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Time Served in New Mexico Prisons,
Fiscal Year 1999:
An Analysis of the Possible Impact of
Earned Meritorious Deductions

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This Working Paper provides research information for the
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It is **NOT** a statement of the Council's views or opinions.

Personnel associated with this research:

WRITING AND STATISTICAL ANALYSIS

Susan Brumbaugh, Ph.D., Executive Director
New Mexico Criminal and Juvenile Justice Coordinating Council

DATA COLLECTION AND ENTRY

Martha Fernández, Administrative Assistant and Researcher
Paul Brault, Research Assistant
Amanda Lucero, Research Assistant

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EXECUTIVE SUMMARY

- Prisoners in the state of New Mexico historically have been admitted under several different statutory policies that reduce time spent in prison. These policies are meant to reward good behavior and punish those who misbehave by adding or removing credits that shorten or lengthen the time they spend in the prison facility. During the 1999 legislative session a law was passed to reduce the amount of credit violent offenders and parole violators can earn while serving time in prison. The law was signed by the Governor, and the Earned Meritorious Deductions (EMD) Policy went into effect for prisoners committing crimes on or after July 1, 1999.
- The purpose of this study is to determine time served under the previous Meritorious Deductions policy just prior to the effective date of the Earned Meritorious Deductions policy to generate a baseline from which to compare time served under the new policy. Data collected are also used to provide projections of the additional amount of time prisoners would have served had they been sentenced under the EMD policy, along with associated costs.
- The present study includes male prisoners who had been paroled or discharged from prison during Fiscal Year 1999 (July 1, 1998 through June 30, 1999). The study does not analyze releases under the EMD policy, since the study period is before its effective date. Information was collected on type of conviction, sentence and good time awards for a random sample of 397 paroled and discharged male offenders. (The follow-up study for FY 2000 will include females in the sample).
- Male prisoners served 68.8% of their total sentences (including time served in non-prison facilities, such as pre-sentence credits, not subject to meritorious deductions).
- Male prisoners served 57.8% of their prison sentences (the amount of time to be served in prison after non-prison facility credits are applied).
- Assuming that the behaviors of offenders, defense attorneys, prosecutors and judges does not change, prisoners sentenced under the EMD policy might serve an average of between 72% and 75% of their prison sentences (compared to 58% under the old policy). Violent offenders might serve approximately 94% of their sentences.
- The increased amount of time prisoners serve under the EMD policy could eventually cost the Corrections Department an additional \$15 to \$19 million annually. The actual additional cost to the state is likely to vary based on the plea agreement practices of defense attorneys and prosecutors, and sentencing practices of judges.
- These costs may well be mitigated by specific deterrent or incapacitative effects of the law.
- Future studies of the actual fiscal effect of the new policy will allow the state to either plan for the increased cost or implement policy to reduce prison admissions.

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1. TIME SERVED IN PRISON

Prisoners in the state of New Mexico historically have been admitted under several different statutory policies that reduce time spent in prison. These statutory policies are meant to reward good behavior and punish those who misbehave by awarding, withholding or forfeiting credits that shorten or lengthen the time they spend in prison. In early 1996, the New Mexico Criminal and Juvenile Justice Coordinating Council asked the Institute for Social Research (ISR) to collect information on good time statutory policy and its application. A comprehensive review of good time policy and programs for prisoners was prepared by the ISR as Working Paper No. 6 (*Good Time Policy and Programs for Prisoners, New Mexico*). Simultaneously, the ISR designed and carried out a study to examine the application of good time policy to offenders' prison sentences as Working Paper No. 16 (*Doing Time in New Mexico's Prisons*). The results of these studies were used, in part, to draft legislation regarding "earned" meritorious deductions that provides for differential rewards for certain types of offenders. This law, passed in the 1999 legislative session, went into effect on July 1, 1999.

2. "GOOD TIME" AND MERITORIOUS DEDUCTIONS IN NEW MEXICO

Meritorious deduction or "good time" serve both to control inmate behavior and reduce prison populations. In New Mexico, this practice is managed through "good time" statutory policies that provide for reductions in prison sentences based on good behavior and participation in prison programs. While these statutory policies have changed over the years, they continue to exist for as long as there are prisoners who were sentenced under them.

Currently, the New Mexico Corrections Department operates under three good time statutory policies. The type of good time credit a prisoner receives depends on the date the prisoner committed the crime. Prisoners who committed crimes before May 18, 1988 receive credits under a good time statutory policy entitled "meritorious good time." Prisoners who committed crimes between May 18, 1988 and June 30, 1999 receive credits under the "meritorious deductions" statutory policy. Prisoners who committed their crimes on or after July 1, 1999 receive credits under the "earned meritorious deductions" statutory policy. The three statutory policies are briefly described below.

Meritorious Good Time Statutory Policy

The Meritorious Good Time statutory policy applies to prisoners whose crimes were committed before May 18, 1988 (a small number of inmates are still incarcerated who were sentenced under this policy). With some exceptions, prisoners were eligible for good time deductions from the date of their arrival at the Reception and Diagnostic Center. Under this statutory policy, prisoners are allowed to earn good time on the condition that they observe the rules, regulations and policies of the New Mexico Corrections Department, demonstrate a continuing effort toward self-improvement and meet the criteria of the statutory policy. One day is deducted from the prison

sentence for each day of good behavior. Although no specific research has been conducted to determine average time served under this statutory policy, the best estimates indicate that, on average, prisoners serve 50 to 55% of their sentences.

Meritorious Deductions Statutory Policy

The Meritorious Deduction credit system applies to prisoners whose crimes were committed on or after May 18, 1988 and before July 1, 1999 (the majority of current prisoners). Under this statutory policy, when prisoners enter the facility, their needs are evaluated and they are approved for specific programs designed to meet those needs. Unlike the Meritorious Good Time statutory policy, prisoners entering under the Meritorious Deduction credit system began receiving deductions only after the first 60 days in the facility. The prisoner was required to be in an established program to begin receiving credits and must be participating satisfactorily and attending regularly in order to continue receiving credits. Prisoners are also eligible for deductions for exceptionally meritorious service. Those not eligible for deductions include:

- a) those within the first 60 days of receipt following sentencing;
- b) those disobeying an order to perform labor;
- c) those in disciplinary segregation;
- d) those not engaged in programs recommended and approved by the Classification Committee;
- e) parole violators who have not yet had their parole formally revoked;
- f) prisoners serving parole time in prison who refuse a parole plan or do not seek a parole plan in good faith.

Time to be served in prison is reduced by credits of up to thirty (30) days per month depending upon program participation and good behavior. Meritorious Deductions and Lump Sum Awards may be permanently forfeited upon receipt of a major misconduct report, or termination from a reintegration program. Forfeitures in excess of 90 days good time must be approved by the Director of the Adult Prisons Division. The 1996 study (Birkbeck et al.) showed that, on average, offenders sentenced under the Meritorious Deductions statutory policy served 67.4% of their total confinement sentences.

Earned Meritorious Deductions Statutory Policy

The Earned Meritorious Deductions (EMD) credit system applies to prisoners whose crimes were committed on or after July 1, 1999. The EMD statutory policy contains the same restrictions on the conditions under which credits may be earned and forfeited as does the Meritorious Deductions statutory policy, with some exceptions. Under the EMD statutory policy, meritorious deductions are differentially awarded to prisoners based on the crime for which the offender was sentenced to prison. Prisoners convicted of certain “serious violent offenses” and parole violators returned for the commission of a new crime or for absconding from parole can earn up to a maximum of 4 days per month in meritorious deductions. Parolees returned for technical violations can earn up to 8 days per month in meritorious deductions. All other prisoners can earn up to 30 days per month in meritorious deductions. The policy also awards lump sum meritorious deductions to prisoners who complete specified programs. For example, completion of a GED leads to a lump sum meritorious deduction of 3 months.

3. ABOUT THIS STUDY

The purpose of this study is to determine the average amount of time served by inmates under the intermediate Meritorious Deductions statutory policy just prior to the effective date of the Earned Meritorious Deductions statutory policy to generate a baseline from which to compare time served in future years. Data collected are also used to provide projections of the additional amount of time prisoners would have served had they been sentenced under the EMD statutory policy, along with associated costs.

In order to obtain a comprehensive picture of the impact of good time awards on completed prison sentences, ISR staff visited the Records Department in Los Lunas to gather information on offenders who had been paroled or discharged from prison during Fiscal Year 1999 (July 1, 1998 through June 30, 1999). The ISR staff collected information on conviction, sentence and good time awards for a ten percent random sample of 397 paroled and discharged male offenders. It should be noted that it was not known at the time of data collection that the files included only male prisoners. Time and funding limitations prevented the collection of information for females¹.

4. THE ROLE OF PRISON IN CRIMINAL SENTENCING

When judges in New Mexico sentence offenders to imprisonment, they must impose a determinate sentence (i.e., specific and definite periods of time) expressed in terms of years and/or months in prison. However, even with determinate sentencing, the amount of time an offender spends in prison is also affected by additional rules that are applicable to sentences. For example, if more than one sentence is imposed, they may be set to run concurrently or consecutively. Similarly, part or all of a prison sentence may be suspended. "Prison time" in this report refers to the amount of time that offenders spend at any of the Corrections Department prison facilities. For a number of reasons, including the following, offenders' prison time rarely coincides with the prison terms specified in their sentences.

- If offenders have been held in jail on pre-sentence detention, the time in jail counts toward the prison sentence and is deducted from the latter in the form of pre-sentence credits.
- Offenders are frequently held in jail after sentencing until they can be transferred to the Corrections Department. We refer to this period as "holding time."
- If offenders are sentenced to imprisonment for a probation violation the length of time already spent outside the prison facility on probation is deducted from the prison sentence

¹ Females account for less than twelve percent of total releases in FY1999. Prior analyses of admission patterns among women indicate that approximately 35% of these females might have been subject to the new EMD statutory policy. Future analyses of time served under the EMD statutory policy will include females in the sample.

in the form of probation credits. In effect, probation violators are returned to prison to complete the remainder of their original sentence.

- Felony sentences include a parole term of one or two years following completion of the basic sentence. Some prisoners serve part or all of their parole time in prison.
- Following parole violations, offenders may be returned to prison to complete the balance of their parole term. Additionally, some parole violators are re-paroled. The remainder of the parole term is then served outside the prison facility.

An offender may serve a prison term under one of the following dispositions:

- *Basic Sentence*
This is the portion of imprisonment that is still to be served when an offender enters the NMCD system. It is computed by subtracting pre-sentence credit and holding time from the total confinement imposed by the court. One sentence may involve several different charges and a varying number of counts for each charge (e.g., one count of robbery plus two counts of aggravated battery). If offenders have been involved in several crime incidents, they may receive two or more sentences (either consecutive or concurrent).
- *Probation Violation*
Following probation violations, offenders might be sent to serve the remainder of their sentence in prison. Probation time already completed is deducted from the sentence.
- *Parole Violations*
Following parole violations, offenders may be returned to prison to complete the balance of their parole term.
- *In-house Parole*
Felony sentences include a parole term of one or two years following completion of the basic sentence. Some prisoners serve part or all of their parole time in prison. The portion of the parole term served inside prison is termed “in-house parole” for the purposes of this study.

When estimating the quantitative impact of good time awards on reductions in sentences, it is useful to distinguish between two types of sentence length:

- *Total Sentence Length*: the total number of years in prison set by the court at sentencing, minus any suspensions or deferrals
- *Prison Facility Sentence Length*: the total sentence length minus any credits for time served outside the prison facility.

More detailed descriptions of these calculations are contained in Appendix A. The sample of paroled and discharged prisoners illustrates how the credits previously described affect time to be served in prison. Table 1 contains a breakdown of total sentence length, non-prison facility credit (pre-sentence credit, probation credit, holding time, and parole credit) and corresponding prison sentence length by type of admission. The number of offenders and average months are presented within each type of admission.

Table 1: Analysis of Time to be Served (Months) by Type of Admission

Type of Admission	Total Sentence Length (Months)		Amount of Non-Prison Facility Credit (Months)		Prison Facility Sentence Length (Months)	
	N	Avg	N	Avg	N	Avg
Basic Sentence	218	47.49	190	5.65	218	41.92
Probation Violator	49	32.31	32	12.37	49	23.33
Parole Violator	83	19.07	83	8.72	83	10.35
In-house Parole	47	19.20	30	15.29	47	9.47
Total	397	36.32	335	7.91	397	29.19

- A total of 335 of the 397 offenders (84.4%) in the sample received credit for time served outside the prison facility, for an average of nearly eight months.
- 190 out of 218 (87.2%) of those serving a basic sentence had either pre-sentence credits or holding time. At entry to prison, the average offender had already served nearly half a year of the sentence outside the prison facility.
- 32 of the 49 probation violators (65.3%) had known pre-sentence, probation or holding credit prior to prison entry. The average total credit was nearly a year.
- All parole violators received at least some credit (an average of 8.7 months) for time served on parole prior to revocation.
- 30 of the 47 in-house parolees (63.8%) served only a portion of their parole terms inside prison and served the remaining 15.3 months (on average) outside prison.

Clearly, the prison facility sentence length (29.19 months, on average) is shorter than the total sentence length (36.32 months, on average). Analysis showed that once non-prison facility credits were applied, the average offender was likely to serve only 72.2% of his original sentence in prison. Because meritorious deductions are earned only on time served in prison and not on non-prison facility credits, the effect of good time credits on sentence reductions is greater for the prison sentence than for the total sentence.

5. ANALYSIS OF MERITORIOUS DEDUCTIONS ON TIME SERVED

Good time may be earned under each of the four types of admission described above (basic sentences, probation violators, parole violators, and in-house parolees). Offenders serving a basic sentence or a sentence connected with a probation violation must wait to earn good time until 60 days after entry to the corrections system (unless the sentence is consecutive to a sentence already being served). Parole violators must wait until a parole revocation hearing has been held and parole is revoked. Prisoners serving a parole term in prison immediately following their basic sentence may earn good time starting on the first day of parole. However, if prisoners refuse a parole plan, or fail to pursue an acceptable parole plan in good faith, they are not eligible for good time while serving parole in prison.

Table 2: Total Time Served (in Months) by Type of Admission, FY 1999

Type of Admission	Frequency	Average Total Sentence Length	Average Total Time Actually Served	Average Percentage of Total Time Actually Served
Basic Sentence	218	47.49	28.56	63.55%
Probation Violator	49	32.31	22.02	70.95%
Parole Violator	83	19.07	14.62	77.28%
In-house Parole	47	19.20	14.95	75.98%
Total	397	36.32	23.23	68.80%

In Table 2, the average total sentence length is compared to total time actually served (which includes both time served in prison and non-prison facility credits described earlier). This analysis shows that parole violators and in-house parolees serve a higher proportion of their sentences than do probation violators and those serving basic sentences. This is likely because their non-facility credits can be lengthy and are not subject to meritorious deductions. Overall, offenders on average served 68.8% of their total sentences. This can be compared to the 1996 estimate of 67.4%².

Because meritorious deductions do not apply to time served outside the prison facility, when examining the impact of meritorious deductions on time served, it can be more useful to analyze time served within the prison facility.

²Note that in the 1996 analysis, offenders who served a portion of their parole terms inside prison but were subsequently released were not included in the analysis. If these offenders are removed from the 1999 sample and the proportion recalculated, the 1999 proportion is 67.3%, nearly identical to the 1996 estimate. Note that the 1996 and 1999 estimates are virtually identical even though the 1999 sample did not include women and the 1996 sample did.

Table 3: Prison Time Served (in Months) by Type of Admission, FY 1999

Type of Admission	Frequency	Average Prison Sentence Length	Average Prison Time Actually Served	Average Percentage of Prison Time Served
Basic Sentence	218	41.92	23.01	57.30%
Probation Violator	49	23.33	13.00	60.01%
Parole Violator	83	10.35	5.90	59.28%
In-house Parole	47	9.47	5.19	55.42%
Total	397	29.19	16.09	57.83%

MARGINS OF ERROR

The estimated proportions of confinement actually served by offenders are based on a random sample that is subject to a margin of error. When estimating the proportions of confinement likely to have been served by all prisoners paroled or discharged during fiscal year 1999, we can be 95% certain that:

- prisoners served 68.8% of their total sentences +/- 1.4% (67.4% to 70.2%)
- prisoners served 57.8% of their prison sentences +/- 0.9% (56.9% to 58.7%)

In Table 3, the average time to be served in prison is compared to time actually served inside prison. This analysis shows that in-house parolees and those serving basic sentences serve a lower proportion of their sentences than do probation and parole violators. There are two likely causes. For in-house parolees, it is likely because they have no waiting period during which they are ineligible to earn meritorious deductions. Those serving basic sentences may have lower proportions because the sentences are longer and the waiting period has less of an impact on the total proportion. Overall, offenders on average served 57.8% of their prison-only sentences. This can be compared to the 1996 estimate of 58.8%³.

In the analyses described earlier in this report, we examined sentences. Some offenders in our sample have more than one sentence (for example, an offender may have been serving two concurrent basic sentences, plus he may have violated a one year parole term - all three sentences would be contained in our sample). In order to calculate the possible fiscal effect, the following analyses examine total time served by the 345 offenders in our sample.

³The 1999 estimate with partial in-house parolees removed from the analysis is 58.03%.

6. ANALYSIS OF THE POSSIBLE IMPACT OF THE EARNED MERITORIOUS DEDUCTIONS STATUTORY POLICY

Offenders who committed their crimes on or after July 1, 1999 (or violate their parole on a crime committed on or after July 1, 1999) are subject to the new Earned Meritorious Deductions statutory policy. Under this policy, offenders convicted of the following "serious violent crimes" as defined by New Mexico statute will only receive up to four days of credit for thirty days served:

- 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
- 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
- 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, and are also subject to four days of credit for 30 days served:

- involuntary manslaughter
- fourth degree aggravated assault
- third degree assault 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 injury by vehicle
- battery upon a peace officer

Parole violators convicted under this statutory policy would also be subject to reduced credit eligibility. Parole violators who are convicted of new crimes or are found to be absconders may receive up to four days of credit for 30 days served. Parole violators revoked for technical violations may receive up to eight days of credit for 30 days served. All other types of offenders would continue to receive up to 30 days for 30 days served.

In order to estimate the possible impact of this new law on future offenders, we classified our sample of 345 offenders into the basic types of earners described above. Because the second list of violent offenses is discretionary, and it is impossible to know whether a court would have deemed the offense as a “serious violent offense”, we have created two categories of serious violent offenders. The first category (Non-discretionary Serious Violent Offenders) contains only offenders convicted of offenses that, if they had been committed after July 1, 1999, would be considered serious violent offenses contained in the first list. The second type (Non-discretionary and Discretionary Serious Violent Offenders) contains offenders who were convicted of offenses that, if they had been committed after July 1, 1999, would be considered serious violent offenses from both lists. The true number and proportion of offenders who will be considered serious violent offenders under the policy lie somewhere in between.

Tables 4a and 4b show some projections of how much more time offenders would have served if they had been admitted to prison under the new Earned Meritorious Deductions statutory policy. Each type of offender is listed (serious violent, the two types of parole violators, and others, plus overall totals), and a description is given of the amount of deduction. In the first table, only offenses included in the first list of serious violent offenses is included. The discretionary offenses in the second list are included in the serious violent category in the second table. Both tables display the current and projected proportion of time served.

Table 4a: Analysis of Possible Changes to Time Served under New Earned Meritorious Deductions Policy (Non-discretionary Serious Violent Offenses)

Type of EMD Earner	N	Amount of Deduction	Average Length of Prison Sentence (Months)	Average Extra Days Served	Current Average Proportion of Prison Time Served	Projected Average Proportion of Prison Time Served
Serious Violent	59	4 days per 30 days served	57.11	679	55.00%	94.00%
Parole Violator (New Crime or Absconder)	3	4 days per 30 days served	6.64	73	60.80%	94.77%
Parole Violator (Technical Violator)	77	8 days per 30 days served	10.84	101	59.20%	88.38%
Other	206	30 days per 30 days served	33.63	0	58.73%	58.73%
All Offenders	345		32.50	139	58.21%	71.69%

Table 4b: Analysis of Possible Changes to Time Served under New Earned Meritorious Deductions Policy (Non-discretionary and Discretionary Serious Violent Offenses)

Type of EMD Earner	N	Amount of Deduction	Average Length of Prison Sentence (Months)	Average Extra Days Served	Current Average Proportion of Prison Time Served	Projected Average Proportion of Prison Time Served
Serious Violent	87	4 days per 30 days served	53.13	632	55.34%	94.04%
Parole Violator (New Crime or Absconder)	3	4 days per 30 days served	6.64	73	60.80%	94.77%
Parole Violator (Technical Violator)	76	8 days per 30 days served	10.88	101	59.27%	88.79%
Other	179	30 days per 30 days served	31.99	0	59.12%	59.12%
All Offenders	345		32.45	182	58.21%	74.77%

MARGINS OF ERROR

The estimated proportions of confinement actually served by offenders are based on a random sample that is subject to a margin of error. When estimating the proportions of confinement likely to have been served by all prisoners paroled or discharged during fiscal year 1999, we can be 95% certain that:

- the projected proportion of prison time served under EMD, when including only non-discretionary serious violent offenses is 71.7%% +/- 1.9% (69.8% to 73.6%)
- the projected proportion of prison time served under EMD, when including both non-discretionary and discretionary serious violent offenses is 74.8%% +/- 1.9% (72.9% to 76.7%)

In both tables (4a and 4b) it is clear that the estimated proportion of time served is dramatically higher for those receiving reduced credits under the new law (i.e., serious violent offenders and parole violators), and the overall total proportion increases significantly as well. Whereas offenders are currently serving an average of 58% of their sentences, under the new law, the average proportion of time served of prison sentences (minus non-prison facility credit) for all offenders (including serious violent offenders, parole violators and non-violent offenders) may be between 72% and 75%.

Serious violent offenders convicted under this statutory policy may serve well over 90% of their prison sentences, nearly two additional years on average over the amount of time they currently are serving. This raises the question of how costs might increase for the New Mexico Corrections Department as a result of certain prisoners remaining in prison for longer periods of time.

In Tables 5a, 5b, 6a and 6b, we attempt to estimate these costs. *Extreme caution should be used in interpreting the results shown in these tables.* Because it is impossible to predict individual behavior, the costs associated with the change in law may be substantially different from what we estimate here. The following changes in behavior may affect the impact of the new law:

- Judges may defer or suspend larger amounts of the sentence.
- Offenders may be given the opportunity to plea to lower-level offenses not specified as serious violent offenses under the new law, in order to avoid being subject to the additional time served.
- The law may have a deterrent effect, and offenders may commit fewer violent offenses or may violate their paroles less often.
- Each year, the Corrections Department generally sees an increase in the overall number of prison admissions. This increase may bring with it an increase in the number of violent offenders and parole violators.

We begin in Tables 5a and 5b, by determining average costs for the sample. In Tables 6a and 6b, we apply those average costs to estimate total costs for the FY99 population.

In Tables 5a and 5b, *Average Additional Total Cost per Offender* is calculated by computing an average within each EMD Earner category, plus an overall average, of each offender's additional time multiplied by the average daily cost of housing a prisoner (\$75.98). For each offender, this represents the total additional cost to NMCD over the duration of the whole sentence had the offender been sentenced under the EMD statutory policy. Because sentence lengths for violent offenders in particular are often longer than one year, we also present an average annualized cost. The *Average Additional Annualized Cost per Offender* is the total additional cost divided by the length of the additional time, in whole years, for all offenders with sentences longer than one year. More detailed descriptions of these calculations are available in Appendix A.

**Table 5a: Estimated Average Additional Costs under the Earned Meritorious Deductions Policy
(Non-discretionary Serious Violent Offenses)**

Type of EMD Earner	Sample N	Average Extra Days Served	Average Additional Total Cost Per Offender	Average Additional Annualized Cost Per Offender
Serious Violent	59	679	\$51,585	\$19,994
Parole Violator (New Crime or Absconder)	3	73	\$5,531	\$5,531
Parole Violator (Technical Violator)	77	101	\$7,652	\$7,652
Other	206	0	\$0	\$0
All Offenders	345	139	\$10,578	\$5,175

**Table 5b: Estimated Average Additional Costs under the Earned Meritorious Deductions Policy
(Non-discretionary and Discretionary Serious Violent Offenses)**

Type of EMD Earner	Sample N	Average Extra Days Served	Average Additional Total Cost Per Offender	Average Additional Annualized Cost Per Offender
Serious Violent	87	632	\$47,992	\$19,051
Parole Violator (New Crime or Absconder)	3	73	\$5,531	\$5,531
Parole Violator (Technical Violator)	76	101	\$7,670	\$7,670
Other	179	0	\$0	\$0
All Offenders	345	182	\$13,840	\$6,542

Tables 5a and 5b show that offenders, on average, will each cost the state an additional \$10,578 to \$13,840, depending on how many discretionary violent offenses are determined to be serious violent offenses by the court. Because sentences for violent offenses generally exceed one year, the estimate of annualized cost per offender is between \$5,175 and \$6,542.

In Tables 6a and 6b, *Projected Population N* is a weighted estimate (because our sample over-represented parolees compared to discharges) of the number of all offenders released in FY99 who would have served additional time had they been sentenced under EMD. The *Estimated Additional Total Cost* is calculated by multiplying the average additional total cost determined in the sample by the projected number of EMD earners in each group. The total at the bottom of that column is the sum of the amounts in each group. Similarly, the *Estimated Additional Annualized Cost* is the product of the average additional annualized cost and the number of offenders in each group, and the total at the bottom represents the sum of these amounts. Again, detailed calculations are available in Appendix A.

**Table 6a: Projected Additional Costs under the Earned Meritorious Deductions Policy
(Non-discretionary Serious Violent Offenses)**

Type of EMD Earner	Projected Population N	Estimated Additional Total Cost	Estimated Additional Annualized Cost
Serious Violent	421	\$21,717,109	\$10,076,979
Parole Violator (New Crime or Absconder)	34	\$143,815	\$143,815
Parole Violator (Technical Violator)	873	\$5,034,837	\$5,034,837
Other	1586	\$0	\$0
All Offenders	2914	\$28,585,134	\$15,285,501

**Table 6b: Projected Additional Costs under the Earned Meritorious Deductions Policy
(Non-discretionary and Discretionary Serious Violent Offenses)**

Type of EMD Earner	Projected Population N	Estimated Additional Total Cost	Estimated Additional Annualized Cost
Serious Violent	628	\$35,657,966	\$14,154,813
Parole Violator (New Crime or Absconder)	34	\$143,815	\$143,815
Parole Violator (Technical Violator)	861	\$4,978,023	\$4,978,023
Other	1391	\$0	\$0
All Offenders	2914	\$36,931,092	\$18,756,152

MARGINS OF ERROR

The estimated cost of additional confinement is based on a random sample that is subject to a margin of error. When estimating the additional cost of increased confinement length for serious violent offenders or parole violators released from prison during fiscal year 1999, we can be 95% certain that:

- the projected additional total cost under EMD, when including only non-discretionary serious violent offenses is \$28,585,134 +/- \$5,644,512 (\$22,940,622 to \$34,229,646)
- the projected additional total cost under EMD, when including both discretionary and non-discretionary serious violent offenses is \$36,931,092 +/- \$6,655,147 (\$30,275,945 to \$43,586,239)
- the projected additional annualized cost under EMD, when including only non-discretionary serious violent offenses is \$15,285,501 +/- \$1,797,192 (\$13,488,309 to \$17,082,696)
- the projected additional annualized cost under EMD, when including both discretionary and non-discretionary serious violent offenses is \$18,931,092 +/- \$2,143,871 (\$16,787,221 to \$20,725,083)

Tables 6a and 6b show that the additional total cost to the state for a one-year set of released offenders, had they been sentenced under the Earned Meritorious Deductions statutory policy *assuming that the behavior of offenders, attorneys and judges does not change* will be between \$28.6 and \$36.9 million dollars, depending on how many discretionary violent offenses are determined to be serious violent offenses by the court. The corresponding additional annualized cost, again assuming that behavior does not change, will be between \$15.3 and \$18.8 million dollars.

This probable cost increase does not take into account possible reduction in costs to other parts of the criminal justice system and to the general public that might result from the specific incapacitative effect of keeping violent offenders incarcerated for longer periods of time. These types of cost savings are difficult to anticipate and measure.

Preliminary data show that, as of June 30, 2000:

- 31 offenders have been admitted as non-discretionary serious violent offenders
- 17 offenders were convicted of discretionary serious violent offenses, of which 4 were deemed serious violent offenses.

Using our estimates of average annual cost per offender, these prisoners will cost an additional \$700,000 per year.

7. SUMMARY/CONCLUSIONS

Although it is difficult to anticipate the behavior of offenders, attorneys and judges and how the Earned Meritorious Deductions statutory policy may affect their decisions, it is clear that the most serious violent offenders sentenced under this policy will serve significant additional time in prison. The increased cost to the state will be gradual, as offenders slowly begin to exceed time they would have served under the old statutory policies.

In addition to increased cost under the new policy, as increased violent offenders and parole violators spend additional time in prison, the state may also experience problems with prison capacity. Offenders who normally would have been released each year will remain inside the facility while the same or increased numbers of offenders will be admitted. While in FY1999 most medium and minimum security facilities were operating under capacity, with an average of 600 beds available on a particular day, holding an additional 1300 to 1500 additional prisoners per year may strain the operational capacity of many prison facilities in New Mexico.

Even if one assumes that the new Earned Meritorious Deductions statutory policy has a deterrent or incapacitative effect or that plea bargaining will reduce the number of offenders receiving reduced credits under the new policy, the cost to the state will not be insignificant. This potential increased cost was one impetus behind the Council's consideration of a proposal to divert low-level, non-violent offenders from prison into treatment programs that are less expensive and possibly more effective.

Future studies of the actual fiscal effect of the new policy will allow the state to either plan for the increased cost or implement policy to reduce prison admissions.

APPENDIX A TECHNICAL CHARACTERISTICS OF THE STUDY

The Sample

Estimating the quantitative effect of good time awards on the reduction in sentences served by offenders is best undertaken by examining a sample of prisoners who are exiting the prison system. Thus, the primary universe for this study was defined as all prisoners who exited NMCD's facilities, on parole or discharge, during fiscal year 1999. The sampling proportion was set at 10% and selection was designated as random.

At the time of data collection, all closed files for males had recently been transferred to the new Reception and Diagnostic Center in Los Lunas. Files for releases to parole were located in storage boxes stacked four high in alphabetical order. ISR Research assistants and RDC Staff selected from the top and third rows of boxes all files that contained FY99 dates for release to parole. Half of the files for discharged prisoners were located on shelves, arranged alphabetically. Files were selected from every other shelf. The remainder of the discharge files were located in storage boxes, and the files were sampled from the first and third row of boxes, following the procedure for paroled prisoners. For each selected file, research assistants copied the information required for the study.

It should be noted that it was not known at the time of data collection that the files included only male prisoners. Time and funding limitations prevented the collection of information for females. The study will be repeated in the first quarter of fiscal year 2001 for prisoners released during fiscal year 2000. Female offenders will be included in this follow-up study.

Following data collection, some records were not included in the data set developed for the present report because:

- Some prisoners in the sample had been released prior to July 1, 1998 or after June 30, 1999.
- Some prisoners were released early due to court orders and their time served would have distorted the average proportions reported.
- Some prisoners had committed crimes before May 18, 1988, and had served their prison terms under the previous good time policy.
- Some files contained incomplete information and prevented the calculation of key variables.

The final sample size included 278 paroled prisoners and 120 discharged prisoners.

Data Collection, Entry and Analysis

The data used in this report were collected from Good Time Figuring Sheets. NMCD creates a Good Time Figuring Sheet for each sentence imposed on the offender by a court. The sheet records selected information on the inmate, the sentence, good time credits awarded and forfeited, disciplinary reports (major and minor), movement between NMCD's facilities, and the projected or actual discharge date. An example of a Good Time Figuring Sheet is included in Appendix B. If an inmate had more than one Good Time Figuring Sheet - indicating more than one sentence, served either consecutively or concurrently - a copy was made of each sheet.

Data entry and data analysis were handled using SPSS.

Unit of Analysis

Two units of analysis were used in this study. The analysis of actual time served used the "prison term" as the unit of analysis. A prison term refers to any period during which the inmate was continuously in prison for a sentence, irrespective of the part of the sentence being served. The rationale for this definition is that, if estimates of the quantitative impact of good time awards are to be accurate, they must be calculated with reference to periods during which the offender was in prison and not include periods during which the offender was not in prison. This argument is not trivial, because offenders may alternate between periods in and out of prison while serving one sentence.

For example, an offender may be paroled from prison after serving a basic sentence and then returned as a parole violator to complete the remainder of the parole term. Good time awards must be separately examined for the basic sentence and the parole violation, and not include the time during which an offender was on parole outside prison.

Prison terms were defined and identified with reference to an individual sentence. If an inmate was serving more than one sentence - either consecutively or concurrently - the prison terms for each sentence were coded and analyzed separately. Thus, one inmate in the sample could have more than one prison term in the data file. In our sample, 345 prisoners generated 397 records, with an average of 1.08 prison terms per offender.

Cost projections for this study used the offender as the unit of analysis. For offenders with more than one sentence, time served for consecutive sentences was summed, while time served for concurrent sentences were not included in the total time served.

Calculation Methods

Based on the information that appears on the Good Time Figuring Sheets, the principal variables in the study were calculated as follows. Time units were generally calculated in days and converted to months for reporting purposes.

PROPORTION TIME SERVED

Total Sentence

Basic sentence and probation violators:

(NMCD calculated full time date) - (sentence date)

Parole violators and in-house parolees:

(Parole discharge date prior to revocation) - (date parole began)

Credits

Basic sentence:

(Pre-sentence credit) + (holding time (time between the sentencing date and admission to the facility))

Probation violators:

(Pre-sentence credit) + (probation credit) + (holding time)

Parole violators:

(Credit for parole time served prior to return to the prison) + (time served after re-parole)

In-house parolees:

(Credit for time served after in-house parole (if the offender is released to parole and serves the remainder outside prison))

Prison Sentence

(Total sentence) - (credits)

Prison Time Served

(Date of prison release) - (date of prison admission)

Total Time Served

(Prison time served) + (credits)

Proportion Prison Time Served

(Prison time served) / (prison sentence)

Proportion Total Time Served

(Total time served) / (total sentence)

PROJECTIONS

Prison Credit

(Prison sentence) - (prison time served)

New Non-discretionary Prison Credit

Non-discretionary violent offenders and non-technical parole violators:

(Prison credit) * (4/30)

Technical parole violators:

(Prison credit) * (8/30)

All other offenders:

(Prison credit)

New Non-discretionary and Discretionary Prison Credit

Non-discretionary and discretionary violent offenders and non-technical parole violators:

(Prison credit) * (4/30)

Technical parole violators:

(Prison credit) * (8/30)

All other offenders:

(Prison credit)

Additional Days

(Prison credit) - (new prison credit)

New Prison Time Served

(Prison time served) + (additional days)

New Proportion Prison Time Served

(New prison time served) / (prison sentence)

Additional Total Cost

(Additional days) * \$75.98

Additional Annual Cost

If additional days <= 365:

(Additional Total Cost)

If additional days > 365:

(Additional Total Cost) / ((additional days/365) rounded up to next whole year)

Projected Population Size (within deductions categories)

Because we over-sampled discharged offenders, these calculations create the correct proportion of discharged to paroled prisoners existing in the population of released offenders while maintaining the sample distribution of types of EMD earners

Non-discretionary

Non-discretionary violent offenders:

$$\text{ROUND}(((\text{sampnum}/345)*2914)-((58/235)*324)+((1/110)*324)).$$

Non-technical parole violators:

$$\text{ROUND}(((\text{sampnum}/345)*2914)+((3/110)*324))$$

Technical parole violators:

$$\text{ROUND}(((\text{sampnum}/345)*2914)-((1/235)*324)+((76/110)*324))$$

All other offenders:

$$\text{ROUND}(((\text{sampnum}/345)*2914)-((176/235)*324)+((30/110)*324))$$

Non-discretionary+Discretionary

Non-discretionary and discretionary violent offenders:

$$\text{ROUND}(((\text{sampnum}/345)*2914)-((84/235)*324)+((3/110)*324)).$$

Non-technical parole violators:

$$\text{ROUND}(((\text{sampnum}/345)*2914)+((3/110)*324))$$

Technical parole violators:

$$\text{ROUND}(((\text{sampnum}/345)*2914)-((1/235)*324)+((75/110)*324))$$

All other offenders:

$$\text{ROUND}(((\text{sampnum}/345)*2914)-((150/235)*324)+((29/110)*324))$$

Margin of Error

For this study, confidence intervals and margins of error for both average costs and average proportions are calculated using the formula for confidence intervals around a mean.

95% confidence interval

$$(\text{Sample mean}) \pm (\text{margin of error})$$

where:

$$\text{Sample mean} = (\text{sum of all sample values}/\text{sample size})$$

$$\text{Margin of error} = (1.96 * \text{sd}) / \sqrt{n}$$

where:

sd = standard deviation

n = sample size

APPENDIX B SAMPLE GOOD TIME FIGURING SHEET

Identifying information was changed or removed from the following Good Time Figuring Sheet.

