NEW MEXICO
Sentencing Commission

Estimated Number of Offenders in New Mexico Corrections 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)). Twelve 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 6,840 inmates who were in confinement as of June 30, 2019. Of these inmates, 294 were release eligible. Details describing these 294 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.

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

"The focus of the New Mexico Corrections Department is public safety. It is our responsibility to assure that we maintain safe and professional environments in our facilities and that our supervision in the community is effective. Any decisions regarding controlled release will consider all aspects of each case. We will assure that victims voices are heard and their rights are fully respected. We will determine levels of supervision, ensure availability of post release treatment and resources, and we will make certain that our field offices are appropriately staffed for any related caseload increases."

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.

Table 1. Estimated Number of All Offenders Eligible for Controlled Release						
Type of Offense	Final Custody Level Assignment					
	Level I		Level II		Level I & II	
	Count	Percent	Count	Percent	Count	Percent
Other Offenses	1	1.8%	0	0%	1	0.3%
Judicial Interference	2	3.6%	12	5.0%	14	4.8%
Drug Possession	21	38.2%	107	44.8%	128	43.5%
Other Property Offenses	3	5.5%	8	3.3%	11	3.7%
Stolen Property	0	0.0%	5	2.1%	5	1.7%
Fraud	12	21.8%	20	8.4%	32	10.9%
Arson	1	1.8%	1	0.4%	2	0.7%
Motor Vehicle Theft	1	1.8%	7	2.9%	8	2.7%
Larceny Theft	7	12.7%	31	13.0%	38	12.9%
Burglary	7	12.7%	48	20.1%	55	18.7%
Total	55	100%	239	100%	294	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, 2019, and September 30, 2020, 55 non-violent offenders with a Level 1 final custody assignment will be eligible for controlled release. A further 239 non-violent offenders with a Level II final custody assignment had a projected release that would make them eligible for controlled release.

In total, 294 offenders met the initial criteria we used for this analysis. The majority of these offenders are male (89.4%). 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, 2019, and September 30, 2020, 16 female nonviolent offenders with a Level 1 final custody assignment will be eligible for controlled release. A further 42 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, 58 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		Level I & II	
	Count	Percent	Count	Percent	Count	Percent
Other Offenses	1	6.3%	0	0%	1	1.7%
Judicial Interference	0	0%	2	4.8%	2	3.4%
Drug Possession	7	43.8%	23	54.8%	30	51.7%
Other Property Offenses	0	0%	1	2.4%	1	1.7%
Stolen Property	0	0%	0	0%	0	0%
Fraud	3	18.8%	3	7.1%	6	10.3%
Arson	0	0%	0	0%	0	0%
Motor Vehicle Theft	0	0%	0	0%	0	0%
Larceny Theft	2	12.5%	7	16.7%	9	15.5%
Burglary	3	18.8%	6	14.3%	9	15.5%
Total	16	100%	42	100%	58	100%

Table 3. Estimated Number of Male Offenders Eligible for Controlled Release						
Type of Offense	Final Custody Level Assignment					
	Level I		Level II		Level I & II	
	Count	Percent	Count	Percent	Count	Percent
Other Offenses	0	0%	0	0%	0	0%
Judicial Interference	2	5.1%	10	5.1%	12	5.1%
Drug Possession	14	35.9%	84	42.6%	98	41.5%
Other Property Offenses	3	7.7%	7	3.6%	10	4.2%
Stolen Property	0	0%	5	2.5%	5	2.1%
Fraud	9	23.1%	17	8.6%	26	11.0%
Arson	1	2.6%	1	0.5%	2	0.8%
Motor Vehicle Theft	1	2.6%	7	3.6%	8	3.4%
Larceny Theft	5	12.8%	24	12.2%	29	12.3%
Burglary	4	10.3%	42	21.3%	46	19.5%
Total	39	100%	197	100%	236	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, 2019, and September 30, 2020, 39 male nonviolent offenders with a Level 1 final custody will be eligible for controlled release. A further 197 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, 137 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 225 offenders (3.3%) 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 6,615 offenders (96.7%) of the 6,840 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, 2019 and September 30, 2020. 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 2,131 offenders.

We then subtracted offenders who were serving time (defined as their most serious offense) as a violent offender (1000 offenders)[2], as a sex offender (32 offenders), as a DWI offender (53 offenders), or who were serving time on a drug trafficking offense (332 offenders). Then we removed all offenders (66) 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 648 offenders.

We subtracted offenders who had a final Level III custody assignment, a Level IV custody assignment, or were missing a final custody level (354 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 294 offenders that were eligible for controlled release between the dates of October 1, 2019 and September 30, 2020.

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 294 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.
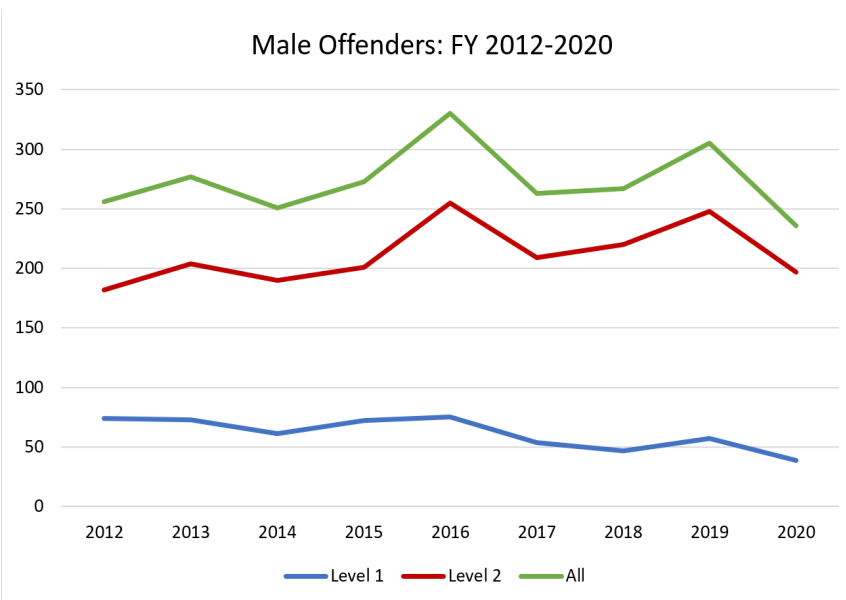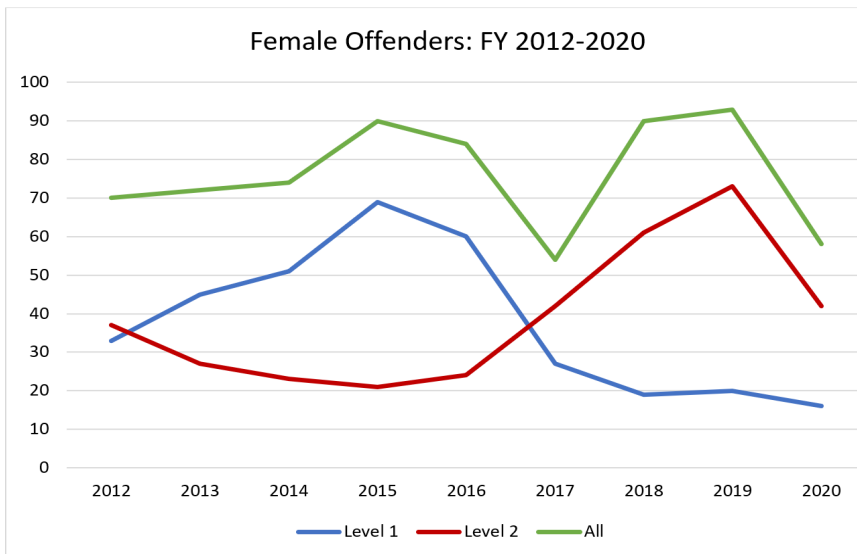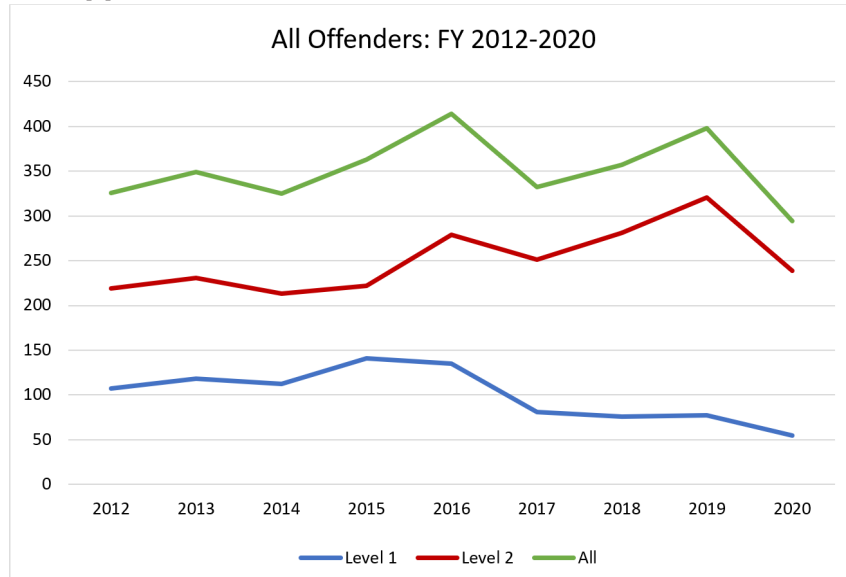
Endnotes

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 1000 are Serious Violent Offenders as labeled by NMCD including, 396 sexually violent offenders, 42 offenders with weapons charges, 133 with other violent offenses, 65 charged with assault, 150 charged with battery, 45 charged with robbery, 41 charged with homicide, 62 charged with armed robbery, 42 charged with kidnapping, and 24 charged with 'other homicide'.

3. We removed all offenders with the following admission type as labeled by NMCD in CMIS: 'Parole Viol Abscond' (39 offenders), 'Parole Viol Pnd Chrg' (6 offenders), 'Parole Viol Tech' (109offenders).

4. The subtracted offenders included 42 Level IV offenders and 296 Level III offenders. Additionally, 16 offenders with no final custody level were deleted.

Appendix 1: Controlled Release Estimates Over Time

All Offenders: FY 2012-2020

Level 1 ■ Level 2 ■ All

Female Offenders: FY 2012-2020

Level 1 ■ Level 2 ■ All

Male Offenders: FY 2012-2020

Level 1 ■ Level 2 ■ All

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

Variable	Count	Percentage
All Offenders:		
Time Served on October 1st, 2019		
Less than 6 Months	43	14.6%
6 Months to 1 Year	95	32.3%
Over 1 Year	156	53.1%
Total	294	100%
Time Until Projected Release on October 1st, 2020		
Less than 6 Months	197	67.0%
6 Months to 1 Year	97	33.0%
Over 1 Year	0	0%
Total	294	100%
Females:		
Time Served on October 1st, 2019		
Less than 6 Months	14	24.1%
6 Months to 1 Year	17	29.3%
Over 1 Year	27	46.6%
Total	58	100%
Time Until Projected Release on October 1, 2020		
Less than 6 Months	40	69.0%
6 Months to 1 Year	18	31.0%
Over 1 Year	0	0%
Total	58	100%
Males:		
Time Served on October 1, 2019		
Less than 6 Months	29	12.3%
6 Months to 1 Year	78	33.1%
Over 1 Year	129	54.7%
Total	236	100%
Time Until Projected Release on October 1st, 2020		
Less than 6 Months	157	66.5%
6 Months to 1 Year	79	33.5%
Over 1 Year	0	0%
Total	236	100%