

# NEW MEXICO SENTENCING COMMISSION

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## Estimated Number of Initial Parole Reviews 2010 – 2014 for Implementation of Section 31-21-10.1 NMSA 1978

### Information Available on Offenders Currently Confined

This analysis of offenders sentenced to prison in New Mexico as sex offenders with charges mentioned in Section 31-21-10.1 NMSA 1978 is derived from information provided to the New Mexico Sentencing Commission by the New Mexico Corrections Department. At the request of the NMSC, NMCD staff annually provides several different Microsoft Excel files that contain information on offenders released by calendar year, offenders admitted by calendar year, and offenders confined on a particular day. The information reported here comes from the confined file, which contains information on 6,020 offenders who were confined on July 9, 2009.

Using the July 9, 2009 confined file, we selected the 787 offenders with crimes mentioned in Section 31-21-10.1 NMSA 1978:

- 30-4-1 Kidnapping (when committed with the intent to inflict a sexual offense upon the victim)
- 30-6A-3 Sexual Exploitation of Children (2nd degree)
- 30-6A-4 Sexual Exploitation of Children by Prostitution (1st or 2nd degree)
- 30-9-11 Aggravated Criminal Sexual Penetration or Criminal Sexual Penetration (1st, 2nd and 3rd degree)
- 30-9-13 Criminal Sexual Contact of a Minor (2nd, 3rd or 4th degree)

We removed 8 offenders with an admissions type of “compact in/from other state”, “hold preliminary hearing”, and “issue number only” reducing the number of offenders to 779. All offenders confined with kidnapping charges were reviewed using the NMCD public website (<http://www.corrections.state.nm.us/offenders/search.php>) to determine if the kidnapping occurred with the intent to commit a sex offense. Of the 189 offenders with kidnapping as their highest charge, 40% (77) were also convicted of a sex offense. The 112 offenders with non-sexual assault kidnapping were removed from the dataset reducing the number of offenders to 667. Table 1 summarizes the crime description for confined offenders.

Crime	Number	Percent
Criminal Sexual Contact Of Minor 3rd Or 4th Degree	139	20.8%
Criminal Sexual Penetration 1st Degree	204	30.6%
Criminal Sexual Penetration 2nd Degree	204	30.6%
Criminal Sexual Penetration 3rd Degree	32	4.8%
Kidnapping	77	11.5%
Sexual Exploitation	11	1.6%
<b>TOTAL</b>	<b>667</b>	<b>100.0%</b>

Of the 667 confined offenders with the relevant statutes, 251 (37.6%) have a crime committed date on or after February 3, 2004, which is the date 31-21-10.1 NMSA took effect.

Next, we reviewed the projected release date for each of the 251 offenders. Projected release dates are defined as the date an inmate will release if they earn all the time to which they are entitled by law. We reviewed the projected release date for each of the 251 offenders and added five years to each projected release date in order to estimate when offenders would become eligible for the mandatory hearing provided in the statute. This is only an estimate because not all offenders earn all their time and some offenders earn additional time by completing programs in prison for which they earn lump sum awards. It is important to note these are estimates. Through additional review we might be able to create a more accurate estimate. Our estimate assumes that each inmate earns all their allowed earned credit time and this information is used to predict when an inmate would have their first review.

### Released Offenders

In addition to reviewing confined offenders we reviewed offenders who were released from a NMCD facility to the community between January 2005 and June 2009. We began with January 2005 since only crimes committed on or after February 3, 2004 are eligible. Given the time it takes to prosecute a crime, sentence an offender, and for an offender to serve the mandatory

minimum sentence it is improbable any offenders were released from a NMCD facility in the same year the statute was enacted. During 2005, only 5 of the offenders released with the relevant statutes had crime committed dates of February 3, 2004 or after.

For the study time period 593 offenders were convicted of crimes referenced in the statute. This includes 123 offenders convicted of kidnapping. Due to time constraints we did not review all offenders who were released on kidnapping charges using the NMCD public website to determine if there was a sex offense conviction in the case. Rather, we applied the proportion that we verified in the confined file. Of the 123 offenders with kidnapping charges, we selected a random sample of 40% or 50 of the offenders and these offenders were included in the analyses. This resulted in 519 releases.

Of the 15,995 offenders who released from a NMCD facility during the study period, 519 (3.2%) had a conviction for one of the eligible statutes. When offenders were separated into those who had crime committed dates prior to February 3, 2004 and those with crime committed dates subsequent, 65 offenders (12.5%) were subject to Section 31-21-10.1 NMSA 1978. Table 2 lists the year of release and those subject to the statute. The relative annual percentage of offenders subject to the statute increases steadily from 2.0% in 2005 to 30.0% for the partial year of 2009 (June 2009). It is important to note that from 2005 to 2008 the total number of releases from prison of all offenders convicted of these charges remained relatively stable. It appears there may be an increase in the total number of offenders released with convictions on the relevant statutes in 2009. The number of offenders released from a NMCD facility who are eligible for an initial review should continue to increase beyond 2009 as more offenders are released with offense dates after February 3, 2004.

## Projecting the Number of Offenders Covered by the Statute

Using the information described in Table 2, we combined offenders already released and offenders currently confined to estimate the number of offenders who will have their initial review in the next five years beginning in 2010. This analysis does not factor in other issues, including subsequent two and half year reviews or parole revocations. There are 80 offenders either confined or released who are covered by the statute that we estimate will have their initial review in the next five years. Table 3 reports the number of offenders who we estimate will have their initial review in the next five years.

Year of Initial Review	Number of Offenders
2010	2
2011	6
2012	16
2013	20
2014	36

We estimate that 2 offenders will be eligible in 2010 and 36 offenders will be eligible in 2014. The number of eligible offenders beginning in 2010 through 2013 matches the number of eligible offenders released from a NMCD facility through June 2009.

Beginning in 2014 the number of offenders eligible for an initial review includes offenders who have already released from prison and offenders currently confined who we estimate will release from prison between July 2009 and December 2009. Estimating the number of offenders eligible for initial reviews beginning in 2015 is difficult because not all offenders release from prison based on their projected release date. This estimate should be viewed as preliminary. Discussions with NMCD staff and the Parole Board could be useful in refining the estimate. ■

		Year of Release					Total	
		2005	2006	2007	2008	2009		
Crime Committed Date On or After February 3, 2004	No	Count	100	107	111	87	49	454
		Percent	98.0%	94.7%	87.4%	81.3%	70.0%	87.5%
	Yes	Count	2	6	16	20	21	65
		Percent	2.0%	5.3%	12.6%	18.7%	30.0%	12.5%
	Total	Count	102	113	127	107	70	519
		Percent	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%