

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 Corrections Department (NMCD) facilities who might be eligible for controlled release (Adult Community Corrections Act, N.M. STAT. ANN. §§33-9-1 to -10 (2013)). Ten previous estimates have been published by the NMSC. The methodology we use to provide this estimate is identical to what has been used in the previous estimates.

The NMCD may place 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 that are eligible for controlled release is derived from information provided to the NMSC by the NMCD concerning offenders confined on a particular day. The information reported here comes from information on the 7,051 inmates who were in confinement as of June 30, 2017. Of these inmates, 357 were release-eligible. Details describing these 357 inmates will be found in the following pages.

The estimates in this report should be viewed as preliminary. The report methodology section following the analysis provides further information on the confined population sample.

This report also includes two additional analyses, presented in Appendix 1 and 2. In Appendix 1 we present the total number of estimated inmates eligible for controlled release over time; these numbers were obtained from prior years' controlled release reports of the NMSC. In Appendix 2 we present the time served and time until projected release for inmates estimated to be eligible for controlled release.

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

"In the face of a growing inmate population and limited resources, but through the lens of true public safety, the Department will remain open to all reasonable options for the transition of offenders back into the community. Based upon review of current options relating to the Department's authority under the controlled release statute, any such release at this time is not reasonable or realistic for two significant reasons.

First, New Mexico has grown to recognize its inadequate transitional support and community based treatment infrastructure for offenders completing their prison sentences and returning to our communities. Specifically, the state lacks the statewide availability of drug/alcohol treatment, transitional living centers, and half-way houses to aid in the safe transition of all offenders, to include but not limited to those controlled release offenders outlined in the study. Accordingly, releasing these offenders abruptly and directly to the streets of New Mexico is not in the best interests of public safety, the state's economy, or the offenders themselves.

Second, it is important to remember that offenders within twelve months of eligibility of parole, 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. While judges have complete judicial immunity for their decisions and actions, the law provides no such immunity or protection to the Corrections Department for its early release decisions. As stewards of the state's resources, and given the state's current inadequate community based programming and treatment infrastructure, exposing the state to greater litigation via the controlled release statute would not appear to be reasonable.

In closing, while the law gives the Department the authority to release certain offenders, the Department will not arbitrarily exercise its authority in a vacuum. The Department instead must and will continue to reasonably manage its facilities and offenders through the lens of public safety."

Table 1. 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	3	1.4	3	1.1
Other Public Order	0	0	3	1.4	3	1.1
Judicial Interference	1	2.1	9	4.1	10	5.2
Drug Possession	14	29.8	89	40.5	103	38.6
Other Property Offenses	0	0	5	2.3	5	.4
Stolen Property	0	0	8	3.6	8	3.0
Fraud	5	10.6	15	6.8	20	7.5
Arson	0	0	2	0.9	2	0.8
Motor Vehicle Theft	1	2.1	6	2.7	7	4.4
Larceny Theft	13	27.7	31	14.1	44	16.5
Burglary	13	27.7	49	22.3	62	23.2
Total	47	100	220	100	267	100

Our estimate suggests that between October 1, 2017, and September 30, 2018, 47 male non-violent offenders with a Level I final custody will be eligible for controlled release.

A further 220 male non-violent offenders with a Level II final custody assignment had a projected release that would make them eligible for controlled release. In total, 267 male offenders met the criteria we used for this analysis.

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

Report Methodology

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.

The confined 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).

In our review of the dataset we discovered 190 offenders (2.7%) were missing a projected release date and flat time release. We excluded all cases that were missing these data.¹ This created a sample of 6,861 offenders (97.3%) of the 7,051 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, 2017 and September 30, 2018. This was done in order to include only offenders who had a projected release date that was approximately 12 months from the date of this research. This yielded a sample that included 2,361 offenders.

We then subtracted offenders who were serving time (defined as their most serious offense) as a violent offender (1,050 offenders)², as a sex offender (56 offenders), as a DWI offender (79 offenders), or who were serving time on a drug trafficking offense (345 offenders). Then we removed all offenders (67) who had an admission type into prison that noted they were serving time on a parole revocation or were awaiting a parole revocation hearing.³ This yielded a sample that included 831 offenders.

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.

Table 2. 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	4	1.4	4	1.1
Other Public Order	0	0	3	1.1	3	0.8
Judicial Interference	2	2.6	10	3.6	12	3.4
Drug Possession	28	36.8	124	44.1	152	42.6
Other Property Offenses	1	1.3	5	1.8	6	1.7
Stolen Property	0	0	8	2.8	8	2.2
Fraud	12	15.8	20	7.1	32	9.0
Arson	0	0	2	0.7	2	0.6
Motor Vehicle Theft	2	2.6	7	2.5	9	2.5
Larceny Theft	14	18.4	37	13.2	51	14.3
Burglary	17	22.4	61	21.7	78	21.8
Total	76	100	281	100	357	100

Our estimate using NMCD data suggests that between October 1, 2017, and September 30, 2018, 76 non-violent offenders with a Level I final custody assignment might be eligible for controlled release. A further 281 non-violent offenders with a Level II final custody assignment had a projected release that might make them eligible for controlled release. In total, 357 offenders met the initial criteria we used for this analysis. The majority of these offenders, 267, are male (74.5%). Individuals serving time on a drug possession conviction comprised the largest group, followed by larceny theft and burglary convictions.

Table 2 provides the number of offenders, male and female, eligible for controlled release by type of offense and custody level assignment. Our estimate suggests that between October 1, 2017, and September 30, 2018, 47 male non-violent offenders with a Level I final custody will be eligible for controlled release.

Our estimate suggests that between October 1, 2017, and September 30, 2018, 29 female non-violent offenders with a Level I final custody assignment could be eligible for controlled release. A further 61 female non-violent offenders with a Level II final custody assignment had a projected release that could make them eligible for controlled release. In total, 90 female offenders met the criteria we used for this analysis.

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

Table 3. 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	1	1.6	1	1.1
Other Public Order	0	0	0	0	0	0
Judicial Interference	1	3.4	1	1.6	2	2.2
Drug Possession	14	58.3	35	57.4	49	54.4
Other Property Offenses	1	3.4	0	0	1	1.1
Stolen Property	0	0	0	0	0	0
Fraud	7	24.1	5	8.2	12	13.3
Arson	0	0	0	0	0	0
Motor Vehicle Theft	1	3.4	1	1.6	2	2.2
Larceny Theft	1	3.4	6	9.8	7	7.8
Burglary	4	13.8	12	19.7	16	17.8
Total	29	100	61	100	90	100

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.

We subtracted offenders who had a final Level III custody assignment, a Level IV custody assignment, or were missing a final custody level (407 offenders).⁴ We only included offenders with a Level I or Level II final custody assignment, which, with the other subtractions, leaves a sample of 357 offenders that were eligible for controlled release between the dates of October 1, 2017 and September 30, 2018.

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.

The statutory 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. We are also unable to estimate how many offenders are serving consecutive sentences or who have had a recent and/or major misconduct reports. The 357 sample would likely be reduced if such offenders were also excluded.

ENDNOTES

1. In a review of the study, the NMCD 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

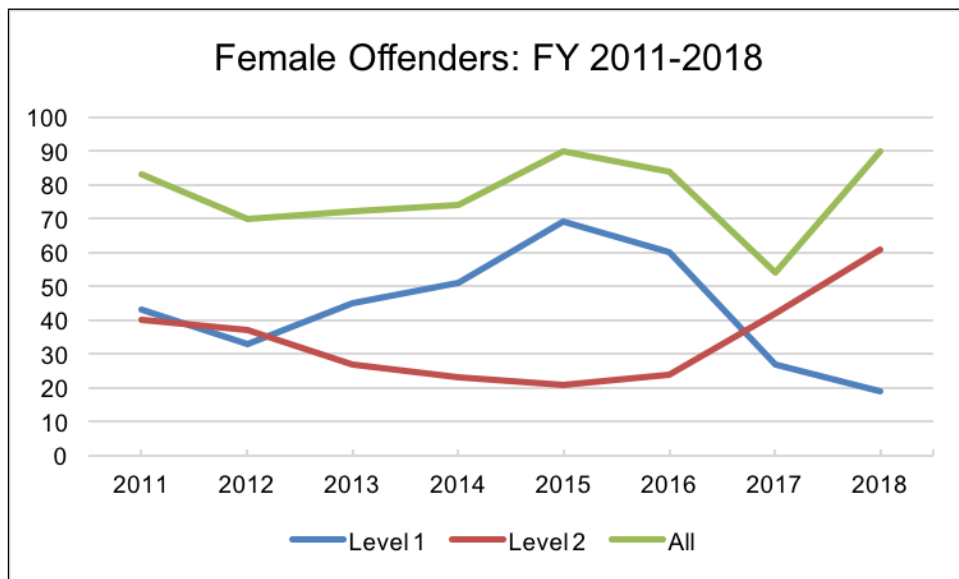
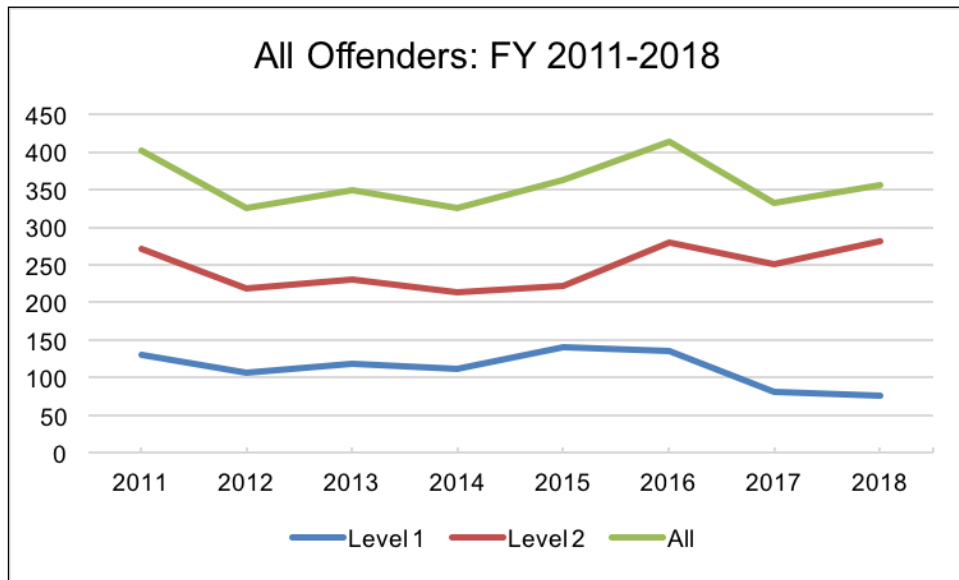
laws (many are parole violators) who do not have a projected release date.

2. Consisting of 1,050 serious violent offenders as labeled by NMCD: 404 sexually violent offenders, 38 offenders with weapons charges, 141 with other violent offenses, 64 charged with assault, 178 charged with battery, 45 charged with robbery, 41 charged with homicide, 61 charged with armed robbery, 52 charged with kidnapping, and 26 charged with 'other homicide'.

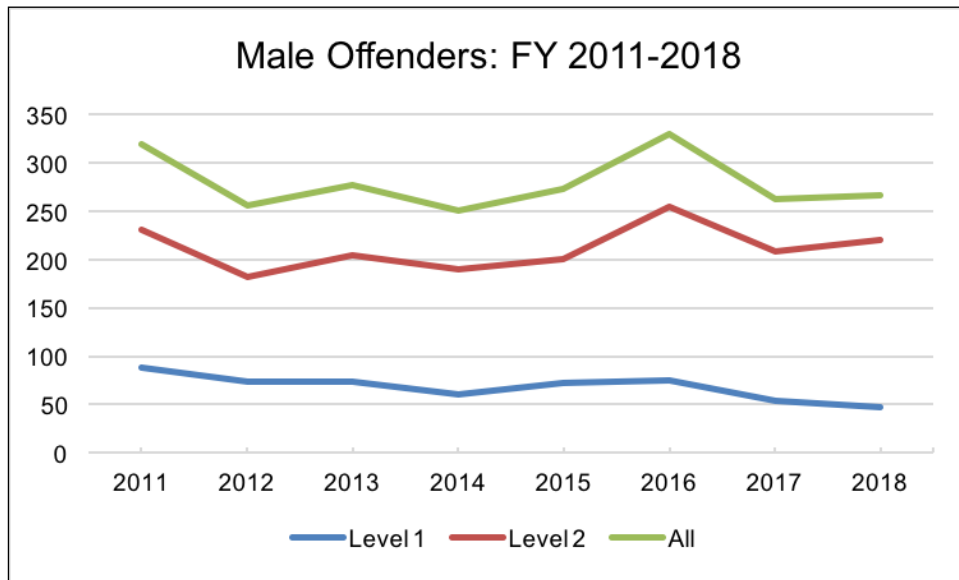
3. We removed all offenders with the following admission type as labeled by NMCD in CMIS: 'Parole Viol Abscond' (34 offenders), 'Parole Viol Pnd Chrg' (12 offenders), 'Parole Viol Tech' (21 offenders).

4. There were 63 Level IV offenders, 324 Level III offenders, and 20 offenders with no final custody level removed.

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 1st, 2017		
Less Than 6 Months	87	24.4
6 Months to One Year	121	33.9
Over One Year	148	41.5
Total	357	100.0
Time Until Projected Release On October 1st, 2017		
Less Than 6 Months	228	63.9
6 Months to One Year	129	36.1
Total	357	100.0
Females:		
Time Served On October 1st, 2017		
Less Than 6 Months	25	27.8
6 Months to One Year	39	43.3
Over One Year	26	28.9
Total	90	100.0
Time Until Projected Release On October 1st, 2017		
Less Than 6 Months	59	65.6
6 Months to One Year	31	34.4
Total	90	100.0
Males:		
Time Served On October 1st, 2017		
Less Than 6 Months	62	23.2
6 Months to One Year	82	30.7
Over One Year	122	45.7
Total	266	100.0
Time Until Projected Release On October 1st, 2017		
Less Than 6 Months	169	63.3
6 Months to One Year	98	36.7
Total	266	100.0