

PRISON POPULATION PROJECTIONS: FISCAL YEAR 2022 TO FISCAL YEAR 2031

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's (DPS) Division of Adult Correction and Juvenile Justice (DACJJ) 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, 2021 (new population). The Administrative Analysis Unit of the DACJJ prepared projections for all offenders in prison as of June 30, 2021 (resident prison population). The final combined projections account for the decline of the resident prison population (Structured Sentencing Act [SSA] releases, Fair Sentencing Act [FSA] releases, and pre-FSA 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 or post-release supervision [PRS]).¹ The ten-year prison population projections include all inmates considered part of the state prison system.

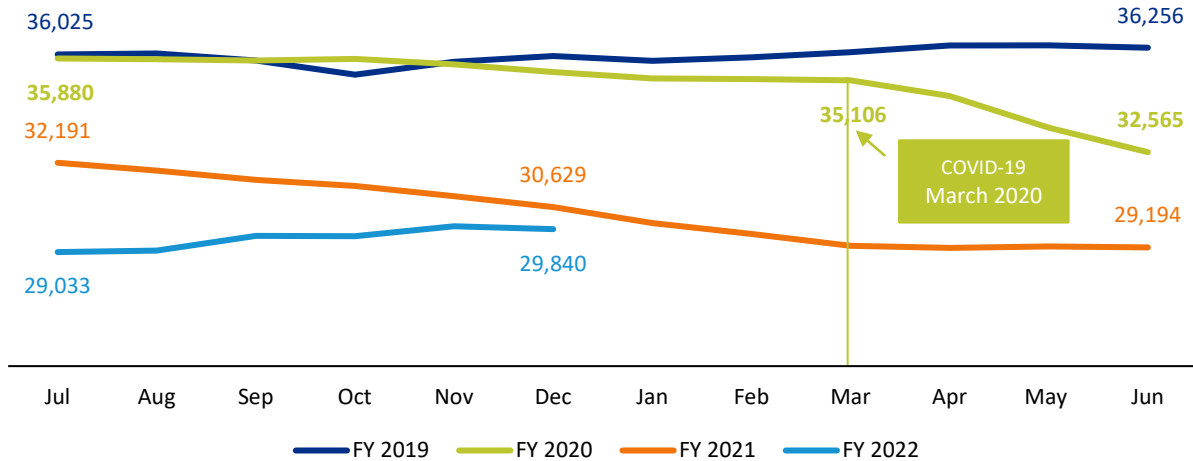
COVID-19 PANDEMIC AND THE PRISON POPULATION

Convictions, prison admissions, and prison releases – critical factors for accurately projecting the prison population – have been affected by the COVID-19 pandemic. While accounted for in the prison population projections published in February 2021, the pandemic continues to affect this year's projections. Of particular relevance are pandemic disruptions to the criminal justice system – specifically, court and correctional operations – that occurred beginning in the last quarter of FY 2020, throughout FY 2021, and continue to date. It is not known how long the COVID-19 pandemic will continue to affect court and correctional operations.

The impact of COVID-19 on the prison population is shown in Figure 1. The population declined 7% from March to June 2020 and declined an additional 9% over the course of FY 2021. From July to December 2021, the prison population increased nearly 3% – the first increases found following the COVID-19 pandemic.

¹ The SSA applies to offenses committed on or after October 1, 1994. There is no parole for offenders sentenced under the SSA, with the exception of the possibility of life with parole for offenders convicted of first degree murder who were under age 18 at the time of offense. Otherwise, only those offenders sentenced under the FSA or pre-FSA may be eligible for parole.

Figure 1
Average Monthly Prison Population by Fiscal Year



Note: When applicable, prison population figures include offenders in Extended Limits of Confinement (ELC) status and offenders awaiting transfer to prison from local jails (i.e., jail backlog). On December 31, 2021, there were 16 offenders in ELC status and 425 offenders backlogged in county jails.

SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice, Daily Unit Population Reports and Inmates on Backlog Reports

PRISON POPULATION PROJECTIONS AND CAPACITY

The prison population projections were developed using SAS® Simulation Studio. 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 distribution of offenders convicted and sentenced under the SSA. Data on convictions and sentences imposed in FY 2021 (July 1, 2020 through June 30, 2021) provide the foundation for the projections. By using the most recent data available, the projections account for changes in criminal justice trends (arrests, court filings, dispositions, and convictions) that occur from year to year.

For the majority of the past decade, the accuracy of the prison population projections has been within 2%. The projected prison population for June 2021 was 30,568. The actual average population for June 2021 was 29,194 – a difference of 1,374 beds, or 5%. The larger-than-usual difference resulted from the impact of the COVID-19 pandemic on the court and correctional systems.

Table 1 and Figure 2 present the projected prison population and capacity for FY 2022 through FY 2031. As shown in the Current Projection column in Table 1, the prison population is projected to increase from 29,624 in June 2022 to 33,788 in June 2031. The current projection is lower than the previous projection due to the continued effects of the COVID-19 pandemic.

Table 1
Prison Population Projections and Capacity

Fiscal Year End	Prison Population ²		Prison Capacity ^{3,4,5}		Difference between Current Projection and EOC ⁸
	Previous Projection	Current Projection	Standard Operating Capacity ⁶	Expanded Operating Capacity ⁷	
2022	31,206	29,624	31,161	35,702	6,078
2023	31,886	30,015	31,161	35,702	5,687
2024	31,485	30,355	31,161	35,702	5,347
2025	31,205	31,031	31,161	35,702	4,671
2026	31,197	31,187	31,161	35,702	4,515
2027	31,304	31,569	31,161	35,702	4,133
2028	31,449	32,096	31,161	35,702	3,606
2029	31,784	32,639	31,161	35,702	3,063
2030	32,062	33,238	31,161	35,702	2,464
2031	N/A	33,788	31,161	35,702	1,914

Note: Prepared in conjunction with the North Carolina Department of Public Safety's Division of Adult Correction and Juvenile Justice (DPS-DACJJ).

² See <https://www.nccourts.gov/documents/publications/adult-correctional-population-projections> for previous prison population projections. The current projection includes offenders in Confinement in Response to Violation (CRV) Centers and in Extended Limits of Confinement (ELC) status.

³ Prison capacity estimates were provided by Prisons Administration of the DPS and are based on projects funded or authorized.

⁴ While the state's prisons have been operating near Expanded Operating Capacity (EOC) for many years, DPS bases its facility staffing levels on Standard Operating Capacity (SOC), which is the capacity that promotes a safer environment for staff and inmates. In addition, some prison units are not able to achieve full efficiency due to facility age, location, and infrastructure.

⁵ As of February 18, 2022, twenty-eight (28) correctional facilities are operating at either full or partial suspension of bed capacity, totaling 6,351 beds offline. The aforementioned temporary capacity reductions are required for either COVID-19-related operational reasons or serious staffing shortages at particular locations. These numbers can fluctuate at any time during the year as staffing shortages are addressed and/or revisions to pandemic-related operations continue to drive housing decisions.

⁶ 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.

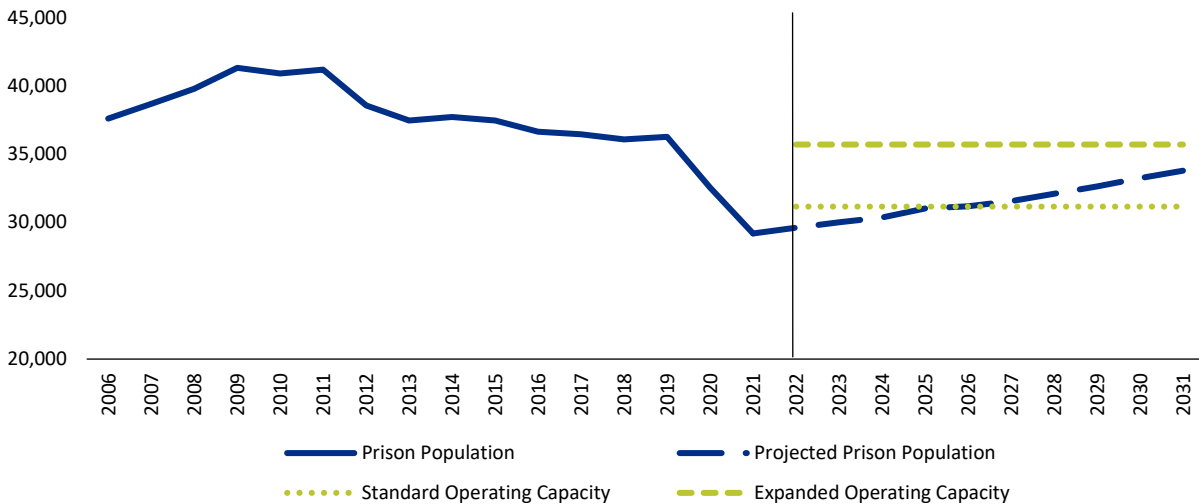
⁷ EOC is the number of inmates housed in dormitories that operate at varying percentages (not to exceed 130%) beyond their SOC, plus the number of single cells with one inmate per cell, plus the number of single cells that house two inmates per cell.

⁸ Positive numbers indicate that the current projected population is lower than capacity, while negative numbers indicate that the current projected population is higher than capacity.

Prison capacity figures were provided by Prisons Administration of the DPS and are based on projects funded or authorized. Standard Operating Capacity (SOC) is projected to be 31,161 and Expanded Operating Capacity (EOC) is projected to be 35,702 for each year of the ten-year projection. A comparison of the projections with EOC indicates that the projected prison population will be below prison capacity for all ten years of the projection period; the prison population is projected to be below SOC for the first four years of the projection period.

Figure 2 and Figure 3 provide a historical examination of the prison population, while Figure 2 also graphically presents the ten-year prison population projection within the context of prison capacity. The prison population experienced consistent growth through FY 2009, with an average yearly increase of about 3%. From FY 2009 through FY 2011, the prison population leveled off as a result of downward shifts in criminal justice trends (e.g., arrests, convictions) and in response to legislative changes in 2009 to the felony punishment chart. Changes to earned time credits for prisoners and the passage of the Justice Reinvestment Act (JRA) in 2011 led to declines in the prison population. In 2015, further reductions occurred due to legislative changes that shifted all remaining misdemeanants from prison to local jails through the Statewide Misdemeanant Confinement Program (SMCP). Following that change, the prison population stabilized at FY 2005 levels until the beginning of the COVID-19 pandemic in March 2020. Primarily as a result of the COVID-19 pandemic, the prison population decreased 10% from FY 2019 to FY 2020 and again by 10% from FY 2020 to FY 2021. Overall, the population dropped 17% (or just over 6,000) from the start of the COVID-19 pandemic to the lowest population point in July 2021. Since then, the population has been increasing.

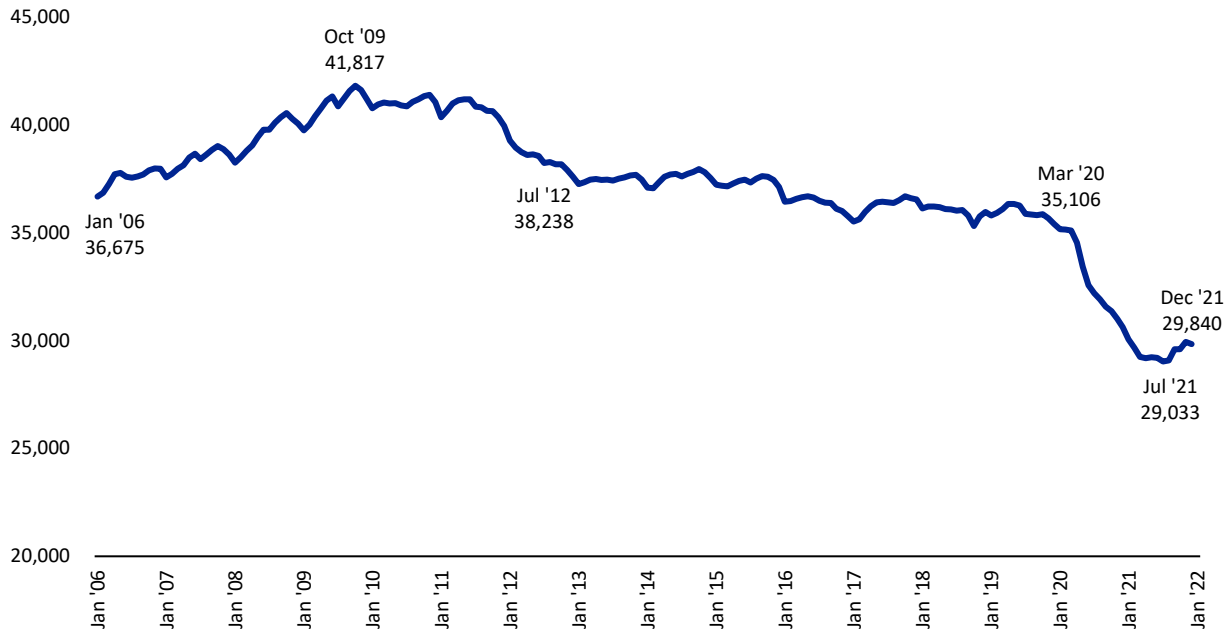
Figure 2
NC Prison Population and Projection at Fiscal Year End:
FY 2006 - FY 2031



Note: When applicable, prison population figures include offenders in ELC status and offenders awaiting transfer to prison from local jails (i.e., jail backlog). On December 31, 2021, there were 16 offenders in ELC status and 425 offenders backlogged in county jails.

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

**Figure 3
NC Prison Population
Monthly Average: CY 2006 - CY 2021**



Note: When applicable, prison population figures include offenders in ELC status and offenders awaiting transfer to prison from local jails (i.e., jail backlog). On December 31, 2021, there were 16 offenders in ELC status and 425 offenders backlogged in county jails.

SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice, Daily Unit Population Reports and Inmates on Backlog Reports

ASSUMPTIONS

This section details the assumptions that were used to develop the prison population projections for FY 2022 through FY 2031. The assumptions were primarily determined using data from the most recent fiscal year (FY 2021) and assume there will be no significant changes in demographics, crime rates, or criminal justice laws and policies in North Carolina. Quarterly and semi-annual data were also used to inform assumptions for the projections, as described below.

COVID-19 Adjustment

Examination of quarterly and semi-annual data for FY 2019 (pre-pandemic), FY 2020 (start of pandemic), and FY 2021 (ongoing pandemic) revealed increases in the second half of FY 2021 for key data used in the projections. As a result, the following adjustments were made:

- *Convictions*: Increases in felony convictions (particularly in the more serious offense classes) and in the percentage of convictions with active sentences were found in the second half of FY 2021. To account for these increases in the projections, active sentences were adjusted to FY 2020 levels and active rates were based on a two-year average using FY 2020 and FY 2021 data.

- *Prison Entries:* Increases in felony prison entries, particularly for entries due to violations of probation and PRS, were found in the second half of FY 2021. To account for these increases in the projections, probation revocation rates and PRS revocation rates were based on a two-year average using FY 2020 and FY 2021 data.

Growth

- *Growth Rates:* As adopted by the *Forecasting Technical Advisory Group*,⁹ the projections assume a growth rate of 0% for FY 2022, 1% for FY 2023, 1% for FY 2024, 0% for FY 2025, and 1% for the remaining projection years. In adopting these rates, the group focused on the continuing impact of COVID-19, particularly related to disruptions in court operations and the timing of disposition for pending felony cases.

Convictions and Sentences Imposed

- *Punishment Chart:* The projections assume all new felony convictions will be sentenced under the current felony punishment chart (effective for offenses committed on or after October 1, 2013).
- *Court Practices:* The projections assume no change in judicial or prosecutorial behavior relating to convictions and sentencing.
- *Composition of Felony Convictions:* The projections assume that there will be no changes in the composition of felony convictions. In FY 2021, 6% of convictions were for Class A – D felonies, 29% were for Class E – G felonies, and 65% were for Class H – I felonies.
- *Active Rates:* In FY 2021, 34% of felons received an active sentence. As discussed above, active sentences were adjusted to FY 2020 levels and it is assumed that the rates of active sentences for new felony convictions will match the two-year average rates for FY 2020 and FY 2021.
- *Time Served for Active Sentences:* In FY 2021, the average estimated time served for felons was 31 months. The projections assume average estimated time served will match that found in FY 2021.
- *Percent of Active Sentence Served:* The projections assume that, on average, all SSA felons will serve 105% of their minimum active sentences (the average percentage served by SSA felons released from prison during FY 2021).¹⁰ 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., 101% for Class C, 112% for Class I).

⁹ The *Forecasting Technical Advisory Group*, convened by Sentencing Commission staff, adopts growth rates for convictions on an annual basis. In addition to Sentencing Commission staff, the group consists of representatives from the Administrative Office of the Courts, Conference of District Attorneys, Conference of Clerks of Superior Court, Office of Indigent Defense Services, Division of Adult Correction and Juvenile Justice, State Bureau of Investigation, Office of State Budget and Management, Governor’s Crime Commission, UNC School of Government, and Fiscal Research Division of the General Assembly. The group adopts growth rates after reviewing population, juvenile justice, and criminal justice trends.

¹⁰ The maximum sentence length is set at 120% of the minimum sentence length rounded to the next highest month plus the period of PRS.

- *Discretionary Sentence Credits:* It is assumed that discretionary sentence credits will be awarded in the manner they had been prior to the February 25, 2021, settlement agreement in NC NAACP v. Cooper.
- *Legislative Changes:* The potential impact of legislative changes to criminal penalties can be taken into account in projecting the prison population, depending on the nature of the changes and available historical data. Potential impact from the past session cannot be determined because 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 Admissions

- *Prison Admissions:* The distribution of prison admissions is expected to match the distribution from FY 2021. In FY 2021, 47% of all felony admissions to prison resulted from active sentences for a new conviction, 24% resulted from probation violations other than conviction for a new crime, and 29% resulted from PRS violations other than conviction for a new crime.¹¹
- *Probation:* In FY 2021, 14% of exits from probation for felons resulted from revocation of probation. As discussed above, probation revocation rates were based on a two-year average of FY 2020 and FY 2021 rates. It is assumed that the lag-time from placement on probation to revocation and time served will match FY 2021 figures.
- *PRS:* In FY 2021, 16% of exits from PRS resulted from revocation. As discussed above PRS revocation rates were based on a two-year average of FY 2020 and FY 2021 rates. It is assumed that lag-time from placement on PRS to revocation and time served will match FY 2021 figures.

Select Populations Housed in Prison Facilities

- *FSA and pre-FSA Offenders:* Prison population projections continue to be affected by parole practices due to the number of FSA and pre-FSA offenders currently in prison. On December 31, 2021, there were 1,450 FSA and pre-FSA offenders in prison (1,397 with life sentences and 53 with death sentences), representing 5% of the state's inmates.
- *CRV Offenders:* Based on DPS policy, CRV Centers house offenders who commit technical violations of the conditions of their supervision and are ordered to serve a 90-day CRV (probationers) or three-month revocation (post-release supervisees).¹² On December 31, 2021, there were 111 offenders in CRV Centers (84 probationers and 27 post-release supervisees) and 412 in traditional prison facilities (239 probationers and 173 post-release supervisees).
- *Misdemeanor Offenders:* Misdemeanants sentenced under the SSA and offenders sentenced for impaired driving are mandated to serve any active sentence imposed in jail rather than prison. The projections assume that nearly all of these offenders will serve their sentences in local jails, although a small number may serve their sentences in prison due to medical or other reasons as part of the SMCP. On December 31, 2021, the SMCP population was 760.

¹¹ This distribution is based on all felony prison entries, including offenders entering a CRV Center.

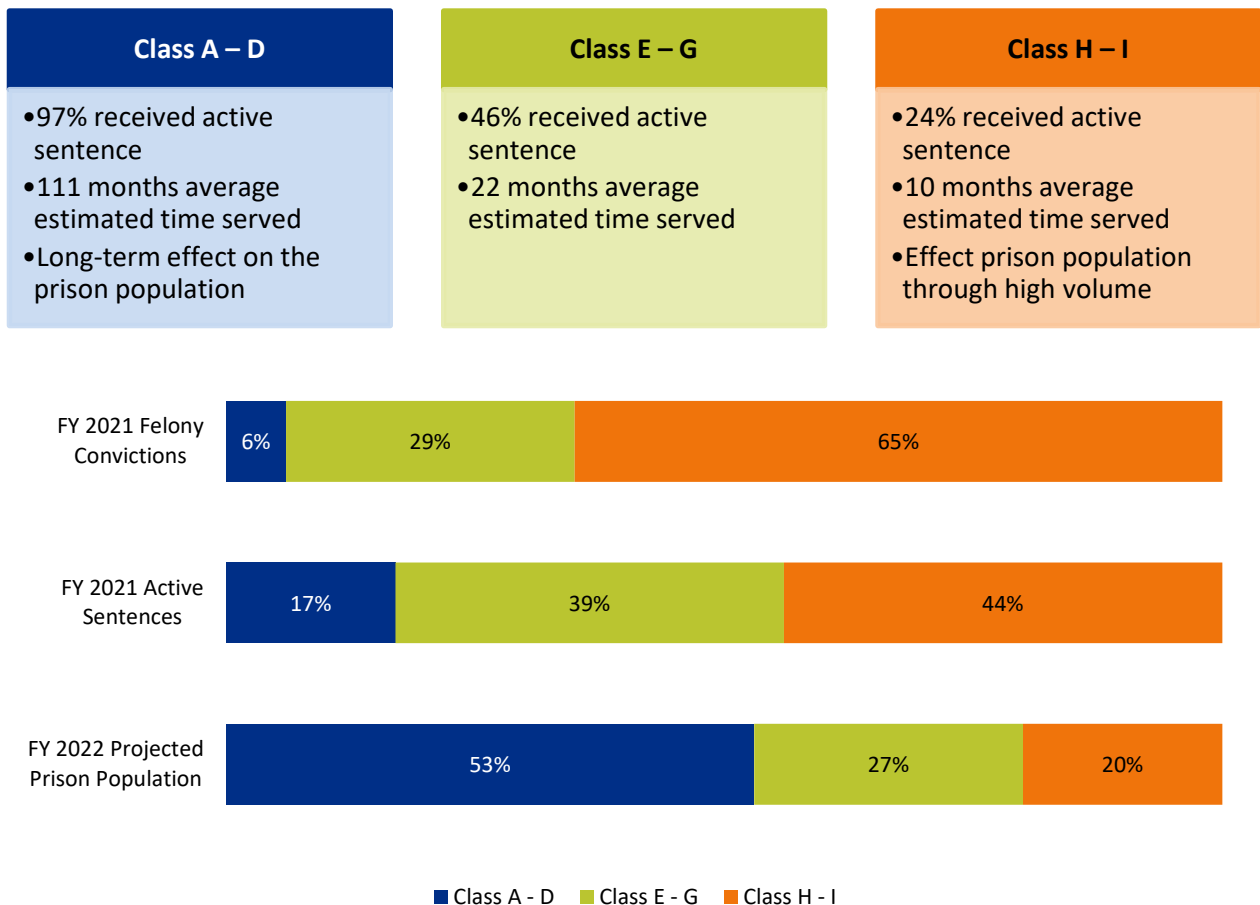
¹² Technical violations include, for example, missing appointments, curfew violations, and positive drug screens.

- *Inmates Backlogged in County Jails:* When applicable, the projections account for jail backlog as part of the prison population. On December 31, 2021, there were 425 inmates backlogged in county jails.

DYNAMICS OF SENTENCES IMPOSED AND THE PRISON POPULATION

Figure 4 examines the composition of the projected prison population determined by the empirical distribution of offenders convicted and sentenced under the SSA. This distribution reflects the prioritization of resources for violent and repeat offenders under the SSA. Class A through Class D felonies (the most serious felony offenses) have a long-term effect on the prison population due to the requirement to receive an active sentence (with some limited exceptions) and the long sentences imposed in these classes. Class A through D felonies account for over one-half (53%) of the projected prison population but represent only 6% of felony convictions and 17% of active sentences overall. Class H through Class I felonies (the least serious felony offenses), which account for nearly two-thirds (65%) of felony convictions and 44% of active sentences, account for one-fifth (20%) of the projected prison population due to their lower rate of active sentences (24%) and shorter time served (an average of 10 months).

Figure 4
Dynamics of Sentences Imposed and the Prison Population
FY 2021 Felony Convictions and FY 2022 Projected Prison Population



Note: Mandatory active sentence required with limited exceptions for Class A through D felonies.
 SOURCE: NC Sentencing and Policy Advisory Commission and NC Department of Public Safety