



# New Mexico Sentencing Commission

November 2006

## Summary

- This study calculates proportions served on the total sentence length and proportions on the total prison length of a sample of EMD offenders released in FY06 by the New Mexico Corrections Department
- Serious Violent Offenders served 84.3% of their prison sentence and 87.6% of their total sentence in FY06.
- Non-violent Offenders who may earn 30 days credit for each day served, served 56.3% of their prison sentence in FY06 and 67.1% of their total sentence in FY06.
- In FY06 and FY05 almost 80% of those released were offenders who may earn 30 days credit for 30 days served.
- The percentage of Serious Violent Offenders released increased from 12.8% in FY05 to 13% in FY06 and the percentage of Technical Parole Violators increased from 7.6% in FY05 to 9.3% in FY06.
- Sex offenders represented 1.3% of all offenders released under EMD. Probation violations and technical parole violations represented the largest percentage (28.6%) of offenses in the study.
- The 2nd Judicial District contributed the greatest number of offenders and releases under the EMD policy. The 2nd, 3rd, 11th and 5th Judicial Districts accounted for 68.9% of the offenders.
- Women in FY06 served slightly lower proportions of their total sentence and slightly lower proportions of their prison sentences compared to men.

## Time Served in New Mexico Prisons, FY 2006: *Analysis of the Impact of Earned Meritorious Deductions*

This report provides calculations of the average proportion of time served by inmates released in fiscal year 2006 (July 1, 2005 – June 30, 2006) who earned credits to their sentences under the Earned Meritorious Deductions (EMD) statutory policy (33-2-34 NMSA 1978).

For background information on the EMD policy and its effects, see the two baseline studies completed on releases prior to the implementation of the EMD policy (Working Papers #16 and #30), the report on time served from fiscal year 2004 (Time Served in New Mexico Prisons, FY 2004: *Analysis of the Impact of Earned Meritorious Deductions*), and last year's report (Time Served in New Mexico Prisons, FY 2005: *Analysis of the Impact of Earned Meritorious Deductions*). It should be noted that the CMIS data were not created with this study in mind. This report and more than 50 other research reports by the NMSC are available on our web site:

<http://www.nmsc.state.nm.us/reports.htm>

### Methodology

In July 2006 NMSC staff obtained a list of offenders who were released during FY 2006 from the NMCD. The list contained 2,071 individuals who had committed their crimes on or after July 1, 1999, and had prison release dates between July 1, 2005 and June 30, 2006, making them subject to the EMD statutory policy.

Similar to last year's study it was determined that the automated data, though more complete than the previous fiscal year, was not complete enough to be used for this study. Like last year, we decided to sample from the total population of releases from the

New Mexico Corrections Department. This occurred for two reasons. First, the number of releases was sufficiently large that a 100% sample was not necessary to complete the study and second, the amount of resources required to collect a 100% sample was prohibitive.

The list provided by the NMCD included (1) offenders with offense dates after July 1, 1999 and (2) offenders who were not subject to early release such as diagnostic evaluations or court-ordered releases. From this list we created the sample. Additionally, we collected a 100% sample of women offenders.

Upon completion of the data collection and data entry process we had a sample of 762 records. From the analyses that report the proportions of the total time served and the prison time served a number of records were eliminated based on incorrect dates.

The study reports the average proportion of time served for our sample of valid releases during FY06. This represents 676 offenders, indicating that a number of offenders had multiple releases during the reporting period.

### Information About Releases

Offenders in the study do not represent a random sample of all FY06 releases because FY06 releases also include offenders serving time under an older good time policy. Therefore the characteristics reported here may be unusual, especially compared to the prison population as a whole. We do not have information on all offenders released during the time period so it is not possible to report any differences. One consequence of this study is the number of serious violent

## EARNED MERITORIOUS DEDUCTIONS STATUTORY POLICY (33-2-34 NMSA 1978)

Offenders who committed their crimes on or after July 1, 1999 or violated their parole on a crime committed on or after July 1, 1999, are subject to the Earned Meritorious Deductions statutory policy. Under this policy, offenders convicted of the following "serious violent crimes" as defined by New Mexico statute will only receive up to 4 days of credit for 30 days served (4/30):

- second degree murder (first degree murder is not subject to any meritorious deductions)
- voluntary manslaughter
- third degree aggravated battery
- first degree kidnapping
- first and second degree criminal sexual penetration
- second and third degree criminal sexual contact of a minor
- first and second degree robbery
- second degree aggravated arson
- shooting at a dwelling or occupied building
- shooting at or from a motor vehicle
- aggravated battery upon a peace officer
- aggravated assault upon a peace officer
- assault with intent to commit a violent felony upon a peace officer

The following list of violent offenses are also considered to be "serious violent offenses" when the nature of the offense and the resulting harm are such that the court judges the crime to be so, and are also subject to 4 days of credit for 30 days served (4/30):

- involuntary manslaughter
- fourth degree aggravated assault
- third degree assault with intent to commit a violent felony
- third and fourth degree aggravated stalking
- second degree kidnapping
- second degree abandonment of a child
- first, second, and third degree abuse of a child
- third degree dangerous use of explosives

- third and fourth degree criminal sexual penetration
- fourth degree criminal sexual contact of a minor
- third degree robbery
- third degree homicide by vehicle or great bodily injury by vehicle
- battery upon a peace officer

Parole violators convicted under this statutory policy would also be subject to reduced credit eligibility. Parole violators who are convicted of new crimes or are found to be absconders may receive up to 4 days of credit for 30 days served. Parole violators revoked for technical violations may receive up to 8 days of credit for 30 days served (8/30). All other types of offenders would continue to receive up to 30 days for 30 days served (30/30).

Note that under the EMD policy, inmates may not receive any credits during their first 60 days in prison. Prisoners confined in federal, out-of-state, and in private facilities are eligible for EMD. EMD can be forfeited for misconduct or restored for exemplary conduct or work performance. Prisoners are kept informed of their EMD status on a quarterly basis.

Additionally, the policy allows the opportunity for an offender to earn "lump sum awards" for activities such as successfully completing an approved vocational, substance abuse or mental health program, or for earning various educational degrees.

Senate Bill 21 (2006), developed by the NM Sentencing Commission, amended a section of law regarding award of EMD to state inmates. The legislation elevated certain assault and battery offenses against household members to "serious violent offender" status; streamlined the Corrections Department's administrative authority to award, forfeit and restore EMD; and authorized award of EMD to non-violent offenders during the first 60 days of receipt by the Corrections Department. The effective date of Senate Bill 21 was July 1, 2006.

offenders (SVO) released in FY06 may be lower than what we might see in future studies.

### Offender Demographics

The offenders in this study included 451 males (66.7%) and 225 females (33.3%). Ages ranged from 18 to 65 years with the average age at admission being 33 years (Table 1).

The largest number and percentage of releases were from the Second Judicial District (Bernalillo County). The Eleventh Judicial District (San Juan County and McKinley County), the Third Judicial District (Dona Ana County), and the Fifth Judicial District (Chaves County, Eddy County, and Lea County) each accounted for the same number and percentage of releases. These

four judicial districts accounted for 68.9% of the offenders (Table 2).

### Analysis of Time Served

Offense types are described in Table 3. Sex offenders represented 1.3% of all offenders in the study sample. Probation violations and technical parole violations represent the largest percentage of offenses in the study. Our analysis show that 16.7% were classified as serious violent offenders.

In this report we distinguish between two types of sentence length:

- *Total Sentence Length*: the total number of years in prison set by the court at sentencing – this includes

Age	Frequency	Percentage
15-21	49	7.2
22-25	119	17.6
26-30	129	19.1
31-35	111	16.4
36-40	110	16.3
41-45	101	14.9
46-50	35	5.2
51+	22	3.3
<b>Total</b>	<b>676</b>	<b>100.0</b>

Source: NMCD GTFS data based on unduplicated individuals.

District	Frequency	Percentage
1	23	3.4
2	178	26.4
3	96	14.2
4	10	1.5
5	96	14.2
6	20	2.9
7	13	1.9
8	15	2.2
9	49	7.3
10	5	.7
11	96	14.2
12	47	7.0
13	26	3.9
<b>Total</b>	<b>674</b>	<b>100.0</b>

Source: NMCD GTFS data based on unduplicated individuals. Judicial District data missing in 2 cases.

Offense	Frequency	Percentage
<b>Violent</b>	<b>113</b>	<b>16.7</b>
Homicide	5	0.7
Sexual Offenses	5	0.7
Armed Robbery	2	0.3
Other Homicide	6	0.9
Other Sexual Offenses	4	0.6
Kidnapping	2	0.3
Robbery	10	1.5
Battery	36	5.3
Assault	14	2.1
Other Violent Offenses	29	4.3
<b>Property</b>	<b>124</b>	<b>18.4</b>
Burglary	44	6.5
Larceny - Theft	10	1.5
Motor Vehicle Theft	22	3.3
Arson	1	0.1
Fraud	43	6.4
Stolen Property	3	0.4
Other Property	1	0.1
<b>Drug</b>	<b>137</b>	<b>20.3</b>
Drug Trafficking	68	10.1
Drug Possession	69	10.2
<b>Public Order</b>	<b>301</b>	<b>44.6</b>
Weapons	2	0.3
Driving While Intoxicated	81	12.0
Judicial Interference	14	2.1
Probation Violation/ Technical Parole Violation	193	28.6
Other Public Order	11	1.6
<b>Total</b>	<b>675</b>	<b>100.0</b>

Source: NMCD GTFS data based on unduplicated individuals. Offense Type data missing in 1 case.

time served in jail before sentencing and/or after sentencing and before transfer to prison

- *Prison Facility Sentence Length*: the total sentence length (defined above) minus any credits for time served outside the prison facility (usually in a local jail) – this is the time served in prison, from the day the offender enters prison to the expected full time release date.

The sample included 592 offenders who may earn 30 days credit for 30 days served, 99 offenders who may earn 4 days credit for 30 days served, and 71 parole violators who may earn 8 days credit for 30 days served (Table 4). The vast majority (78%) of those released in this sample had a parole term to serve and a minority (22%) were discharged from prison with no parole term (Table 5). *Discharged releases* are offenders who either served their complete parole term in prison or were revoked back to prison to complete their parole term in a prison facility.

Table 7 reports the proportion of the total sentence served and the proportion of prison sentence served for EMD categories. The percentage of prison sentences served by SVO's increased from 86.3% in FY04 to 86.7% in FY05. In FY06 the percentage of prison sentences served by SVO's slightly decreased to 84.3%. Additionally, SVO's served 89.6% of their total sentence in FY05 and 87.6% of their total sentence in FY06. Technical parole violators (8/30) served 94.4% of their total sentence and 88.5% of their prison sentence. All other types of offenders, receiving day-for-day earned

time, served 67.1% of their total sentence and 56.3% of their prison sentence.

In FY06 women served 68.9% of their total sentence and 59% of their prison sentence. Men served a similar proportion of their total sentence (71.4%) and a higher proportion of their prison sentence (61.9%). Among technical parole violators, men (87.8%) and women (87.7%) served similar proportions of their total sentence. In the other offenders type, women served slightly lower proportions of their total sentence (65.9%) than men (67.1%) and of their prison sentence (55.2% for women and 56.3% for men). (Table 8).

Type	Frequency	Percentage
30/30	592	77.7
4/30	99	13.0
8/30	71	9.3
<b>Total</b>	<b>762</b>	<b>100.0</b>

Source: NMCD GTFS data based upon the number of releases.

Type	Frequency	Percentage
Parole	594	78.0
Discharge	168	22.0
<b>Total</b>	<b>762</b>	<b>100.0</b>

Source: NMCD GTFS data based upon the number of releases.

Type	Frequency	Percentage
Basic Sentence	428	56.2
Probation Violation	117	15.4
Parole Violator	129	16.9
In-House Parole	88	11.5
<b>Total</b>	<b>762</b>	<b>100.0</b>

Source: NMCD GTFS data based upon the number of releases.

### About This Study

The EMD policy was part of the Sentencing Standards Package proposed by the NMSC to the New Mexico State Legislature in 1999. NMSC is statutorily mandated to provide an analysis of the average reduction in the sentence of imprisonment due to meritorious deductions earned by prisoners (NMSA 31-18-15G). This report is the fulfillment of that mandate for FY06.

### Acknowledgment

This study would not be possible without the help of the New Mexico Corrections Department.

EMD Type	Number	Total Sentence	Number	Prison Sentence
SVO (4/30)	24	87.6%	24	84.3%
Parole Violation (4/30)	37	94.4%	37	88.5%
Parole Violation (8/30)	61	87.8%	61	80.3%
Other Offenders	571	67.1%	571	56.3%
<b>Overall Average</b>		<b>71.5%</b>		<b>61.9%</b>

Source: NMCD GTFS data based upon the number of releases.

Gender	Type	Number	Total Sentence	Number	Prison Sentence
Male	SVO (4/30)	17	87.5%	18	85.1%
	Parole Violators (4/30)	30	94.4%	31	87.5%
	Technical Parole	46	87.8%	47	80.1%
	Other Offenders (30/30)	366	67.8	377	57.5%
	<i>Male Average</i>			72.8%	63.4%
Female	SVO (4/30)	7	87.6%	7	83.6%
	Parole Violators (4/30)	7	94.5%	7	89.2%
	Technical Parole	15	87.7%	15	82.6%
	Other Offenders (30/30)	205	65.9%	207	55.2%
	<i>Female Average</i>			68.9%	59.0%

Source: NMCD GTFS data based upon the number of releases.

### About The Commission

The New Mexico Sentencing Commission serves as a criminal and juvenile justice policy resource to the State of New Mexico. Its mission is to provide information, analysis, recommendations, and assistance from a coordinated cross-agency perspective to the three branches of government and interested citizens so that they have the resources they need to make policy decisions that benefit the criminal and juvenile justice systems. The Commission is made up of members from diverse parts of the criminal justice system, including members of the Executive and Judicial branches, representatives of lawmakers, law enforcement officials, criminal defense attorneys, and members of citizens' interest groups.

