

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

## **CURRENT POPULATION PROJECTIONS** *FISCAL YEAR 2009/10 to FISCAL YEAR 2018/19*

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

*RELEASED: JANUARY 2010*

### **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 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, 2009 (new population). The Department of Correction prepared projections for all offenders in prison as of June 30, 2009 (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 sentences, probation revocations, post-release supervision revocations, and parole revocations). Added to these figures is the estimated number of "safekeepers" and DWI offenders held in the state prison system.

### **ASSUMPTIONS AND RELEVANT CHANGES**

The projections are based on the following assumptions that were determined using data from the most recent fiscal year (FY 2008/09):

- The distribution of prison admissions resulting from Active sentences for a new conviction and resulting from technical revocations of probation will match the distribution during FY 2008/09. While 58% of all felony admissions to prison in FY 2008/09 resulted from Active sentences for a new conviction, 42% of the felony admissions resulted from technical revocations of probation. In FY 2008/09, 43% of all misdemeanor admissions to prison resulted from Active sentences for a new conviction and 57% of the misdemeanor admissions resulted from technical revocations of probation.
- Rates of Active sentences for new felony convictions will match rates during FY 2008/09 for all SSA offenders. Overall, 39% of felons received an Active sentence, with an average estimated time served of 38 months. These rates assume no changes in judicial or prosecutorial behavior regarding convictions and sentencing.

- Probation revocation rates for technical violations of supervision will match rates during FY 2008/09. The median lag-time between the imposition of a probation sentence and revocation to prison for a technical violation was 15 months for felons and 11 months for misdemeanants.
- Post-release supervision revocation rates for technical violations of supervision will match rates during FY 2008/09.<sup>1</sup> The median lag-time between release from prison onto post-release supervision and revocation to prison for a technical violation was 7 months.
- On average, all Structured Sentencing Act (SSA) felons will serve 109% of their minimum Active sentences (the average percentage served by SSA felons released from prison during FY 2008/09).<sup>2</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, 113% for Class I).
- On average, all SSA misdemeanants will serve 96% of their Active sentences (the average percentage served by SSA misdemeanants released from prison during FY 2008/09).
- 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 November 30, 2009, there were 3,080 FSA and pre-FSA offenders in prison (including 2,066 with life sentences and 69 with death sentences), representing about 8% 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 2008/09 and that parole revocation rates will match FY 2008/09 rates.
- The Sentencing Commission's *Forecasting Advisory Group* adjusted the projected growth rate for felony convictions for FY 2009/10 due to national trends regarding crime and decreasing prison populations in other states. The group projected that there would be no growth for misdemeanor convictions for FY 2009/10 due to declines in misdemeanor filings and convictions.<sup>3</sup>

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<sup>1</sup> Under Structured Sentencing, prisoners released with a most serious offense for Class B1 through Class E felonies are released on post-release supervision for a period of nine months, with the exception of sex offenders who are supervised for five years.

<sup>2</sup> For Classes B1 through E, the maximum sentence length is set at 120% of the minimum sentence length rounded to the next highest month plus an additional nine months for post-release supervision. For Classes F through I, the maximum sentence length is set at 120% of the minimum sentence length rounded to the next highest month.

<sup>3</sup> The *Forecasting Advisory Group* convenes annually and consists of representatives from the Sentencing Commission, Administrative Office of the Courts, Conference of District Attorneys, Office of Indigent Defense Services, Department of Correction, Department of Juvenile Justice and Delinquency Prevention, 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 recent crime trends, arrest trends, court filing trends, state demographic trends, and prison admission trends.

<u>Time Period</u>	<i>Felony Convictions</i>		<i>Misdemeanor Convictions</i>	
	<u>Previous Growth Rate</u>	<u>Current Growth Rate</u>	<u>Previous Growth Rate</u>	<u>Current Growth Rate</u>
FY 2009/10	3%	2%	1%	0%
FY 2010/11	2%	2%	1%	1%
FY 2011/12	2%	2%	1%	1%
FY 2012/13	2%	2%	1%	1%
FY 2013/14	2%	2%	1%	1%

- This projection accounts for impact from legislative changes to criminal penalties from the 2009 Session of the General Assembly that could be modeled. The two bills modeled involve changes to the minimum sentence lengths and prior record point distributions in the felony punishment chart.<sup>4</sup> However, this projection does not account for any increases in the prison population from other legislative changes to criminal penalties during 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.

## **PRISON POPULATION PROJECTIONS**

### **Prison Population and Capacity**

Table 1 and Figure 1 present the projected prison population and capacity for FY 2009/10 through FY 2018/19. Updated prison capacity projections were provided by the Department of Correction’s Division of Prisons. These projections include both the Expanded Operating Capacity (EOC) and the Standard Operating Capacity (SOC) of all prison facilities.

As shown in Table 1, the prison population is projected to increase from 42,776 in June 2010 to 50,829 by June 2019. A comparison of the projected prison population with prison capacity indicates that the projected prison population will exceed both SOC and EOC for all ten years of the projection. The Department of Correction’s estimate of EOC is 39,332 for June 2010 and 42,296 for June 2019. The difference between the projected population and EOC for these two years is 3,444 and 8,533 respectively. The projected prison populations represent an increase from last year’s projections. This increase can primarily be attributed to an increase in convictions in the most serious felony offense classes (Classes A through D) and an increase in revocation entries to prison.

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<sup>4</sup> Session Law 2009-556 (SB 488/Establish Proportionate Sentence Lengths) changes the felony punishment chart to make the increase in sentence lengths between prior record levels more proportionate using set percentage (15%) increments. The current sentence lengths in Prior Record Level I in each offense class remain unchanged, serving as an anchor, while the sentence lengths between each subsequent prior record level are increased by 15% in all classes except Classes H and I, which also remain unchanged. Session Law 2009-555 (SB 489/Even Out Prior Criminal Record Points) changes the felony punishment chart by restructuring the prior record level point ranges in order to expand the points in Prior Record Level I and to even out the remaining ranges. Prior Record Level I is expanded to include up to one prior record point. Prior Record Levels II through V are changed to cover four points each. The new felony punishment chart that results from these changes is effective for offenses committed on or after December 1, 2009.

# NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**TABLE 1**  
**PRISON POPULATION PROJECTIONS AND CAPACITY:**<sup>5,6</sup>  
**UPDATED JANUARY 2010**

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

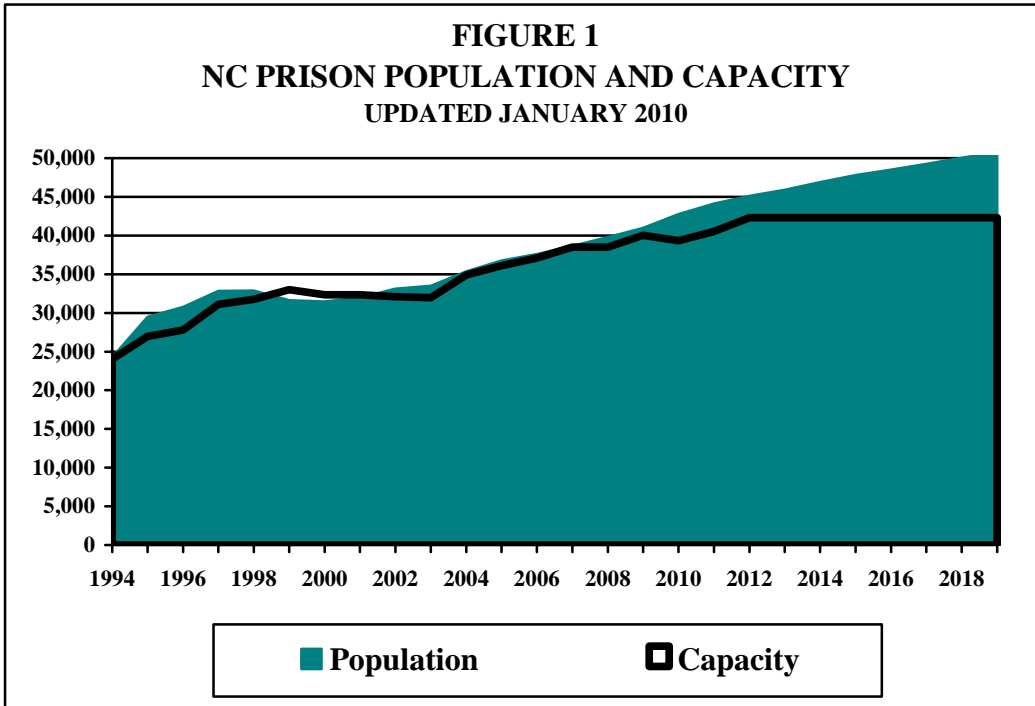
FISCAL YEAR	PREVIOUS PROJECTION as of June 30	CURRENT PROJECTION as of June 30	ESTIMATE OF EXPANDED OPERATING PRISON CAPACITY <sup>A</sup>	ESTIMATE OF STANDARD OPERATING PRISON CAPACITY <sup>B</sup>
<b>2009/10</b>	42,296	42,776	39,332	33,682
<b>2010/11</b>	43,165	44,147	40,532	34,650
<b>2011/12</b>	44,024	45,114	42,296	36,008
<b>2012/13</b>	44,987	45,922	42,296	36,008
<b>2013/14</b>	45,998	46,914	42,296	36,008
<b>2014/15</b>	46,937	47,806	42,296	36,008
<b>2015/16</b>	47,882	48,527	42,296	36,008
<b>2016/17</b>	48,823	49,253	42,296	36,008
<b>2017/18</b>	49,770	50,029	42,296	36,008
<b>2018/19</b>	N/A	50,829	42,296	36,008

<sup>A</sup> Expanded Operating Capacity (EOC) is the number of inmates housed in dormitories that operate at varying percentages (not to exceed 130%) beyond their Standard Operating Capacity (SOC), plus the number of single cells with one inmate per cell, plus the number of single cells that house two inmates per cell.

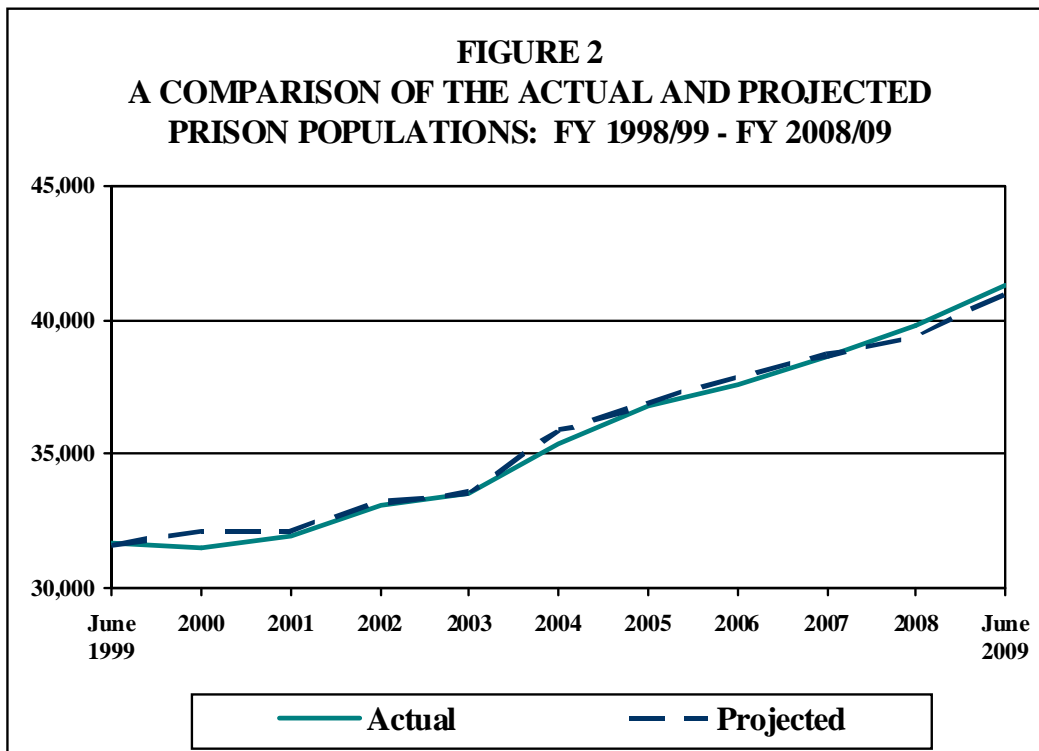
<sup>B</sup> Standard Operating Capacity (SOC) is the number of single cells with one inmate per cell plus the number of inmates who can be housed in dormitories by dividing the gross square feet of each dormitory by 50 square feet and rounding to the closest double bunk configuration.

<sup>5</sup> Changes in the June 30, 2010, EOC and SOC capacity estimates from the 2009 report are the result of a loss of 682 beds due to the closure of seven facilities in FY 2009/10. The increases in funded capacity for 2011 and 2012 include the Phase 2 expansion of Swannanoa Correctional Center for Women, as well as the minimum and medium custody expansions at Scotland, Alexander, Bertie, Lanesboro, Maury, and Tabor Correctional Institutions.

<sup>6</sup> The capacity estimates from the Department of Correction are based on projects funded or authorized. Added double cell beds at Pamlico Correctional Institution are considered as permanent and, therefore, are counted in the EOC and SOC capacity amounts due to the fact that the facility is designed for the accommodation of double-celling; all other facilities double-celled in FY 2009/10 (Hoke, Odom, Warren, and Craven Correctional Institutions), as well as the addition of dayroom beds at Nash Correctional Institution, were temporarily put in place to immediately offset the loss of beds due to the closure of seven facilities in FY 2009/10 as required by Session Law 2009-451. The double cells at Hoke, Odom, Warren, and Craven Correctional Institutions are to be converted to single cells and the dayroom beds at Nash Correctional Institution are to be completely eliminated once additional capacity becomes available. Therefore, those beds are not counted in the EOC and SOC capacity amounts.



Note: Population figures reflect actual prison population for 1994-2009 and projected prison population for 2010-2019. Prison capacity figures reflect Expanded Operating Capacity.



SOURCE: NC Sentencing and Policy Advisory Commission and NC Department of Correction

For the past decade, the accuracy of the prison population projections has been within two percent. The population projected by the Commission’s simulation model for June 2009 was 40,994. The actual average population for June 2009 was 41,318 – a difference of 324 (or less than one percent). For FY 1998/99 through FY 2008/09, a comparison of the actual average prison population with the projected prison population for June of each year is provided in Figure 2.

### **Prison Population Projections by Offense Class**

The structure of North Carolina’s felony and misdemeanor punishment charts forms the basis of allocating correctional resources, including prison resources. 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.<sup>7</sup> In the following discussion of the composition of the prison population, Table 2 and Figure 3 describe actual felony convictions and sentences by offense class for FY 2008/09; Table 3 and Figure 4 present the projected felony prison populations by offense class for FY 2009/10 through FY 2018/19.<sup>8</sup>

Examining the distribution of the projected prison populations for FY 2009/10 – FY 2018/19, three population dynamics emerge. These dynamics seem to drive the projected prison population and help explain the composition of this population over time. The dynamics become evident upon categorization of the felony offense classes into the following groups: 1) Classes A through D<sup>9</sup>; 2) Classes E through G; and 3) Classes H and I. As expected with Structured Sentencing, the proportion of prisoners with Class A through D felonies increases over the projection period due to the mandatory active sentences and long sentence lengths imposed, while the proportion with Class H through I felonies decreases over the projection period due to the low rate of active sentences and short sentence lengths imposed. The proportion of prisoners in Classes E through G remains fairly stable over the projection period.

Class A through D felonies (the most serious felony offenses) have a long-term effect on the prison population due to the long sentences imposed in these classes, which result in a “stacking” effect. Under Structured Sentencing, all Class A through D offenders are required to serve an Active sentence, with the exception of those who receive extraordinary mitigation.<sup>10</sup> During FY 2008/09, the average minimum sentence imposed for Class A through D felonies was 102 months. The average estimated time served was 128 months. Class A through D felonies

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<sup>7</sup> The Structured Sentencing Act applies to offenses committed on or after October 1, 1994.

<sup>8</sup> Misdemeanants sentenced under Structured Sentencing were excluded from this analysis since they represent less than 5% of the projected prison population. In North Carolina, offenders with misdemeanor offenses who are sentenced to active terms greater than 90 days are incarcerated in state prison, while those sentenced to active terms 90 days or less are incarcerated in county jail.

<sup>9</sup> While felonies falling into Classes A through E are typically considered to be the “violent felonies,” the lack of a mandatory active sentence for all Class E felons, as well as a comparison of sentence lengths, indicates that Class E should be considered apart from this group for this analysis.

<sup>10</sup> Offenders convicted of first degree murder may receive either a death sentence or life without parole. The sentence of life without parole is also required for offenders found to be violent habitual felons, certain offenders convicted of second or subsequent Class B1 felonies, and offenders convicted of first-degree rape or sexual assault who are sentenced from the aggravated range in Prior Record Levels V and VI.

account for the highest percentage of the prison population (53% in 2010) and the lowest percentage of convictions (8%) and active sentences (22%). Offenders in Classes A through D are projected to increase to 56% of the prison population by 2019, indicating their stacking effect.

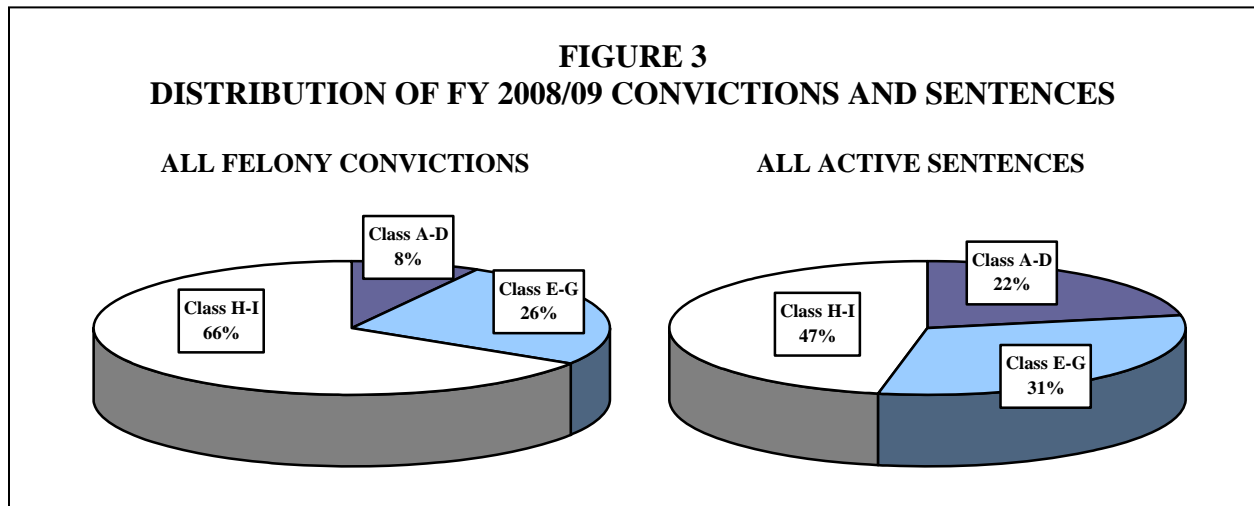
Class E through G offenders represented 26% of all felony convictions and 31% of Active sentences in FY 2008/09. Forty-eight percent of Class E through G convictions resulted in Active sentences, with an average minimum sentence imposed of 19 months and an average estimated time served of 23 months. An examination of the projected prison population by offense class indicates that the proportion of prisoners falling into Classes E through G remains fairly stable at around 26-27% over the projection period.

Classes H and I (the least serious felony offenses) represent the largest group of felony convictions (66%) and Active sentences (47%), but they account for the smallest percentage of the prison population (19% in 2010). Class H and I felons contribute to the prison population by their high volume, their short prison sentences, and through their high rate of technical probation revocations to prison. In FY 2008/09, 27% of Class H and I convictions resulted in an Active sentence, with an average minimum sentence imposed of nine months and an average estimated time served of ten months. Class H and I offenders account for a decreasing proportion of the prison population over the projection period (from 19% in 2010 to 17% in 2019).

**TABLE 2  
CONVICTIONS AND SENTENCES BY OFFENSE CLASS  
FY 2008/09 FELONIES**

Offense Class	Type of Punishment Imposed						Minimum Active Sentence (months)	TOTAL
	Active		Intermediate		Community			
	#	%	#	%	#	%		
<b>A</b>	89	100	.	.	.	.	.	89
<b>B1</b>	154	100	.	.	.	.	241	154
<b>B2</b>	316	100	.	.	.	.	167	316
<b>C</b>	1,047	100	.	.	.	.	93	1,047
<b>D</b>	861	100	.	.	.	.	66	861
<b>A-D SUBTOTAL</b>	2,467	100	.	.	.	.	102	2,467
<b>E</b>	638	50	643	50	.	.	29	1,281
<b>F</b>	1,273	56	988	44	.	.	19	2,261
<b>G</b>	1,699	42	2,338	58	.	.	15	4,037
<b>E-G SUBTOTAL</b>	3,610	48	3,969	52	.	.	19	7,579
<b>H</b>	4,546	37	6,311	51	1,431	12	10	12,288
<b>I</b>	869	12	3,246	44	3,300	44	7	7,415
<b>H-I SUBTOTAL</b>	5,415	27	9,557	49	4,731	24	9	19,703
<b>TOTAL</b>	11,492	39	13,526	45	4,731	16	32	29,749

NOTE: Of the 32,266 felony Structured Sentencing convictions in FY 2008/09, 2,517 convictions that did not fit within the felony punishment chart were excluded from this table. Sentences resulting in life without parole or death were excluded from the calculation of the average minimum sentences.



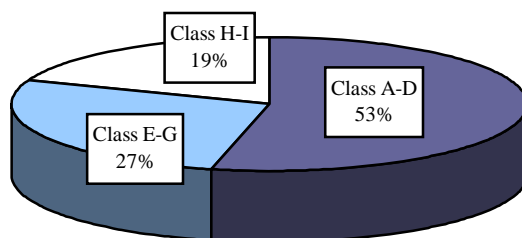
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2008/09 Preliminary Felony Statistical Report Data

**TABLE 3  
DISTRIBUTION OF THE PROJECTED PRISON POPULATION BY OFFENSE CLASS  
FELONIES ONLY**

Offense Class	Average Estimated Time Served in Months	Percent by Fiscal Year		
		2010	2014	2019
A	600	4.3	4.6	5.1
Viol. Hab. Felon	600	0.0	0.1	0.1
B1	276	6.2	6.9	7.5
B2	181	8.5	9.2	9.7
C	97	20.9	21.0	20.9
D	73	13.3	13.0	12.6
<b>A-D Subtotal</b>	<b>128</b>	<b>53.2</b>	<b>54.8</b>	<b>55.9</b>
E	31	5.7	6.2	6.0
F	25	9.0	9.0	8.7
G	19	11.9	11.5	11.3
<b>E-G Subtotal</b>	<b>23</b>	<b>26.6</b>	<b>26.7</b>	<b>26.0</b>
H	11	15.2	13.9	13.5
I	7	4.0	3.8	3.7
<b>H-I Subtotal</b>	<b>10</b>	<b>19.2</b>	<b>17.7</b>	<b>17.2</b>
Unknown	N/A	1.1	0.9	0.8
<b>TOTAL</b>	<b>38</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

NOTE: The averaged estimated time served for convictions with life or death sentences was estimated at 600 months. Percentages may not add to 100.0% due to rounding.

**FIGURE 4  
DISTRIBUTION OF THE 2010 PROJECTED PRISON POPULATION  
BY OFFENSE CLASS**



NOTE: The distribution of the 2010 projected prison population is based only on felonies and excludes offenses for which the offense class is unknown (1%).

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2008/09 Structured Sentencing Simulation Model