

# UNANNOTATED

## CHAPTER 33 Correctional Institutions

### ARTICLE 1 Corrections Department

#### 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.

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

As used in the Corrections Act:

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

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

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

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

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

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

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

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

#### 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. Repealed.**

**History:** 1953 Comp., § 42-9-4, enacted by Laws 1969, ch. 226, § 4; 1971, ch. 221, § 4; 1977, ch. 257, § 99; repealed by Laws 2005, ch 23, § 7.

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

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

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

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

### **33-1-4.2. Restraints on pregnant prisoners.**

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

- (1) an immediate and serious threat of harm to herself, staff or others; or
- (2) a substantial flight risk and cannot be reasonably contained by other means.

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

**History:** Laws 2009, ch. 73, § 1.

### **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.

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

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

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

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

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

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

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

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

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

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

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

### **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.

### **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.

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

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

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

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

A. Correctional officers of the corrections department, or any employee of the corrections department who has at the particular time the principal duty to hold in custody or supervise any person accused or convicted of a criminal offense or placed in the legal custody or supervision of the corrections department, shall have the power of a peace officer with respect to arrests and enforcement of laws when on the premises of a

New Mexico correctional facility or while transporting a person committed to or under the supervision of the corrections department; when supervising any person committed to or under the supervision of the corrections department anywhere within the state; or when engaged in any effort to pursue or apprehend any such person. No correctional officer or other employee of the corrections department shall be convicted or held liable for any act performed pursuant to this section if a peace officer could lawfully have performed the same act in the same circumstances.

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

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

- (1) field investigations;
- (2) surveillance;
- (3) searches and seizures conducted alone or in cooperation with a state or local law enforcement agency; and
- (4) security during the course of a probation or parole revocation hearing or proceeding or any other hearing or appearance required by law.

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

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

### **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.

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

### **33-1-17. Private contract.**

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

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

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

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

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

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

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

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

- (1) setting forth comprehensive standards for conditions of incarceration;
- (2) that the contractor assumes all liability caused by or arising out of all aspects of the provision or operation of the facility;
- (3) for liability insurance or other proof of financial responsibility acceptable to the general services department covering the contractor and its officers, employees and agents in an amount sufficient to cover all liability caused by or arising out of all aspects of the provision or operation of the facility;
- (4) for termination for cause upon ninety days' notice to the contractor for failure to meet contract provisions when such failure seriously affects the availability or operation of the facility;
- (5) that venue for the enforcement of the contract shall be in the district court for Santa Fe county;
- (6) that continuation of the contract is subject to the availability of funds; and
- (7) that compliance with the contract shall be monitored by the corrections department and the contract may be terminated for noncompliance.

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

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

G. Any contract entered into by the corrections department with a private contractor to operate an existing facility shall include a provision securing the right of all persons employed by that facility prior to the effective date of that contract to be employed by

that contractor in any position for which they qualify before that position is offered to any person not employed by that facility prior to that date.

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

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

There are created in the state treasury special funds to be known as the "corrections department building fund", the "Guadalupe county prison fund" and the "New Mexico prison fund". The funds shall consist of money appropriated by the legislature, from year to year, from the income of the permanent fund and land income of which the penitentiary of New Mexico is the beneficiary and any other revenues that are appropriated to the funds, other than revenues derived from property taxes or general fund revenues. Income from investment of each special fund created by this section shall be credited to that fund.

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

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

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

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

- (1) payment for the corrections department central office complex;
- (2) a correctional facility in Guadalupe county of not less than five hundred fifty and not more than two thousand two hundred beds;
- (3) a correctional facility in Lea, Chaves or Santa Fe county of not less than one thousand two hundred and not more than two thousand two hundred beds; and
- (4) design and construction of a support services building, a laundry and an infirmary at the penitentiary of New Mexico in Santa Fe.



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

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

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

### **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, 33-1-19 NMSA 1978] of this act. Such transfers shall not be restricted by the four-percent limitation on division transfers as set forth in Section 3 of Chapter 131 of Laws 1990 of the second regular session of the thirty-ninth legislature.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) a controlled substance;
- (2) a prescription drug that is dispensed as part of a customized patient medication package;
- (3) a prescription drug that is not dispensed as a unit-dose package or a unit-of-issue package; or
- (4) a prescription drug that is not properly labeled with the identity, strength, lot number and expiration date.

E. As used in this section:

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

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

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

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

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

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

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

**History:** Laws 2009, ch. 236, § 1.

### **33-1-22. Correctional facilities; care coordination.**

A. A correctional facility shall ensure that each inmate of that correctional facility is screened for mental illness and for habitual substance abuse within thirty days of incarceration in that facility.

B. A correctional facility shall offer a qualifying inmate the opportunity to enroll in medicaid in accordance with the provisions of Section 27-2-12.22 NMSA 1978.

C. To the extent allowed by federal law or waiver agreement, care coordinators employed by medicaid managed care organizations shall link inmates who are enrolled in a medicaid managed care program to care coordination prior to the inmates' release.

D. The human services department [health care authority department] shall provide information to correctional facilities seeking medicaid care coordination for qualifying inmates.

E. As used in this section:

(1) "care coordination" means an assessment for health risks and the creation of a plan of care to address an individual's comprehensive health needs, including access to physical health care and mental health services; substance use disorder treatment; and transportation services;

(2) "correctional facility" means a:

(a) state correctional facility;

(b) privately operated correctional facility;

(c) county jail;

(d) privately operated jail;

(e) detention facility that is operated under the authority of the children, youth and families department and that holds the individual pending a court hearing; or

(f) facility that is operated under the authority of the children, youth and families department and that provides for the care and rehabilitation of an individual who is under eighteen years of age and who has committed an act that would be designated as a crime under the law if committed by an individual who is eighteen years of age or older;

(3) "medicaid" means the joint federal-state health coverage program pursuant to Title 19 or Title 21 of the federal Social Security Act and rules promulgated pursuant to that act; and

(4) "qualifying inmate" means an inmate who has been identified as currently having a mental illness or a substance use disorder, either through the screening provided pursuant to the provisions of Subsection A of this section or as evidenced in the inmate's medical record.

**History:** Laws 2018, ch. 74, § 2.

### **33-1-23. Correctional facilities; breastfeeding and lactation policies.**

A. By January 1, 2020, every correctional facility that houses female inmates shall develop and implement a breastfeeding and lactation policy for lactating female inmates that is based on current accepted best practices. The policy shall include provisions for:

(1) human milk expression with access to an electric breast pump, milk storage and transport or disposal;

(2) continuation of medication-assisted addiction treatment;

(3) breastfeeding in county and municipal detention facilities that can accommodate skin-to-skin contact visits and in all facilities operated by the corrections department and children, youth and families department; and

(4) medically appropriate support and care related to cessation of lactation or weaning if preferred by the lactating inmate.

B. For purposes of this section, "correctional facility" means a jail, prison or other detention facility, whether operated by a government or private contractor, that is used for the confinement of adult or juvenile persons who are charged with or convicted of a violation of a law or ordinance

**History:** Laws 2019, ch. 71, § 1.

## **ARTICLE 1A**

### **Correctional Facilities Housing**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **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.

#### **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.

#### **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.

### **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.

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

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

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

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



### **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.

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

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

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

### **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.

### **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.

### **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 [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.

### **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.

### **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.

#### **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.

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

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

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

### **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.

### **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.

### **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.

### **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.

### **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.

### **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.

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

### **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.

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

### **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.

### **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 [employee], they shall be justified and shall be held guiltless; but such officer, assistant, guard or other employe [employee] 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.

### **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.

### **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.

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

### **33-2-34. Eligibility for earned meritorious deductions.**

A. To earn meritorious deductions, a prisoner confined in a correctional facility designated by the corrections department must be an active participant in programs recommended for the prisoner by the classification supervisor and approved by the warden or the warden's designee. Meritorious deductions shall not exceed the following amounts:

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

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

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

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

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

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

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

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

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

(1) for successfully completing an approved vocational, substance abuse or mental health program, one month; except when the prisoner has a demonstrable physical, mental health or developmental disability that prevents the prisoner from successfully earning a high school equivalency credential, in which case, the prisoner shall be awarded three months;



- (2) for earning a high school equivalency credential, three months;
- (3) for earning an associate's degree, four months;
- (4) for earning a bachelor's degree, five months;
- (5) for earning a graduate qualification, five months; and

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

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

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

- (1) disobeys an order to perform labor, pursuant to Section 33-8-4 NMSA 1978;
- (2) is in disciplinary segregation;
- (3) is confined for committing a serious violent offense and is within the first sixty days of receipt by the corrections department; or
- (4) is not an active participant in programs recommended and approved for the prisoner by the classification supervisor.

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

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

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

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

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

L. As used in this section:

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

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

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

(4) "serious violent offense" means:

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

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

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

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

- (e) first degree kidnapping, as provided in Section 30-4-1 NMSA 1978;
- (f) first and second degree criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;
- (g) second and third degree criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;
- (h) first and second degree robbery, as provided in Section 30-16-2 NMSA 1978;
- (i) second degree aggravated arson, as provided in Section 30-17-6 NMSA 1978;
- (j) shooting at a dwelling or occupied building, as provided in Section 30-3-8 NMSA 1978;
- (k) shooting at or from a motor vehicle, as provided in Section 30-3-8 NMSA 1978;
- (l) aggravated battery upon a peace officer, as provided in Section 30-22-25 NMSA 1978;
- (m) assault with intent to commit a violent felony upon a peace officer, as provided in Section 30-22-23 NMSA 1978;
- (n) aggravated assault upon a peace officer, as provided in Section 30-22-22 NMSA 1978; or
- (o) any of the following offenses, when the nature of the offense and the resulting harm are such that the court judges the crime to be a serious violent offense for the purpose of this section: 1) involuntary manslaughter, as provided in Section 30-2-3 NMSA 1978; 2) fourth degree aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3) third degree assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978; 4) fourth degree aggravated assault against a household member, as provided in Section 30-3-13 NMSA 1978; 5) third degree assault against a household member with intent to commit a violent felony, as provided in Section 30-3-14 NMSA 1978; 6) third and fourth degree aggravated stalking, as provided in Section 30-3A-3.1 NMSA 1978; 7) second degree kidnapping, as provided in Section 30-4-1 NMSA 1978; 8) second degree abandonment of a child, as provided in Section 30-6-1 NMSA 1978; 9) first, second and third degree abuse of a child, as provided in Section 30-6-1 NMSA 1978; 10) third degree dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978; 11) third and fourth degree criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; 12) fourth degree criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978; 13) third degree robbery, as provided in Section 30-16-2 NMSA 1978; 14) third degree homicide by vehicle or great

bodily harm by vehicle, as provided in Section 66-8-101 NMSA 1978; or 15) battery upon a peace officer, as provided in Section 30-22-24 NMSA 1978.

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

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

### **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.

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

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

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

- (1) federal or out-of-state correctional facility; or
- (2) correctional facility in New Mexico operated by a private company pursuant to a contract with the corrections department.

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

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

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

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

- (1) federal or out-of-state correctional facility; or
- (2) correctional facility in New Mexico operated by a private company pursuant to a contract with the corrections department.

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

### **33-2-38. Computation of term.**

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

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

### **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.

### **33-2-40. Fines and costs; service for.**

All convicts sentenced to the penitentiary of New Mexico who have a fine or costs or both attached to the sentence shall not be required to serve more than fifteen days for the 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; 1978 Comp., § 33-2-40; 2023, ch. 184, § 5.

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

### **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.

### **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.

### **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.

### **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.

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

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

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

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

### **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.

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

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

**History:** Laws 1991, ch. 88, § 1.

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

A. As corrections department funding and department supplies of naloxone permit, upon discharge of an inmate who has been diagnosed with an opioid use disorder from



a corrections facility, regardless of whether that inmate has received treatment for that disorder, the corrections department shall:

- (1) ensure that the inmate is provided with opioid overdose education that:
  - (a) conforms to department of health or federal substance abuse and mental health services administration guidelines for opioid overdose education;
  - (b) explains the causes of an opioid overdose;
  - (c) instructs when and how to administer in accordance with medical best practices: 1) life-saving rescue techniques; and 2) an opioid antagonist; and
  - (d) explains how to contact appropriate emergency medical services; and
- (2) provide the inmate, as the inmate leaves the correctional facility, with:
  - (a) two doses of naloxone in either a generic form or in a form approved by the federal food and drug administration; and
  - (b) a prescription for naloxone.

B. As used in this section:

- (1) "corrections facility" means a prison or other detention facility, whether operated by a government or private contractor, that is used for confinement of adult or juvenile persons who are charged with or convicted of a violation of a law or an ordinance; and
- (2) "naloxone" means naloxone hydrochloride, which is an opioid antagonist for the treatment of an opioid overdose.

**History:** Laws 2017, ch. 59, § 3.

## **ARTICLE 2A**

### **Corrections Population Control**

#### **33-2A-1. Short title.**

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

**History:** Laws 2002, ch. 8, § 1.

#### **33-2A-2. Purpose.**

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

**History:** Laws 2002, ch. 8, § 2.

### **33-2A-3. Definitions.**

As used in the Corrections Population Control Act:

- A. "commission" means the corrections population control commission;
- B. "female correctional facilities" means:
  - (1) the women's correctional facility, located in Grants; and
  - (2) any other female correctional facility so designated by the corrections department;
- C. "male correctional facilities" means:
  - (1) the penitentiary of New Mexico, located in Santa Fe;
  - (2) the central New Mexico correctional facility, located in Los Lunas;
  - (3) the southern New Mexico correctional facility, located in Las Cruces;
  - (4) the western New Mexico correctional facility, located in Grants;
  - (5) the Roswell correctional facility, located in Hagerman;
  - (6) the Guadalupe county correctional facility, located in Santa Rosa;
  - (7) the Lea county correctional facility, located in Hobbs; and
  - (8) any other male correctional facility so designated by the corrections department;
- D. "nonviolent offender" means:
  - (1) a person convicted only of possession of a controlled substance, pursuant to the provisions of Section 30-31-23 NMSA 1978;

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

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

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

**History:** Laws 2002, ch. 8, § 3.

### **33-2A-4. Repealed.**

**History:** Laws 2002, ch. 8, § 4; repealed by Laws 2002, ch. 8, § 8.

### **33-2A-5. Repealed.**

**History:** Laws 2002, ch. 8, § 5; repealed by Laws 2002, ch. 8, § 8.

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

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

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

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

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

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

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

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

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

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

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

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

**History:** Laws 2002, ch. 8, § 6.

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

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

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

**History:** Laws 2002, ch. 8, § 7.

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

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

**History:** Laws 2002, ch. 8, § 8.

## **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.

#### **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.

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

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

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

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

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

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

### **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.

### **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.

### **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.

### **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.

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

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

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

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

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

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

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

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

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

### **33-3-10. Repealed.**

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

A. Whenever any person is committed to jail for nonpayment of any fine or costs or both, the person shall be credited with twenty-four times the state hourly minimum wage a day in reduction thereof for each day or portion of a day of incarceration. When the person has remained incarcerated a sufficient length of time to extinguish the fine or cost or both, computed at this rate, or has paid to the sentencing court the amount of the fine or costs or both, remaining after deducting credit allowed by this section and obtaining from the court an order of release from commitment, the officer having the prisoner in custody shall discharge the prisoner from custody under commitment.

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



**History:** Laws 1889, ch. 9, § 1; C.L. 1897, § 832; Code 1915, § 3045; C.S. 1929, § 75-113; 1941 Comp., § 45-209; 1953 Comp., § 42-2-9; Laws 1961, ch. 48, § 1; 1967, ch. 153, § 1; 1983, ch. 181, § 11; 2001, ch. 170, § 1; 2023, ch. 184, § 6.

### **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.

### **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.

### **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.

### **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.

### **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.

### **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.

### **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.

### **33-3-20. Repealed.**

### **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.

### **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.

### **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.

### **33-3-24. Prisoner-release program.**

The sheriff of any county or the jail administrator of any jail with the approval of the board of county commissioners and the governing body of the municipality, as applicable, may establish a prisoner-release program in accordance with the provisions of Sections 33-2-43 and 33-2-44 NMSA 1978. The labor and industrial commission shall exercise the same supervision over conditions of employment for prisoners working under a prisoner-release program as it does over conditions of employment for free persons. A prisoner working under a prisoner-release program is not entitled to any benefits under the Unemployment Compensation Law [Chapter 51 NMSA 1978] during the term of his sentence. No prisoner involved in a prisoner-release program is an agent, employee or involuntary servant of a county jail while attending school, working in private business or going to or from such assignment.

**History:** Laws 1981, ch. 4, § 1.

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

A. There is created in the state treasury the "local government corrections fund" to be administered by the administrative office of the courts.

B. All balances in the local government corrections fund are appropriated to the administrative office of the courts for payment to counties for county jailer or juvenile detention officer training; for the construction planning, construction, maintenance and operation of the county detention facility, jail or juvenile detention facility; for paying the cost of housing county prisoners or juveniles in any detention facility in the state; for alternatives to incarceration; or for complying with match or contribution requirements for the receipt of federal funds relating to detention facilities, jails or juvenile detention facilities. Payments shall be made quarterly upon certification by the magistrate court or metropolitan court and the motor vehicle division of the taxation and revenue department of eligible amounts as provided in Subsection C of this section.

C. Each county shall be eligible for a payment in an amount equal to the costs and fees collected by a magistrate court or a metropolitan court and the motor vehicle division pursuant to offenses committed within the county and deposited in the local government corrections fund.

D. Payments from the local government corrections fund shall be made upon vouchers issued and signed by the director of the administrative office of the courts upon warrants drawn by the secretary of finance and administration.

E. All money received by a county pursuant to this section shall be deposited in a special fund in the county treasury and shall be used solely for:

- (1) county jailer or juvenile detention officer training;
- (2) the construction planning, construction, maintenance and operation of the county detention facility, jail or juvenile detention facility;
- (3) paying the cost of housing county prisoners or juveniles in any detention facility in the state;
- (4) alternatives to incarceration; or
- (5) complying with match or contribution requirements for the receipt of federal funds relating to detention facilities, jails or juvenile detention facilities.

**History:** Laws 1983, ch. 134, § 1; 1985, ch. 27, § 1; 1987, ch. 251, § 1; 1989, ch. 133, § 2; 2003, ch. 424, § 1; 2011, ch. 173, § 1.

**33-3-25. Local government corrections fund created; administration; distribution. (Effective July 1, 2024.)**

*A. There is created in the state treasury the "local government corrections fund" to be administered by the local government division of the department of finance and administration. The fund consists of gifts, grants, donations, appropriations and distributions to the fund made pursuant to the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].*

*B. All balances in the local government corrections fund are appropriated to the local government division of the department of finance and administration for payment to counties for county jailer or juvenile detention officer training; for the construction planning, construction, maintenance and operation of the county detention facility, jail or juvenile detention facility; for paying the cost of housing county prisoners or juveniles in any detention facility in the state; for alternatives to incarceration; or for complying with match or contribution requirements for the receipt of federal funds relating to detention facilities, jails or juvenile detention facilities.*

*C. Payments from the local government corrections fund shall be made upon vouchers issued and signed by the local government division of the department of finance and administration upon warrants drawn by the secretary of finance and administration.*

*D. All money received by a county pursuant to this section shall be deposited in a special fund in the county treasury and shall be used solely for:*

- (1) county jailer or juvenile detention officer training;*
- (2) the construction planning, construction, maintenance and operation of the county detention facility, jail or juvenile detention facility;*
- (3) paying the cost of housing county prisoners or juveniles in any detention facility in the state;*
- (4) alternatives to incarceration; or*
- (5) complying with match or contribution requirements for the receipt of federal funds relating to detention facilities, jails or juvenile detention facilities.*

**History:** *Laws 1983, ch. 134, § 1; 1985, ch. 27, § 1; 1987, ch. 251, § 1; 1989, ch. 133, § 2; 2003, ch. 424, § 1; 2011, ch. 173, § 1; 2023, ch. 184, § 7.*

### **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.

### **33-3-27. Jail agreements; approval; liability; termination; venue.**

A. Agreements with a private independent contractor for the operation of a jail or for the incarceration of prisoners shall be made for a period of up to five years, but those agreements may allow for additional one-year, two-year or three-year extensions not to exceed a total of six extensions. Agreements binding on future governing bodies for construction, purchase or lease of a jail facility for not more than fifteen years are authorized.

B. All agreements with private independent contractors for the operation or provision and operation of jails shall include a performance bond and be approved in writing, prior to their becoming effective, by the local government division of the department of finance and administration and the office of the attorney general. Disapproval may be based on any reasonable grounds, including adequacy or appropriateness of the proposed plan or standards; suitability or qualifications of the proposed contractor or the contractor's employees; absence of required or desirable contract provisions; unavailability of funds; or any other reasonable grounds. No agreement shall be valid or enforceable without prior approval.

C. All agreements with private independent contractors for the operation or provision and operation of jails shall provide for the independent contractor to provide and pay for training for jailers to meet minimum training standards, which shall be specified in the contract.

D. All agreements with private independent contractors for the operation or provision and operation of jails shall set forth comprehensive standards for conditions of incarceration, either by setting them forth in full as part of the contract or by reference to known and respected compilations of those standards.

E. All agreements with private independent contractors for the operation or provision and operation of jails shall be approved in writing, prior to their becoming effective, by the risk management division of the general services department. Approval shall be conditioned upon contractual arrangements satisfactory to the risk management division for:

(1) the contractor's assumption of all liability caused by or arising out of all aspects of the provision and operation of the jail; and

(2) liability insurance covering the contractor and its officers, jailers, employees and agents in an amount sufficient to cover all liability caused by or arising out of all aspects of the provision and operation of the jail. A copy of the proposed insurance policy for the first year shall be submitted for approval with the contract.

F. All agreements with private independent contractors for the operation or provision and operation of jails shall provide for termination for cause by the local public body parties upon ninety days' notice to the independent contractor. A termination shall be allowed for at least the following reasons:

(1) failure of the independent contractor to meet minimum standards and conditions of incarceration, which standards and conditions shall be specified in the contract; or

(2) failure to meet other contract provisions when the failure seriously affects the operation of the jail.



The reasons for termination set forth in this subsection are not exclusive and may be supplemented by the parties.

G. Venue for the enforcement of any agreement entered into pursuant to the provisions of this section shall be in the district court of the county in which the facility is located or in Santa Fe county.

**History:** 1978 Comp., § 33-3-27, enacted by Laws 1984, ch. 22, § 18; 2001, ch. 153, § 1; 2007, ch. 222, § 1; 2015, ch. 137, § 1.

### **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.

## **ARTICLE 3A**

### **DWI Alternative Facility**

#### **33-3A-1. Alternative sentencing facility; purpose; establishment; provisions.**

A. The legislature recognizes that among individuals who drive under the influence of intoxicating liquor or drugs, there is a growing problem of recidivism, a lack of available space in present jail facilities and a need for alcohol and narcotics abuse counseling. Therefore, the legislature mandates the implementation of an alternative sentencing facility pilot program. The pilot program would incarcerate the repeat offender in a minimum security facility while allowing him to maintain his job and receive counseling for his disease.

B. The metropolitan court and the Bernalillo county detention center, under the supervision of the programs manager of the Bernalillo county detention center, with input from universities and community organizations, shall establish a pilot program that provides for an alternative sentencing facility in Bernalillo county for individuals convicted two or more times of driving under the influence of intoxicating liquor or drugs. The Bernalillo county detention center shall develop, adopt and enforce rules that establish minimum program standards for an alternative sentencing facility program.

C. Prior to sentencing a person convicted of a second or subsequent offense of driving under the influence of intoxicating liquor or drugs, the metropolitan court judge shall request the metropolitan court probation office to prepare a presentence report which shall include information and documentation regarding the offender's prior arrests and convictions for driving under the influence of intoxicating liquor or drugs and his level of alcohol or drug abuse.

D. Notwithstanding any provision of Section 66-8-102 NMSA 1978 to the contrary, a metropolitan court judge may order a person convicted of a second or subsequent offense of driving under the influence of intoxicating liquor or drugs to serve his sentence specified in Subsection E of Section 66-8-102 NMSA 1978 at the alternative sentencing facility.

E. Any person ordered to serve his sentence at the alternative sentencing facility shall be permitted to continue his employment if he is employed. The person shall be allowed out of the facility only long enough to complete his actual hours of employment. Any person not employed at the time of sentencing or while completing his sentence at the facility shall perform community service primarily in the community where the facility is located.

F. An offender ordered to serve his sentence at the alternative sentencing facility who is employed shall pay the cost of his imprisonment according to a sliding fee scale established by the Bernalillo county detention center. All fees collected shall be used to offset the costs of implementing the alternative sentencing facility. An offender ordered to serve his sentence at the alternative sentencing facility who is unemployed or determined to be indigent by the court shall not pay the cost of his imprisonment.

G. During the time of imprisonment, the offender shall undergo substance abuse counseling, educational counseling and lifeskills counseling, under the approved program at the alternative sentencing facility.

H. The metropolitan court and the Bernalillo county detention center shall report to the appropriate legislative interim committee by November 30, 1992 on the progress of the pilot program and any recommendations they may have concerning the continuation of the pilot program or implementation of it in other areas of New Mexico.

I. The provisions of Section 30-22-8 NMSA 1978 shall apply to any person who escapes from an alternative sentencing facility.

**History:** Laws 1992, ch. 81, § 1.

## **ARTICLE 3B**

### **County Detention Facility Reimbursement Act**

#### **33-3B-1. Short title.**

This act [33-3B-1 to 33-3B-4 NMSA 1978] may be cited as the "County Detention Facility Reimbursement Act".

**History:** Laws 2007, ch. 333, § 1.

#### **33-3B-2. Definitions.**

As used in the County Detention Facility Reimbursement Act:

A. "county detention facility" means a facility that is owned, operated or under contract of operation by a board of county commissioners and that is used for the incarceration of prisoners charged with or convicted of a violation of local, state, tribal, federal or international law;

B. "division" means the local government division of the department of finance and administration;

C. "dual supervision offender" means an individual who is serving a probation term and a parole term;

D. "eligible county" means a county that provides information to the New Mexico sentencing commission regarding costs incurred by the county for the incarceration of felony offenders;

E. "felony offender" means an individual who is convicted of a felony and sentenced to confinement in a correctional facility designated by the corrections department and who:

(1) has been released from confinement and is a dual supervision offender and:

(a) has violated parole or is charged with a parole violation;

(b) has violated probation or is charged with a probation violation; or

(c) while on probation or parole, is charged with a violation of local, state, tribal, federal or international law;

(2) has been released from confinement and is serving a parole term and:

(a) has violated parole or is charged with a parole violation; or

(b) while on parole, is charged with a violation of local, state, tribal, federal or international law; or

(3) is awaiting transportation and commitment to the corrections department following the revocation of parole or a sentencing hearing for a felony conviction; and

F. "fund" means the county detention facility reimbursement fund.

**History:** Laws 2007, ch. 333, § 2.

### **33-3B-3. Incarceration of felony offenders in county detention facilities; rate of reimbursement.**

A. The distribution amount for each eligible county each fiscal year shall be derived by multiplying the total amount of money available in the fund for distribution pursuant to this section by the felony offender incarceration percentage for that county. The felony offender incarceration percentage shall be equal to a fraction:

(1) the numerator of which is the rolling average of the number of felony offenders incarcerated in an eligible county on June 30 of each of the three fiscal years immediately preceding the fiscal year in which the distribution is to be made pursuant to Section 4 [33-3B-4 NMSA 1978] of the County Detention Facility Reimbursement Act; and

(2) the denominator of which is the rolling average of the number of felony offenders incarcerated in all eligible counties on June 30 of each of the three fiscal years immediately preceding the fiscal year in which the distribution is to be made pursuant to Section 4 of the County Detention Facility Reimbursement Act.

B. Annually, on or before December 1, the New Mexico sentencing commission shall:

(1) determine the felony offender incarceration percentage for each eligible county;

(2) calculate the distribution amount for each eligible county by applying the formula in Subsection A of this section; and

(3) certify to the division the felony incarceration percentage and the distribution amount for each eligible county.

**History:** Laws 2007, ch. 333, § 3.

### **33-3B-4. County detention facility reimbursement fund created; distribution.**

A. The "county detention facility reimbursement fund" is created in the state treasury. The fund consists of appropriations, gifts, grants, donations and bequests made to the fund. Money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year, and income from investment of the fund shall be credited to the fund. The division shall administer the fund, and money in the fund is appropriated to the division to make distributions to counties in accordance with Subsection B of this section. Disbursements from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the director of the division. No money in the fund shall be expended by the division for the purpose of administering the fund.

B. Annually, on or before January 30 and to the extent money in the fund is available for such purposes, money in the fund shall be distributed by the state treasurer as follows:

(1) an amount equal to seventy percent of the fund less thirty thousand dollars (\$30,000) to eligible counties in the amounts certified to the division in accordance with Section 3 [33-3B-3 NMSA 1978] of the County Detention Facility Reimbursement Act;

(2) thirty thousand dollars (\$30,000) to the New Mexico sentencing commission to fund the annual calculation of the felony offender incarceration percentage and the distribution amount for each eligible county; and

(3) the remainder of the fund to counties other than class A counties that are designated by the division as needing additional resources due to inadequate base revenues.

**History:** Laws 2007, ch. 333, § 4.

## **ARTICLE 4**

### **New Mexico Boys' School (Repealed.)**

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

## **ARTICLE 5**

### **Girls' Welfare Home (Repealed.)**

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

## **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.

### **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.

### **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.

### **33-6-6. Budget for maintenance of homes in counties; fund; disbursements.**

For the purpose of maintaining juvenile detention homes in counties that have them, there may be appropriated by the board of county commissioners of the county sufficient funds to provide for the maintenance, upkeep, repair and improvement of a juvenile detention home.

**History:** Laws 1939, ch. 151, § 2; 1941 Comp., § 45-609; 1953 Comp., § 42-6-9; Laws 1953, ch. 9, § 1; 1973, ch. 258, § 142; 1976, ch. 42, § 5.

### **33-6-7. Home in one county keeping juveniles transferred from other counties; maintenance of juvenile.**

In those counties without juvenile detention homes, if the district judges of such counties shall determine it advisable that a juvenile within such counties should be transferred to a juvenile detention home for safekeeping or detention, and the board of county commissioners of the county in which the juvenile detention home is located agree [agrees] to said transfer, the county from which said juvenile is transferred shall bear the expense of the maintenance and upkeep of said juvenile in the juvenile detention home, which upkeep and maintenance of such juvenile shall be the sum computed by adding the actual per diem cost of housing said juvenile to an amount equal to fifty percent of such per diem housing cost to cover administrative and amortization expense.

**History:** Laws 1939, ch. 151, § 4; 1941 Comp., § 45-610; 1953 Comp., § 42-6-10; Laws 1953, ch. 58, § 1; 1976, ch. 42, § 6.

### **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.

### **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 (Repealed.)**

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

## **ARTICLE 8 Corrections Industries**

### **33-8-1. Short title.**

Sections 1 through 15 [33-8-1 to 33-8-15 NMSA 1978] of this act may be cited as the "Corrections Industries Act".

**History:** Laws 1981, ch. 127, § 1.

### **33-8-2. Definitions.**

As used in the Corrections Industries Act:

A. "commission" means the corrections industries commission;

B. "department" means the corrections department;

C. "enterprise" means a manufacturing, agricultural or service operation or group of closely related operations within the bounds of a facility but does not include standard facility maintenance activities and services;

D. "facility" means a place under the jurisdiction of the department at which individuals are confined pursuant to court order;

E. "fund" means the corrections industries revolving fund;

F. "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions supported wholly or in part by funds derived from public taxation; and

G. "state agency" means the state or any of its branches, agencies, departments, boards, instrumentalities or institutions supported wholly or in part by funds derived from public taxation.

**History:** Laws 1981, ch. 127, § 2; 1987, ch. 75, § 1; 2005, ch. 23, § 4.

### **33-8-3. Purpose.**

The purpose of the Corrections Industries Act is to enhance the rehabilitation, education and vocational skills of inmates through productive involvement in enterprises and public works of benefit to state agencies and local public bodies and to minimize inmate idleness.

**History:** Laws 1981, ch. 127, § 3.

### **33-8-4. Prisoners to labor.**

All persons convicted of crime and confined in a facility under the laws of the state except such as are precluded by the terms of the judgment and sentence under which they may be imprisoned shall perform labor under such rules and regulations as have been or may hereafter be prescribed by the department.

**History:** Laws 1981, ch. 127, § 4.

### **33-8-5. Repealed.**

### **33-8-5.1. Corrections industries commission.**

The "corrections industries commission" is created. The commission consists of seven members appointed by the governor with the advice and consent of the senate for staggered terms of four years or less in a manner that the terms of one or two members expire as the case may be on June 30 each year. Four members of the commission constitute a quorum for the transaction of business. Not more than four members shall be of the same political party. Any member who fails to attend three consecutive meetings of the commission without being excused by the commission shall be automatically removed. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term. Members of the commission shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** Laws 2005, ch. 23, § 1.

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

The commission has the following powers and duties to:

A. determine those enterprises to be conducted in facilities in such volume, kind and place as to eliminate unnecessary inmate idleness at all facilities and to provide diversified work activities that will serve as a means of enhancing vocational skills;

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

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

D. approve the prices at which all services and products provided, manufactured, produced or harvested by enterprises shall be furnished; provided that the prices shall be as near the prevailing market price as possible. As used in this subsection, "prevailing market price" means the prevailing price that an equivalent product or service would have if purchased by a state agency or local public body from community sources. The commission shall include data provided by the purchasing division of the general services department in the price determination process. Compensation paid to inmates shall be included as an item of the cost in fixing prices;

E. consult regularly and continuously with state agencies and local public bodies in order to develop new enterprise products, adapt existing enterprise products and establish new service functions to meet their needs;

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

G. obtain and provide technical assistance for enterprise programs;

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

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

J. notwithstanding any other provision of law, adopt policies and procedures that permit an enterprise to make a single purchase of raw materials involving the expenditure of twelve thousand dollars (\$12,000) or less without bids and at the best obtainable price whether or not the provider is the holder of a preexisting state contract for the particular product. Records of such purchases shall be maintained for auditor's inspection and reported at the next scheduled commission meeting. Separate purchases of the same or similar materials from the same or different suppliers at the same time or about the same time where each purchase does not exceed twelve thousand dollars (\$12,000), but the aggregate of such purchases exceeds twelve thousand dollars (\$12,000), shall be considered a single purchase involving more than twelve thousand dollars (\$12,000);

K. notwithstanding any other provision of law, adopt policies and procedures that permit an enterprise to make a single purchase of a product or service other than raw materials involving the expenditure of two thousand dollars (\$2,000) or less without bids and at the best obtainable price whether or not the provider is the holder of a preexisting state contract for the particular product or service. Records of such purchases shall be maintained for auditor's inspection and reported at the next scheduled commission meeting. Separate purchases of the same or similar materials or services from the same or different suppliers at the same time or about the same time where each purchase does not exceed two thousand dollars (\$2,000), but the aggregate of such purchases exceeds two thousand dollars (\$2,000), shall be considered a single purchase involving more than two thousand dollars (\$2,000);

L. review, approve, adopt and monitor an annual budget for all enterprises. The budget process shall include a projected profit analysis, sales forecast and anticipated year-end financial forecast;

M. submit and recommend the names of one or more qualified individuals to the secretary of corrections for appointment as director of the corrections industries division;

N. advise the director of the corrections industries division in the management and control of the corrections industries division;

O. assist in the process of inmate occupational placement upon release from confinement by coordination with the parole board and the field services division; and

P. prepare an annual report to the governor and the legislature that contains:

(1) a detailed financial statement for each enterprise in each facility;

- (2) a detailed financial statement of the fund;
- (3) reasons for establishing or terminating enterprises;
- (4) a summary of plans to develop additional enterprises;
- (5) the number of inmates employed in each enterprise;
- (6) the number of idle inmates available for work at each facility; and
- (7) any further information requested by the governor or the legislature.

**History:** Laws 1981, ch. 127, § 6; 1985 (1st S.S.), ch. 7, § 1; 2005, ch. 23, § 5.

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

### **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.

### **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.**

### **33-8-11. Repealed.**

### **33-8-12. Products; sale; labeling requirement; penalty; exceptions.**

A. Except as otherwise provided in this section, no product or service manufactured or provided in whole or in part by inmate labor shall be sold or furnished except to a qualified purchaser; provided that such products may be resold by the user for purposes of salvage. As used in this subsection, "qualified purchaser" means:

- (1) a state agency;
- (2) local public bodies;
- (3) the state agencies of other states and their local public bodies;

- (4) agencies of the federal government;
- (5) tribal and pueblo governments;
- (6) nonprofit organizations properly registered under state law and supported wholly or in part by funds derived from public taxation;
- (7) persons, partnerships, corporations or associations that provide public school transportation services to a state agency or local public body pursuant to contract;
- (8) any business engaged primarily in the manufacture or resale of the same type of product;
- (9) a person, partnership, corporation or association that provides correctional services to the department pursuant to a contract; and
- (10) a person, partnership, corporation or association that houses inmates on behalf of the department.

B. Every product manufactured pursuant to the provisions of the Corrections Industries Act shall be distinctively identified as inmate-made by brand, label or mark consistent with the type and character of the product. Every product manufactured pursuant to the provisions of the Corrections Industries Act may be certified pursuant to the federal private sector prison industry enhancement certification program.

C. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and upon conviction shall be sentenced to imprisonment in the county jail for a definite term not to exceed six months or to the payment of a fine of not more than one thousand dollars (\$1,000) or to both imprisonment and fine in the discretion of the judge.

D. The provisions of this section shall not apply to products produced pursuant to Section 33-8-13 NMSA 1978.

E. Notwithstanding the provisions of Subsection A of this section, to assure the most effective use of state-owned land, produce from agricultural and animal husbandry enterprises may be sold to commercial sources upon review and recommendation of the commission and pursuant to procedures, including audit, established by the secretary of finance and administration.

F. The corrections industries division of the department may sell products manufactured pursuant to the provisions of the Corrections Industries Act to the general public; provided that all inmate labor used in the production of any products offered to the general public is voluntary and not compelled. All sales to the general public shall take place on corrections industries division property. Sales to the general public shall

not be conducted online or by mail order. Proceeds from the sales shall be placed into the corrections industries revolving fund; a portion of the proceeds placed into the corrections industries revolving fund pursuant to this subsection shall be placed into the crime victims reparation fund.

**History:** Laws 1981, ch. 127, § 12; 1992, ch. 62, § 1; 1999, ch. 22, § 1; 2014, ch. 29, § 1; 2017, ch. 88, § 1.

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

### **33-8-12.2. Corrections industries sales representatives.**

A. The secretary of corrections may employ individuals necessary to serve as sales representatives for the marketing of goods and services produced or assembled through the corrections industries division who shall be classified personnel and be paid in accordance with a commission-based incentive compensation plan approved by the personnel board for sales to purchasers other than state agencies and local public bodies not to exceed two percent (2%).

B. The secretary of corrections may contract with persons or business entities to serve on an independent contractor basis as sales representatives for marketing goods or services produced or assembled through the corrections industries division.

**History:** 1978 Comp., § 33-8-12.2, enacted by Laws 1985 (1st S.S.), ch. 7, § 3.

### **33-8-13. Private industry on facility grounds.**

A. The department secretary, upon recommendation of the commission, may lease real property on the grounds of any facility and may provide for reasonable access to and egress from the leased property to a private commercial industry for the purpose of establishing and operating a factory for the manufacture and processing of products or to any other commercial industry deemed by the commission to be consistent with the purposes of the Corrections Industries Act.

B. Any agreement entered into pursuant to this section shall provide that:

(1) all persons employed in the enterprise, except administrative, supervisory and training personnel, shall be inmates of the facility where the leased property is located who volunteer for employment and who are approved for such employment by the superintendent of that facility;

(2) the enterprise shall at all times observe practices and procedures regarding security as the lease may specify or as the facility superintendent may temporarily stipulate during periods of emergency; and



(3) the enterprise shall be deemed a private enterprise and subject to all laws governing the operation of similar private business enterprises; provided that the provisions of the Unemployment Compensation Law [Chapter 51 NMSA 1978] shall not apply to inmate employees.

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

### **33-8-14. Repealed.**

### **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, department 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.

## **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.

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

As used in the Adult Community Corrections Act:

A. "department" means the corrections department;

B. "fund" means the community corrections grant fund;

C. "program" means a community-based program that is operated by a county, municipality, the department or a private organization, individually or jointly, with the purpose of providing services to criminal offenders;

D. "criminal offender" means any person convicted of a felony; and

E. "volunteer services" means services provided by individuals or organizations without compensation.

**History:** Laws 1983, ch. 202, § 2; 1987, ch. 341, § 1; 1988, ch. 101, § 33; 1989, ch. 219, § 2.

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

A. There is created in the state treasury a special fund to be known as the "community corrections grant fund". All money appropriated to the fund or accruing to it as a result of gift, deposit, investments or other sources shall not be transferred to another fund or encumbered or disbursed in any manner except as provided in the Adult Community Corrections Act. The fund shall be for the purpose of providing programs and services for the diversion of criminal offenders to community-based settings.

B. The department shall require criminal offenders who participate in a program and who receive services to make a co-payment to offset the cost of the services. The amount of the co-payment shall be based upon the offender's ability to pay. The department shall collect the co-payments and on a monthly basis deliver them to the state treasurer for deposit in the community corrections grant fund.

**History:** Laws 1983, ch. 202, § 3; 1988, ch. 101, § 34; 1989, ch. 219, § 3; 2004, ch. 38, § 3.

### **33-9-4. Fund; administration.**

The department shall administer the fund and make grants to counties, municipalities or private organizations, individually or jointly, pursuant to the provisions of the Adult Community Corrections Act; provided that a grant shall not be made to a private organization which is not a nonprofit organization without the approval of the secretary of corrections. The department may also utilize the fund to contract directly for programs. The department shall use no more than ten percent of the fund for administration and monitoring purposes by the state. In addition, the department shall allow no more than ten percent of a grant from the fund to be used for administrative costs incurred by counties, municipalities and private organizations. After proper notice and public hearings, the department shall adopt regulations which provide standards for qualifications for grants, priorities for awarding of funds and other standards regarding community corrections and shall review and approve or disapprove all applications submitted pursuant to the provisions of the Adult Community Corrections Act. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of corrections.

**History:** Laws 1983, ch. 202, § 4; 1986, ch. 68, § 1; 1987, ch. 341, § 2; 1990, ch. 53, § 1.

### **33-9-5. Criteria for applications.**

A. Counties, municipalities or private organizations, individually or jointly, may apply for grants from the fund, including grants for counties or municipalities to purchase contractual services from private organizations, provided that:

(1) the application is for funding a program with priority use being for criminal offenders;

(2) the applicant certifies that it is willing and able to operate the program according to standards provided by the department;

(3) the applicant demonstrates the support of key components of the criminal justice system;

(4) the applicant, if a private organization, demonstrates the support of the county and municipality where the program will provide services;

(5) the applicant certifies that it will utilize volunteer services as an integral portion of the program to the maximum extent feasible; and

(6) no class A county as defined in Section 4-44-1 NMSA 1978, alone or in conjunction with any municipality within a class A county, shall receive more than forty-nine percent of any money appropriated to the fund.

B. The department may use the fund to place individuals eligible for probation or parole in community-based settings. The department may also use the fund to place criminal offenders within twelve months of eligibility for parole in community-based settings; provided that the criminal offender has never been convicted of a felony offense involving the use of a firearm. The adult parole board may, in its discretion, require participation by a criminal offender in a program as a condition of parole pursuant to the provisions of Section 31-21-10 NMSA 1978.

C. The department may authorize use of the fund for adults who are not criminal offenders with prior department approval, if the priority use does not result in full use of the fund or the capacity of a program, or the department may authorize additional programs or additional funding for existing programs.

D. The department may contract directly for programs, including programs for New Mexico Indian tribes and pueblos for diversion of state law offenders, and may establish and operate adult community corrections programs.

E. The department shall establish additional guidelines for allocation of funds under the Adult Community Corrections Act.

**History:** Laws 1983, ch. 202, § 5; 1986, ch. 68, § 2; 1987, ch. 341, § 3; 1988, ch. 101, § 35; 1989, ch. 219, § 4; 1991, ch. 201, § 1; 1997, ch. 11, § 1; 2013, ch. 165, § 1.

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

The department shall establish a panel to review all applications for grants under the Adult Community Corrections Act. The panel shall make recommendations to the secretary of corrections regarding each application.

**History:** Laws 1983, ch. 202, § 6; 1989, ch. 219, § 5; 1994, ch. 20, § 1; 2013, ch. 165, § 2.

### **33-9-7. Repealed.**

**History:** Laws 1983, ch. 202, § 7; 1988, ch. 101, § 36; 1989, ch. 219, § 6; repealed by Laws 2013, ch. 165, § 4.

### **33-9-8. Repealed.**

**History:** Laws 1983, ch. 202, § 8; 1988, ch. 101, § 37; 1989, ch. 219, § 7; repealed by Laws 2013, ch. 165, § 4.

### **33-9-9. Sentencing; placement of offender.**

A. In every case where the commitment of a person to the department is contemplated by a sentencing judge and the offender meets criteria for placement in community corrections, the adult probation and parole division of the department shall, at the request of the judge, prepare a report containing a recommendation regarding a community corrections placement or complete a diagnostic evaluation containing the recommendation of the department regarding that placement, including a statement that the criminal offender has been approved for a program. The sentencing judge shall consider the report or evaluation prior to making the commitment.

B. At a sentencing hearing, if a judge of a court of competent jurisdiction determines that placement in community corrections is appropriate, the judge shall defer or suspend the sentence and, as a condition of probation, require an individual to serve a period of time in a community corrections program.

**History:** Laws 1983, ch. 202, § 9; 1987, ch. 341, § 4; 1988, ch. 101, § 38; 1989, ch. 219, § 8; 2013, ch. 165, § 3.

### **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.

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

As used in the Juvenile Community Corrections Act:

A. "delinquent" means a child adjudicated delinquent pursuant to the Children's Code [Chapter 32A NMSA 1978];

B. "department" means the children, youth and families department;

C. "fund" means the juvenile community corrections grant fund;

D. "secretary" means the secretary of children, youth and families; and

E. "volunteer services" means services provided by individuals or organizations without compensation.

**History:** Laws 1988, ch. 101, § 40; 1989, ch. 219, § 10; 1992, ch. 57, § 47.

### **33-9A-3. Juvenile community corrections grant fund created; purpose; administration; report.**

A. There is created in the state treasury the "juvenile community corrections grant fund" to be administered by the department. All balances in the fund are appropriated to the department to carry out the purposes of the fund, and no money shall be transferred to another fund or be encumbered or disbursed in any manner except as provided in the Juvenile Community Corrections Act. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of children, youth and families.

B. Money in the fund shall be used by the department to make grants to counties, municipalities or private organizations, individually or jointly, to provide community corrections programs and services for the diversion of adjudicated delinquents to community-based settings. No grant shall be made to a private organization that is not a nonprofit organization without the approval of the secretary. The department may also use money in the fund to contract directly for or operate juvenile community corrections programs.

C. No more than ten percent of the money in the fund shall be used by the department for administration and program monitoring by the department. No more than ten percent of any grant from the fund shall be used for administrative costs incurred by the grantee.

D. After notice and public hearing as required by law, the secretary shall adopt regulations that provide standards for qualifications for grants, priorities for awarding of

grants and other standards regarding juvenile community corrections programs deemed necessary. The department shall review and approve or disapprove all applications submitted pursuant to the Juvenile Community Corrections Act for a grant of funds from the fund.

E. The department shall submit an annual report to the governor and legislature not later than December 15 providing information on grant awards, program effectiveness and monitoring efforts and making recommendations as necessary to carry out the purpose of the fund.

F. The department may accept donations, payments, contributions, gifts or grants from whatever source for the benefit of the fund.

**History:** Laws 1988, ch. 101, § 41; 1989, ch. 324, § 26; 1990, ch. 53, § 2; 1992, ch. 57, § 48.

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

A. Counties, municipalities or private organizations, individually or jointly, may apply for grants from the fund, including grants for counties or municipalities to purchase contractual services from private organizations; provided that:

(1) the application is for funding a program with priority use being for delinquents selected pursuant to the provisions of Section 33-9A-5 NMSA 1978;

(2) the applicant certifies that it is willing and able to operate the program according to standards provided by the department, which may include the negotiation of a contract between the delinquent and program staff with provisions such as deductions from employment income for applicable victim restitution, family support, room and board, savings and weekly allowance. In addition to monetary restitution, to the extent practical, or if monetary restitution is not applicable, the contract may include provision for community service restitution for a specific number of hours;

(3) the applicant demonstrates the support of key components of the criminal justice system;

(4) the applicant, if a private organization, demonstrates the support of the county and municipality where the program will provide services;

(5) the applicant certifies that it will utilize volunteer services as an integral portion of the program to the maximum extent feasible; and

(6) no class A county alone or in conjunction with any municipality within a class A county shall receive more than forty-nine percent of any money appropriated to the fund.

B. Notwithstanding the provisions of Subsection A of this section, the department may utilize the fund to place individuals eligible, or within twelve months of eligibility, for parole in community-based settings. The department may, in its discretion, require participation by a delinquent in a program as a condition of supervised release.

C. The department may utilize not more than twenty-five percent of the fund to contract directly for community corrections programs or to establish programs operated by the department; provided, however, that the department may utilize up to an additional ten percent of the fund to operate juvenile community corrections programs if, after a reasonable effort to solicit proposals, there are no satisfactory proposals from a community where it is determined that a program is necessary or if it becomes necessary to cancel a program as provided in the contract.

D. The department shall establish additional guidelines for allocation of funds under the Juvenile Community Corrections Act. An applicant shall retain the authority to accept or reject the placement of any delinquent in a program.

**History:** Laws 1988, ch. 101, § 42; 1989, ch. 219, § 11; 1991, ch. 201, § 2; 1992, ch. 57, § 49; 1994, ch. 20, § 2; 2005, ch. 234, § 1; 2009, ch. 239, § 67.

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

A. The department shall establish a state panel whose duties shall be to immediately screen and identify delinquents sentenced to a juvenile correctional facility of the department and transferred to the legal custody of the department, except individuals who are sentenced or transferred from a judicial district that has established a local panel to exercise these duties pursuant to the provisions of this section and who meet the following criteria:

(1) the offense involved is one for which community service or reasonable restitution may be made using a payment schedule compatible with the total amount of restitution to be paid and the time the offender is to participate in a program; and

(2) the child is willing to enter into a contract that establishes objectives that shall be achieved before release from the program.

B. The department may establish criteria in addition to those established in Subsection A of this section for the screening of delinquents who would benefit from participation in a program and who would not pose a threat to the community.

C. If the state panel determines that a child is suitable for placement in a program, a recommendation to that effect and for modification of disposition shall be presented as soon as possible to the sentencing judge or the department, which may, notwithstanding any provision of law, accept, modify or reject the recommendation. The determination shall be presented to the county, municipality or private nonprofit organization, as applicable, for approval or rejection.



D. A county, municipality or private nonprofit organization, individually or jointly, may establish a local panel to exercise the duties and responsibilities of the state panel pursuant to the provisions of Subsection A of this section and, using the same criteria as the state panel, the local panel may screen and identify delinquents. The composition of a local panel shall include, to the maximum extent possible, representatives of the judiciary, the administrative office of the district attorneys, the public defender department, the children, youth and families department, the county sheriff or the municipal police department, individuals representing local programs and private citizens.

**History:** Laws 1988, ch. 101, § 43; 1989, ch. 219, § 12; 1992, ch. 57, § 50; 2009, ch. 239, § 68.

### **33-9A-6. Sentencing.**

A. In every case where the commitment to the authority of a child adjudicated delinquent is contemplated by a judge, a predisposition report shall be prepared containing the recommendation of the juvenile probation officer regarding a community corrections placement or a diagnostic evaluation shall be completed by the authority containing the recommendation of the authority regarding that placement and the judge shall consider that report or evaluation prior to making that commitment. A juvenile probation officer shall consult with the authority prior to making a recommendation pursuant to this subsection.

B. At a sentencing hearing, if a judge of a court of competent jurisdiction determines placement in community corrections is appropriate, he shall defer or suspend the sentence and, as a condition of probation, require an individual to serve a period of time in a community corrections program.

**History:** Laws 1988, ch. 101, § 44.

## **ARTICLE 10**

### **Native American Counseling**

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

This act [33-10-1 to 33-10-4 NMSA 1978] may be cited as the "Native American Counseling Act".

**History:** Laws 1983, ch. 276, § 1.

#### **33-10-2. Purpose [of Native American Counseling Act].**

It is the purpose of the Native American Counseling Act to provide a program of counseling for native Americans confined in penal institutions in New Mexico, to teach

good work habits and develop motivation through work; to develop and instill cultural pride and improve the self-image of native Americans; to develop an understanding of the cultural differences between native Americans and other ethnic groups and assist the native American in relating and adjusting to such differences; to train the native American and his family to develop attitudes of mutual trust, mutual respect and an interdependence based on mutual understanding; to increase the availability of Indian spiritual leaders for teaching native Americans in the areas of Indian history, cultural sensitivity and Indian religion; and to generally involve native Americans in those aspects of the penal system that will assist in their rehabilitation and adjustment to a fuller life after their release from confinement.

**History:** Laws 1983, ch. 276, § 2.

### **33-10-3. Definitions.**

As used in the Native American Counseling Act:

A. "native American" means any person who is descended from or is a member of an American Indian tribe, pueblo or band or is a native Hawaiian or Alaskan native; and

B. "native American religion" means any religion or religious belief that is practiced by a native American, the origin and interpretation of which is from a traditional native American culture or community, and includes the native American church.

**History:** Laws 1993, ch. 108, § 1.

### **33-10-4. Freedom of worship.**

A. Native American religions shall be afforded by the corrections department the same standing and respect as Judeo-Christian religions. The practice of native American religion shall be permitted at each state corrections facility, including women's corrections facilities, to the extent that it does not threaten the reasonable security of the corrections facility.

B. Upon the request of any native American inmate or group of native American inmates, a state corrections facility shall permit access on a regular basis, for at least six consecutive hours per week, to:

(1) native American spiritual advisers;

(2) items and materials used in religious ceremonies provided by the inmate or a spiritual advisor, including cedar, corn husks, corn pollen, eagle and other feathers, sage, sweet grass, tobacco, willow, drums, gourds, lava rock, medicine bundles, bags or pouches, pipes, staffs and other traditional items and materials, except that the sacramental use of peyote by an inmate while incarcerated is prohibited in conformance with the religious and spiritual beliefs and policies of the Native American church; and

(3) a sweat lodge on the grounds of the corrections facility.

C. A secure place at the site of worship in which to store the items and materials used to conduct the religious ceremonies shall be provided. Any native American inmate may possess items and materials used in religious ceremonies as defined in Section 2 Subsection B of this Act [Subsection B of this section] as long as this possession does not threaten the reasonable security of the corrections facility.

D. Native American spiritual advisers shall be afforded by the administration of a state corrections facility the same stature, respect and inmate contact as is afforded the clergy of any Judeo-Christian religion.

E. No native American inmate shall be required to cut his hair if it conflicts with his traditional native American religious beliefs.

**History:** Laws 1993, ch. 108, § 2.

## **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.

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

The purpose of the Inmate Literacy Act is to require the corrections department to adopt certain regulations to require inmates to meet specified educational levels under certain circumstances.

**History:** Laws 1988, ch. 78, § 2.

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

A. The corrections department, by July 1, 1988, shall adopt regulations for all adult correctional institutions operated by the department for the implementation of a mandatory education program for all inmates to attain a minimum education standard as set forth in this section.

B. The regulations shall apply only to any inmate who:

(1) commits a crime after the effective date of the Inmate Literacy Act; and

(2) has eighteen months or more remaining to be served on the inmate's sentence of incarceration; and who:

(a) is not exempted due to a medical, developmental or learning disability; or

(b) does not possess a high school equivalency credential or a high school diploma.

C. The regulations adopted shall require that:

(1) a minimum education standard shall be met beginning in 1988 and in all subsequent years as follows:

(a) in 1988, the education standard shall be the equivalent of grade six in reading and math on the test of adult basic education;

(b) in 1989, the education standard shall be the equivalent of grade seven in reading and math on the test of adult basic education;

(c) in 1990, the education standard shall be the equivalent of grade eight in reading and math on the test of adult basic education; and

(d) in 1991, the education standard shall be a high school diploma or a high school equivalency credential;

(2) inmates who meet the criteria in Subsection B of this section shall be required to participate in education programs for ninety days. After ninety days, inmates may choose to withdraw from educational programs but will be subject to the provisions of Paragraph (3) of this subsection; and

(3) notwithstanding any other provision of law, inmates who are subject to these regulations but who refuse or choose not to participate shall not be eligible for monetary compensation for work performed or for meritorious deduction as set forth in Subsection D of Section 33-2-34 NMSA 1978.

D. The regulations may:

(1) exclude any inmate who has been incarcerated for less than ninety days in an institution controlled by the corrections department;

(2) exclude any inmate who is assigned a minimum custody classification; or

(3) defer educational requirements for inmates with sentences longer than ten years.

**History:** Laws 1988, ch. 78, § 3; 2015, ch. 122, § 18.

## **ARTICLE 12**

### **Regional Juvenile Services (Repealed.)**

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

**History:** Laws 1994, ch. 16, § 1; repealed by Laws 2007, ch. 351, § 3.

#### **33-12-2. Repealed.**

**History:** Laws 1994, ch. 16, § 2; repealed by Laws 2007, ch. 351, § 3.

#### **33-12-3. Repealed.**

**History:** Laws 1994, ch. 16, § 3; repealed by Laws 2007, ch. 351, § 3.

#### **33-12-4. Repealed.**

**History:** Laws 1994, ch. 16, § 4; repealed by Laws 2007, ch. 351, § 3.

#### **33-12-5. Repealed.**

**History:** Laws 1994, ch. 16, § 5; repealed by Laws 2007, ch. 351, § 3.

#### **33-12-6. Repealed.**

**History:** Laws 1994, ch. 16, § 6; repealed by Laws 2007, ch. 351, § 3.

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

**History:** Laws 1994, ch. 16, § 7; repealed by Laws 2007, ch. 351, § 3.

## **ARTICLE 13**

### **Inmate Forestry Work Camp**

#### **33-13-1. Short title.**

This act [33-13-1 to 33-13-8 NMSA 1978] may be cited as the "Inmate Forestry Work Camp Act".

**History:** Laws 1998, ch. 57, § 1.

#### **33-13-2. Definitions.**

As used in the Inmate Forestry Work Camp Act:

- A. "department" means the corrections department;
- B. "forestry division" means the forestry division of the energy, minerals and natural resources department;
- C. "program" means the inmate forestry work camp program; and
- D. "work camp" means a minimum security facility operated by the department that houses inmates training or working in the program.

**History:** Laws 1998, ch. 57, § 2.

### **33-13-3. Inmate forestry work camp program; purpose; limitation.**

A. The department and the forestry division shall jointly establish the "inmate forestry work camp program" to provide inmate labor for natural resource work planned by the forestry division. The purpose of the program is to use minimum security male and female inmates to work on natural resource projects on public lands, fire suppression and emergency response activities as directed in an emergency declaration issued by the governor.

B. The program is not an inmate-release program pursuant to the provisions of Sections 33-2-43 through 33-2-47 NMSA 1978.

**History:** Laws 1998, ch. 57, § 3.

### **33-13-4. Inmate eligibility.**

The department shall screen and classify applicants for the program. To be eligible, an applicant must meet all of the standards provided in Section 33-2-44 NMSA 1978 and not be serving a sentence for first or second degree murder.

**History:** Laws 1998, ch. 57, § 4.

### **33-13-5. Work camps.**

The department may establish work camps as needed for the custody of inmates participating in the program.

**History:** Laws 1998, ch. 57, § 5.

### **33-13-6. Inmates not employees.**

An inmate participating in the program shall not be considered an employee of the state or of any other person deriving benefits from inmate services pursuant to the program. An inmate participating in the program shall not be covered by the provisions of the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] or be entitled to benefits pursuant to that act, whether on behalf of himself or another person. Inmates participating in the program may be compensated as provided in Section 33-2-26 NMSA 1978.

**History:** Laws 1998, ch. 57, § 6.

### **33-13-7. Forestry division; interagency cooperation; program participation.**

The forestry division shall cooperate with the department in the development and implementation of the program and shall:

- A. plan and develop natural resource projects and provide technical direction and supervision for activities carried out by inmates participating in the program;
- B. provide instruction in forestry and natural resource issues to inmates participating in the program; and
- C. provide direction and instruction in the use of tools and equipment and conduct safety training for inmates participating in the program.

**History:** Laws 1998, ch. 57, § 7.

### **33-13-8. Inmate forestry work camp fund.**

The "inmate forestry work camp fund" is created in the state treasury. All money received by the department or the forestry division from public land management agencies for work performed by inmates in the program shall be deposited in the fund. Money in the fund shall not revert at the end of a fiscal year. Money in the fund is appropriated to the forestry division to administer the program, including acquisition of tools and equipment and expenses incurred by the forestry division or the department in planning and supervising program projects. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the director of the forestry division or his authorized representative.

**History:** Laws 1998, ch. 57, § 8.

## **ARTICLE 14**

### **Telecommunications Services**

### **33-14-1. Contract to provide inmates with access to telecommunications services in a correctional facility or jail; conditions.**

A. A contract to provide inmates with access to telecommunications services in a correctional facility or jail shall be negotiated and awarded to an entity that meets the correctional facility's or jail's technical and functional requirements for services, and that provides the lowest cost of service to inmates or any person who pays for inmate telecommunication services.

B. A contract to provide inmates with access to telecommunications services in a correctional facility or jail shall not include a commission or other payment to the operator of the correctional facility or jail based upon amounts billed by the telecommunications provider for telephone calls made by inmates in the correctional facility or jail.

C. As used in this section:

(1) "correctional facility" means a state correctional facility or a privately operated correctional facility; and

(2) "jail" means a county jail, a municipal jail or a privately operated jail.

**History:** Laws 2001, ch. 33, § 1 and Laws 2001, ch. 115, § 1.

## **ARTICLE 15 Privately Operated Correctional Facilities Oversight**

### **33-15-1. Short title.**

This act [33-15-1 to 33-15-4 NMSA 1978] may be cited as the "Privately Operated Correctional Facilities Oversight Act".

**History:** Laws 2001, ch. 169, § 1.

### **33-15-2. Definitions.**

As used in the Privately Operated Correctional Facilities Oversight Act:

A. "out-of-state inmate" means a person incarcerated in a privately operated correctional facility within this state who is being incarcerated on behalf of a state other than New Mexico or a governmental entity whose jurisdiction is outside the state of New Mexico. "Out-of-state inmate" does not include a person who is being incarcerated on



behalf of an Indian tribe or pueblo whose lands are located wholly or partially within New Mexico, or on behalf of the United States;

B. "privately operated correctional facility" means a correctional facility or jail that has all or substantially all of its security operations performed by persons employed by, or engaged by, a private entity to perform security functions; and

C. "secretary" means the secretary of corrections or his designee.

**History:** Laws 2001, ch. 169, § 2.

### **33-15-3. Incarceration of out-of-state inmates in privately operated correctional facilities; minimum standards; secretary's authority to adopt rules.**

A. A privately operated correctional facility shall have statutory authority, other than this section, in order to operate or house inmates. In addition to satisfying requirements set forth in a statute other than this section, a privately operated correctional facility shall meet the following minimum standards before housing ten or more out-of-state inmates:

(1) all correctional officers and other persons, employed or engaged by a privately operated correctional facility, whose primary function is to provide security shall, before being assigned to provide the security functions, successfully complete a screening, background check and training course approved by the secretary. The secretary may offer to provide services to the privately operated correctional facility, including qualifying screening, background checks and a training program at the corrections academy at a reasonable cost;

(2) a privately operated correctional facility shall provide immediate oral notice, followed by a written report, to the secretaries of public safety and corrections, the local county sheriff and the chief of police of the municipality in which the facility is located, or the chief of police of the nearest municipality, or their designees, whenever any of the following events occur at the privately operated correctional facility:

(a) discharge of a firearm other than for training purposes;

(b) discharge of a chemical agent, gas or munitions to control the behavior of two or more inmates;

(c) a hostage situation;

(d) the death of an inmate, staff member, visitor or other person;

(e) a disturbance involving five or more inmates;

- (f) an escape or attempted escape; or
- (g) the commission of a felony offense;

(3) a privately operated correctional facility shall obtain and maintain current accreditation by the American correctional association regarding standards for prisons or standards for jails. As to any new privately operated correctional facility, the secretary may allow the facility a period of two years from the date the facility becomes operational to obtain accreditation or may require the facility to apply for and receive provisional accreditation;

(4) a privately operated correctional facility shall prepare an emergency response plan deemed satisfactory by the secretary. A copy of the emergency response plan shall be provided to the secretaries of public safety and corrections, the local county sheriff and the chief of police of the municipality in which the facility is located, or the chief of police of the nearest municipality, or their designees;

(5) a privately operated correctional facility shall ensure that an out-of-state inmate released from the privately operated correctional facility is released to his state of origin; and

(6) the owner or operator of a privately operated correctional facility shall enter into a written contract with the entity that proposes to house ten or more out-of-state inmates in the facility, and the contract shall contain provisions that require compliance with the minimum standards set forth in this subsection.

B. The secretary shall review all contracts and proposed contracts between the owner or operator of a privately operated correctional facility and the entity that proposes to house ten or more out-of-state inmates in the facility. The secretary shall prepare and submit to the county a written report summarizing his review of each contract.

C. The secretary shall inspect and monitor a privately operated correctional facility that houses or proposes to house ten or more out-of-state inmates to ensure compliance with the minimum standards set forth in this section and to ensure compliance with standards and rules adopted by the secretary pursuant to this section. The secretary shall be provided with the classification records and other relevant records pertaining to the out-of-state inmates who are proposed to be incarcerated at the privately operated correctional facility. The secretary shall have subpoena authority as to all present and former employees and other personnel of the privately operated correctional facility, as well as to all records pertaining to the facility, for the purposes of inspecting and monitoring the facility. Upon completion of an inspection, the secretary shall submit a report with findings and recommendations to the privately operated correctional facility, the board of county commissioners for the county where the facility is located, the county sheriff of the county where the facility is located and the legislative corrections oversight committee. The secretary shall allow the facility a reasonable

period of time to address any deficiencies and recommendations set forth in the report. The secretary may conduct additional inspections to determine compliance with minimum standards, rules and any recommendations. If a privately operated correctional facility that houses or proposes to house out-of-state inmates fails to comply with the standards and rules authorized pursuant to this section, the secretary shall notify the county of the deficiencies and recommend corrective action.

**History:** Laws 2001, ch. 169, § 3.

### **33-15-4. Classification review of out-of-state inmates in privately operated correctional facilities; assessing a fee.**

A. An out-of-state inmate shall not be incarcerated in a privately operated correctional facility in New Mexico unless the privately operated correctional facility is designed to meet or exceed the appropriate classification level for the out-of-state inmate.

B. The operator of a privately operated correctional facility that houses out-of-state inmates shall pay a fee, on a quarterly basis, to the county in which the privately operated correctional facility is located. The amount of the fee shall be a minimum of two dollars (\$2.00) per inmate per day for each out-of-state inmate who is incarcerated in the privately operated correctional facility.

**History:** Laws 2001, ch. 169, § 4; 2003, ch. 64, § 1.

## **ARTICLE 16**

### **Restricted Housing**

#### **33-16-1. Short title.**

This act [33-16-1 to 33-16-7 NMSA 1978] may be cited as the "Restricted Housing Act".

**History:** Laws 2019, ch. 194, § 1.

#### **33-16-2. Definitions.**

As used in the Restricted Housing Act:

A. "correctional facility" means a jail, prison or other detention facility that is used for the confinement of adult or juvenile persons, whether operated by the state or a political subdivision of the state or a private contractor on behalf of the state or a political subdivision of the state;

B. "inmate" means an adult or juvenile person who is under sentence to or confined in a correctional facility;

C. "restricted housing", whether instituted pursuant to disciplinary, administrative, inmate classification or other action, means confinement of an inmate locked in a cell or similar living quarters in a correctional facility for twenty-two or more hours each day without daily, meaningful and sustained human interaction; and

D. "serious mental disability" means:

(1) a serious mental illness, including schizophrenia, psychosis, major depression and bipolar disorder; or

(2) having a significant functional impairment along with a brain injury, organic brain syndrome or intellectual disability.

**History:** Laws 2019, ch. 194, § 2.

### **33-16-3. Restrictions on the use of restricted housing.**

A. An inmate who is younger than eighteen years of age shall not be placed in restricted housing.

B. An inmate who is known to be pregnant shall not be placed in restricted housing.

**History:** Laws 2019, ch. 194, § 3.

### **33-16-4. Restrictions on the use of restricted housing; inmate with serious mental disability.**

A. An inmate with a serious mental disability shall not be placed in restricted housing; provided that:

(1) the inmate is:

(a) known by the correctional facility to have been diagnosed by a qualified health care professional as having a serious mental disability; or

(b) clearly exhibiting self-injurious behavior, grossly abnormal and irrational behaviors, delusions or suicidal behavior unless a qualified health care professional has determined that the behavior is unrelated to a serious mental disability;

(2) the restriction on placement in restricted housing shall not apply during the first five consecutive days of the inmate's confinement in the correctional facility;

(3) if a warden, jail administrator or person in charge of a correctional facility finds that an inmate with a serious mental disability needs to be placed in restricted housing to prevent an imminent threat of physical harm to the inmate or another person, the inmate may be placed in restricted housing for no longer than forty-eight hours, and the warden, jail administrator or other person in charge of a correctional facility shall:

(a) make a written record of the facts and circumstances that necessitated the inmate's placement in restricted housing;

(b) prepare a written action plan describing how the facility will transition the inmate out of restricted housing at the earliest opportunity; and

(c) notify the facility's health services administrator in writing that the inmate was placed in restricted housing in accordance with this subsection; and

(4) if, after fulfilling the requirements of Paragraph (3) of this subsection, a warden, jail administrator or person in charge of a correctional facility finds that an inmate with a serious mental disability poses an ongoing and realistic threat of physical harm to another person, the inmate may be placed in restricted housing for longer than forty-eight consecutive hours only if:

(a) other methods for ensuring the safety of the threatened person have been considered and determined insufficient, impractical or inappropriate;

(b) the inmate is placed in restricted housing for the shortest time period and under the least restrictive conditions practicable;

(c) the correctional facility provides regular access to medical and mental health care for the inmate; and

(d) the warden, administrator or person in charge of the correctional facility:  
1) makes a written record of the facts and circumstances that necessitated the inmate's continued placement in restricted housing; 2) makes a written action plan describing how the correctional facility will transition the inmate out of restricted housing at the earliest opportunity, including a projected time line; and 3) notifies the correctional facility's health services administrator in writing that the inmate continues to be placed in restricted housing in accordance with this section.

B. For purposes of this section, "qualified health care professional" means a physician, licensed psychologist, prescribing psychologist, certified nurse practitioner, clinical nurse specialist with a specialty in mental health or a physician assistant with a specialty in mental health.

**History:** Laws 2019, ch. 194, § 4.

### **33-16-5. Correctional facilities; transparency and reporting.**

A. Every three months, every correctional facility shall:

(1) produce a report that includes:

(a) the age, gender and ethnicity of every inmate who was placed in restricted housing during the previous three months, including every inmate who is in restricted housing at the time the report is produced;

(b) the reason restricted housing was instituted for each inmate listed in the report; and

(c) the dates on which each inmate was placed in and released from restricted housing during the previous three months; and

(2) submit a report prepared in accordance with this subsection to the:

(a) legislature, if the correctional facility is a prison; and

(b) board of county commissioners of the county in which the correctional facility is located, if the facility is a jail.

B. The corrections department shall post to its public website every report produced pursuant to Subsection A of this section.

**History:** Laws 2019, ch. 194, § 5.

### **33-16-6. Private correctional facilities; anticorruption and reporting.**

Every three months, every private correctional facility shall submit to the board of county commissioners of the county in which the private correctional facility is located and to the legislature a report of all monetary settlements that were paid to inmates, former inmates or inmates' estates as a result of lawsuits filed by the inmates, former inmates or inmates' estates against the private correctional facility or its employees related to the use of restricted confinement or any other reason.

**History:** Laws 2019, ch. 194, § 6.

### **33-16-7. Reports filed with legislative library.**

On the date that a report is submitted to a board of county commissioners pursuant to Section 5 [33-16-5 NMSA 1978] or 6 [33-16-6 NMSA 1978] of the Restricted Housing Act, a copy of the report shall be submitted electronically to the legislative council service library.

**History:** Laws 2019, ch. 194, § 7.

