

## 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)). Eleven 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 annually by the NMCD concerning offenders confined on a particular day. The information reported here comes from information on the 7,161 inmates who were in confinement as of June 30, 2018. Of these inmates, 398 were release-eligible. Details describing these 398 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 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	1	1.3%	2	0.6%	3	0.8%
Other Public Order	0	0%	7	2.2%	7	1.8%
Judicial Interference	6	7.8%	24	7.5%	30	7.5%
Drug Possession	19	24.7%	129	40.2%	148	37.2%
Other Property Offenses	2	2.6%	6	1.9%	8	2.0%
Stolen Property	2	2.6%	6	1.9%	8	2.0%
Fraud	17	22.1%	27	8.4%	44	11.1%
Arson	1	1.3%	2	0.6%	3	0.8%
Motor Vehicle Theft	4	5.2%	8	2.5%	12	3.0%
Larceny Theft	13	16.9%	46	14.3%	59	14.8%
Burglary	12	19.9%	64	19.9%	76	19.1%
Total	77	100%	321	100%	398	100%

**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, 2018, and September 30, 2019, 77 non-violent offenders with a Level 1 final custody assignment will be eligible for controlled release. A further 321 non-violent offenders with a Level II final custody assignment had a projected release that would make them eligible for controlled release.

In total, 398 offenders met the initial criteria we used for this analysis. The majority of these offenders are male (76.6%). Individuals serving time on a drug possession conviction comprised the largest group, followed by burglary convictions and larceny theft.

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

Our estimate suggests that between October 1, 2018, and September 30, 2019, 20 female non-violent offenders with a Level I final custody assignment will be eligible for controlled release. A further 73 female non-violent offenders with a Level II final custody assignment had a projected release that would make them eligible for controlled release. In total, 93 female offenders met the criteria we used for this analysis.

**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%
Other Public Order	0	0%	2	2.7%	2	2.2%
Judicial Interference	4	20%	6	8.2%	10	10.8%
Drug Possession	6	30%	35	47.9%	41	44.1%
Other Property Offenses	0	0%	0	0%	0	0%
Stolen Property	0	0%	1	1.4%	1	1.1%
Fraud	7	35%	8	11%	15	16.1%
Arson	0	0%	1	1.4%	1	1.1%
Motor Vehicle Theft	1	5%	1	1.4%	2	2.2%
Larceny Theft	1	5%	10	13.7%	11	11.8%
Burglary	1	5%	9	12.3%	10	10.8%
Total	20	100%	73	100%	93	100%

<b>Table 3. Estimated Number of Male Offenders Eligible for Controlled Release</b>						
Type of Offense	Final Custody Level Assignment					
	Level I		Level II		Levels I & II	
	Count	Percent	Count	Percent	Count	Percent
Other Offenses	1	1.8%	2	0.8%	3	1.0%
Other Public Order	0	0%	5	2.0%	5	1.6%
Judicial Interference	2	3.5%	18	7.3%	20	6.6%
Drug Possession	13	22.8%	94	37.9%	107	35.1%
Other Property Offenses	2	3.5%	6	2.4%	8	2.6%
Stolen Property	2	3.5%	5	2.0%	7	2.3%
Fraud	10	17.5%	19	7.7%	29	9.5%
Arson	1	1.8%	1	0.4%	2	0.7%
Motor Vehicle Theft	3	5.3%	7	2.8%	10	3.3%
Larceny Theft	12	21.1%	36	14.5%	48	15.7%
Burglary	11	19.3%	55	22.2%	66	21.6%
Total	57	100%	248	100%	305	100%

**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, 2018, and September 30, 2019, 57 male non-violent offenders with a Level 1 final custody will be eligible for controlled release. A further 248 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, 305 male offenders met the criteria we used for this analysis.

### 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 date of release if no time is earned); 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 (new commitment, probation violator, parole readmission, etc.); final custody level (this field represents the offender custody level placement after overrides); and earned meritorious deduction 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 211 offenders (2.9%) were missing a projected release date and flat time release. We excluded all cases that were missing these data.<sup>1</sup> This created a sample of 6,950 offenders (97.3%) of the 7161, 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, 2018 and September 30, 2019. 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 2,447 offenders.

We then subtracted offenders who were serving time (defined as their most serious offense) as a violent offender (1,088 offenders)<sup>2</sup>, as a sex offender (48 offenders), as a DWI offender (72 offenders), or who were serving time on a drug trafficking offense (343 offenders). Then we removed all offenders (99) who had an admission type into prison that noted they were serving time on a parole revocation or were awaiting a parole revocation hearing.<sup>3</sup> This yielded a sample that included 797 offenders.

We subtracted offenders who had a final Level III custody assignment, a Level IV custody assignment, or were missing a final custody level (399 offenders).<sup>4</sup> We only included offenders with a Level I or Level II final custody assignment, which, with the other subtractions,

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leaves a sample of 398 offenders that were eligible for controlled release between the dates of October 1, 2018 and September 30, 2019.

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 398 sample would likely be reduced if such offenders were also excluded.

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.

## 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

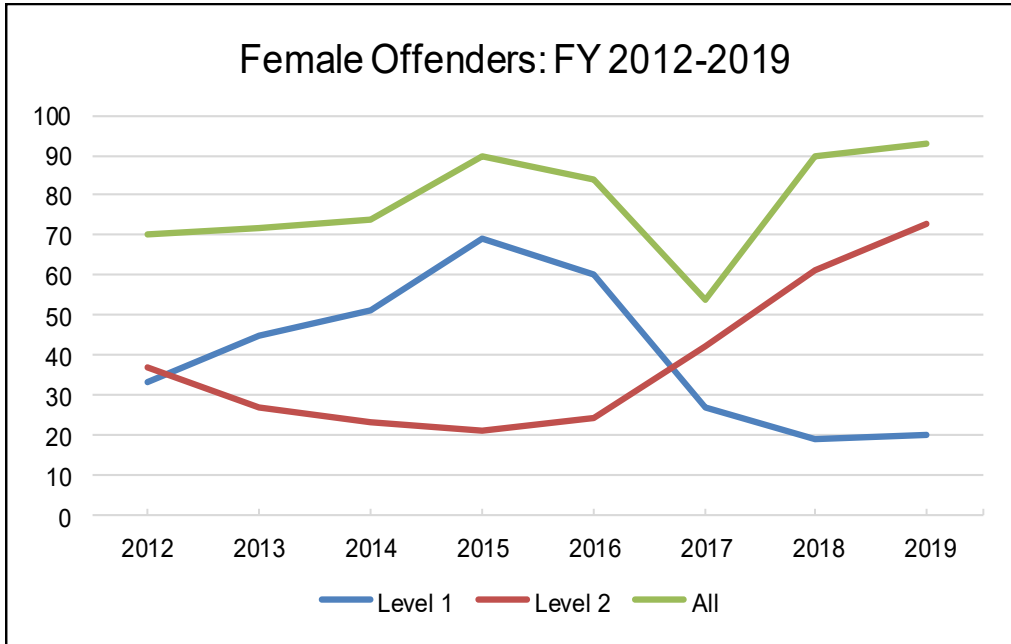
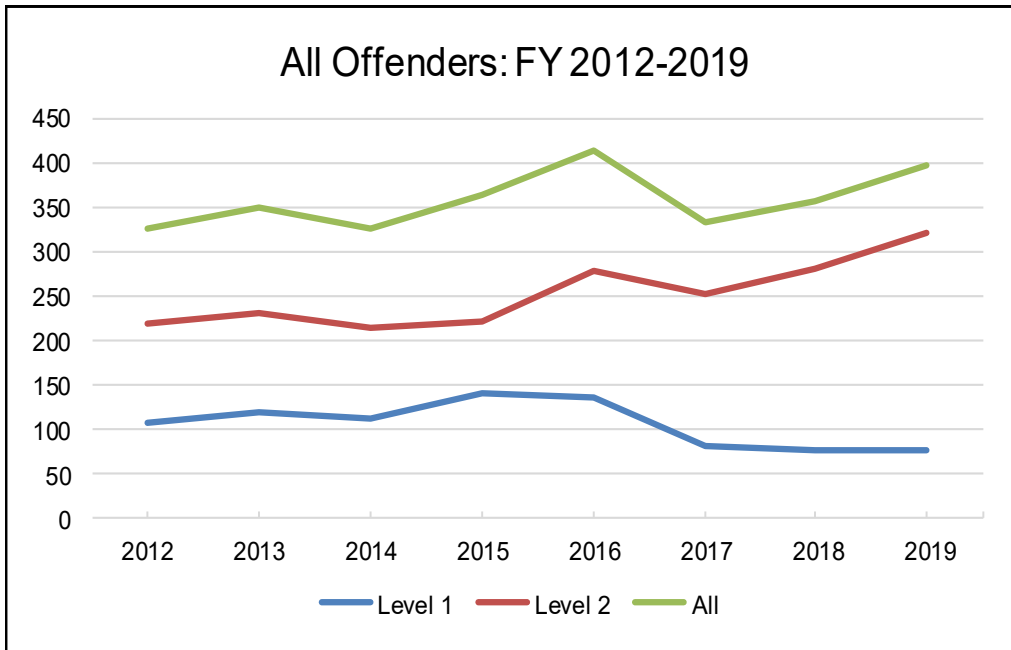
laws (many are parole violators) who do not have a projected release date.

2. The 1,088 are Serious Violent Offenders as labeled by NMCD including, 391 sexually violent offenders, 38 offenders with weapons charges, 143 with other violent offenses, 81 charged with assault, 186 charged with battery, 56 charged with robbery, 45 charged with homicide, 65 charged with armed robbery, 51 charged with kidnapping, and 32 charged with 'other homicide'.

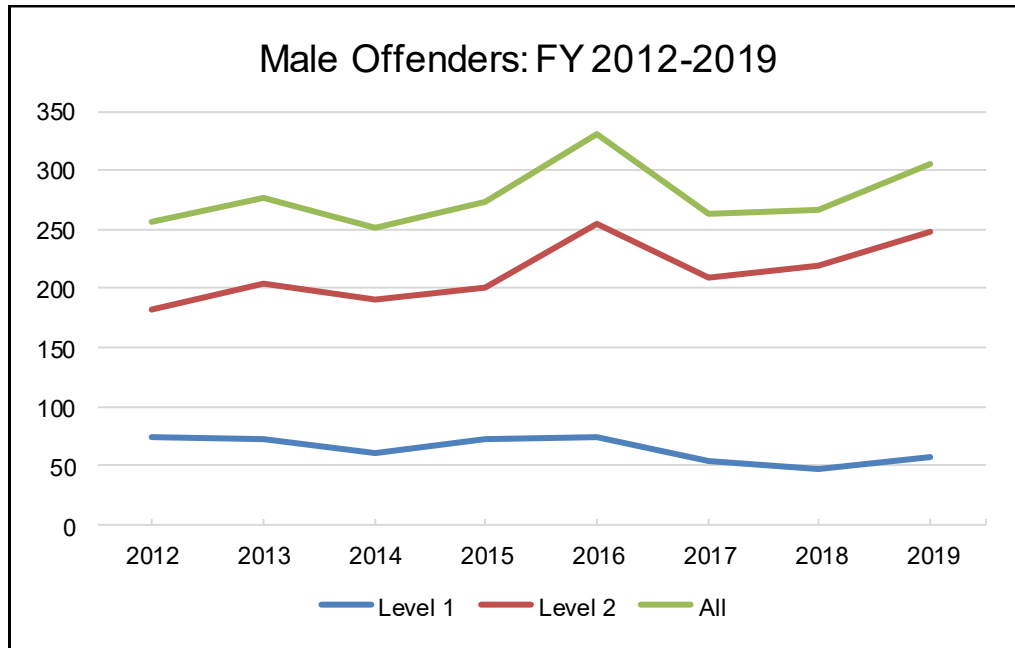
3. We removed all offenders with the following admission type as labeled by NMCD in CMIS: 'Parole Viol Abscond' (55 offenders), 'Parole Viol Pnd Chrg' (8 offenders), 'Parole Viol Tech' (36 offenders).

4. The subtracted offenders included 55 Level IV offenders and 319 Level III offenders. Additionally, 25 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
<b>All Offenders:</b>		
<b>Time Served On October 1<sup>st</sup>, 2018</b>		
Less Than 6 Months	67	16.8
6 Months to One Year	131	32.9
Over One Year	200	50.3
Total	398	100.0
<b>Time Until Projected Release On October 1<sup>st</sup>, 2018</b>		
Less Than 6 Months	260	65.3
6 Months to One Year	138	34.7
Total	398	100.0
<b>Females:</b>		
<b>Time Served On October 1<sup>st</sup>, 2018</b>		
Less Than 6 Months	16	17.2
6 Months to One Year	36	38.7
Over One Year	41	44.1
Total	93	100.0
<b>Time Until Projected Release On October 1<sup>st</sup>, 2018</b>		
Less Than 6 Months	56	60.2
6 Months to One Year	37	39.8
Total	93	100.0
<b>Males:</b>		
<b>Time Served On October 1<sup>st</sup>, 2018</b>		
Less Than 6 Months	51	16.7
6 Months to One Year	95	31.1
Over One Year	159	52.1
Total	305	100.0
<b>Time Until Projected Release On October 1<sup>st</sup>, 2018</b>		
Less Than 6 Months	204	66.9
6 Months to One Year	101	33.1
Total	305	100.0