



Time Served in New Mexico Prisons, FY 2021: Analysis of the Impact of Earned Meritorious Deductions

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Summary

- This study calculates proportions served on the total sentence lengths and proportions on the total prison length of male EMD offenders released in FY21 by the New Mexico Corrections Department (NMCD).
- Male Serious Violent Offenders served 80.7% of their total sentence and 79.6% of their prison sentence in FY21.
- Male offenders earning 30 days credit for 30 days served, served 53.7% of their total sentence and 47.8% of their prison sentence in FY21.
- In FY21, 65.2% of the men released were offenders earning 30 days credit for 30 days served.
- 36.6% of the releases were offenders admitted on a basic sentence, while a total of 50.1% were probation or parole violators.
- The Second Judicial District contributed the greatest number of offenders and releases under the EMD policy. The Second, Third, and Fifth Judicial Districts combined accounted for 51.4% of the offenders.

This report provides calculations of the average proportion of time served by male inmates released in fiscal year 2021 (July 1, 2020 – June 30, 2021) who earned deductions to their sentences under the Earned Meritorious Deductions (EMD) statute (Section 33-2-34 NMSA 1978).

Methodology

In this report we are reporting on male inmates only for FY21. Each fiscal year we rotate the study between male and female inmates.

In July 2021, NMSC staff obtained a list of all inmates released who had committed their crimes on or after July 1, 1999, making them potentially eligible for Earned Meritorious Deductions (EMD) under Section 33-2-34 NMSA 1978. These inmates had prison release dates between July 1, 2020 and June 30, 2021. From this list we extracted all male inmates, a total of 2,288 offenders.

We attempted to collect the information for all men released who were subject to the EMD statute in FY21. Offenders were excluded from the original sample for the following reasons: (1) the person did not have available records at the time of data collection; (2) the person had incomplete or inconclusive records; (3) the person was due for diagnostic evaluation or court ordered release; and (4) the person was deceased at the time of the data collection. We ultimately ended up with a sample of

12.3% of men released under the EMD statute, representing a total of 282 offenders.

The study reports the average proportion of time served for our sample of valid releases during FY21. This represents 282 offenders but 325 releases, indicating that a number of offenders had multiple releases or changes in prison status during the reporting period.

During FY21, there were 56 offenders in the sample (19.8%) who 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. This could result in a lower average percentage of time spent in prison.

Information About Releases

Male offenders in the study do not represent a random sample of all FY21 male releases because FY21 also includes 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.

Definitions

- **Total Sentence Length:** the total amount of time for incarceration set by the court at sentencing – this includes time served in jail before sentencing and/or after sentencing and before transfer to prison.
- **Prison Facility Sentence Length:** the total sentence length 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.
- **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 (9) and in-house parole inmates (7), they are reported with basic sentences (37) in this category.
- **Parole Violators (4/30)** represent offenders who either abscond or have an alleged commission of a new felony offense.
- **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 NMCD for a new non-violent conviction for which an offender was not previously sentenced to probation.
- **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 necessarily expected to serve half of their sentence like other offenders who have an EMD type of 30/30.

Analysis of Time Served

EMD Type	Number	Total Sentence Percentage	Prison Sentence Percentage
SVO (4/30)	53	80.7%	79.6%
Parole Violation (4/30)	48	94.3%	90.4%
Parole Violation (8/30)	12	85.0%	80.4%
Parole Violation (30/30)	19	70.5%	59.1%
Basic Sentence (30/30)	82	58.8%	52.5%
Probation Violation (30/30)	75	60.2%	51.9%
In-House Parole (30/30)	36	28.6%	28.6%
Overall Average	325	66.2%	61.1%

As seen in Table 1, Serious Violent Offenders served 80.7% of their total sentence and 79.6% of their prison sentence, compared to Parole Violators with the same deduction (4/30), the most common type of parole offender, who served 94.3% of their total sentence and 90.4% of their prison sentence. Basic sentence offenders served 58.8% of their total sentence and 52.5% of their prison sentence. The other most common category of offenders with the same deduction (30/30), probation violators, served 60.2% of their total sentence, and 51.9% of their prison sentence.

EMD Type	Frequency	Percentage
SVO (4/30)	53	16.3%
Parole Violation (4/30)	48	14.8%
Parole Violation (8/30)	12	3.7%
Parole Violation (30/30)	19	5.8%
Basic Sentence (30/30)	82	25.2%
Probation Violation (30/30)	75	23.1%
In-House Parole (30/30)	36	11.1%
Total	325	100.0%

Table 2 shows the sample included 212 sentences or 65% with 30 days credit for 30 days served (Parole Violation, Basic Sentence, Probation Violation, and In-House Parole), 101 or 31% of sentences with 4/30 releases (SVO and Parole Violation), and 12 or 4% of sentences with 8/30 releases (Parole Violations).

Table 3. Type of Admission		
Type	Frequency	Percentage
Basic Sentence	119	36.6%
Probation Violator	84	25.8%
Parole Violator	79	24.3%
In-House Parole	43	13.2%
TOTAL	325	100.0%

*Note that each of the four admission types can be assigned different EMD types. Thus, n's in Tables 2 and 3 differ.

Table 3 breaks out releases by type of admission and shows that 36.6% of the releases were offenders admitted on a new offence (including both violent and nonviolent) while a total of 50.1% were probation or parole violators.

Table 4. Type of Release		
Type	Frequency	Percentage
Parole	219	67.4%
Discharge	106	32.6%
Total	325	100.0%

Table 4 shows that the majority of those released in the sample (67.4%) had a parole term to serve, and a minority were discharged from prison with no parole term (32.6%). Discharge refers to 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 5. Age at Prison Admission		
Age	Frequency	Percentage
19-21	5	1.8%
22-25	51	18.1%
26-30	64	22.7%
31-35	54	19.1%
36-40	45	16.0%
41-45	35	12.4%
46-50	9	3.2%
51+	19	6.7%
Total	282	100.0%

Tables 5 and 6 look the unduplicated sample of men released rather than the total number of their releases. Table 5 shows that their ages ranged from 20 to 71 years. The average age at admission was 34 years.

Table 6. Judicial Districts		
District	Frequency	Percentage
1	18	6.4%
2	71	25.2%
3	32	11.3%
4	4	1.4%
5	42	14.9%
6	14	5.0%
7	10	3.5%
8	9	3.2%
9	21	7.4%
10	6	2.1%
11	14	5.0%
12	29	10.3%
13	12	4.3%
Total	282	100.0%

Table 6 illustrates that the largest number and percentage of releases were from the Second Judicial District (Bernalillo County), with 71 offenders, or 25.2% of released offenders. Next, the Fifth Judicial District (Chavez, Eddy, and Lea Counties) accounted for 14.9% of released offenders, followed by the Third Judicial District (Dona Ana County) for 11.3% of released offenders. Together, these three judicial districts accounted for over half or 51.4% of the released offenders.

Table 7. Offense Types		
Offense	Frequency	Percentage
Violent	56	27.6%
Serious Violent Offenses	37	18.2%
Sexual Offenses	4	2.0%
Assault and Battery	9	4.4%
Other Violent Offenses	6	3.0%
Property	22	10.8%
Burglary	16	7.9%
Other Property	6	3.0%
Drug	24	11.8%
Drug Trafficking	13	6.4%
Drug Possession	11	5.4%
Public Order	17	8.4%
DWI	4	2.0%
Other Public Order	13	6.4%
Probation Violation	84	41.4%
Total	203	100.0%

Table 7 focuses just on released offenders admitted on a basic sentence and probation violations. The most common offense type was Probation Violation (41.4%), followed by Violent Offences (27.6%), comprised mostly of the serious violent offences defined by the Earned Meritorious Deductions Statute.

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 FY21.

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.

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 or 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).) People convicted of these crimes may 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. (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).

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 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.