

NEW MEXICO SENTENCING COMMISSION

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Estimated Number of Offenders in New Mexico Corrections Department Facilities in October Eligible for Controlled Release

This analysis by New Mexico Sentencing Commission (NMSC) staff is an estimate of the number of individuals in New Mexico Correction Department (NMCD) facilities who might be eligible for controlled release (1978 NMSA 33-9-5, Adult Community Corrections Act). Four estimates have been provided to the Legislative Finance Committee (LFC) since January 2006. The methodology we use to provide this estimate is identical to what has been used in the previous estimates.

The New Mexico Corrections Department provided the following response to this analysis:

"It is important to remember that offenders within twelve months of eligibility of parole, and who are eligible for Community Corrections controlled (early) release, are still serving the last year of their original sentence as ordered by New Mexico judges. No one can predict with complete certainty that these offenders will not commit new crimes or endanger the community if released early from prison. In fact, it is very likely that some of these offenders will commit new crimes during their release, and that some of these crimes may result in significant harm or death to New Mexico citizens. While the New Mexico Corrections Department provides programming designed to return its offenders to the community as productive, law abiding citizens, public safety is always potentially jeopardized whenever offenders are released early from prison. This remains true even though offenders would be very carefully scrutinized and screened for Community Corrections controlled release."

Further, it must be remembered that the sentencing judge must, in accordance with Sections 33-9-7 and 33-9-8 NMSA 1978, first approve of or consent to the controlled release of the offender. At this time, the judges have generally indicated their reluctance to give such approvals. Without the consent of the sentencing judges, the Corrections Department has no authority to engage in a Community Corrections controlled release for even a single offender."

Currently the NMCD may recommend placement of offenders who are within twelve-months of eligibility of parole in community-based settings, provided they have never been convicted of a felony offense involving a firearm. No other criteria have been established regarding eligibility for this type of controlled release program.

This analysis of offenders sentenced to prison in New Mexico and eligible for controlled release is derived from information provided to the New Mexico Sentencing Commission by the New Mexico Corrections Department. At the request of the NMSC, NMCD staff provided several different Microsoft Excel files that contain information on offenders released by calendar year, offenders admitted by calendar year, and offenders confined on a particular day. The information reported here comes from the confined file, which contains information on 6,568 inmates who were confined on June, 30th 2011.

The file contained a number of variables for each offender including their projected release date (release date assuming all future earned-time will be awarded), their flat time release date (this field represents the absolute latest day the offender will be released), the most serious charge (this field describes the most

serious offense the offender is currently serving, even if it is not his/her longest sentence), the type of offender (parole violator technical, parole violator new charge, probation violator technical, probation violator new charge, new court commitment, escapee returned, etc.), final custody level (this field represents the offender custody level placement after overrides), and earned type class (this field represents the number of earned time days per month the offender is eligible to receive). A complete list of variables and descriptions are provided in Attachment A.

Our estimate of the number of individuals eligible for controlled release is based on a number of variables included in the NMCD dataset. The estimate was created using the projected release date, the final custody level, the admission type, and the most serious charge on which the offender was being held.

In our review of the dataset we discovered 216 offenders (3.3%) were missing a projected release date and flat time release. We excluded all cases that were missing these data¹. The sample provided in this brief report includes 6,352 offenders (96.7%) of the 6,568 offenders in the confined dataset.

After removing offenders with missing projected release dates we removed offenders who did not have a projected release date between October 1, 2011 and September 30, 2012. This was done in order to only include offenders who had a projected release date that was approximately 12 months from the date of this publication. This sample included 2,343 offenders.

We then subtracted offenders who were serving time (defined as their most serious offense) as a violent offender (1,043 offenders)², a sex offender

(85 offenders), a DWI offender (200 offenders) or who were serving time on a drug trafficking offense (338 offenders). This sample included 677 offenders.

Next, we subtracted offenders who had a final Level III custody assignment, Level IV custody assignment, or were missing a final custody level (296 offenders)³. We only included offenders with a Level I final custody assignment or Level II final custody assignment, which with the other subtractions leaves a sample of 381 offenders.

The NMCD places offenders in security levels and assignment to these security levels is based upon eligibility criteria. Level I custody assignment indicates an ability to function appropriately among staff and other inmates without the need for constant supervision or a security perimeter. A Level II custody assignment indicates the ability to function appropriately and productively among staff and other inmates in a dormitory setting without presenting a significant risk to the safe, secure and orderly operation of the institution. Level III and Level IV custody assignment levels include offenders who do not meet the criteria of Level I and Level II, and typically consists of offenders with more serious offenses and those that might pose a threat to the safety of other inmates and staff.

While the section of law defining the eligibility criteria for controlled release does not expressly exclude violent offenders, sex offenders, offenders convicted of drug trafficking or offenders in higher custody level assignments, we believed it was prudent to exclude them from consideration in this analysis. Following an initial review by NMCD staff it was decided to also exclude DWI offenders. If directed, we could limit or increase the eligibility criteria and conduct additional analyses.

Table 1. Estimated Number of All Offenders Eligible for Controlled Release

Type of Offense	Final Custody Level Assignment					
	Level I		Level II		Levels I & II	
	Count	Percent	Count	Percent	Count	Percent
Other Offenses	0	0.0	2	0.9	2	0.6
Other Public Order	1	0.9	2	0.9	3	0.9
Judicial Interference	3	2.8	8	3.7	11	3.4
Drug Possession	43	40.2	75	34.2	118	36.2
Other Property Offenses	1	0.9	7	3.2	8	2.5
Stolen Property	2	1.9	6	2.7	8	2.5
Fraud	18	16.8	27	12.3	45	13.8
Arson	0	0.0	2	0.9	2	0.6
Motor Vehicle Theft	3	2.8	8	3.7	11	3.4
Larceny Theft	5	4.7	20	9.1	25	7.7
Burglary	31	29.0	62	28.3	93	28.5
Total	107	100.0	219	100.0	326	100.0

Table 2. Estimated Number of Female Offenders Eligible for Controlled Release

Type of Offense	Final Custody Level Assignment					
	Level I		Level II		Levels I & II	
	Count	Percent	Count	Percent	Count	Percent
Other Offenses	0	0.0	0	0.0	0	0.0
Other Public Order	1	3.0	0	0.0	1	1.4
Judicial Interference	0	0.0	1	2.7	1	1.4
Drug Possession	13	39.4	16	43.2	29	41.4
Other Property Offenses	0	0.0	0	0.0	0	0.0
Stolen Property	2	6.1	3	8.1	5	7.1
Fraud	10	30.3	8	21.6	18	25.7
Arson	0	0.0	0	0.0	0	0.0
Motor Vehicle Theft	0	0.0	1	2.7	1	1.4
Larceny Theft	2	6.1	2	5.4	4	5.7
Burglary	5	15.2	6	16.2	11	15.7
Total	33	100.0	37	100.0	70	100.0

Finally, we removed all offenders (55) who had an admission type into prison that noted they were serving time on a parole revocation or were awaiting a parole revocation hearing. In other words, we removed all offenders with the following admission type as labeled by NMCD in CMIS: ‘Parole Viol Abscond’ (21 offenders), ‘Parole Viol Pnd Chrg’ (11 offenders), and ‘Parole Viol Tech’ (23 offenders). By deleting these offenders from the file, we were left with a total of 326 offenders that were eligible for controlled release between the dates of October 1, 2011 and September 30, 2012.

Table 1 provides the number of offenders eligible for controlled release by type of offense and custody level assignment.

Our estimate using NMCD data suggests that between October 1, 2011, and September 30, 2012, 107 non-violent offenders with a Level 1 final custody assignment will be eligible for controlled release. A further 219 non-violent offenders with a Level II final custody assignment had a projected release that would have made them eligible for controlled release. In total 326 offenders met the initial criteria we used for this analysis. The majority of these offenders are male (78.5%). Individuals serving time on a drug possession conviction comprised the largest group followed by burglary convictions and fraud convictions.

Table 2 provides the number of female offenders eligible for controlled release by type of offense and custody level assignment.

Table 3. Estimated Number of Male Offenders Eligible for Controlled Release

Type of Offense	Final Custody Level Assignment					
	Level I		Level II		Levels I & II	
	Count	Percent	Count	Percent	Count	Percent
Other Offenses	0	0.0	2	1.1	2	0.8
Other Public Order	0	0.0	2	1.1	2	0.8
Judicial Interference	3	4.1	7	3.8	10	3.9
Drug Possession	30	40.5	59	32.4	89	34.8
Other Property Offenses	1	1.4	7	3.8	8	3.1
Stolen Property	0	0.0	3	1.6	3	1.2
Fraud	8	10.8	19	10.4	27	10.5
Arson	0	0.0	2	1.1	2	0.8
Motor Vehicle Theft	3	4.1	7	3.8	10	3.9
Larceny Theft	3	4.1	18	9.9	21	8.2
Burglary	26	35.1	56	30.8	82	32.0
Total	74	100.0	182	100.0	256	100.0

Our estimate suggests that between October 1, 2011, and September 30, 2012, 33 female non-violent offenders with a Level 1 final custody assignment will be eligible for controlled release. A further 37 female non-violent offenders with a Level II final custody assignment had a projected release that would have made them eligible for controlled release. In total 70 female offenders met the criteria we used for this analysis.

Table 3 provides the number of male offenders eligible for controlled release by type of offense and custody level assignment.

Our estimate suggests that between October 1, 2011, and September 30, 2012, 74 male non-violent offenders with a Level 1 final custody will be eligible for controlled release. A further 182 male non-violent offenders with a Level II final custody assignment had a projected release that would have made them eligible for controlled release. In total 256 male offenders met the criteria we used for this analysis.

The criteria established for this program notes that offenders convicted of a felony offense involving the use of a firearm are not eligible for controlled release. We are not able to estimate how many individuals this might exclude. Given additional time and drawing upon national literature and discussions with individuals knowledgeable about this population, including NMCD staff, we could provide an estimate and include this in our calculations. NMCD staff also pointed out they would exclude offenders on detainees, offenders serving consecutive sentences, and offenders who had recent and/or major misconduct reports. At this time, we are unable to estimate how many offenders are serving consecutive sentences or who have had a recent and/or major misconduct reports. However, one recent estimate suggests that approximately 25% of current offenders are on some sort of detainer. If the total number of offenders who are eligible for controlled release (326) is reduced by 25%, the result is a total of 244 who may be eligible for controlled release. Additionally, using this technique, it is estimated that the female offenders' (70) eligible for controlled release is reduced to about 52 female offenders. Whereas, the total estimated male offenders (256) are reduced to 192 male offenders that are eligible for controlled release.

This estimate should be viewed as preliminary. These numbers would likely be reduced if those serving consecutive sentences, with misconduct reports, and who have committed a crime involving firearms were removed from the sample. Discussions with NMCD staff could be useful in further refining the estimate.

In addition to the above analysis, this iteration of the report includes two new analyses presented in Appendix 1 and 2. In the first appendix, we present the total number of estimated inmates eligible for controlled release over time. In the second appendix, we present the time served and time until projected release for inmates estimated to be eligible for controlled release.

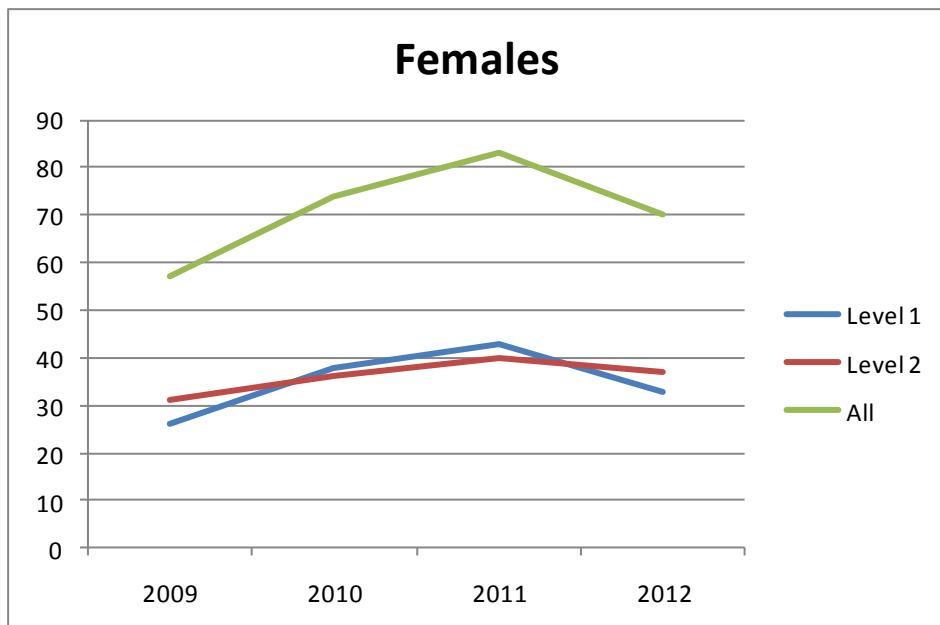
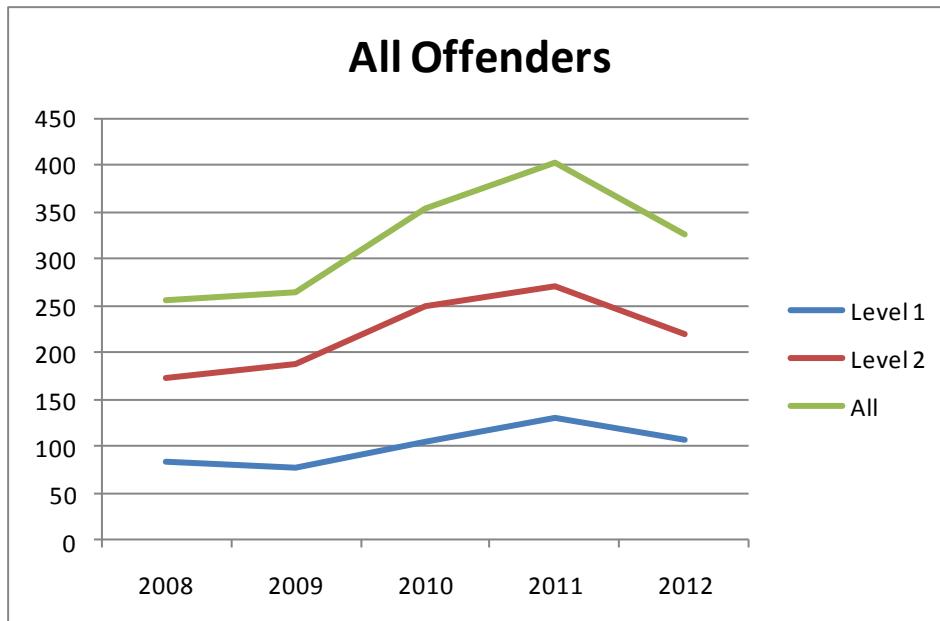
FOOTNOTES

1. In a review of the study, the New Mexico Corrections Department noted several reasons that may explain why some offenders are missing a projected release date including: the housing of interstate compact offenders who are serving sentences for other states, but whose release dates are not tracked by NMCD, inmates serving Life sentences who do not have either a projected release date or a flat time release date, and those inmates sentenced prior to July 1, 1979 under the indeterminate sentencing laws (many are parole violators) who do not have a projected release date.

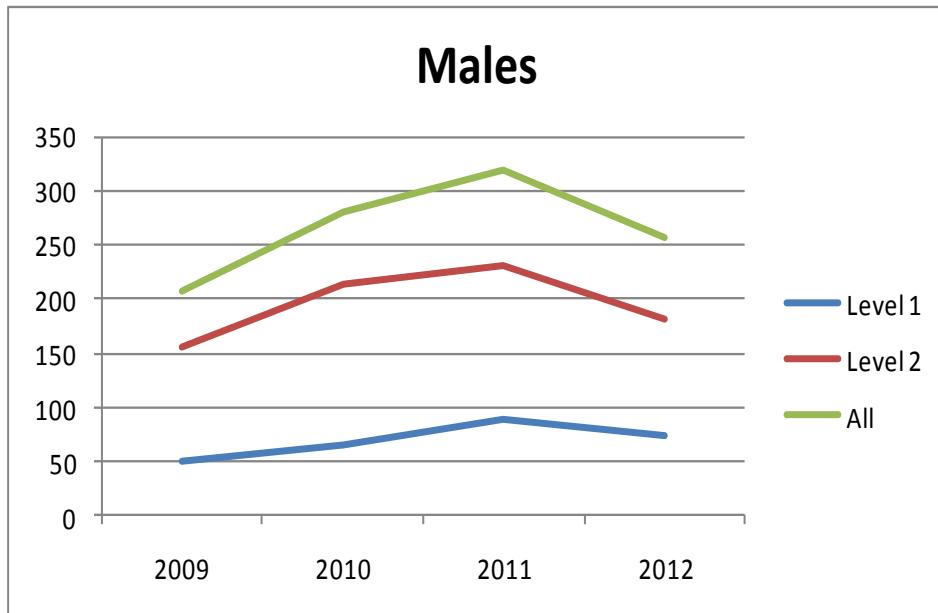
2. Consisting of 370 Serious Violent Offenders as labeled by NMCD, 21 offenders with weapons charges, 147 with other violent offenses, 78 charged with assault, 142 charged with battery, 73 charged with robbery, 59 charged with homicide, 61 charged with armed robbery, 57 charged with kidnapping, and 35 charged with 'other homicide'.

3. Consisting of only 53 Level IV offenders and 226 Level III offenders. Additionally, 17 offenders with no final custody level were deleted.

Appendix 1: Controlled Release Estimates Over Time



Appendix 1 Continued: Controlled Release Estimates Over Time



Appendix 2: Time Served and Time Until Projected Release for Inmates Estimated to be Eligible for Controlled Release

Variable	Count	Percentage
All Offenders:		
Time Served On October 1 st , 2011		
Less Than 6 Months	233	71.5
6 Months to One Year	74	22.7
Over One Year	19	5.8
Total	326	100.0
Time Until Projected Release On October 1 st , 2011		
Less Than 6 Months	190	58.3
6 Months to One Year	136	41.7
Total	326	100.0
Females:		
Time Served On October 1 st , 2011		
Less Than 6 Months	45	64.3
6 Months to One Year	18	25.7
Over One Year	7	10.0
Total	70	100.0
Time Until Projected Release On October 1 st , 2011		
Less Than 6 Months	40	57.1
6 Months to One Year	30	42.9
Total	70	100.0
All Offenders:		
Time Served On October 1 st , 2011		
Less Than 6 Months	188	73.4
6 Months to One Year	56	21.9
Over One Year	12	4.7
Total	256	100.0
Time Until Projected Release On October 1 st , 2011		
Less Than 6 Months	150	58.6
6 Months to One Year	106	41.4
Total	256	100.0

Attachment A:

Variable	Definition
State id number (via view dba.v_inmate_pop)	Unique offender/incarceration identifier
Gender	Sex of offender
Race	Race of offender
Date of birth	ofndr.dob.dob
County of residence	n/a
Marital Status	ofndr.mrtl_stat_cd
Statute (via view jbg.v_rfrd_ofnse_id_hr)	This field should represent the <i>most serious offense statute</i> the offender is currently serving, even if it is not his/her longest sentence. DOC established hierarchy of offenses should be utilized.
Offense Description (via view jbg.v_rfrd_ofnse_id_hr)	This field should describe the most serious offense the offender is currently serving, even if it is not his/her longest sentence. DOC established hierarchy of offenses should be utilized and standardized offense name used.
Jail credits (via view jbg.v_rfrd_ofnse_id_hr)	This field should represent the total number of pre-trial credits to be awarded to the offender.
Admission type (via view jbg.v_naro_adm_typ_con)	i.e., parole violator technical, parole violator new charge, probation violator technical, probation violator new charge, new court commitment, escapee returned, etc.
Sentence length (Maxdays) agg_prsn_sent.max_days	This field should represent the total net sentence the offender will serve under DOC custody. All consecutive and concurrent calculations should be applied. Lifers will also need to be determined from this field.
Parole eligibility date (via view jbg.v_rfrd_ofnse_id_hr)	This field should represent the first date in which an offender is parole eligible. dd/mm/yyyy
Goodtime earning class (via formula @gtearnclass)	This field should represent the number of goodtime days per month the offender is eligible to receive.
Offense Class Code (via view jbg.v_rfrd_ofnse_id_hr)	This field should represent the most serious offense the offender is currently serving, even if it is not his/her longest sentence. DOC established hierarchy of offenses should be utilized; standardized codes should be employed.
Mandatory release date (flatdate) (via view jbg.v_rfrd_ofnse_id_hr)	This field should represent the absolute latest day the offender will be released. dd/mm/yyyy
Current classification level (1-6)	This field should represent the current classification level of the offender.
Final custody level	This field should represent offender custody level placement after overrides

Projected release date	<code>tm_acct_jrnl.prjct_rlse_dt (via view jbg.v_rfrd_ofnse_id_hr)</code>	This field should provide the projected release date assuming all future earned-time will be awarded
Offense severity	<code>ofnse_cd_hrchy.ofnse_cd_order (via view jbg.v_rfrd_ofnse_id_hr)</code>	Severity of current offense
Arrest date	<code>ofnse_cd_hrchy.ofnse_cd_order (via view jbg.v_rfrd_ofnse_id_hr)</code>	Date of offenders arrest for current offense
Offense date	<code>rfrd_ofnse.ofnse_dt (via view jbg.v_rfrd_ofnse_id_hr)</code>	Date crime offender is currently held for was committed
Sentence date	<code>crt_case.sent_dt</code>	Date offender was sentenced for most current/ serious offense
Begin date	<code>crt_case.sent_dt</code>	Sentence begin date
Institution start date	<code>prsn_stay.begin_dt (via view jbg.v_rfrd_ofnse_id_hr)</code>	Institution admission date