

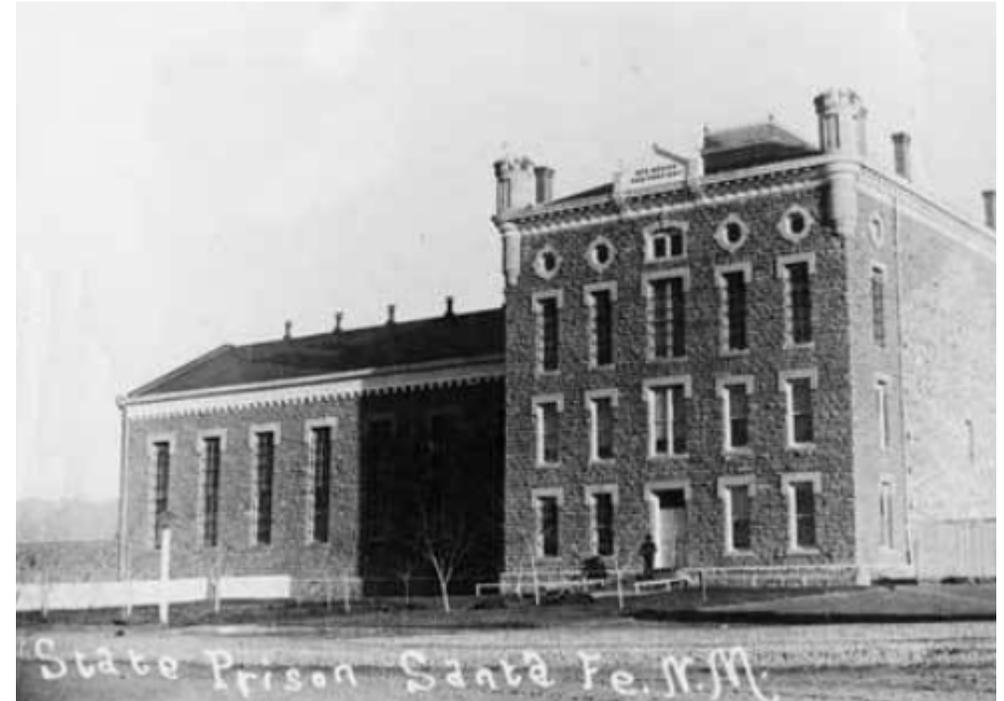
NEW MEXICO
LEGISLATIVE
FINANCE
COMMITTEE

Private Prisons in New Mexico

Jon Courtney, PhD, Deputy Director, LFC
Ellen Rabin, Senior Fiscal Analyst, LFC
Courts, Corrections and Justice Committee
October 11, 2021

Timeline (1854-1953)

1854	The Territorial Legislature authorizes construction of a penitentiary on the site of the current federal courthouse in Santa Fe, but construction was halted due to citizen opposition and lack of funds
1885	Penitentiary of New Mexico (PNM) constructed with 104 cells at a cost of \$150 thousand
1897	Prison overcrowding requires inmates to be housed in yard buildings
1912	New cell house completed at PNM, but overcrowding is still a problem
1939	Minimum security Honor Farm built in Los Lunas, but overcrowding still a challenge
1953	A PNM riot results in the death of two inmates and numerous injuries



Prison of New Mexico circa 1900
Source: New Mexico History Museum

Timeline (1953-present day)

1956	As a result of the 1953 riot a new PNM opens for a cost of \$8 million but soon faces overcrowding
1977	Inmate Dwight Duran files a federal class action lawsuit on living conditions that continues to impact department operations
1980	Riot at PNM resulting in the death of 33 inmates and injury of 90 inmates with 12 corrections officers taken hostage (all survive)
1980-1996	Partially in response to the 1980 riot the state builds 3 new correctional facilities and expands PNM
1996	Overcrowding persists and prisoners are housed in Texas and local jails
1997-2007	Private facilities were constructed or expanded and NMCD takes over Springer and Albuquerque (Camino Nuevo) from CYFD
2008-2013	NMCD contracts with privately operated facilities in Clayton and Otero County
2019-2021	NMCD sees significant declines in prison population creating excess capacity



Penitentiary of New Mexico—opened 1956

Source: NMCD

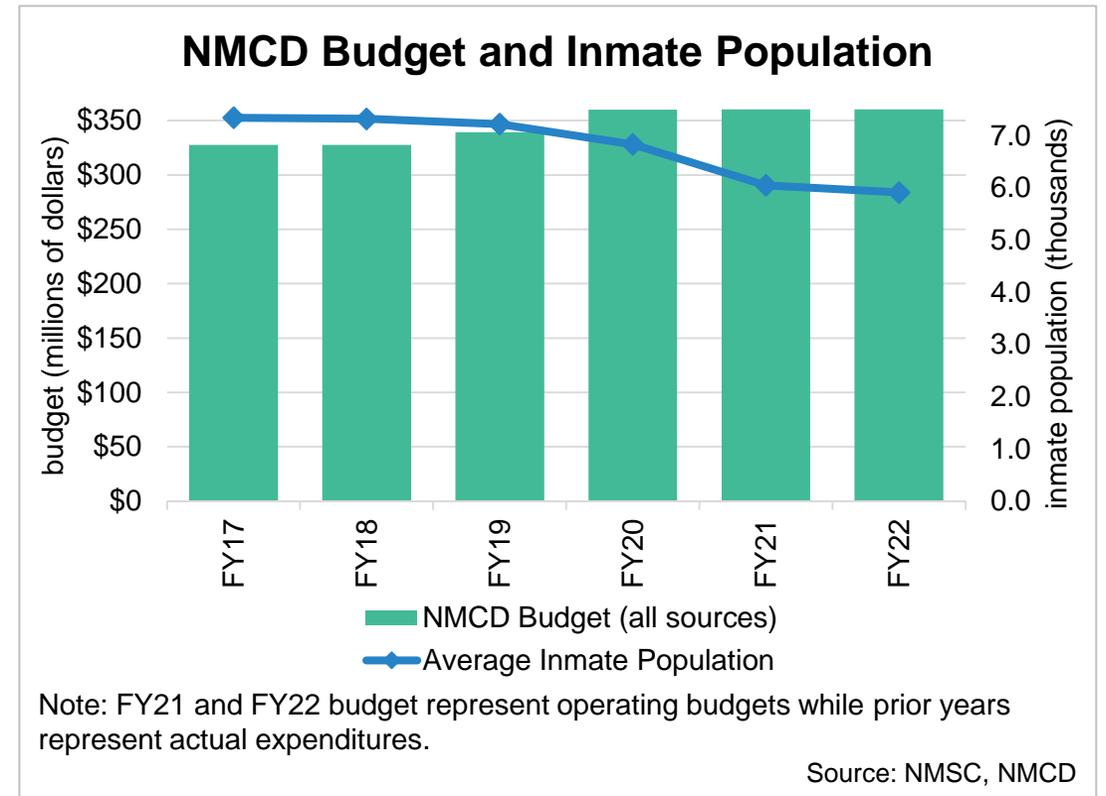
NMCD Recent Trends

FY17-FY21

- NMCD budget grows by \$36 million (11%)
- NMCD inmate population decreases by 1,296 (17.6%)

FY21

- Saw some cost savings from reduced inmate populations but these were used to offset rising medical costs



The State Prison System Today

Other key events—private prisons

- 2015—NMCD moves female inmates from private prison to two publics (Springer and Western)
- 2019—NMCD takes over NENMCC

11 Facilities

- 7 public
- 4 private
- GCCF and NWNMCC to be taken over by NMCD this fall
- 215 FTEs to operate facilities

New Mexico State Prisons				
Facility	Capacity	Est. FY21 Occupancy	Custody Levels	Location
Publicly Operated				
Central New Mexico Correctional Facility	1,221	56%	I, II, IV, Restricted Housing, Long Term Care Unit, Mental Health Treatment Center	Los Lunas
Northeast New Mexico Correctional Facility	628	78%	III	Clayton
Penitentiary of New Mexico	864	78%	II, IV, Restricted Housing, Predatory Behavior Management Unit	Santa Fe
Roswell Correctional Center	340	74%	II	Hagerman
Springer Women's Correctional Center	308	73%	I, II	Springer
Southern New Mexico Correctional Facility	768	85%	II, III, IV, Restricted Housing	Las Cruces
Western New Mexico Women's Correctional Facility	353	97%	III, IV	Grants
Privately Operated				
Guadalupe County Correctional Facility	590	79%	III, Restricted Housing	Santa Rosa
Lea County Correctional Facility	1,293	88%	II, III, Restricted Housing	Hobbs
Northwest New Mexico Correctional Center	673	67%	II, III	Grants
Otero County Prison Facility	607	87%	III, Restricted Housing	Chaparral

Source: NMCD, LFC analysis of CBC count sheets

Trends in capacity and inmate population

As of Friday, NMCD is holding

- 530 female inmates
- 5,048 male inmates
- **5,578 total inmates**

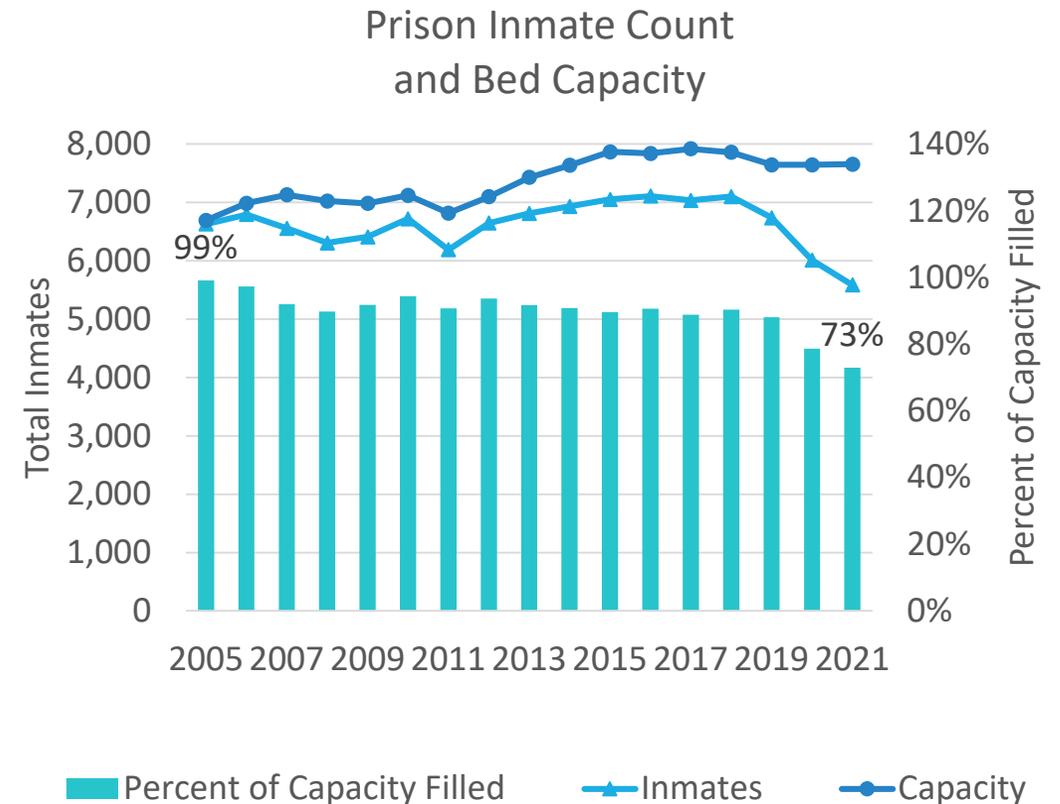
45 percent of inmates are in private prisons

Since 2018

- 47% decrease in female inmates (183 fewer)
- 20% decrease in male inmates (1,340 fewer)

Percent of capacity filled has slowly trended downward from 99% in 2005 to 73% in 2021

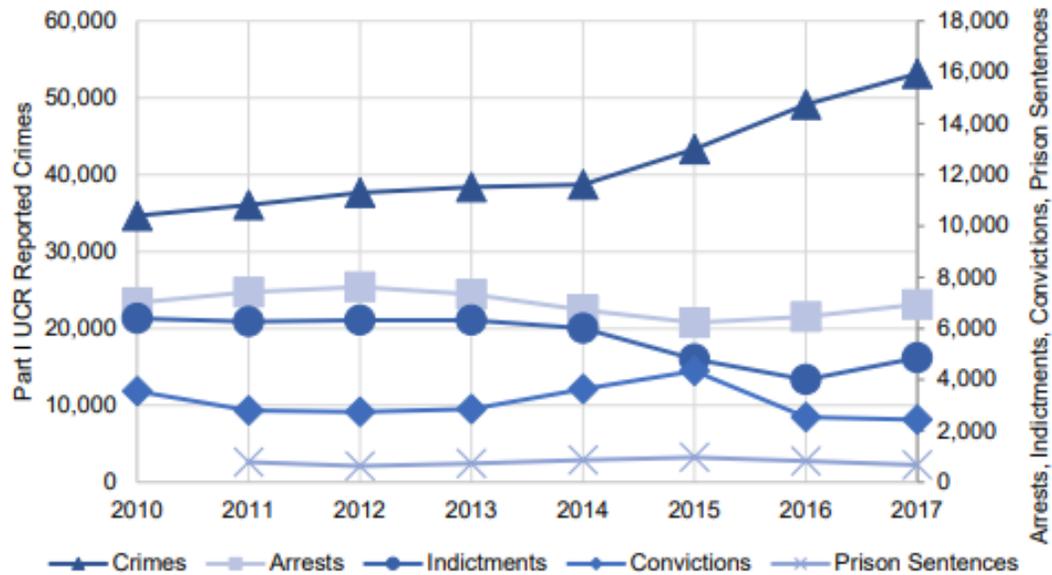
Declines in admissions partially driven by COVID but trending downwards prior to pandemic



Source: NMCD/LFC Volume 3
Note: Inmate count is point in time toward end of calendar year

Why the drop in prison admissions (looking upstream)

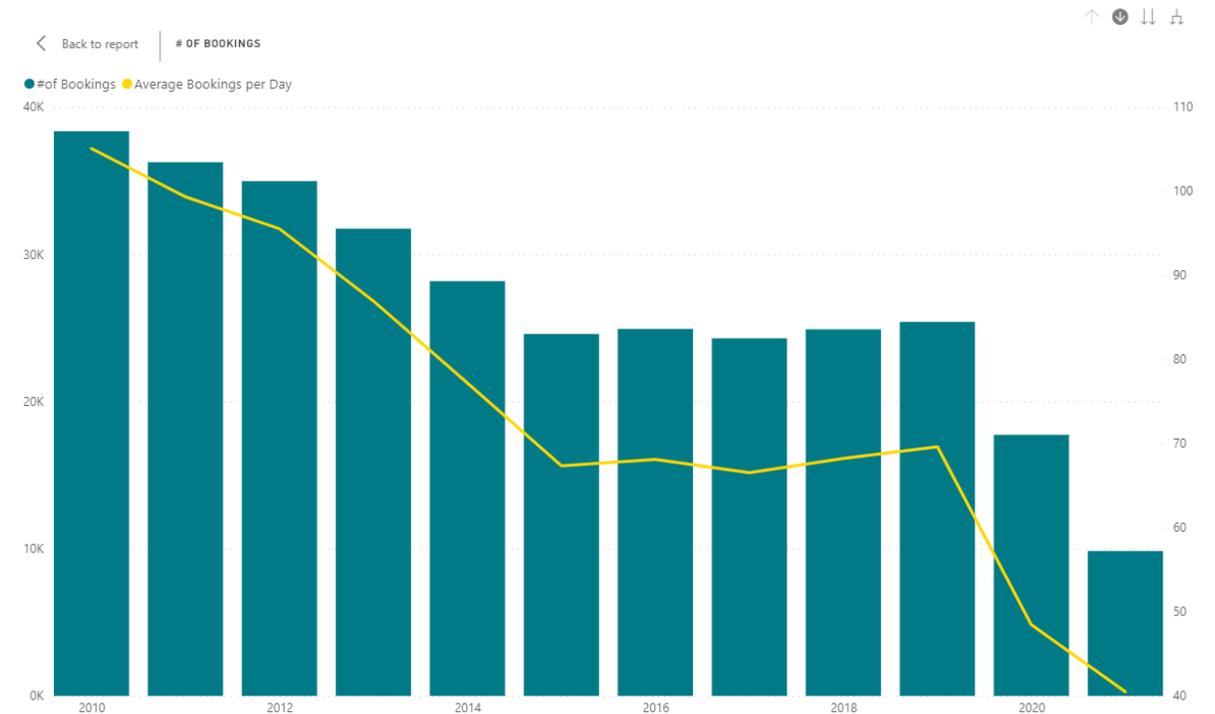
Chart 11. ABQ/Bernalillo CJ System - Felonies



Source: APD, BCSO, UNMPD, NMCD, AOC, NMSC

In 2018 LFC found that as crime increased in 2015, the criminal justice system did not keep pace

BERNALILLO COUNTY MDC POPULATION DASHBOARD



A key upstream indicator: MDC bookings and population declining consistently from 2019 through 2021.

Why the move to private prisons?

Situation in the mid 90's

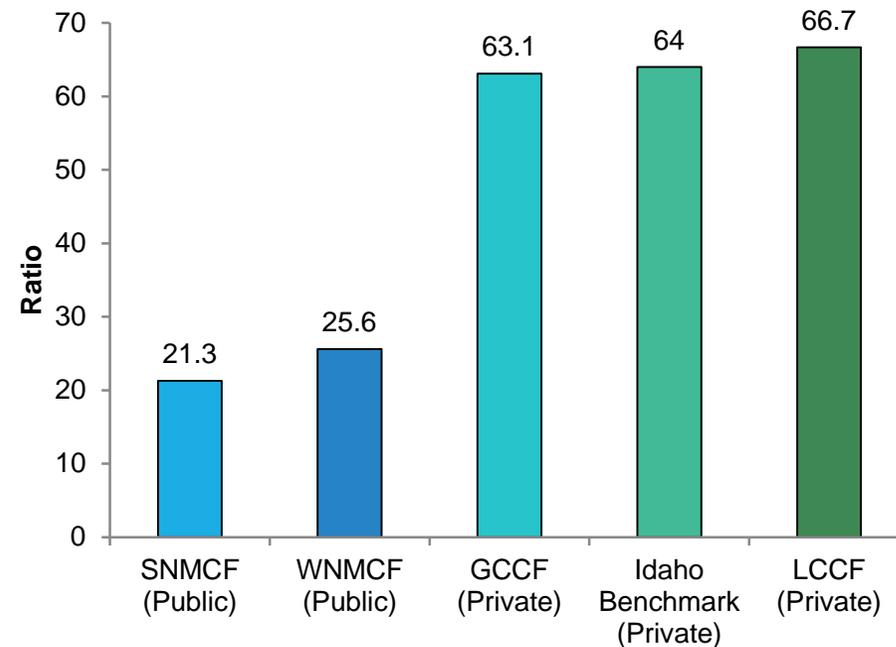
- In the mid 1990's New Mexico chose to expand prison beds using private prisons in order to save costs and expand capacity.
- In 1996, inmates were being shifted to other states and local jails with the biggest need being for medium security beds
- Population was 4,571 with a projection of need rising to 8,500 by the early 2000's
- NMCD estimated private prison beds would be about half the cost of existing public prisons
 - 1996 NMCD private prison cost per day estimate: \$40.00 (\$70 in 2021-adjusted for inflation)
 - 1996 public prison cost per day: \$76.79
- At a 1996 LFC hearing Representative Varela voiced concern that the \$40 a day estimate “may not accurately reflect actual daily costs”
 - FY20 private prison actual cost per day=\$95.67
 - FY20 public prison actual cost per day=\$147.54

Private prisons able to operate more efficiently

Post 1980's public prisons were built to be very security focused with low staff to inmate ratios

Post 1990's public prisons were built more efficiently for medium security inmate needs

Medium Security Inmate to Officer Ratios

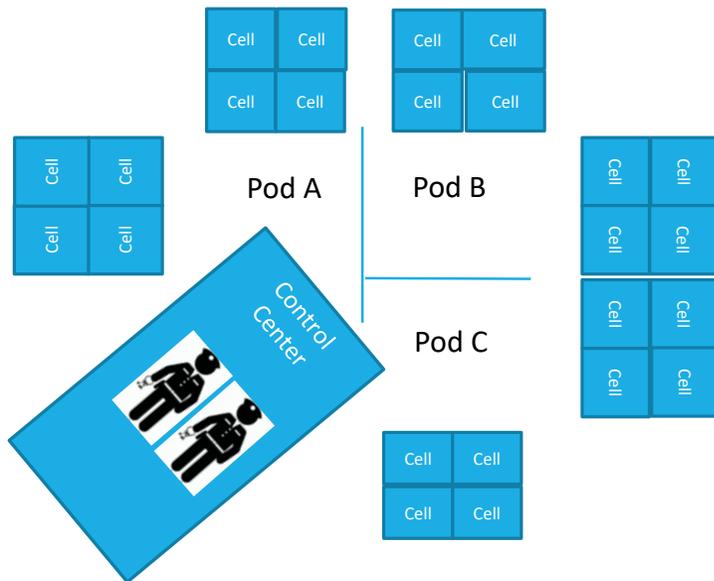


Source: NMCD, Private Prison Contracts, Idaho Office of Performance Evaluations
Note: Assumes average salaries are the same across facilities.



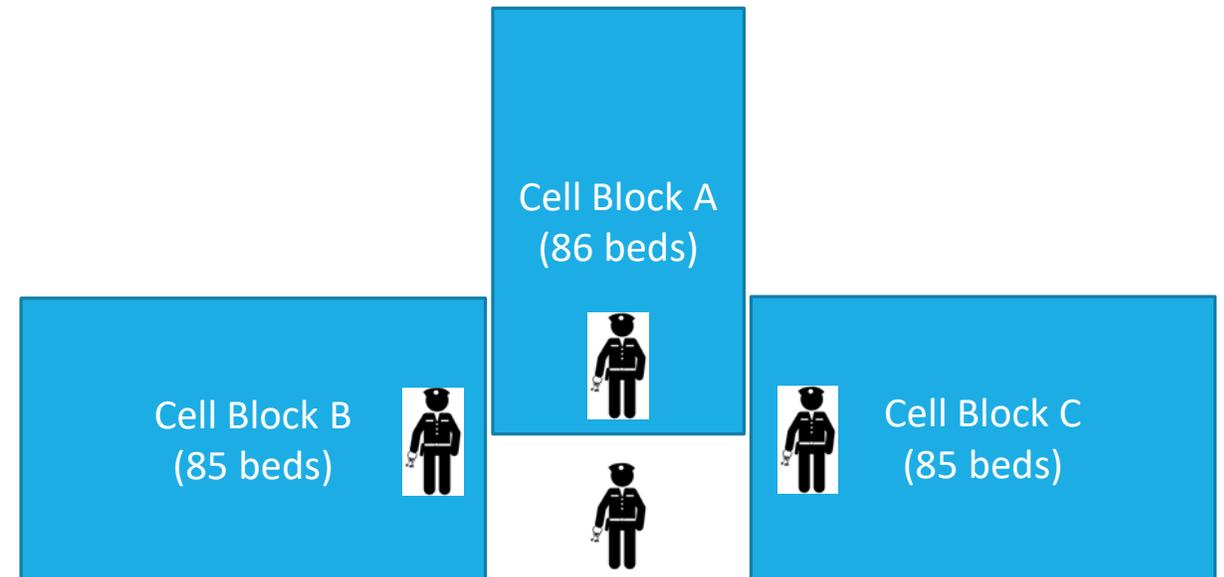
Many state built facilities are less efficient than privately built facilities

Example NM Public Prison Cell Layout (Level III)



Capacity: 48 Cell Housing Unit @ Western (2 floors)
Inmate to Officer Ratio: 24 to 1-Lower inmate to prisoner ratio

Example NM Private Prison Cell Layout (Level III)



Capacity: 256 Cell Housing Unit (benchmark private unit)
Inmate to Officer Ratio: 64 to 1-Higher inmate to prisoner ratio

Performance: LFC evaluation findings

2007 LFC Evaluation on NMCD

- Department lacks long-term planning or a facility master plan
- NM was more reliant on private prisons than any other state
- NM private prisons cost more than they should and more than other states due to contract price increases
- Not using traditional state capital outlay financing results in higher long-term costs for the state

2012 LFC Evaluation on NMCD

- Difficulty maintaining staffing levels resulting in fines from NMCD
- Department lacks system wide lack of risk needs assessment despite state investment
- Discontinuation of some private prison programs due to staffing challenges, lack of consistent programs
- NMCD reduced contracted staffing requirements at LCCF providing \$2 million in annual savings, but savings not passed on to taxpayers through per-diem adjustments

Performance: LFC evaluation findings (continued)

2014 LFC Evaluation on Capital Outlay

- Private prisons operate more efficiently than public medium security units
- NMCD still does not have a facility master plan and needs one
- Inefficient design and high deferred maintenance costs at public prisons (\$262 million) would make building new housing units more cost beneficial

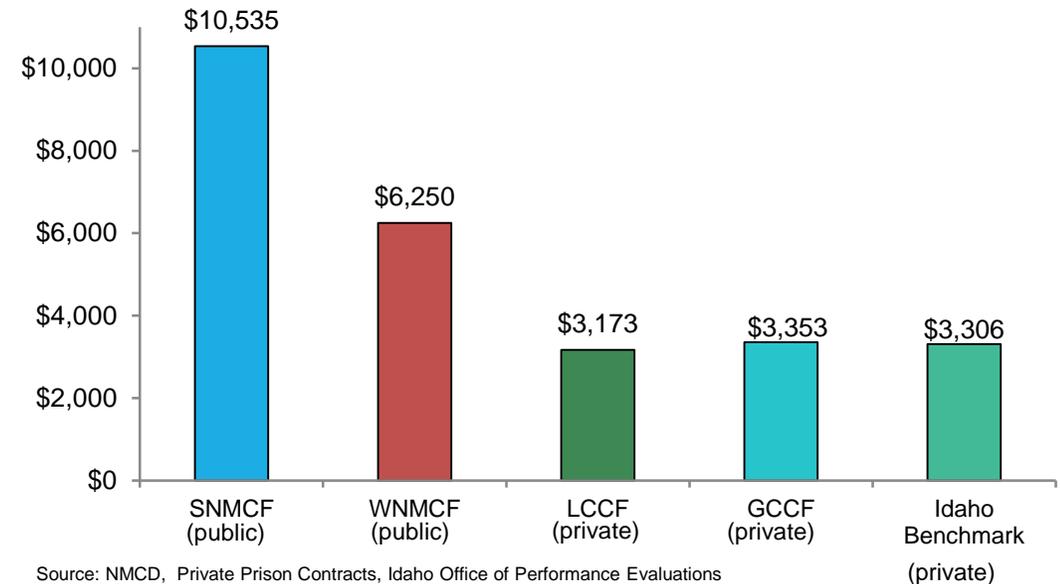
2018 LFC Evaluation on NMCD

- Private prisons held a disproportionate amount of release eligible inmates
- GEO SEC filings exhibited potential conflict of interest issues stating concerns regarding prisons ability to “maintain or increase occupancy rates”

2020 LFC Evaluation of NMCD Classification

- Women’s prison housed inmates together regardless of classification
- Overall issues with correct classification due to an unvalidated instrument

Direct Security Staffing Annual Cost Per Medium Security Housing Unit Inmate (Level III)-2014



Economic Impact and GRT Issues: Geo Group Inc. assessed \$16.6 million due to gaps in GRT payments

FIR raised concerns that closure of all private prisons in NM could reduce GRT revenue by \$4.6 million (2020 HB40)

- \$2.8 million (state)
- \$1.8 million (local)

However, there is evidence that some private prison contractors have not paid adequate GRT

- Geo Group Inc. (Geo) claimed GRT qualified for deduction for the sale of a license for resale (Section 7-9-47, NMSA 1978)
- Geo had not remitted adequate GRT from receipts in Guadalupe and Lea counties since at least 2010
- In 2015 TRD audits Geo's returns assessing penalties:
 - \$14.8 million for 2010-2015
 - \$1.8 million in interest
 - \$3 million in civil penalties
- After a protest from Geo, a Dec 2020 Administrative Hearings Office decision upheld \$16.6 million in penalties (all but \$3 million in civil penalties)
- LFC staff have asked TRD for additional information on status of private prison contractors and GRT payments

Private Prison Transitions Could Be More Costly Despite Efficient Design

NWNMCC taken over from Geo in 2019

- 22 percent increase in operating costs

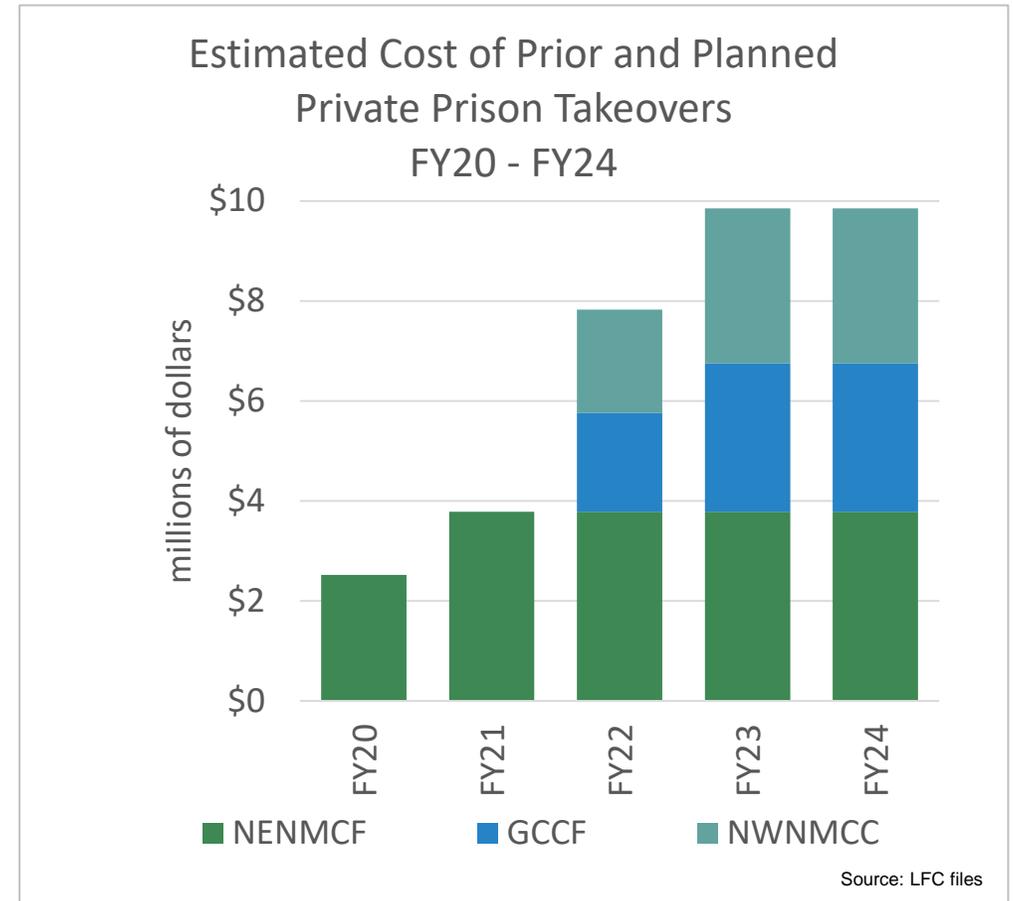
GCCF (Geo) to be taken over this year

- 71 percent vacancy rate
- Officers bringing in contraband
- NMCD reduced population to less than 300 (590 capacity)
- Lease costs to be determined

NWNMCC (CoreCivic) to be taken over this year

- Oldest privately operated state prison (c. 1989)
- Capacity of 673, holding 549

NMCD estimating at least \$2.7 million more in staffing costs for GCCF and NWNMCC



Impacts of excess capacity

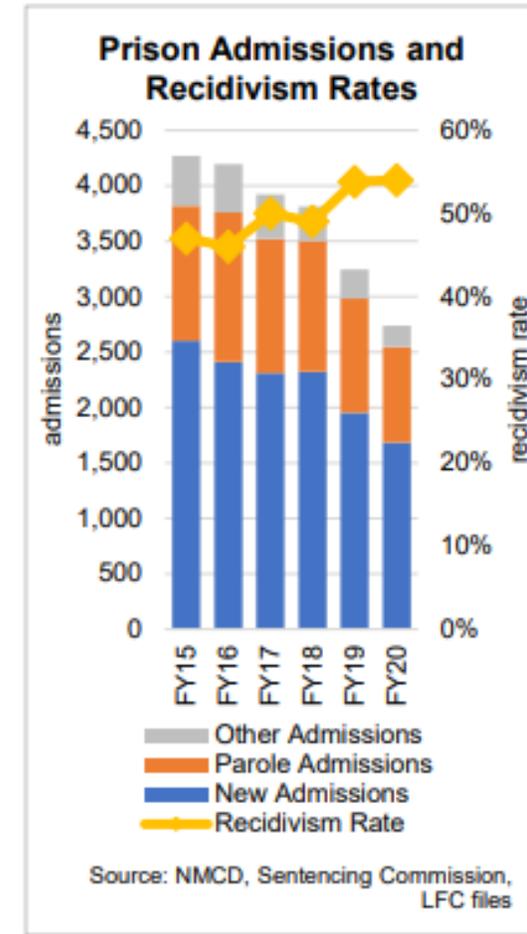
Excess capacity is costly

Cost per inmate increases and creates competition for other priorities, including recidivism reduction programming

The more “sites” the more administrative capacity is needed for programming (e.g. 2012 program eval)

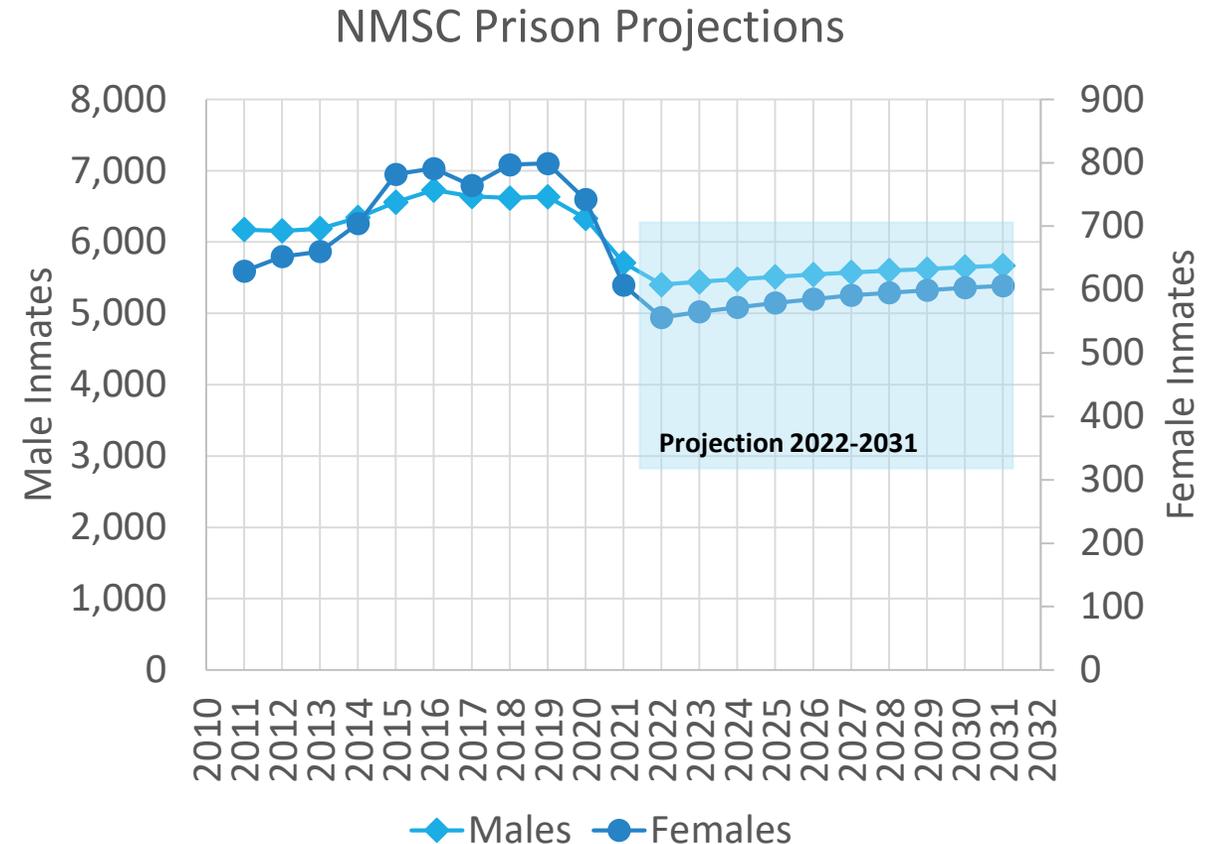
The NMCD recidivism rate (measured as return to prison within 36 months) has been trending upwards in recent years

Addressing root cause issues through evidence-based programming is key to avoiding return to prison



Future capacity requirements

- NMSC projections estimate inmate levels will remain below 82% of current capacity for next 10 years
 - 2031—Maximum of 6,276 inmates out of the current capacity of 7,655
- Future directions
 - NMCD needs a facility master plan
 - NMCD should provide detailed cost comparisons comparing costs to operate takeover facilities publicly
 - Informed by a master plan and cost comparison, the state should consider measures including shutting down inefficient public prison housing units to realize cost savings and adjust capacity to align with needs



Source: NMSC



NEW MEXICO LEGISLATIVE FINANCE COMMITTEE

For More Information on LFC

- <http://www.nmlegis.gov/lcs/lfc/lfcdefault.aspx>
 - Session Publications – Budgets
 - Performance Report Cards
 - Program Evaluations

Jon Courtney, PhD, Deputy Director
Jon.Courtney@nmlegis.gov

Ellen Rabin, Senior Fiscal Analyst
Ellen.Rabin@nmlegis.gov

