

# New Mexico Animal Cruelty Statute

## Chapter 30. Criminal Offenses. Article 18. Animals.

**Citation: NM ST § 30-18-1 - 15**

**Citation: NMSA 1978, § 30-18-1 - 15**

Summary: This section comprises the New Mexico anti-animal cruelty provisions. As used in this section, "animal" does not include insects or reptiles (see editor's note). Cruelty to animals occurs when a person **negligently** mistreats, injures, kills without lawful justification or torments an animal or abandons or fails to provide necessary sustenance to an animal under that person's custody or control. Extreme cruelty to animals, a fourth-degree felony, consists of a person **intentionally or maliciously** torturing, mutilating, injuring or poisoning an animal or maliciously killing an animal. Upon conviction, the court may order a person to participate in an animal cruelty prevention program or an animal cruelty education program, or to obtain psychological counseling for treatment of a mental health disorder. For juveniles, such psychological counseling is mandatory. The provisions of this section do not apply to fishing, hunting, falconry, taking and trapping, the practice of veterinary medicine, rodent or pest control, the treatment of livestock and other animals used on farms and ranches for the production of food, fiber or other agricultural products (when the treatment is in accordance with commonly accepted agricultural animal husbandry practices), the use of commonly accepted Mexican and American rodeo practices, or acts by licensed research facilities. Other prohibitions include illegal branding of livestock, dogfighting, horse tripping, and interference with police or guide dogs.

### Statute in Full - Contents:

#### Cruelty Provisions

§ 30-18-1. Cruelty to animals; extreme cruelty to animals; penalties; exceptions

§ 30-18-1.1. Seizure of animals; notice

§ 30-18-1.2. Disposition of seized animals

§ 30-18-1.3. Costs

§§ 30-18-2, 30-18-2.1. Repealed by L. 1999, Ch. 107, § 6, eff. July 1, 1999

#### Unlawful Use or Confinement of Animals

§ 30-18-3. Unlawful branding

§ 30-18-4. Unlawful disposition of animal

§ 30-18-5. Illegal confinement of animals

§ 30-18-6. Transporting stolen livestock

§ 30-18-7. Misrepresentation of pedigree

§ 30-18-8. Killing unbranded cattle; killing, without bill of sale cattle bearing brand of another person; penalty

#### Animal Fighting Provisions

§ 30-18-9. Dog fighting and cockfighting; penalty

§ 30-18-10. Exclusion

#### Equine and Livestock Provisions

§ 30-18-11. Unlawful tripping of an equine; exception

§ 30-18-12. Injury to livestock

#### Law Enforcement Animal Provisions

§ 30-18-13. Injury to a police dog, police horse or fire dog; harassment of a police dog, police horse or fire dog

#### Miscellaneous

§ 30-18-14. Livestock crimes; livestock inspectors to enforce

§ 30-18-15. Intracardiac injection prohibited on conscious animal

**§ 30-18-1. Cruelty to animals; extreme cruelty to animals; penalties; exceptions**

A. As used in this section, "animal" does not include insects or reptiles.

B. Cruelty to animals consists of a person:

- (1) negligently mistreating, injuring, killing without lawful justification or tormenting an animal; or
- (2) abandoning or failing to provide necessary sustenance to an animal under that person's custody or control.

C. As used in Subsection B of this section, "lawful justification" means:

- (1) humanely destroying a sick or injured animal; or
- (2) protecting a person or animal from death or injury due to an attack by another animal.

D. Whoever commits cruelty to animals is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Upon a fourth or subsequent conviction for committing cruelty to animals, the offender is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Extreme cruelty to animals consists of a person:

- (1) intentionally or maliciously torturing, mutilating, injuring or poisoning an animal; or
- (2) maliciously killing an animal.

F. Whoever commits extreme cruelty to animals is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. The court may order a person convicted for committing cruelty to animals to participate in an animal cruelty prevention program or an animal cruelty education program. The court may also order a person convicted for committing cruelty to animals or extreme cruelty to animals to obtain psychological counseling for treatment of a mental health disorder if, in the court's judgment, the mental health disorder contributed to the commission of the criminal offense. The offender shall bear the expense of participating in an animal cruelty prevention program, animal cruelty education program or psychological counseling ordered by the court.

H. If a child is adjudicated of cruelty to animals, the court shall order an assessment and any necessary psychological counseling or treatment of the child.

I. The provisions of this section do not apply to:

- (1) fishing, hunting, falconry, taking and trapping, as provided in Chapter 17 NMSA 1978;
- (2) the practice of veterinary medicine, as provided in Chapter 61, Article 14 NMSA 1978;
- (3) rodent or pest control, as provided in Chapter 77, Article 15 NMSA 1978;
- (4) the treatment of livestock and other animals used on farms and ranches for the production of food, fiber or other agricultural products, when the treatment is in accordance with commonly accepted agricultural animal husbandry practices;
- (5) the use of commonly accepted Mexican and American rodeo practices, unless otherwise prohibited by law;
- (6) research facilities licensed pursuant to the provisions of 7 U.S.C. Section 2136, except when knowingly operating outside provisions, governing the treatment of animals, of a research or maintenance protocol approved by the institutional animal care and use committee of the facility; or
- (7) other similar activities not otherwise prohibited by law.

J. If there is a dispute as to what constitutes commonly accepted agricultural animal husbandry practices or commonly accepted rodeo practices, the New Mexico livestock board shall hold a hearing to determine if the practice in question is a commonly accepted agricultural animal husbandry practice or commonly accepted rodeo practice.

L. 1999, Ch. 107, § 1, eff. July 1, 1999; L. 2001, Ch. 81, § 1; L. 2007, Ch. 6, § 1, eff. June 15, 2007.

**§ 30-18-1.1. Seizure of animals; notice**

A. A peace officer who reasonably believes that the life or health of an animal is endangered due to cruel treatment may apply to the district court, magistrate court or the metropolitan court in the county where the animal is located for a warrant to seize the animal.

B. If the court finds probable cause that the animal is being cruelly treated, the court shall issue a warrant for the seizure of the animal. The court shall also schedule a hearing on the matter as expeditiously as possible within thirty days unless good cause is demonstrated by the state for a later time.

C. Written notice regarding the time and location of the hearing shall be provided to the owner of the seized animal. The court may order publication of a notice of the hearing in a newspaper closest to the location of the seizure.

D. If the owner of the animal cannot be determined, a written notice regarding the circumstances of the seizure shall be conspicuously posted where the animal is seized at the time the seizure occurs.

E. At the option and expense of the owner, the seized animal may be examined by a veterinarian of the owner's choice.

F. If the animal is a type of livestock, seizure shall be pursuant to Chapter 77, Article 18 NMSA 1978.

L. 1999, Ch. 107, § 2, eff. July 1, 1999.

### **§ 30-18-1.2. Disposition of seized animals**

A. If the court finds that a seized animal is not being cruelly treated and that the animal's owner is able to provide for the animal adequately, the court shall return the animal to its owner.

B. If the court finds that a seized animal is being cruelly treated or that the animal's owner is unable to provide for the animal adequately, the court shall hold a hearing to determine the disposition of the animal.

C. An agent of the New Mexico livestock board, an animal control agency operated by the state, a county or a municipality, or an animal shelter or other animal welfare organization designated by an animal control agency or an animal shelter, in the custody of which an animal that has been cruelly treated has been placed may petition the court to request that the animal's owner may be ordered to post security with the court to indemnify the costs incurred to care and provide for the seized animal pending the disposition of any criminal charges of committing cruelty to animals pending against the animal's owner.

D. The court shall determine the amount of security while taking into consideration all of the circumstances of the case including the owner's ability to pay, and may conduct periodic reviews of its order. If the posting of security is ordered, the animal control agency, animal shelter or animal welfare organization may, with permission of the court, draw from the security to indemnify the costs incurred to care and provide for the seized animal pending disposition of the criminal charges.

E. If the owner of the animal does not post security within fifteen days after the issuance of the order, or if, after reasonable and diligent attempts the owner cannot be located, the animal may be deemed abandoned and relinquished to the animal control agency, animal shelter or animal welfare organization for adoption or humane destruction; provided that if the animal is livestock other than poultry associated with cockfighting, the animal may be sold pursuant to the procedures set forth in Section 77-18-2 NMSA 1978.

F. Nothing in this section shall prohibit an owner from voluntarily relinquishing an animal to an animal control agency or shelter in lieu of posting security. A voluntary relinquishment shall not preclude further prosecution of any criminal charges alleging that the owner has committed felony cruelty to animals.

G. Upon conviction, the court shall place the animal with an animal shelter or animal welfare organization for placement or for humane destruction.

H. As used in this section, "livestock" means all domestic or domesticated animals that are used or raised on a farm or ranch and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae but does not include canine or feline animals.

CREDIT(S)

L. 1999, Ch. 107, § 3, eff. July 1, 1999; L. 2009, Ch. 43, § 1, eff. June 19, 2009.

<sup>1</sup>Caption added by Publisher.

## HISTORICAL AND STATUTORY NOTES

L. 2009, Ch. 43, § 1, rewrote the section, which formerly read:

“A. If the court finds that the seized animal is not being cruelly treated and that the animal's owner is able to adequately provide for the animal, the court shall return the animal to its owner.

“B. If the court finds that the seized animal is being cruelly treated or that the animal's owner is unable to adequately provide for the animal, the court shall hold a hearing to determine the disposition of the animal.

“C. Upon conviction the court may place the animal for adoption with an animal shelter or animal welfare organization or provide for the humane destruction of the animal.”

### § 30-18-1.3. Costs

A. Upon conviction, a defendant shall be liable for the reasonable cost of boarding the animal and all necessary veterinary examinations and care provided to the animal. The amount of these costs shall be offset by the security posted pursuant to Section 30-18-1.2 NMSA 1978. Unexpended security funds shall be returned to the defendant.

B. In the absence of a conviction, the seizing agency shall bear the costs of boarding the animal and all necessary veterinary examinations and care of the animal during the pendency of the proceedings, return the animal, if not previously relinquished, and all of the security posted pursuant to Section 30-18-1.2 NMSA 1978.

### CREDIT(S)

L. 1999, Ch. 107, § 4, eff. July 1, 1999; L. 2009, Ch. 43, § 2, eff. June 19, 2009.

**§§ 30-18-2, 30-18-2.1. Repealed by L. 1999, Ch. 107, § 6, eff. July 1, 1999**

### **§ 30-18-3. Unlawful branding**

Unlawful branding consists of either:

A. branding, marking or causing to be branded or marked any animal, which is the property of another, with any brand not the brand of the owner of the animal;

B. defacing or obliterating any brand or mark upon any animal which is the property of another; or

C. using any brand unless said brand shall have been duly recorded in the office of the Cattle Sanitary Board of New Mexico\* or the Sheep Sanitary Board of New Mexico\*, whichever is applicable, and the person holds a certificate from the cattle sanitary board or the sheep sanitary board\* certifying to the fact of such record.

Whoever commits unlawful branding is guilty of a fourth degree felony.

\* Now the New Mexico Livestock Board.<sup>1</sup>

L. 1963, Ch. 303, § 18-3.

### **§ 30-18-4. Unlawful disposition of animal**

Unlawful disposition of animal consists of:

A. skinning or removing without the permission of the owner any part of the hide of any neat cattle found dead;

B. abandoning any livestock without giving reasonable notice to the owner, where the livestock has been entrusted by the owner to such person for the herding, care or safekeeping upon a contract for a valuable consideration;

C. taking any livestock for use or work, without the consent of the owner;

D. driving or leading any animal being the property of another from its usual range, without the consent of the owner;

E. contracting, selling or otherwise disposing of any animal, which a person has in his possession or under his control on shares or under contract, without the consent of the owner of such animal; or

F. knowingly buying, taking or receiving from any person having in his possession, or under his control, any animal on shares or under contract, without the consent of the owner of such animal.

Whoever commits unlawful disposition of animal is guilty of a misdemeanor.

L. 1963, Ch. 303, § 18-4.

**§ 30-18-5. Illegal confinement of animals**

Illegal confinement of animals consists of:

- A. detaining for more than two (2) hours for the purpose of milking any cow, without the permission of the owner;
- B. taking and detaining any bull for the purpose of improving livestock, without the consent of the owner;
- C. intentionally separating offspring of livestock from the mother, unless branded. Provided that, when milk cows, which are actually used to furnish milk for household or dairy purposes, have calves, that are unbranded, such young animals may be separated from their mother and enclosed; or
- D. confining, or in any manner interfering with the freedom of, or selling, or offering to sell, any freshly branded animal, unless such animal has been previously branded with an older and duly recorded brand for which the person has a legally executed bill of sale from the owner of such brand or unless such animals are with their mother, or unless such animals are the calves of milk cows when such cows are actually used to furnish milk for household purposes or for carrying on a dairy; but in every such case the person, firm or corporation, separating calves from their mother for either of these purposes shall, upon the demand of any sheriff, inspector or other officer, produce, in a reasonable time, the mother of each of such calves so that interested parties may ascertain if the cow does or does not claim and suckle such calf.

Whoever commits illegal confinement of animals is guilty of a misdemeanor.

L. 1963, Ch. 303, § 18-5; L. 1965, Ch. 3, § 1.

**§ 30-18-6. Transporting stolen livestock**

Transporting stolen livestock consists of knowingly transporting or carrying any stolen or unlawfully possessed livestock or any unlawfully possessed game animal, or any parts thereof.

Whoever commits transporting stolen livestock is guilty of a fourth degree felony.

L. 1963, Ch. 303, § 18-6.

**§ 30-18-7. Misrepresentation of pedigree**

Misrepresentation of pedigree consists of either the giving, obtaining, misrepresenting or exhibiting of any type of registry certificate or transfer certificate, pertaining to the pedigree registry of any animal, knowing such certificate to be false or misleading, or to have been secured by means of false pretenses or false representations.

Whoever commits misrepresentation of pedigree is guilty of a misdemeanor.

L. 1963, Ch. 303, § 18-7.

**§ 30-18-8. Killing unbranded cattle or cattle having another's brand**

Any person, firm or corporation, who shall kill or cause to be killed, for sale or use any unbranded neat cattle, or any cattle on which the brand has not peeled off and fully healed, unless such cattle shall have an older and duly recorded brand; or shall kill, or cause to be killed for sale or use any neat cattle having a brand not legally owned by such person, firm or corporation, without having taken a duly acknowledged bill of sale for the same from the owner thereof, shall be deemed guilty of a petty misdemeanor.

L. 1965, Ch. 7, § 1.

**§ 30-18-9. Dog fighting and cockfighting; penalty**

A. It is unlawful for any person to cause, sponsor, arrange, hold or participate in a fight between dogs or cocks for the purpose of monetary gain or entertainment. Participation in a fight between dogs or cocks for the purpose of monetary gain or entertainment consists of an adult knowingly:

- (1) being present at a dog fight without attempting to interfere with or stop the contest; or
- (2) owning or equipping one of the participating dogs or cocks with knowledge of the contest.

B. It is unlawful to train, equip or sponsor a dog or cock for the purpose of having it participate in a fight with another dog or cock, respectively, for monetary gain or entertainment.

C. Any person violating the provisions of Subsection A or B of this section, as it pertains to dogs, is guilty of a fourth degree felony.

D. Any person violating the provisions of Subsection A or B of this section as it pertains to cocks:

- (1) upon a first conviction, is guilty of a petty misdemeanor;
- (2) upon a second conviction, is guilty of a misdemeanor; and
- (3) upon a third or subsequent conviction, is guilty of a fourth degree felony.

L. 1981, Ch. 30, § 1; L. 2007, Ch. 6, § 2, eff. June 15, 2007.

**§ 30-18-10. Exclusion**

Nothing in this act shall be construed to prohibit or make unlawful the taking of game animals, game birds or game fish by the use of dogs, provided the person so doing is licensed as provided by law and is using such dogs in a lawful manner.

L. 1981, Ch. 30, § 2.

**§ 30-18-11. Unlawful tripping of an equine; exception**

A. Unlawful tripping of an equine consists of intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment.

B. The provisions of Subsection A of this section do not apply to laying an equine down for medical or identification purposes.

C. As used in this section, "equine" means a horse, pony, mule, donkey or hinny.

D. Whoever commits unlawful tripping of an equine is guilty of a misdemeanor.

E. Whoever commits unlawful tripping of an equine that causes the maiming, crippling or death of the equine is guilty of a fourth degree felony.

L. 1995, Ch. 113, § 1, eff. July 1, 1995.

**§ 30-18-12. Injury to livestock**

A. Injury to livestock consists of willfully and maliciously poisoning, killing or injuring livestock that is the property of another.

B. As used in this section, "livestock" means cattle, sheep, buffalo, horses, mules, goats, swine and ratites.

C. Whoever commits injury to livestock is guilty of a fourth degree felony.

L. 1998, Ch. 35, § 1, eff. July 1, 1998.

**§ 30-18-13. Injury to a police dog, police horse or fire dog; harassment of a police dog, police horse or fire dog**

A. As used in this section:

(1) "fire dog" means a dog used by a fire department, special fire district or the state fire marshal for the primary purpose of aiding in the detection of flammable materials or the investigation of fires;

(2) "police dog" means a dog used by a law enforcement or corrections agency that is specially trained for law enforcement or corrections work in the areas of tracking, suspect apprehension, crowd control or drug or explosives detection; and

(3) "police horse" means a horse that is used by a law enforcement or corrections agency for law enforcement or corrections work.

B. Injury to a police dog, police horse or fire dog consists of willfully and with intent to injure or prevent the lawful performance of its official duties:

(1) striking, beating, kicking, cutting, stabbing, shooting or administering poison or any other harmful substance to a police dog, police horse or fire dog; or

(2) throwing or placing an object or substance in a manner that is likely to produce injury to a police dog, police horse or fire dog.

C. Whoever commits injury to a police dog, police horse or fire dog when the injury causes the animal minor physical injury or pain is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

D. Whoever commits injury to a police dog, police horse or fire dog when the injury causes the animal serious physical injury or death or directly causes the destruction of the animal is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. A person convicted of injury to a police dog, police horse or fire dog may be ordered to make restitution for the animal's veterinary bills or replacement costs of the animal if it is permanently disabled, killed or destroyed.

F. Harassment of a police dog, police horse or fire dog consists of a person willfully and maliciously interfering with or obstructing a police dog, police horse or fire dog by frightening, agitating, harassing or hindering the animal.

G. Whoever commits harassment of a police dog, police horse or fire dog is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

H. Whoever commits harassment of a police dog, police horse or fire dog that results in bodily injury to a person not an accomplice to the criminal offense is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

I. It is an affirmative defense to a prosecution brought pursuant to the provisions of this section that a police dog, police horse or fire dog was not handled in accordance with well-recognized national handling procedures or was handled in a manner contrary to its own department's handling policies and procedures.

L. 1999, Ch. 107, § 5, eff. July 1, 1999.

**§ 30-18-14. Livestock crimes; livestock inspectors to enforce**

Livestock inspectors who are certified peace officers shall enforce the provisions of Chapter 30, Article 18 NMSA 1978 and other criminal laws relating to livestock.

L. 2001, Ch. 8, § 1; L. 2001, Ch. 341, § 1.

**§ 30-18-15. Intracardiac injection prohibited on conscious animal**

A. It is unlawful for an employee or agent of an animal control service or facility, animal shelter or humane society to use intracardiac injection to administer euthanasia on a conscious animal if the animal could first be rendered unconscious in a humane manner.

B. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

L. 2004, Ch. 35, § 1.

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**31-18-15. Sentencing authority; noncapital felonies; basic sentences and fines; parole authority; meritorious deductions.**

A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:

- (1) for a first degree felony resulting in the death of a child, life imprisonment;
- (2) for a first degree felony for aggravated criminal sexual penetration, life imprisonment;
- (3) for a first degree felony, eighteen years imprisonment;
- (4) for a second degree felony resulting in the death of a human being, fifteen years imprisonment;
- (5) for a second degree felony for a sexual offense against a child, fifteen years imprisonment;
- (6) for a second degree felony, nine years imprisonment;
- (7) for a third degree felony resulting in the death of a human being, six years imprisonment;
- (8) for a third degree felony for a sexual offense against a child, six years imprisonment;
- (9) for a third degree felony, three years imprisonment; or

(10) for a fourth degree felony, eighteen months imprisonment.

B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted and sentenced pursuant to Subsection A of this section, unless the court alters the sentence pursuant to the provisions of the Criminal Sentencing Act.

C. The court shall include in the judgment and sentence of each person convicted and sentenced to imprisonment in a corrections facility designated by the corrections department authority for a period of parole to be served in accordance with the provisions of Section 31-21-10 NMSA 1978 after the completion of any actual time of imprisonment and authority to require, as a condition of parole, the payment of the costs of parole services and reimbursement to a law enforcement agency or local crime stopper program in accordance with the provisions of that section. The period of parole shall be deemed to be part of the sentence of the convicted person in addition to the basic sentence imposed pursuant to Subsection A of this section together with alterations, if any, pursuant to the provisions of the Criminal Sentencing Act.

D. When a court imposes a sentence of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the basic sentence of imprisonment provided pursuant to the provisions of Subsection A of this section, the period of parole shall be served in accordance with the provisions of Section 31-21-10 NMSA 1978 for the degree of felony for the basic sentence for which the inmate was convicted. For the purpose of designating a period of parole, a court shall not consider that the basic sentence of imprisonment was suspended or deferred and that the inmate served a period of imprisonment pursuant to the provisions of the Criminal Sentencing Act.

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

- (1) for a first degree felony resulting in the death of a child, seventeen thousand five hundred dollars (\$17,500);
- (2) for a first degree felony for aggravated criminal sexual penetration, seventeen thousand five hundred dollars (\$17,500);
- (3) for a first degree felony, fifteen thousand dollars (\$15,000);
- (4) for a second degree felony resulting in the death of a human being, twelve thousand five hundred dollars (\$12,500);
- (5) for a second degree felony for a sexual offense against a child, twelve thousand five hundred dollars (\$12,500);
- (6) for a second degree felony, ten thousand dollars (\$10,000);
- (7) for a third degree felony resulting in the death of a human being, five thousand dollars (\$5,000);
- (8) for a third degree felony for a sexual offense against a child, five thousand dollars (\$5,000); or
- (9) for a third or fourth degree felony, five thousand dollars (\$5,000).

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

G. No later than October 31 of each year, the New Mexico sentencing commission shall provide a written report to the secretary of corrections, all New Mexico criminal court judges, the administrative office of the district attorneys and the chief public defender. The report shall specify the average reduction in the sentence of imprisonment for serious violent offenses and nonviolent offenses, as defined in Section 33-2-34 NMSA 1978, due to meritorious deductions earned by prisoners during the previous fiscal year pursuant to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. The corrections department shall allow the commission access to documents used by the department to determine earned meritorious deductions for prisoners.

History: 1953 Comp., § 40A-29-28, enacted by Laws 1977, ch. 216, § 4; 1979, ch. 152, § 1; 1980, ch. 38, § 1; 1981, ch. 285, § 1; 1987, ch. 139, § 3; 1993, ch. 38, § 1; 1993, ch. 182, § 1; 1994, ch. 23, § 3; 1999, ch. 238, § 5; 2003, ch. 75, § 4; 2003 (1st S.S.), ch. 1, § 5; 2005, ch. 59, § 2; 2007, ch. 69, § 2.