



Time Served in New Mexico Prisons, FY 2022: Analysis of the Impact of Earned Meritorious Deductions

Prepared by
Grace Cairo

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Summary

- This study calculates proportions served on the total sentence lengths and proportions on the total prison length of female EMD offenders released in FY22 by the New Mexico Corrections Department (NMCD).
- Female serious violent offenders served 81.2% of their total sentence and 80.0% of their prison sentence in FY22.
- Female offenders earning 30 days credit for 30 days served, served 53.8% of their total sentence and 46.1% of their prison sentence in FY22.
- In FY22, 68.4% of the women released were earning 30 days credit for 30 days served.
- The largest admission group was probation violations, which made up 34.9% of the sample. The second largest was parole violations, 29.1% of the sample.
- The Second Judicial District contributed the greatest number of offenders and releases under the EMD policy. The Second, Fifth, and Twelfth Judicial Districts combined accounted for 45.8% of the offenders.

Introduction

New Mexico's law regarding earned meritorious deductions (EMD), Section 32-2-34 NMSA 1978), which came into law on July 1, 1999, is complex. New Mexico allows and even anticipates that incarcerated individuals will earn time deducted from their sentences depending on the severity of their offense. The amount of deducted time ranges from 4 days per month (defined as 30 days) for those convicted of serious violent offenses (SVOs), unless they are serving a sentence of 'life imprisonment without possibility of release or parole,' to 30 days per month for those convicted of nonviolent offenses. Incarcerated individuals may earn additional, though limited, 'lump-sum' meritorious deductions by participating in vocational, substance abuse or mental health programs, or by earning educational degrees.

On a 10-year sentence, serious violent offenders are expected to serve 85% of their sentence in prison, while those who were convicted of other offenses are expected to serve 50% of their sentence in prison. Similarly, those who return to prison for violations can earn between 4 days and 30 days meritorious deductions per month for the remainder of their sentence. All deductions are subject to NMCD approval; certain violations during prison negate the possibility of earning meritorious deductions.

This report calculates the average proportion of time served by female

inmates released in fiscal year 2022 (July 1, 2021 – June 30, 2022) who earned deductions to their sentences under the EMD statute.

Methodology

Each fiscal year we rotate the study between male and female inmates. In FY22 we are reporting on female inmates only.

In July 2022, NMSC staff obtained a list of all female inmates released who had committed their crimes on or after July 1, 1999, making them potentially eligible for Earned Meritorious Deductions (EMD) under Section 32-2-34 NMSA 1978. These inmates had prison release dates between July 1, 2021, and June 30, 2022. From this list we extracted all female inmates, a total of 333 offenders. Ten offenders were excluded.¹ We ultimately ended up with 97% of women released under the EMD statute, for a total of 323 offenders.

The study reports the average percentage of time served for our sample of valid releases during FY22. The valid releases represent 323 offenders but 364 releases, indicating that several offenders were released multiple times or had changes in their prison status during the reporting period.

During FY22, 45 (or 12.3%) of the 364 releases were paroled early due to the COVID-19 pandemic. For these individuals, the amount of time that they were released early was added onto their parole term. As a result, the

average overall percentage of time spent in prison may have decreased.

Definitions

- **EMD Types** represent what an individual can earn in sentence deductions for every 30 days served. For example, if an individual would earn four days for every 30 days served, it would be designated as 4/30.
- **Serious Violent Offenders (SVO) (4/30)** represent offenders whose underlying charge is considered a serious violent offense. Given the small number of probation violation (8) and in-house parole inmates (5) who have committed serious violent offenses, they are reported with basic sentences (18) in this category.
- **Parole Violators (4/30)** represent offenders who have an alleged commission of a new felony offense or have been formally declared by the Parole Board as an absconder.
- **Parole Violators (8/30)** represent offenders who are revoked for violations such as failing to pass a drug test administered as a condition of parole.
- **Parole Violators (30/30)** represent offenders who are revoked for violations for whom the Parole Board has set their EMD as 30/30.
- **Basic Sentence (30/30)** represents an admission to the New Mexico Corrections Department (NMCD) for a new non-violent conviction that an offender was not previously sentenced to probation for.
- **Probation Violation (30/30)** represents an admission for those revoked for violations of probation.
- **In-House Parole (30/30)** indicates offenders who finished their sentence but did not have an approved parole plan, so they started their parole in the prison facility. For that reason, they are not expected to serve half of their sentence like other offenders who have an EMD type of 30/30.
- **Total Sentence Percentage:** The total sentence percentage was computed by dividing the actual total sentence with presentence credit by the longest possible total sentence. The actual total sentence with presentence credit is the amount of time it took for an offender to serve their sentence from the day of sentencing to the day of release, including any presentence credits. The longest total sentence is the longest time they would spend serving their sentence if they earned no good time and had no presentence credit, set at sentencing. Dividing these two gets the percentage of the overall sentence served from the time of sentencing until release, counting any presentence credits.
- **Prison Sentence Percentage:** The prison sentence percentage was computed by dividing the actual prison

sentence by the longest prison sentence. The actual prison sentence is the difference between the date they arrive in the prison facility to the date they complete their sentence. In other words, it is the actual time spent in prison. The longest prison sentence is the difference between the date they got to the prison facility and the date that they are expected to leave, counting their presentence credit. This would be the day they would leave prison if they earned no good time at all. Dividing these two yields the prison sentence percentage, which most accurately reflects the amount of EMD they earned during their time spent in prison.

Analysis of Time Served

Table 1. Average Percentage of Sentence and Prison Sentence Served			
EMD Type	Frequency	Total Sentence Percentage	Prison Sentence Percentage
EMD 4	99	90.3%	85.4%
SVO (4/30)	31	81.2%	80.0%
Parole Violation (4/30)	68	94.4%	87.9%
EMD 8	16	85.4%	75.7%
Parole Violation (8/30)	16	85.4%	75.7%
EMD 30	249	53.8%	46.1%
Parole Violation (30/30)	22	68.3%	48.7%
Basic Sentence (30/30)	77	55.0%	48.7%
Probation Violation (30/30)	119	57.5%	49.2%
In-House Parole (30/30)	31	26.3%	26.3%
Total	364	65.1%	58.1%

As seen in Table 1, serious violent offenders served 81.2% of their total sentence and 80% of their prison sentence, while parole violators with the same deduction (4/30), the most common category of parole violators, served 94.4% of their total sentence and 87.9% of their prison sentence. Probation violators, the largest group of offenders with a 30/30 deduction, served 57.5% of their total sentence, and 49.2% of their prison sentence. Basic sentence offenders, the second largest group with the same deduction (30/30), served 55% of their total sentence and 48.7% of their prison sentence.

Table 2. Type of EMD		
EMD Type	Frequency	Percentage
EMD 4	99	27.2%
SVO (4/30)	31	8.5%
Parole Violation (4/30)	68	18.7%
EMD 8	16	4.4%
Parole Violation (8/30)	16	4.4%
EMD 30	249	68.4%
Parole Violation (30/30)	22	6.0%
Basic Sentence (30/30)	77	21.2%
Probation Violation (30/30)	119	32.7%
In-House Parole (30/30)	31	8.5%
Total	364	100.0%

As shown in Table 2, most sentences (68.4%) were earning 30 days credit for 30 days served (EMD 30). These included parole violations, basic sentences, probation violations, and in-house parolees. The second most common (27.2%) were sentences earning 4 days credit for 30 days served (EMD 4), which included SVOs and parole violations. The least frequent were sentences earning 8 days credit for 30 days served (EMD 8), with only parole violations in this category.

Table 3. Type of Admission		
Admission Type	Frequency	Percentage
Basic Sentence	95	26.1%
Probation Violator	127	34.9%
Parole Violator	106	29.1%
In-House Parole	36	9.9%
Total	364	100.0%

*Note that the n's in this Table differ from those in Table 2 because in Table 2, some probation violators, in-house parolees, and basic sentences are included in the SVO category.

Table 3 breaks down releases by admission type and shows that the largest group was probation violators (34.9%), followed by parole violators (29.1%), basic sentences (26.1%), and lastly, in-house parolees (9.9%).

Table 4. Type of Release		
Release Type	Frequency	Percentage
Parole	229	62.9%
Discharge	135	37.1%
Total	364	100.0%

Table 4 reveals that the majority of those released had a parole term to complete, while a minority were discharged from prison with no parole term. Discharged offenders are those who either completed their parole

term while in prison, those who were revoked back to prison to complete their parole term, those who were admitted on a probation violation and had already completed their parole term, or those serving time for misdemeanors who had no parole term.

Tables 5 and 6 look the individual women released (323) rather than the total number of their releases.

Table 5. Age at Prison Admission		
Age	Frequency	Percentage
19-21	8	2.5%
22-25	28	8.7%
26-30	81	25.1%
31-35	70	21.7%
36-40	67	20.7%
41-45	33	10.2%
46-50	18	5.6%
51+	18	5.6%
Total	323	100.0%

As seen in Table 5, the most common age group at prison admission was between the ages of 26 and 30. The ages ranged from 19 to 64, with the average being around 35.

Table 6. Judicial Districts		
District	Frequency	Percentage
1	14	4.3%
2	63	19.5%
3	40	12.4%
4	4	1.2%
5	41	12.7%
6	9	2.8%
7	23	7.1%
8	10	3.1%
9	31	9.6%
10	7	2.2%
11	22	6.8%
12	44	13.6%
13	15	4.6%
Total	323	100.0%

Table 6 illustrates that the greatest percentage of releases were from the Second Judicial District (Bernalillo County), with 63 offenders, or 19.5% of released offenders. Next, the Twelfth Judicial District (Lincoln and Otero Counties) accounted for 13.6% of released offenders, followed by the Fifth Judicial District (Chaves, Eddy, and Lea Counties) with 12.7% of released offenders. These three judicial districts together accounted for 45.8% of all released offenders.

Offense	Frequency	Percentage
Violent	34	15.3%
Assault and Battery	10	4.5%
Other Violent Offenses	24	10.8%
Property	29	13.1%
Burglary	10	4.5%
Other Property	19	8.6%
Drug	24	10.8%
Drug Trafficking	15	6.8%
Drug Possession	9	4.1%
Public Order	8	3.6%
Other Public Order	8	3.6%
Probation Violation	127	57.2%
Total	222	100%

Table 7 only includes released offenders of all EMD types admitted on a basic sentence or probation violation, for a total of 222 offenders. The most common offense types for this subset were probation violations (57.2%), followed by violent offenses (15.3%), which were mostly serious violent offenses defined by the EMD statute.

Endnotes

¹ Offenders were excluded from the original sample for the following reasons: (1) they did not have available records at the time of data collection; (2) they were due for diagnostic evaluation or court ordered release; (3) they were deceased at the time of the data collection; or (4) their records were incomplete or inconclusive.

About This Study

The EMD policy was part of the Sentencing Standards Package proposed by the New Mexico Sentencing Commission to the New Mexico State Legislature in 1999. The Commission is statutorily mandated to provide an analysis of the average reduction in the sentence of imprisonment due to meritorious deductions earned by prisoners (Section 31-18-15(G) NMSA 1978). This report is the fulfillment of that mandate for FY22.

Acknowledgment

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

About the Commission

The New Mexico Sentencing Commission serves as a criminal and juvenile justice policy resource to the three branches of state government and interested

citizens. Its mission is to provide impartial information, analysis, recommendations, and assistance from a coordinated cross-agency perspective, with an emphasis on maintaining public safety and making the best use of our criminal and juvenile justice resources. The Commission is made up of members of the criminal justice system, including members of the Executive and Judicial branches, representatives of lawmakers, law enforcement officials, criminal defense attorneys, and citizens.

Appendix

This appendix includes tables that contain additional information about the specific relationships between admission types, release types, and EMD types.

		EMD Type			Total
		EMD 30	EMD 4	EMD 8	
Admission Type	Basic Sentence	77	18	0	95
	Probation Violator	119	8	0	127
	Parole Violator	22	68	16	106
	In-House Parole	31	5	0	36
Total		249	99	16	364

Basic sentences, probation violators, and in-house parolees are most often EMD 30. Parole violators, on the other hand, are usually EMD 4.

		Release Type		Total
		Parole	Discharged	
Admission Type	Basic Sentence	91	4	95
	Probation Violator	103	24	127
	Parole Violator	4	102	106
	In-House Parole	31	5	36
Total		229	135	364

Basic sentences, probation violators, and in-house parolees are usually released with a parole term. Parole violators usually are discharged without a parole term because they complete their parole term during their sentence.

Earned Meritorious Deductions Statute

The EMD statute can be found at Section 33-2-34 NMSA 1978. Offenders who committed their crimes on or after July 1, 1999, the effective date of the statute, or who violated their parole on a crime committed on or after July 1, 1999, are subject to the statute. Under this policy, offenders convicted of the following “serious violent crimes”, as defined by New Mexico statute, may only receive up to 4 days of credit for 30 days served (4/30). The list can be found at Section 33-2-34(L)(4)(a) through (n). Note that first degree murder is not subject to any meritorious deductions:

- Second degree murder
- Voluntary manslaughter
- Third degree aggravated battery
- Third degree aggravated battery against a household member
- 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. (The list can be found at Section 33-2-34(L)(4)(o).) People convicted of these crimes might also be 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
- Fourth degree aggravated assault against a household member
- Third degree assault against a household member 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 harm by vehicle
- Battery upon a peace officer

Parole violators may also be subject to reduced credit eligibility under the EMD statute. Parole violators who are convicted of new crimes or are found to be absconders may receive 4 days of credit for 30 days served. Parole violators revoked for violations may receive 8 days of credit for 30 days served (8/30). All other types of parole violators continue to receive 30 days credit for 30 days served (30/30).

EMD can be forfeited for misconduct or restored for exemplary conduct or work performance. Prisoners are kept informed of their EMD status quarterly.

Additionally, the statute 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. See the full EMD statute for details.