1981, ch. 127, contains no effective date provision applicable to this section, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

### **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.

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

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

**Bracketed material.** - See same catchline in notes to 33-2-1 NMSA 1978.

**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, repeals 33-2-27 and 33-2-28 NMSA 1978, relating to payment of prisoners' earnings. For provisions of former sections, see 1978 original pamphlet.

Laws 1981, ch. 127, contains no effective date provision applicable to this section, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

### **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.

**Bracketed material.** - See same catchline in 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.

**Cross-references.** - As to 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.

**Cross-references.** - As to escape from penitentiary see 30-22-9 NMSA 1978.

As to 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.

**Bracketed material.** - See same catchline in notes to 33-2-1 NMSA 1978.

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

### **33-2-33. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1977, ch. 216, § 17, repeals 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 former section, see 1978 original pamphlet. For provisions of the present Criminal Sentencing Act, see 31-18-12 NMSA 1978 et seq.

### **33-2-34. Meritorious deductions.**

A. Any inmate confined in the penitentiary of New Mexico or other institution or reintegration program designated by the corrections department for the confinement of adult criminal offenders may be awarded a meritorious deduction of thirty days per month upon recommendation of the classification committee and approval of the warden; provided that an inmate who:

(1) disobeys an order to perform labor pursuant to Section 33-8-4 NMSA 1978 shall not be eligible for meritorious deductions;

(2) is in disciplinary segregation shall not be eligible for meritorious deductions;

(3) is within his first sixty days of receipt by the department shall not be eligible for meritorious deductions; or

(4) is not engaged in programs recommended and approved for him by the classification committee shall not be eligible for meritorious deductions. Programs include but are not limited to education, work, counseling and the like.

The corrections department may award meritorious deductions to New Mexico inmates confined in federal and out-of-state corrections facilities on the basis of inmate conduct reports which shall be furnished by those facilities on a periodic basis.

B. An inmate whose record of conduct shows that he has performed exceptionally meritorious service and whose record of conduct shows that he has otherwise faithfully observed the rules of the institution, may be eligible for a lump sum good time award, not to exceed one year per award and not to exceed a total of one year for all lump sum good time awards awarded in any consecutive twelve-month period, which may be deducted from the length of the sentence then remaining unserved. Exceptionally meritorious service shall include heroic acts of saving life or property, but shall not include acts in performance of normal work duties or program assignments. The classification committee and the warden may recommend the number of days to be awarded in each case based upon the particular merits but any award shall be

determined by the director of adult institutions. Allowance for exceptionally meritorious service shall be in addition to the meritorious deduction provided for in Subsection A of this section, and in the event two or more consecutive sentences are being served, the aggregate of the several sentences shall be the basis upon which the deduction shall be computed.

C. The meritorious deductions provided for in Subsections A and B of this section shall pertain to both the basic sentence to be served and any enhanced term of imprisonment pursuant to the provisions of the Criminal Sentencing Act [31-18-12 to 31-18-21 NMSA 1978]. For inmates convicted of crimes committed on or after the effective date of this act, meritorious deductions of up to ninety days per occurrence shall be permanently forfeited upon recommendation of the classification committee and approval of the warden if the inmate does not properly maintain the standard upon which the award was based. For those inmates, permanent forfeitures in excess of ninety days may be made upon approval of the director of adult institutions. For inmates convicted of crimes committed prior to the effective date of this act, meritorious deductions may be terminated upon recommendation of the classification committee and approval of the warden if the inmate does not properly maintain the standard upon which the award was based; provided that no inmate shall forfeit more than fifty percent of his meritorious deductions accrued during the previous twelve months; and further provided that after forfeiture of any portion of an inmate's accrued meritorious deductions, the remainder shall vest and shall not be subject to further forfeiture.

D. The corrections department shall promulgate rules and regulations for the implementation and determination of meritorious deductions pursuant to this section, and the rules or regulations shall be matters of public record. A concise summary of the rules and regulations shall be provided to every inmate, and every inmate shall receive a quarterly statement of his accrued meritorious deductions.

**History:** 1953 Comp., § 42-1-55, enacted by Laws 1978, ch. 40, § 1; 1981, ch. 127, § 18; 1985, ch. 156, § 1; 1988, ch. 78, § 4.

**Cross-references.** - As to industrial good time deduction, see 33-8-14 NMSA 1978.

**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.

**"Effective date of this act".** - The phrase "effective date of this act," referred to in Subsection C, means May 18, 1988, the effective date of Laws 1988, Chapter 78.

**Compiler's note.** - Laws 1990, ch. 42, § 1 effective May 16, 1990, repeals Laws 1988, ch. 78, § 5 which had repealed and reenacted this section, effective July 1, 1990.

All of the following annotations are taken from cases decided prior to the 1988 amendment, which rewrote this section.

**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*, 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*, 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).

**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*, 104 N.M. 345, 721 P.2d 771, cert. denied, 479 U.S. 917, 107 S. Ct. 321, 93 L. Ed. 2d 294 (1986).

**"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*, 75 N.M. 761, 411 P.2d 347 (1966).

**And 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*, 75 N.M. 761, 411 P.2d 347 (1966).

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*, 60 N.M. 71, 287 P.2d 605 (1955), 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*, 60 N.M. 71, 287 P.2d 605 (1955), cert. denied, 350 U.S. 954, 76 S. Ct. 343, 100 L. Ed. 830 (1956).

"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. 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. 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. 220.

**"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. 105.

**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.

**Compiler's note.** - The 1915 Code compilers deleted "now" after "shall apply to convicts."

**Meaning of "this article".** - The 1915 Code compilers substituted "this article" for "this act." The words "this article" refer to Code 1915, ch. CI, art. 1, being §§ 5018 to 5087. For the location of those sections still in effect in NMSA 1978, see the Table of Comparative Sections in Volume 13.

### **33-2-36. Forfeiture of earned deductions.**

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.

**History:** 1978 Comp., § 33-2-36, enacted by Laws 1988, ch. 78, § 6.

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



**Repeals and reenactments.** - Laws 1988, ch. 78, § 6 repeals 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 enacts the above section, effective July 1, 1990. For current provisions, see 1987 Replacement Pamphlet.

**When conduct warrants, "good time" may be forfeited and parolee returned.** - "Good time" earned may be canceled by the prison board (now corrections department) and superintendent under this section at any time prior to the service of sentence. If prior to this date there comes to the attention of the prison board and superintendent that a parolee's conduct warrants forfeiture of "good time" earned, and the board and superintendent take action canceling such "good time" the board of parole may issue its warrant 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. 6378.

**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*, 84 N.M. 405, 503 P.2d 1183 (Ct. App. 1972).

**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 deductions.**

Deductions forfeited under Section 33-2-36 NMSA 1978 may be restored in whole or in part to any prisoner who is exemplary in conduct and work performance for a period of not less than six months following the date of forfeiture, upon recommendation of the classification committee, approval by the warden and final approval by the secretary of corrections.

**History:** 1978 Comp., § 33-2-37, enacted by Laws 1988, ch. 78, § 7.

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

**Repeals and reenactments.** - Laws 1988, ch. 78, § 7 repeals 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 enacts the above section, effective July 1, 1990. For current provisions, see 1987 Replacement Pamphlet.

### **33-2-38. [Computing period of time to be served under sentence.]**

No convict shall be discharged from the penitentiary until he has remained the full term for which he was sentenced, to be computed from and including the day on which his sentence took effect, and excluding any time the convict may have been at large by reason of escape therefrom, unless he may be pardoned or otherwise released by legal authority; provided, that nothing in this section shall be so construed as to deprive any convict of any reduction of time which he may be entitled to under Section 33-2-33 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.

**Cross-references.** - As to pardon upon discharge, see 31-20-8 NMSA 1978.

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

**Temporary provisions.** - Laws 1969, ch. 50, § 1, provides for giving a prisoner confined on March 19, 1969 credit against his sentence for time spent in official confinement pending appellate review.

**Compiler's note.** - Section 33-2-33 NMSA 1978, referred to in this section, was repealed by Laws 1977, ch. 216, § 17, effective July 1, 1979.

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 provided for 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.

**Cross-references.** - As to 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*, 84 N.M. 405, 503 P.2d 1183 (Ct. App. 1972).

**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.

**In which case 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.

**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*, 79 N.M. 392, 444 P.2d 577 (1968), cert. denied, 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*, 84 N.M. 405, 503 P.2d 1183 (Ct. App. 1972).

**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*, 92 N.M. 256, 586 P.2d 1085 (1978); *Deats v. State*, 84 N.M. 405, 503 P.2d 1183 (Ct. App. 1972).

**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*, 84 N.M. 405, 503 P.2d 1183 (Ct. App. 1972).

**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*, 102 N.M. 148, 692 P.2d 534 (Ct. App. 1984).

**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.

**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*, 79 N.M. 765, 449 P.2d 781 (1969).

**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. 4792.

**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.

**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, 79 N.M. 765, 449 P.2d 781 (1969).

**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.

**Cross-references.** - As to fines and costs being served at the rate of \$5.00 per day, 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, 86 N.M. 199, 521 P.2d 1040 (Ct. App.), cert. denied, 86 N.M. 189, 521 P.2d 1030 (1974).

**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. 23.

**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, repeals 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. For provisions of former sections, see 1978 original pamphlet and 1980 cumulative supplement.

Laws 1981, ch. 127, contains no effective date provision applicable to this section, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

### **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.

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

**Bracketed material.** - See same catchline in 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.

### **33-2-44. 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.

**Bracketed material.** - See same catchline in 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.

**Bracketed material.** - See same catchline in notes to 33-2-16 NMSA 1978.

### **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.

**Crime of specific intent.** - The crime described by this section, escape from an inmate-release program, is a specific intent crime. *State v. Tarango*, 105 N.M. 592, 734 P.2d 1275 (Ct. App. 1987), overruled on other grounds *Zurla v. State*, 109 N.M. 640, 789 P.2d 588 (1990).

### **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 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.

**Employment Security Act.** - The reference to the "Employment Security Act" apparently means the Unemployment Compensation Law. See 51-1-1 NMSA 1978 et seq.

### **33-2-48. Repealed.**

## **ANNOTATIONS**



**Repeals.** - Laws 1989, ch. 210, § 4 repeals 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. For provisions of former section, see 1987 Replacement Pamphlet.

### **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.

**Meaning of "this act".** - The phrase "this act", referred to in this section, means Laws 1988, ch. 78, which appears as 33-11-1 to 33-11-3, 33-2-34, 33-2-36, 33-2-37, and 33-8-14 NMSA 1978.

**"Effective date of this act".** - The phrase "effective date of this act", referred to in this section, 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.

**Effective dates.** - Laws 1991, ch. 88, § 2 makes the act effective on July 1, 1991.

## **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.

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

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

**Compiler's note.** - 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.

**County commissioners may not arbitrarily decide how sheriff's space used.** - While 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.

**And 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).

**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.

**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.

**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. 83-5 (rendered prior to 1984 amendment).

### **33-3-3. [Confinement of persons charged with crime or committed to jail.]**

The jail in each county shall be used for the retention [detention] of every person or persons who, within the same county, shall be charged with any crime, or properly committed for trial, or for the imprisonment of every person or persons 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.

**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.

As to protective custody of intoxicated person pursuant to Detoxification Act, see 43-2-16 to 43-2-22 NMSA 1978.

**Compiler's note.** - 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.

**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, 24 N.M. 421, 174 P. 425 (1918).

**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. 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 by appropriate governing body; report to district court.**

The governing bodies of the several counties or municipalities of this state shall be the inspectors of the jails in their respective counties and shall visit them at least twice a year and shall carefully examine the condition of each cell as to cleanliness and discipline, and the sheriff, jail administrator or independent contractor shall lay before them a list of the names, ages and the cause of imprisonment of each person, and it shall be the duty of the governing body to report to the district court at each term of said court held in each county, and should it appear from the same that any of the provisions of law have been violated or broken, the judge of the district court shall order the district attorney to commence suit against the sheriff, jail administrator or independent contractor for the violation and failure in the discharge of duty.

**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.

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

As to grand jury inquiry into conditions of jails, see 31-6-9 NMSA 1978.

**Irrespective of duty to inspect, sheriffs have control of jail.** - 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.

**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.

**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.

**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.

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

**Compiler's note.** - 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.

**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. 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.

**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.

**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.

**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 district judge or committing 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 or may establish rules for the accrual of "good time." Deductions of time shall not exceed one-third 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 part or all of the prisoner's accrued deductions may be forfeited for any conduct violation. The sheriff or jail administrator shall 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.

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

D. 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.

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

**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*, 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*, 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*, 104 N.M. 672, 726 P.2d 349 (1986).

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*, 104 N.M. 672, 726 P.2d 349 (1986).

**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*, 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, repeals 33-3-10 NMSA 1978, as enacted by Laws 1865-1866, ch. 19, § 11, relating to supplies for jails. For provisions of former section, see 1978 original pamphlet.

Laws 1983, ch. 181, contains no effective date provision but was enacted at a session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

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

A. Whenever any person is committed to prison for nonpayment of any fine or costs or both, he shall be credited with five dollars (\$5.00) a day in reduction thereof for each day or portion of a day of imprisonment. When the person has remained imprisoned 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 three months even though the fine and costs or either exceeds four hundred fifty dollars (\$450). The affidavit shall be delivered to the sheriff or jail administrator 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.

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

**Compiler's note.** - This section might apply to confinement in either the county jail or the state penitentiary. However, 33-2-40 NMSA 1978 limits the time that may be served in the penitentiary for fine and costs to 30 days.

**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.

**Even when multiple sentences imposed.** - 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.2d 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.

**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.

**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.

**Compiler's note.** - 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.

**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. 5094.

**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 County Comm'rs, 39 N.M. 310, 46 P.2d 669 (1935).

**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 County Comm'rs, 33 N.M. 340, 267 P. 72 (1928).

**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.

**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. 265.

**And 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.

**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.

**But such 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.

**And 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.

### **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.

**Cross-references.** - As to 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.

**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*, 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*, 104 N.M. 672, 726 P.2d 349 (1986).

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*, 104 N.M. 672, 726 P.2d 349 (1986).

**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.



**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, 97 N.M. 67, 636 P.2d 886 (Ct. App. 1981).

**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, repeals 33-3-20 NMSA 1978, as enacted by Laws 1909, ch. 89, § 2, relating to duty of sheriffs to enforce provisions for labor. For provisions of former section, see 1978 original pamphlet.

Laws 1983, ch. 181, contains no effective date provision, but was enacted at a session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

### **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.

**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.

**Cross-references.** - As to 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.

**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 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.

**Unemployment Compensation Law.** - See 51-1-1 NMSA 1978 and notes thereto.

### **33-3-25. Local government corrections fund created; administration; distribution.**

A. There is created in the state treasury a "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 and municipalities in counties with a metropolitan court for use by counties and those municipalities for county or municipal jailer or juvenile detention officer training, the construction planning, construction, maintenance and operation of the county or municipal jail or juvenile detention facility, to pay the cost of housing county or municipal prisoners or juveniles in any detention facility in the state or complying with match or contribution requirements for the receipt of federal funds relating to jails [or] a juvenile detention facility. 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; provided, in a county with a metropolitan court, the county shall be eligible for a payment in an amount equal to costs and fees collected pursuant to offenses committed within the boundaries of the unincorporated areas of the county, and a municipality in that county shall be eligible for a payment in an amount equal to the costs collected pursuant to offenses committed within the boundaries of the municipality.

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 or a municipality pursuant to this section shall be deposited in a special fund in the county or municipal treasury and shall be used solely for county or municipal jailer or juvenile detention training, for the construction planning,

construction, maintenance and operation of the county or municipal jail or juvenile detention facility, to pay the cost of housing county or municipal prisoners or juveniles in any detention facility in the state or complying with match or for contribution requirements for the receipt of federal funds relating to jails.

**History:** Laws 1983, ch. 134, § 1; 1985, ch. 27, § 1; 1987, ch. 251, § 1; 1989, ch. 133, § 2.

**Cross-references.** - As to joint agreements for the construction, management and operation of correctional and detention facilities and jails, see 33-3-2 NMSA 1978.

As to police ordinances and county jails, see 3-18-20 NMSA 1978.

As to the duties of the director of the administrative office of the courts, see 34-9-3 NMSA 1978.

**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.

**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 § 33-3-27 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. No agreement with a private independent contractor for the operation of a jail or for the incarceration of prisoners therein shall be made for a period of more than three years. Agreements binding on future governing bodies for construction, purchase, or lease of a jail facility for not more than fifteen years are hereby authorized.

B. All agreements with private independent contractors for the operation, or provision and operation, of jails must 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 but not limited to adequacy or appropriateness of the proposed plan or standards; suitability or qualifications of the proposed contractor or his employees; absence of required or desirable contract provisions; unavailability of funds or any other reasonable grounds whatsoever, whether like or unlike the foregoing. No agreement shall be valid or enforceable without such 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 such standards.

E. All agreements with private independent contractors for the operation, or provision and operation, of jails must 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. Such 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 such 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 act 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.

**Meaning of "this act".** - The words "this act", appearing in Subsection G, refer to Laws 1984, ch. 22, which is compiled as various sections throughout Chapters 4, 6, 13 and 33. See the Table of Disposition of Laws in Volume 13.

**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 § 33-3-26 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 to 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.

**Cross-references.** - As to assault upon peace officer, see 30-22-21 NMSA 1978.

As to assisting in assault upon peace officer, see 30-22-26 NMSA 1978.

**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 4**

### **NEW MEXICO BOYS' SCHOOL**

### **33-4-1 to 33-4-6. Repealed.**

#### **ANNOTATIONS**

**Cross-references.** - As to creation of youth authority, see 9-20-4 NMSA 1978.

**Repeals.** - Laws 1988, ch. 101, § 51 repeals 33-4-1 to 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. For provisions of former sections, see 1987 Replacement Pamphlet.

## **ARTICLE 5 GIRLS' WELFARE HOME**

### **33-5-1, 33-5-2. Repealed.**

#### **ANNOTATIONS**

**Cross-references.** - As to creation of youth authority, see 9-20-4 NMSA 1978.

**Repeals.** - Laws 1988, ch. 101, § 51 repeals 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. For provisions of former sections, see 1987 Replacement Pamphlet.

## **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.

**Cross-references.** - For detention facilities under Children's Code, see 32-1-6, 32-1-25 NMSA 1978.

As to creation of youth authority, see 9-20-4 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*, 44 N.M. 144, 99 P.2d 462 (1930).

**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*, 44 N.M. 144, 99 P.2d 462 (1930).

**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*, 44 N.M. 144, 99 P.2d 462 (1930).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 60 Am. Jur. 2d Penal and Correctional Institutions §§ 8, 9, 11.

76 C.J.S. Reformatories § 2.

### **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.

**Cross-references.** - As to 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.

### **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.

### **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.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 60 Am. Jur. 2d Penal and Correctional Institutions §§ 5, 10.

76 C.J.S. Reformatories §§ 2, 4, 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 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.

### **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.

**Compiler's note.** - 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.

## **ARTICLE 7 PRISON INDUSTRIES**

### **33-7-1 to 33-7-12. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1981, ch. 127, § 20, repeals 33-7-1 to 33-7-12 NMSA 1978, relating to prison industries. For provisions of former sections, see 1978 original pamphlet and 1980 cumulative supplement. For present provisions, see 33-8-1 to 33-8-16 NMSA 1978.

Laws 1981, ch. 127, contains no effective date provision applicable to this section, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

## **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.

**Compiler's note.** - 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 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 any 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.

**Corrections Industries Act.** - See 33-8-1 NMSA 1978 and notes thereto.

### **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.

**Corrections Industries Act.** - See 33-8-1 NMSA 1978 and notes thereto.

### **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.

### **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 repeals 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. For provisions of the former section, see the 1983 Replacement Pamphlet.

Laws 1987, ch. 75, § 2 provides that the terms of the members of the former corrections industries commission shall expire on June 19, 1987.

Laws 1987, ch. 75, § 3 provides that the act shall not alter or affect the validity of any action taken by the corrections industry commission prior to June 19, 1987.

### **33-8-6. Commission; powers and duties.**

The commission shall have the following powers and duties:

A. to 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 which will serve as a means of enhancing vocational skills;

B. to determine whether any enterprise should be established, expanded, diminished or discontinued;

C. to establish policy with respect to the conduct of all enterprises;

D. to 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 which 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. to 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. to act as liaison with private industry, organized labor, the legislature and the general public;

G. to obtain and provide technical assistance for enterprise programs;

H. to hold meetings at such times and for such periods as it deems essential, but not less than quarterly;

I. to recommend to the department the adoption of rules and regulations necessary to carry out the provisions of the Corrections Industries Act;

J. notwithstanding any other provision of law, to adopt policies and procedures which would 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, to adopt policies and procedures which would 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. to 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. to 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. to assist in the process of inmate occupational placement upon release from confinement by coordination with the parole board and the field services division; and

O. to prepare an annual report to the governor and the legislature which shall contain:

- (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.

**Cross-references.** - As to procurements pursuant to the Corrections Industries Act, see 13-1-189 NMSA 1978.

**Corrections Industries Act.** - See 33-8-1 NMSA 1978 and notes thereto.

### **33-8-6.1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1985 (1st S.S.), ch. 7, § 6 repeals 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. For provisions of former section, see 1985 cumulative supplement.



Laws 1987, ch. 5, § 3 attempted to revive this section by repealing laws 1985 (1st S.S.), ch. 7, § 6. However, because this reviver is constitutionally questionable and because Laws 1987, ch. 6, § 1 contains language identical to former 33-8-6.1, the reviver has not been 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.

**Cross-references.** - As to 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, repeals 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 provisions of former section, see 1983 replacement pamphlet. For present comparable provisions, see 13-1-189 NMSA 1978.

Laws 1984, ch. 65, contains 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 note.** - Laws 1984, ch. 64, § 24, purportedly amended 33-8-10 NMSA 1978. This 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 repeals 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 provisions of former section, see 1983 replacement pamphlet. 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. 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 a state agency, local public bodies, the state agencies of other states in the union and their local public bodies, agencies of the federal government, tribal and pueblo governments, nonprofit organizations properly registered under state law and supported wholly or in part by funds derived from public taxation and persons, partnerships, corporations or associations which provide public school transportation services to a state agency or local public body pursuant to contract.

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.

C. Any 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 13 [33-8-13 NMSA 1978] of the Corrections Industries Act.

E. Notwithstanding the provisions of Subsection A of this section, to assure the most effective use of state-owned land, produced 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 the department of finance and administration.

**History:** Laws 1981, ch. 127, § 12.

**Cross-references.** - As to procurements pursuant to the Corrections Industries Act, see 13-1-189 NMSA 1978.

**Corrections Industries Act.** - See 33-8-1 NMSA 1978 and notes thereto.

### **33-8-12.1. Repealed.**

## **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 5, § 4 repeals 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. For provisions of former section, see 1990 Replacement Pamphlet.

### **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 shall not apply to inmate employees.

**History:** Laws 1981, ch. 127, § 13.

**Corrections Industries Act.** - See 33-8-1 NMSA 1978 and notes thereto.

**Unemployment Compensation Law.** - See 51-1-1 NMSA 1978 and notes thereto.

### **33-8-14. Industrial deductions.**

Every inmate confined in a facility and engaged in an enterprise program shall be awarded, in addition to meritorious deductions pursuant to Section 33-2-34 NMSA 1978, a maximum deduction of twenty days industrial good time per month based on work conduct, performance and responsibilities as determined by his immediate work supervisor, with the approval of the facility superintendent; provided that no inmate engaged in an enterprise program shall receive less than ten days industrial good time per month. Industrial good time shall be calculated on a basis so that any inmate engaged in an enterprise program for less than a month shall receive a proportionate share of the industrial good time authorized pursuant to this section. With respect to persons sentenced for crimes committed on or after July 1, 1979, industrial good time shall be deducted from both the basic sentence to be served and any enhanced term of imprisonment pursuant to the provisions of the Criminal Sentencing Act [31-18-12 to 31-18-21 NMSA 1978]. With respect to persons sentenced for crimes committed prior to that date, industrial good time shall be deducted from both the basic maximum and minimum sentence [sentences]. The department shall award industrial good time to New Mexico inmates confined in federal and out-of-state corrections facilities on the basis of inmate reports which shall be furnished by such facilities on a periodic basis. No inmate shall forfeit more than fifty percent of his industrial good time deductions accrued during the previous twelve months. After forfeiture of any portion of an inmate's accrued industrial good time deductions, the remainder shall vest and shall not be subject to further forfeiture. Every inmate engaged in an enterprise program shall receive a quarterly statement of his accrued industrial good time deductions.

**History:** Laws 1981, ch. 127, § 14.

**Compiler's note.** - Laws 1990, ch. 42, § 1, effective May 16, 1990, repeals Laws 1988, ch. 78, § 8 which had repealed and reenacted this section, effective July 1, 1990.

**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*, 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*, 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*, 104 N.M. 672, 726 P.2d 349 (1986).

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*, 104 N.M. 672, 726 P.2d 349 (1986).

**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*, 104 N.M. 345, 721 P.2d 771, cert. denied, 479 U.S. 917, 107 S. Ct. 321, 93 L. Ed. 2d 294 (1986).

### **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.

**Bracketed material.** - The bracketed references to "secretary of corrections" and "corrections department" were inserted by the compiler, as 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 renames the former corrections and criminal rehabilitation department as the corrections department. Laws 1981, ch. 73, § 4, provides 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. The bracketed insertions were not enacted by the legislature and are not part of the law.

## **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.

**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 [this article]:

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.

**The 1989 amendment,** effective July 1, 1989, inserted "Adult" in the undesignated introductory paragraph.

### **33-9-3. Community corrections grant fund; established.**

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 [this article]. The fund shall be for the purpose of providing programs and services for the diversion of criminal offenders to community-based settings.

**History:** Laws 1983, ch. 202, § 3; 1988, ch. 101, § 34; 1989, ch. 219, § 3.

**The 1989 amendment,** effective July 1, 1989, inserted "Adult" in the second sentence.

### **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 [this article]; 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.

**Cross-references.** - As to secretary of corrections, see 9-3-4 NMSA.

As to 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 selected pursuant to the provisions of Section 33-9-7 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 offender 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 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. Notwithstanding the provisions of Subsection A of this section:

(1) the department may utilize the fund to place individuals eligible or within twelve months of eligibility for parole in community-based settings. 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; and

(2) 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 utilization of the fund or the capacity of a program, or the department may authorize additional programs or additional funding for existing programs.

C. The department may utilize not more than twenty-five percent of the fund to contract directly for programs, including programs for New Mexico Indian tribes and pueblos for diversion of state law offenders, or to establish programs operated by the department; provided, however, that the department may utilize up to sixty percent of the fund to operate adult 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 Adult Community Corrections Act [this article]. An applicant shall retain the authority to accept or reject the placement of any person in a program.

**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.

**Cross-references.** - As to adult parole board, see 9-3-11 NMSA 1978.

As to juvenile parole board, see 32-2-2 NMSA 1978.

**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.

**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.

### **33-9-6. Application review panel.**

The department shall establish a panel to review all applications for funding under the Adult Community Corrections Act [this article]. The panel shall make recommendations to the secretary of corrections regarding each application. The panel shall be appointed by the secretary of corrections and shall include representatives of corrections, the judiciary, law enforcement, local and tribal government, interested organizations and the general public. The panel may work jointly with any other panel established pursuant to Section 33-9A-4.

**History:** Laws 1983, ch. 202, § 6; 1989, ch. 219, § 5.

**The 1989 amendment**, effective July 1, 1989, inserted "Adult" in the first sentence, and added the last sentence.

### **33-9-7. State selection panel.**

A. The department shall establish a state panel whose duties shall be to immediately screen and identify criminal offenders sentenced to imprisonment in a correctional facility of the department, except individuals sentenced or transferred from a judicial district which has established a local panel to exercise these duties pursuant to the provisions of Section 33-9-8 NMSA 1978, who meet the following criteria:

(1) the crime 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 offender is willing to enter into a contract which establishes objectives which 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 criminal offenders 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 criminal offender is suitable for placement in a program, a recommendation to that effect and for modification of sentence shall be presented as soon as possible to the sentencing judge who may, notwithstanding any provision of law, accept, modify or reject the recommendation. The sentencing judge's determination shall be presented to the county, municipality or private nonprofit organization, as applicable, for approval or rejection. In no event shall the sentencing judge order to be placed into a program any criminal offender whom the state selection panel has not approved.

**History:** Laws 1983, ch. 202, § 7; 1988, ch. 101, § 36; 1989, ch. 219, § 6.

**The 1989 amendment**, effective July 1, 1989 deleted former Subsection A(1), which read: "the offender has not been convicted of a crime involving the use of a firearm"; redesignated former Subsections A(2) and A(3) as present Subsections A(1) and A(2); substituted "shall" for "must" in Subsection A(2); and in Subsection C inserted "sentencing judge's" in the second sentence, and added the last sentence.

### **33-9-8. Local selection panel.**

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 Section 33-9-7 NMSA 1978, and, using the same criteria as the state panel, the local panel may screen and identify criminal offenders. In no event shall the sentencing judge order to be placed into a program any criminal offender whom the local selection panel has not approved. The composition of a local panel shall include, to the maximum extent possible, representatives of the judiciary, the office of the district attorney, the office of the public defender, the adult probation and parole division of the department, the county sheriff or the municipal police department, individuals representing local programs and private citizens.

**History:** Laws 1983, ch. 202, § 8; 1988, ch. 101, § 37; 1989, ch. 219, § 7.

**The 1989 amendment**, effective July 1, 1989, inserted the second sentence, and substituted "adult probation and parole division" for "field services division" in the last sentence.

### **33-9-9. Sentencing.**

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, a report shall be prepared by the adult probation and parole division of the department containing a recommendation regarding a community corrections placement or a diagnostic evaluation shall be completed by the department containing the recommendation of the department regarding that placement including a statement that the criminal offender has been approved for a program by the state or local selection panel. The sentencing judge shall consider that report or evaluation prior to making that commitment.

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 1983, ch. 202, § 9; 1987, ch. 341, § 4; 1988, ch. 101, § 38; 1989, ch. 219, § 8.

**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.

**The 1989 amendment**, effective July 1, 1989, substituted "Chapter 33, Article 9A NMSA 1978" for "Sections 39 through 44 of this act".

**Effective dates.** - Laws 1988, ch. 101, § 52 makes the act effective on July 1, 1989.

### **33-9A-2. Definitions.**

As used in the Juvenile Community Corrections Act [this article]:

- A. "authority" means the youth authority;
- B. "delinquent" means a child adjudicated delinquent pursuant to the Children's Code;
- C. "fund" means the juvenile community corrections grant fund;
- D. "secretary" means the secretary of the authority; and
- E. "volunteer services" means services provided by individuals or organizations without compensation.

**History:** Laws 1988, ch. 101, § 40; 1989, ch. 219, § 10.

**The 1989 amendment**, effective July 1, 1989, added present Subsection B, and redesignated former Subsections B through D as present Subsections C through E.

**Effective dates.** - Laws 1988, ch. 101, § 52 makes the act effective on July 1, 1989.

**Children's Code.** - See 32-1-1 NMSA 1978 and notes thereto.

### **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 authority. All balances in the fund are appropriated to the authority 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 [this article]. 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.

B. Money in the fund shall be used by the authority 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 which is not a nonprofit organization without the approval of the secretary. The authority 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 authority for administration and program monitoring by the authority. 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 which provide standards for qualifications for grants, priorities for awarding of grants and other standards regarding juvenile community corrections programs deemed necessary. The authority 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 authority 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 authority 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.

**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".

**The 1990 amendment,** effective May 16, 1990, substituted "ten percent" for "five percent" in the second sentence of Subsection C.

**Effective dates.** - Laws 1988, ch. 101, § 52 makes the act effective on July 1, 1989.

### **33-9A-4. Applications; criteria; review panel.**

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 authority, 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 authority may utilize the fund to place individuals eligible, or within twelve months of eligibility, for parole in community-based settings. The juvenile parole board may, in its discretion, require participation by a delinquent in a program as a condition of parole pursuant to the provisions of Section 32-2-6 NMSA 1978.

C. The authority 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 authority; provided, however, that the authority 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 authority shall establish additional guidelines for allocation of funds under the Juvenile Community Corrections Act [this article]. An applicant shall retain the authority to accept or reject the placement of any delinquent in a program.

E. The authority shall establish a panel to review all applications for grants from the fund. The panel shall make recommendations to the secretary regarding each application. The review panel shall include representatives of juvenile corrections, the judiciary, law enforcement, local and tribal government, interested organizations and the general public. The panel may work jointly with any other review panel established pursuant to Section 33-9-6 NMSA 1978.

**History:** Laws 1988, ch. 101, § 42; 1989, ch. 219, § 11; 1991, ch. 201, § 2.

**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.

**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.

**Effective dates.** - Laws 1988, ch. 101, § 52 makes the act effective on July 1, 1989.

### **33-9A-5. Selection panels.**

A. The authority shall establish a state panel whose duties shall be to immediately screen and identify delinquents sentenced to a juvenile correctional facility of the authority and transferred to the legal custody of the authority, except individuals who are sentenced or transferred from a judicial district which 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 which shall be achieved before release from the program.

B. The authority 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 juvenile parole board 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 office of the district attorney, the office of the public defender, the community services division of the authority, 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.

**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.

**Effective dates.** - Laws 1988, ch. 101, § 52 makes the act effective on July 1, 1989.

### **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.

**Effective dates.** - Laws 1988, ch. 101, § 52 makes the act effective on July 1, 1989.

## **ARTICLE 10 NATIVE AMERICAN COUNSELING**

### **33-10-1. Short title.**

This act [33-10-1, 33-10-2 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 [33-10-1, 33-10-2 NMSA 1978] 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.

**Compiler's note.** - The heading of Laws 1983, ch. 276, purports 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.

## **ARTICLE 11 INMATE LITERACY**

### **33-11-1. Short title.**

Sections 1 through 3 [33-11-1 to 33-11-3 NMSA 1978] of this act may be cited as the "Inmate Literacy Act".

**History:** Laws 1988, ch. 78, § 1.

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

**Compiler's note.** - Laws 1990, ch. 15, § 1 repeals Laws 1988, ch. 78, § 10, which had repealed the Inmate Literacy Act, effective July 1, 1990.

### **33-11-2. Purpose of act.**

The purpose of the Inmate Literacy Act [33-11-1 to 33-11-3 NMSA 1978] 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.

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

**Compiler's note.** - Laws 1990, ch. 15, § 1 repeals Laws 1988, ch. 78, § 10, which had repealed the Inmate Literacy Act, effective July 1, 1990.

### **33-11-3. Regulations.**

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.

A. 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 his sentence of incarceration; and either
- (3) is not exempted due to a medical, developmental or learning disability; or
- (4) does not possess a general education diploma or a high school diploma.

B. The regulations adopted shall require that:

- (1) a minimum education standard shall be met beginning in 1988, and in all subsequent years:
  - (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 general education diploma;

(2) inmates who meet the criteria in Subsection A 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 Subsection B of this section; 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 A of Section 33-2-34 NMSA 1978.

C. 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.

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

**Effective date of the Inmate Literacy Act.** - The phrase "effective date of the Inmate Literacy Act", referred to in Subsection A(1), means May 15, 1988, the effective date of Laws 1988, Chapter 78.

**Compiler's notes.** - Laws 1990, ch. 15, § 1 repeals Laws 1988, ch. 78, § 10, which had repealed the Inmate Literacy Act, effective July 1, 1990.