

# **NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

## **CURRENT POPULATION PROJECTIONS** ***FISCAL YEAR 2013 to FISCAL YEAR 2022***

**Prepared in Conjunction with the**  
**North Carolina Department of Public Safety's Office of Research and Planning**

*RELEASED: FEBRUARY 2013*

### **INTRODUCTION**

North Carolina General Statute §164-40 sets forth the North Carolina Sentencing and Policy Advisory Commission's original mandate to develop a computerized simulation model to be used to prepare prison population projections. The projections are prepared on an annual basis in conjunction with the North Carolina Department of Public Safety and are used to help determine long-term resource needs.

The prison population projections contained herein were completed in two parts. The Sentencing Commission prepared prison population projections for all offenders sentenced on or after July 1, 2012 (new population). The Department of Public Safety's Office of Research and Planning prepared projections for all offenders in prison as of June 30, 2012 (resident prison population). The final combined projections take into account the decline of the resident prison population (Structured Sentencing Act releases, Fair Sentencing Act releases, and pre-Fair Sentencing Act releases) and the buildup of the new inmate population (new prison admissions that occur through the imposition of active sentences or as the result of violations of probation, post-release supervision, or parole).<sup>1</sup> Added to these figures is the estimated number of Structured Sentencing Act misdemeanants sentenced to prison, "safekeepers," and DWI offenders held in the state prison system.

### **PRISON POPULATION PROJECTIONS AND CAPACITY**

The prison population projections were developed using SAS® Simulation Studio.<sup>2</sup> The simulation model utilizes empirical information about how offenders are processed through the criminal justice system to produce the projections. The composition of the current and projected prison populations is primarily determined by the empirical distribution of offenders convicted and sentenced under the Structured Sentencing Act. Data on convictions and sentences imposed in FY 2012 (July 1, 2011 through June 30, 2012) provide the foundation for the prison population projections. By using the most recent empirical data available, the projections account

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<sup>1</sup> The Structured Sentencing Act applies to offenses committed on or after October 1, 1994. There is no parole for offenders sentenced under the Structured Sentencing Act. Only those offenders sentenced under the Fair Sentencing Act or pre-Fair Sentencing Act may be eligible for parole.

<sup>2</sup> To produce the prison population projections, SAS® Simulation Studio (also referred to herein as the simulation model) simulates releases for the resident prison population while simultaneously processing new prison admissions that occur over the projection period.

for changes in criminal justice trends (arrests, court filings, dispositions, and convictions) that occur from year to year.

Over the past year North Carolina has been implementing substantial changes to the state's sentencing practices and correctional policies in response to the passage of the Justice Reinvestment Act (JRA) of 2011.<sup>3</sup> JRA redefined community and intermediate punishments, expanded the delegation of authority to probation officers, and limited the time an offender may serve for violations of probation. It created a new status offense of habitual breaking and entering, changed habitual felon punishments, authorized early release from prison under certain conditions, and expanded post-release supervision to include all felons. To keep offenders in the community, the new law mandated the diversion program for certain drug offenses and created the Treatment for Effective Community Supervision (TECS) program. Finally, JRA required the Department of Public Safety to use a validated instrument to assess each probationer for risk of reoffending and criminogenic needs and to place the probationer in the appropriate supervision level. Overall, JRA is expected to result in decreases to North Carolina's prison population. The changes to the criminal justice system under JRA will impact prison admissions, prison releases, and time to be served – all critical factors in determining the prison population.

The projection provides an estimate of the prison population based on assumptions about how the criminal justice system will operate under JRA. Only limited empirical data were available on criminal justice practices under JRA for FY 2012 since many of the provisions of JRA went into effect mid-way through the fiscal year (beginning December 1, 2011). As a result, assumptions regarding the operation of the criminal justice system under JRA were made by extrapolating from other sources where possible or by making informed estimates based upon policies and procedures that have been developed as part of the implementation of JRA. Until practitioners in the criminal justice system fully implement JRA and empirical data representative of the new law becomes available, the projections are limited in that they are based on assumptions not yet fully supported by empirical data and, consequently, may not play out as assumed.

Table 1 and Figure 1 present the projected prison population and capacity for FY 2013 through FY 2022. Prison capacity projections were provided by the NC Department of Public Safety's Division of Adult Correction/Prisons. The prison population is projected to increase from 36,838 in June 2013 to 37,680 in June 2022. A comparison of the projections with Expanded Operating Capacity indicates that the projected prison population will be below prison capacity for the ten-year projection period.

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<sup>3</sup> Further information on the Justice Reinvestment Act can be found on the following websites: <http://jr.nc.gov/index.html>, <http://www.sog.unc.edu/node/2044>, and <http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2011&BillID=hb+642>.

# NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**TABLE 1**  
**PRISON POPULATION PROJECTIONS AND CAPACITY:**  
*UPDATED FEBRUARY 2013*

Prepared in Conjunction with the  
 North Carolina Department of Public Safety's Office of Research and Planning

Fiscal Year End	Prison Population as of June 30 <sup>4</sup>		Prison Capacity <sup>5,6</sup>	
	Previous Projection	Current Projection	Expanded Operating Capacity	Standard Operating Capacity
<b>2013</b>	38,999	36,838	40,718	34,779
<b>2014</b>	39,062	36,967	40,970	34,973
<b>2015</b>	39,091	37,107	40,970	34,973
<b>2016</b>	39,047	36,861	40,970	34,973
<b>2017</b>	39,135	36,748	40,970	34,973
<b>2018</b>	39,291	36,722	40,970	34,973
<b>2019</b>	39,490	36,894	40,970	34,973
<b>2020</b>	39,699	37,179	40,970	34,973
<b>2021</b>	39,976	37,468	40,970	34,973
<b>2022</b>	N/A	37,680	40,970	34,973

<sup>4</sup> The previous projection, which was released in February 2012, was based on assumptions about how the criminal justice system will operate under JRA. Previous prison population projections are located on the following website: <http://www.nccourts.org/Courts/CRS/Councils/spac/Publication/Projections/Adult.asp>.

<sup>5</sup> Standard Operating Capacity (SOC) is the number of single cells with one inmate per cell plus the number of inmates who can be housed in dormitories by dividing the gross square feet of each dormitory by 50 square feet and rounding to the closest double bunk configuration. Expanded Operating Capacity (EOC) is the number of inmates housed in dormitories that operate at varying percentages (not to exceed 130%) beyond their SOC, plus the number of single cells with one inmate per cell, plus the number of single cells that house two inmates per cell.

<sup>6</sup> The EOC and SOC capacity estimates for 2013 include minor changes due to conversion in bed types, as well as expansions at Lanesboro CI (504 medium custody), Bertie CI (504 medium custody), and Maury CI (504 medium custody). The increases in funded capacity for 2014 include expansion at Tabor CI (252 minimum custody).

Demographic, crime, and systemic indicators nationwide point to a multi-year decline in prison populations – a trend supported by the prison population projections presented here for North Carolina. As shown in Table 1, the current projection indicates a decline in the prison population compared to last year's prison projections. The lower projected prison population can be attributed primarily to three factors: a decreasing rate of growth for North Carolina's population (particularly for males ages 16 – 24, the group most likely to be arrested), continued nationwide declines in crime trends, and policy changes.

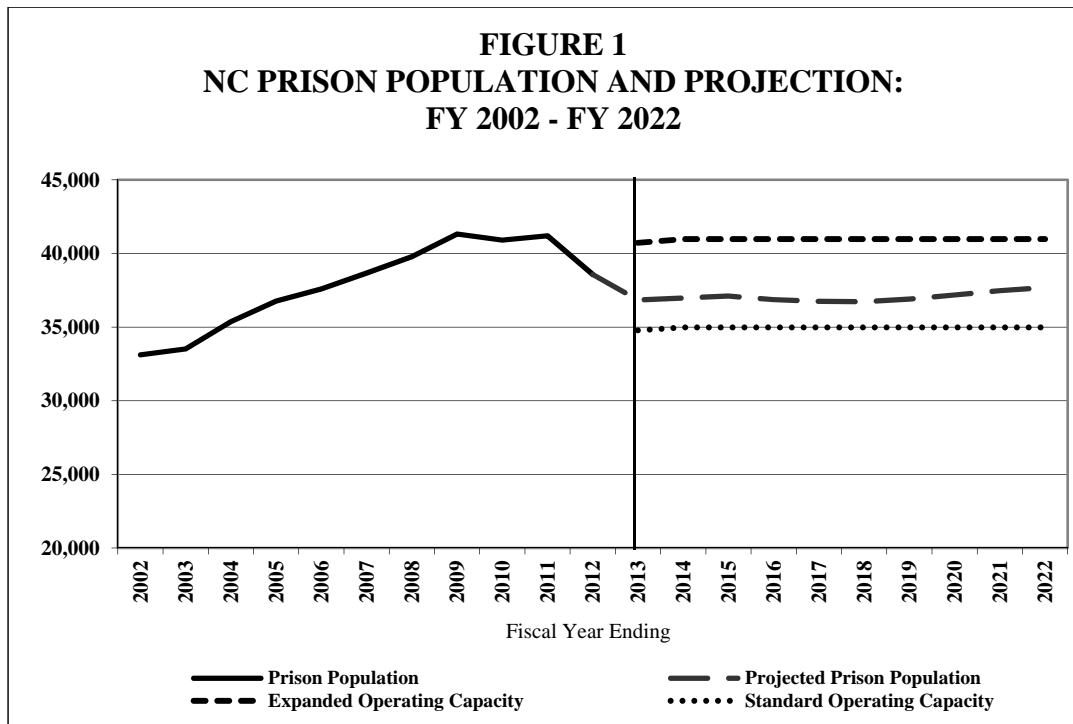
As can be seen in Figure 1 and, more specifically, in Figure 2, after years of growth, the prison population leveled off and then began to decline. From FY 2002 through FY 2009, the prison population increased each year over the previous fiscal year, with an average yearly increase of 3%. The prison population leveled off from FY 2009 through FY 2011 as a result of declines in criminal justice trend indicators (such as arrests and convictions) and in response to changes to the minimum sentence lengths and prior record point distributions in the felony punishment chart that were passed during the 2009 Session of the General Assembly. The declines in the first half of FY 2012 (from July to December 2011) can be attributed to changes to earned time credits for prisoners that went into effect in June 2011, while the declines in the second half of FY 2012 can be attributed to changes in prison entries as a result of JRA. While the intent of JRA is to reduce the prison population by changing offender behavior, this initial decline is a result of two immediate changes: shifting most misdemeanants from prison to local jails through the establishment of the Statewide Misdemeanant Confinement Program; and the legal change that places limits on revocations of probation and establishes 90-day confinement in response to violation (CRV) for technical violations of probation.

Figure 3 and Figure 4 further highlight criminal justice trends that factor into the lower prison population. As shown in Figure 3, felony convictions have decreased the past three fiscal years, with an overall decrease of nearly 13% since FY 2009. Consistent with the decrease in felony convictions, total prison entries also have decreased since FY 2009 (about 21%). However, prison entries experienced a sharper decrease from FY 2011 to FY 2012 (17%), primarily as a result of the JRA changes described above. Although they are not a significant contributor to the recent decline in the prison population, prison exits have also decreased since FY 2009.

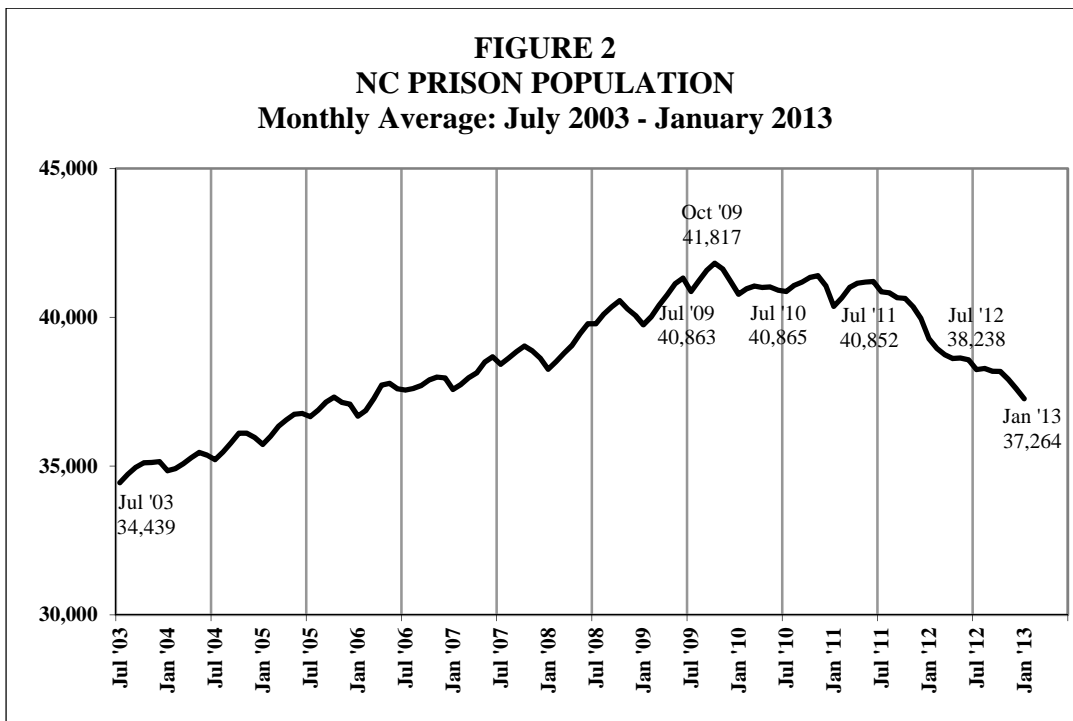
Consistent with national trends, North Carolina's crime rate has also declined over the past few years (see Figure 4). In addition to declines in Index, Violent, and Property crime rates since CY 2008, there has been a decline in the overall number of arrests for Index and non-Index crimes.<sup>7</sup>

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<sup>7</sup> Index crimes include murder, rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft. Arson is also an Index offense, but is typically excluded from Index crime totals.



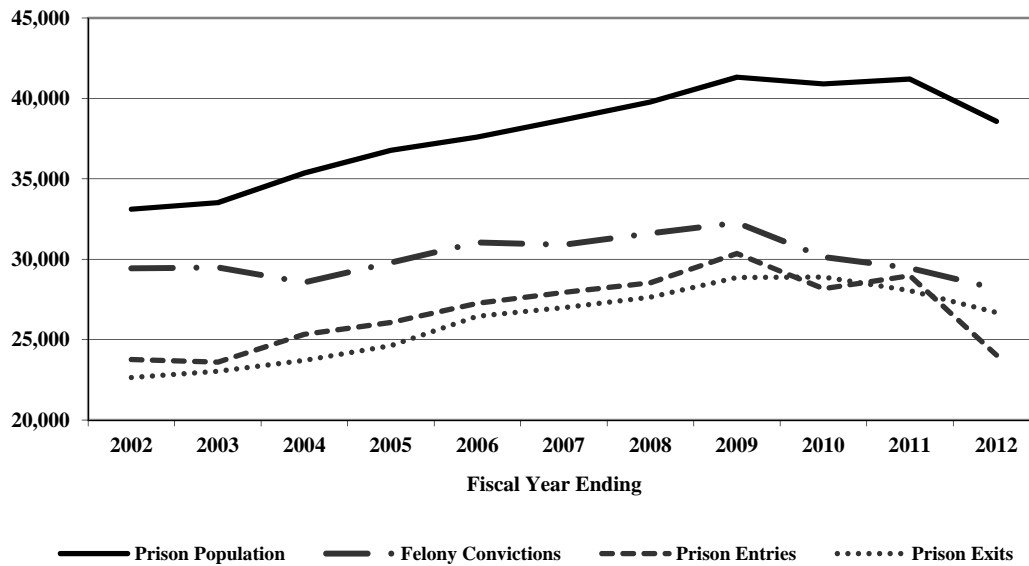
SOURCE: NC Sentencing and Policy Advisory Commission and NC Department of Public Safety



NOTE: Vertical lines separate each fiscal year.

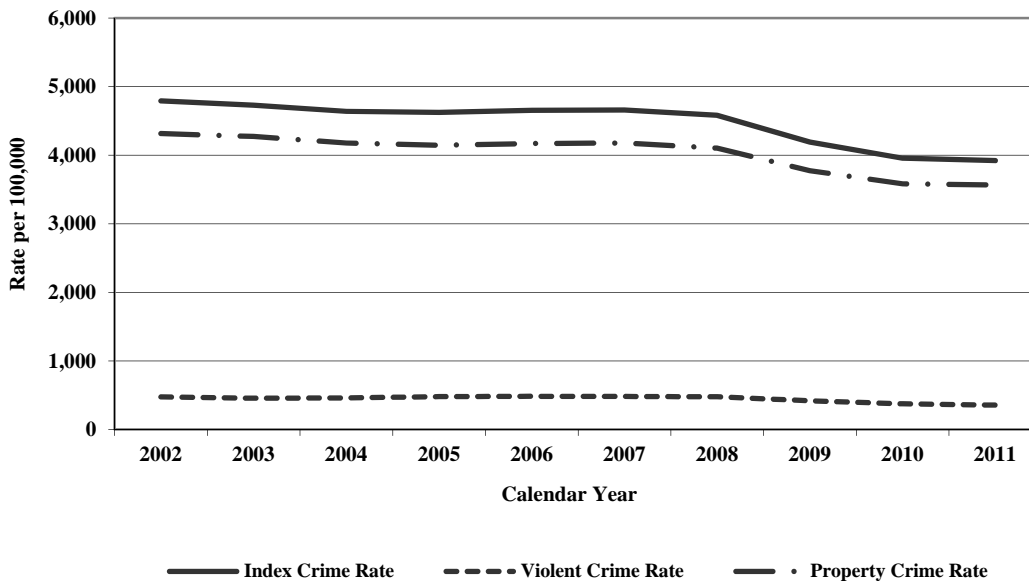
SOURCE: NC Department of Public Safety, Daily Unit Population Reports and Inmates on Backlog Reports

**FIGURE 3**  
**NC PRISON POPULATION AND CRIMINAL JUSTICE**  
**TRENDS: FY 2002 - FY 2012**



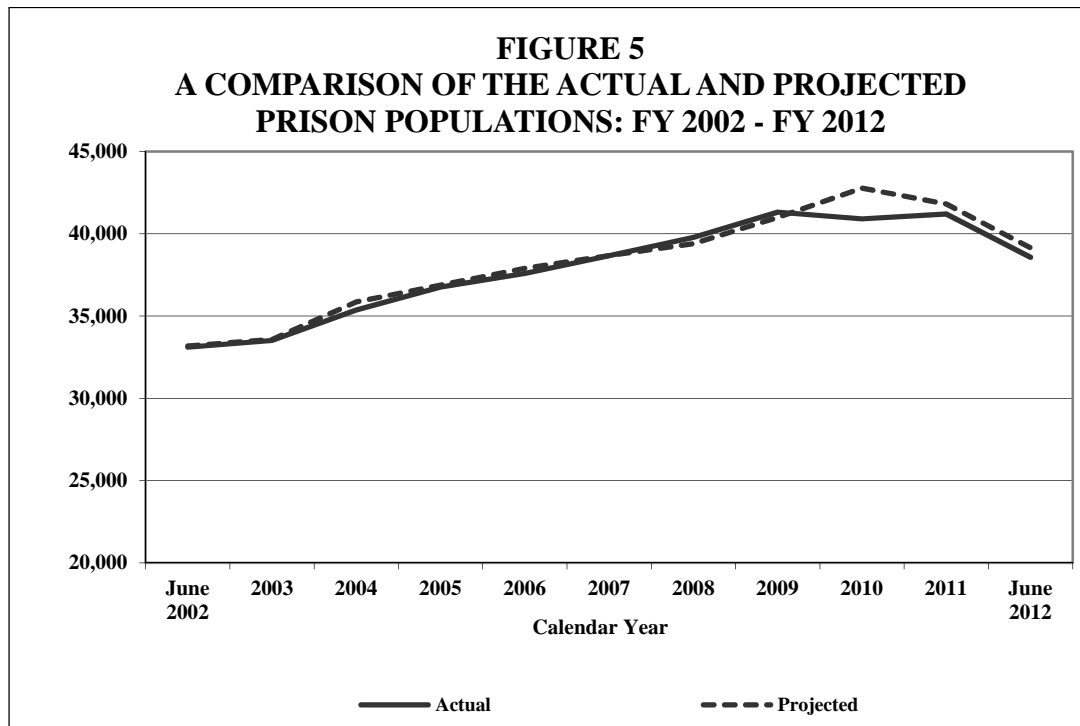
SOURCE: NC Sentencing and Policy Advisory Commission and NC Department of Public Safety

**FIGURE 4**  
**NC INDEX CRIME: CY 2002 - CY 2011**



SOURCE: NC Department of Justice, State Bureau of Investigation, *Crime in North Carolina*

For the majority of the past decade, the accuracy of the prison population projections has been within two percent.<sup>8</sup> A comparison of the actual average prison population with the projected prison population for June of each year is provided in Figure 5. The projected prison population for June 2012 was 39,142.<sup>9</sup> The actual average population for June 2012 was 38,569 – a difference of about one and one-half percent.



SOURCE: NC Sentencing and Policy Advisory Commission and NC Department of Public Safety

## ASSUMPTIONS

Significant changes in criminal justice policies and practices are being implemented as a result of JRA. With an effective date of December 1, 2011, for much of JRA, the use of currently available historical data is limited in its applicability for estimating such changes as limited cases were processed through the court and correctional systems under JRA during FY 2012 (the empirical data used for the prison population projections). As a result, assumptions must be made until more cases are processed through the system and a new empirical base is established that is representative of cases processed under JRA.

<sup>8</sup> While the accuracy of the 2010 projection was within the acceptable accuracy range for projections (under 5%), it was less accurate than the projections have been over the past decade. Factors contributing to the lesser accuracy of the 2010 projection include unexpected and substantial decreases in court filings, dispositions, and convictions.

<sup>9</sup> This projection was based on assumptions about how the criminal justice system would operate under JRA.

The following section details the assumptions that were used to develop the prison population projections for FY 2013 through FY 2022.<sup>10</sup> The assumptions for the projection were determined using data from the most recent fiscal year (FY 2012) and by extrapolating from existing information where possible or by making informed estimates based upon policies and procedures that have been developed as part of the implementation of JRA.

- *Growth Rates:* The projections assume a negative growth rate (-1%) in felony convictions for FY 2013 and FY 2014, 0% for FY 2015, and 1% for FY 2016 through FY 2022, as adopted by the Sentencing Commission's *Forecasting Advisory Group*. The projected growth rates for felony convictions were adjusted downward based on continued decreases in juvenile justice system (delinquent complaints) and criminal justice system indicators (arrests, filings, and convictions). The continued slowing of the growth rate for NC's population (particularly for males ages 16 – 24, the group most likely to be arrested) was also a factor in determining the growth rates.<sup>11</sup>
- *Punishment Chart:* The projections assume all new felony convictions will be sentenced under the punishment chart effective for offenses committed on or after December 1, 2011. This punishment chart incorporates changes to the minimum sentence lengths and prior record point distributions that were passed during the 2009 Session and the changes to maximum sentence lengths that were passed during the 2011 Session of the General Assembly.
- *Prison Admissions:* In FY 2012, 63% of all felony admissions to prison resulted from Active sentences for a new conviction, 35% resulted from probation violations other than a new crime (*i.e.*, absconding or technical violation), and 2% resulted from post-release supervision violations other than a new crime (*i.e.*, absconding or technical violation). It is expected that this distribution will change as more cases are processed under JRA, particularly due to a different response to probation violations and to the changing composition of offenders supervised on post-release supervision that results from the expansion of post-release supervision to all felons.
- *Active Rates and Time Served for Active Sentences:* In FY 2012, 41% of felons received an Active sentence, with an average estimated time served of 34 months. Overall, it is assumed that the rates of Active sentences for new felony convictions and average estimated time served will match the rates for FY 2012.

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<sup>10</sup> A more detailed summary of the assumptions used for this year's prison population projections is available upon request.

<sup>11</sup> The *Forecasting Advisory Group* adopts growth rates for convictions on an annual basis. The *Group* consists of representatives from the Sentencing Commission, Administrative Office of the Courts, Conference of District Attorneys, Office of Indigent Defense Services, Department of Public Safety's Office of Research and Planning, Department of Public Safety's Division of Juvenile Justice, State Bureau of Investigation, Governor's Crime Commission, Office of State Budget and Management, School of Government, and Fiscal Research Division of the General Assembly. The group forecasts growth rates after reviewing demographic trends, crime trends, arrest trends, court filing and disposition trends, and prison entry and exit trends.



- *Percent of Active Sentence Served:* In FY 2012, SSA felons released from prison served 107% of their minimum Active sentences.<sup>12</sup> The percentage of sentence served varies by offense class with prisoners in the more serious offense classes serving a lower percentage of their maximum sentence since they have the potential to accrue more earned time due to their longer sentence lengths (e.g., 102% for Class C, 110% for Class I). As a result of policy changes to earned time credits that went into effect in June 2011, the projections assume that there will be a decrease in the percent of sentence served.
- *Probation:* In FY 2012, 37% of exits from probation for felons resulted from revocation of probation. It is assumed that all probationers with violations prior to December 1, 2011 (prior to JRA) have been processed through the system and that all future violations of probation will be subject to the changes under JRA. Also, it is assumed that confinement rates,<sup>13</sup> lag-time from placement on probation to confinement, and time served will vary according to the form of non-compliance (technical, new crime, or absconding).
- *Post-Release Supervision (PRS):*<sup>14</sup> In FY 2012, 16% of exits from post-release supervision (Class B1-E felons) resulted from revocation. It is assumed that confinement rates, lag-time from placement on PRS to confinement, and time served will vary according to the form of non-compliance (technical, new crime, or absconding) and based on whether the offender is a sex offender. While the PRS population will include pre-JRA prisoners for years to come, the volume of JRA entries to PRS is expected to increase over the projection period, along with the proportion of violations.
- *Advanced Supervised Release (ASR):* It is assumed that 10% of eligible convictions with an active sentence (based on offense class and prior record level as set in statute) will complete ASR program(s) and be released at the ASR date (i.e., the lowest mitigated sentence if the sentence was in the presumptive range, or 80% of the minimum sentence imposed if the sentence was in the mitigated range).
- *Habitual Felons:* It is assumed that certain habitual felons will be reclassified – those habitual felons with an underlying Class H felony will be sentenced as Class D felons and those with an underlying Class I felony will be sentenced as Class E felons. It is assumed that the rates of Active sentences will match the rates for FY 2012, based on the dispositions available in the felony punishment chart as determined by the offense class of the principal offense and prior record points. Also, it is assumed that sentences will be imposed at the midpoint of the presumptive range as determined by offense class and prior record points.

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<sup>12</sup> The maximum sentence length is set at 120% of the minimum sentence length rounded to the next highest month plus the period of post-release supervision.

<sup>13</sup> The term “confinement rates” is used as an overall term to describe the different rates associated with violations of probation (i.e., CRV rates, revocation rates for new crime or absconding violations) or PRS (i.e., revocations for technical violations of PRS, revocations for new crime or absconding violations).

<sup>14</sup> Prior to JRA, a nine-month period of PRS was required for offenders convicted of Class B1-E felonies. Under JRA, the period of PRS is extended from nine months to twelve months for Class B1-E felons and a nine-month period of PRS is required for Class F-I felons. A five-year period of PRS is required for sex offenders. Data from the Sentencing Commission’s 2012 biennial recidivism study were used to develop assumptions relating to revocations of post-release supervision under JRA.

- *Habitual Breaking and Entering (Class E)*: It is assumed that 26% of eligible offenders will be sentenced as habitual breaking and entering felons.<sup>15</sup> It is assumed that the rates of Active sentences will match the rates for FY 2012, based on the dispositions available in the felony punishment chart as determined by the offense class of the principal offense and prior record points. Also, it is assumed that sentences will be imposed at the midpoint of the presumptive range as determined by offense class (Class E) and prior record points.
- *Misdemeanor Sentences under the Structured Sentencing Act*: Under JRA, most misdemeanants sentenced under the Structured Sentencing Act are mandated to serve any active sentence imposed in jail rather than prison.<sup>16</sup> Projections for the estimated misdemeanor prison population were prepared by the Department of Public Safety's Office of Research and Planning.
- *Sentences under the Fair Sentencing Act (FSA) and Prior*: Prison population projections continue to be affected by parole practices due to the number of Fair Sentencing Act (FSA) and pre-FSA offenders currently in prison. On December 31, 2012, there were 2,559 FSA and pre-FSA offenders in prison (including 1,880 with life sentences and 66 with death sentences), representing nearly 7% of the state's inmates. The projections assume that all FSA and pre-FSA prisoners will serve the average percentage of sentence imposed that was served by FSA and pre-FSA prisoners released in FY 2012 and that parole revocation rates will match FY 2012 rates.
- *Legislative Changes to Criminal Penalties*: The projections take into account the increase in penalties for murder and DWI deaths that were ratified during the 2012 Session of the 2011 North Carolina General Assembly. The projections provided do not account for any other legislative changes to criminal penalties from the past legislative session since the legislative changes either created new offenses for which there are no historical data or amended penalties for existing offenses with elements that could not be modeled.

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<sup>15</sup> Eligible offenders were defined as offenders with two or more prior record points who were convicted of an eligible breaking and entering offense. Using prior criminal history data obtained from the Department of Public Safety's Office of Research and Planning, it was estimated that 26% of eligible offenders would have one or more prior breaking and entering offense and would be sentenced as habitual breaking and entering felons.

<sup>16</sup> Effective January 1, 2012, a defendant who is convicted of a misdemeanor offense and sentenced under Structured Sentencing with a sentence imposed of more than 90 days and up to 180 days is required to serve the period of confinement in a local confinement facility through the Statewide Misdemeanant Confinement Program. Prior to this change, only misdemeanants with sentences imposed of 90 days or less were required to serve the period of confinement in a local confinement facility.