

PRISON POPULATION PROJECTIONS: FISCAL YEAR 2021 TO FISCAL YEAR 2030¹

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, 2019 (new population). The Rehabilitative Programs and Services Section of the DACJJ prepared projections for all offenders in prison as of June 30, 2020 (resident prison population).² The final combined projections take into account 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]).³ The ten-year prison population projections include all inmates considered part of the state prison system.

COVID-19 PANDEMIC AND THE PRISON POPULATION

Certain actions taken by the court and correctional systems in response to the COVID-19 pandemic, beginning in March 2020, have contributed to the decline of the prison population. These actions include:

- Emergency directives from the Chief Justice of the North Carolina Supreme Court that postponed certain court proceedings;
- Moratorium on accepting prisoners from county jails by the Department of Public Safety; and
- Enactment of changes to sentence credit policies for inmates and utilization of the Extended Limits of Confinement (ELC) program⁴ by the Secretary of DPS.

These actions have affected convictions, prison admissions, and prison releases – all of which are critical factors for accurately projecting the prison population. While the pandemic affected only the last quarter of FY 2020 (July 1, 2019 through June 30, 2020), it continues to affect the court and correctional systems in FY 2021 and it is not known how long these impacts will continue.

¹ The projections were prepared prior to the February 25, 2021, settlement agreement in *NC NAACP; ACLU v. Cooper*. The primary impact of the settlement will occur in the first two years and, based on discussions with DPS, will not have a significant effect on the projections since 2021 release dates are already taken into account and since ELC is not considered a release from custody.

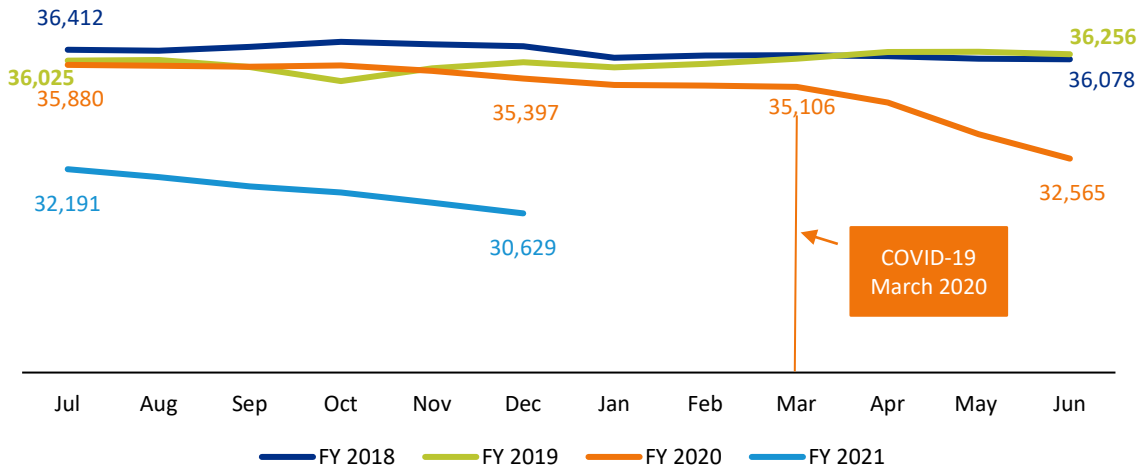
² This population includes 855 inmates backlogged in county jails who were awaiting transfer to prison (i.e., jail backlog).

³ 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.

⁴ The ELC program allows certain inmates to serve the remainder of their prison sentences under community supervision.

The impact of COVID-19 on the prison population is shown in Figure 1. The population declined 7% from March to June 2020, with a total decline of 13% from March through the end of CY 2020.

Figure 1
Average Monthly Prison Population by Fiscal Year



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, 2020, there were 391 offenders in ELC status and 657 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 2020 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 2020 was 35,855. The actual average population for June 2020 was 32,565 – a difference of 3,290 beds, or 10%. 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 2021 through FY 2030. As shown in the Current Projection column in Table 1, the prison population is projected to increase from 30,568 in June 2021 to 32,062 in June 2030 – an increase of nearly 5%. The current projection is lower than the previous projection due to the system-wide impact of the COVID-19 pandemic.

Table 1
Prison Population Projections and Capacity

Fiscal Year End	Prison Population ^{5,6}		Prison Capacity ^{7,8,9}		Difference between Current Projection and EOC ¹²
	Previous Projection	Current Projection	Standard Operating Capacity ¹⁰	Expanded Operating Capacity ¹¹	
2021	35,982	30,568	31,690	36,433	5,865
2022	36,147	31,206	31,690	36,433	5,227
2023	36,328	31,886	31,690	36,433	4,547
2024	36,416	31,485	31,690	36,433	4,948
2025	36,738	31,205	31,690	36,433	5,228
2026	37,107	31,197	31,690	36,433	5,236
2027	37,575	31,304	31,690	36,433	5,129
2028	37,975	31,449	31,690	36,433	4,984
2029	38,613	31,784	31,690	36,433	4,649
2030	N/A	32,062	31,690	36,433	4,371

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

⁵ 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.

⁶ The projections were prepared prior to the February 25, 2021, settlement agreement in *NC NAACP; ACLU v. Cooper*. The primary impact of the settlement will occur in the first two years and, based on discussions with DPS, will not have a significant effect on the projections since 2021 release dates are already taken into account and since ELC is not considered a release from custody.

⁷ Prison capacity estimates were provided by Prisons Administration of the DPS and are based on projects funded or authorized.

⁸ 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.

⁹ On February 18, 2021, there were a total of 1,220 SOC beds and 1,458 EOC beds suspended at the following locations for various COVID-19 related operational reasons: Marion CI, Pasquotank CI, Piedmont CI, Randolph CC, Sampson CI, Southern CI, and Tyrrell PWF. As an example, staff from Randolph CC are being used at Kindred Hospital to supervise offenders in the hospital. In addition, there were a total of 449 beds offline due to serious staffing shortages at Polk CI, Warren CI, and Avery-Mitchell CI. These numbers can fluctuate at any time during the year due to operational needs regarding the pandemic or to address staffing shortages.

¹⁰ 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.

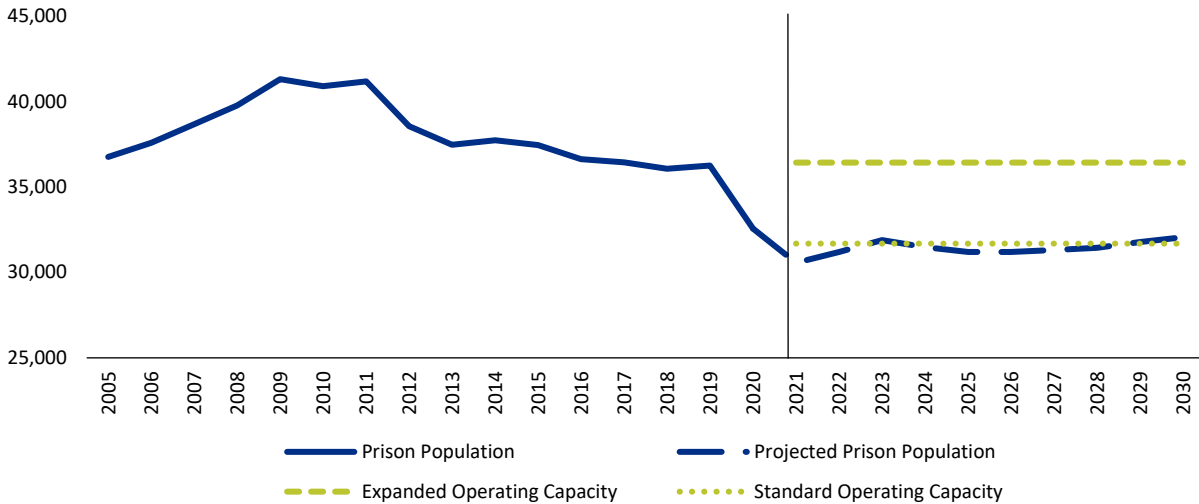
¹¹ EOC is the number of inmates housed in dormitories that operate at varying percentages (not to exceed 130%) beyond their SOC, plus the number of single cells with one inmate per cell, plus the number of single cells that house two inmates per cell.

¹² 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 projections were provided by Prisons Administration of the DPS and are based on projects funded or authorized. Standard Operating Capacity (SOC) is projected to be 31,690 and Expanded Operating Capacity (EOC) is projected to be 36,433 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. Additionally, the prison population is projected to be below SOC for all but three 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.

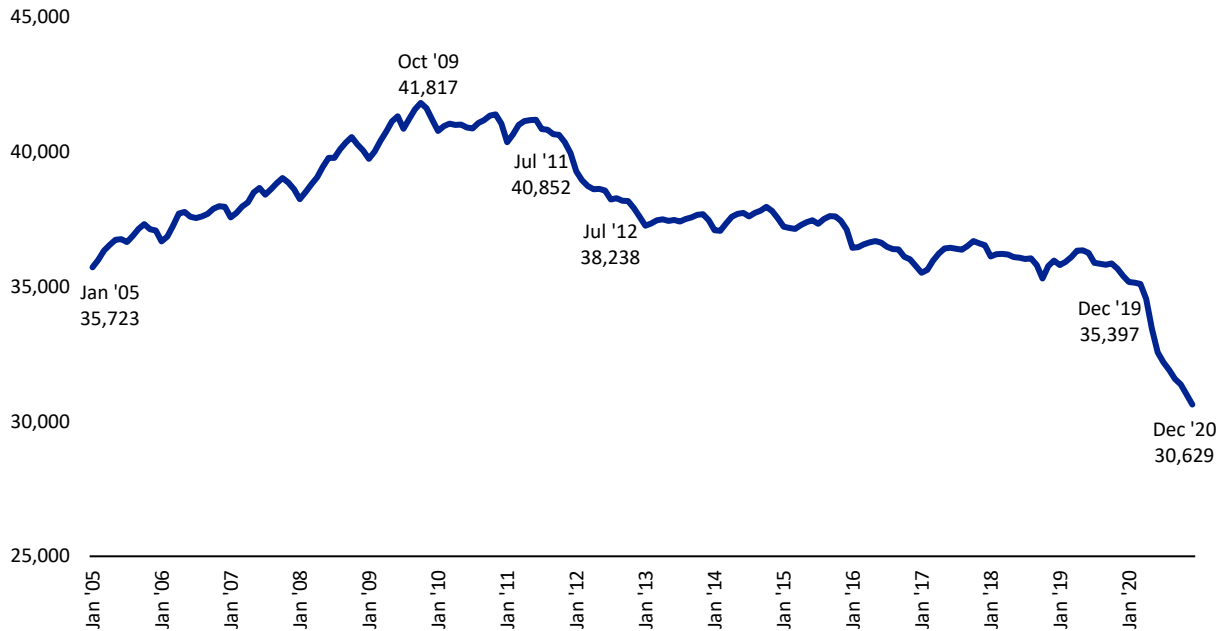
Figure 2
NC Prison Population and Projection at Fiscal Year End:
FY 2005 - FY 2030



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, 2020, there were 391 offenders in ELC status and 657 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 2005 - CY 2020



Note: When applicable, prison population figures include in ELC status and offenders awaiting transfer to prison from local jails (i.e., jail backlog). On December 31, 2020, there were 391 offenders in ELC status and 657 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 2021 through FY 2030. The assumptions were determined using data from the most recent fiscal year (FY 2020) and assume there will be no significant changes in demographics, crime rates, or criminal justice laws and policies in North Carolina. However, data from FY 2020 are limited in their applicability due to the ongoing pandemic. To address these limitations, assumptions for the projections relating to the COVID-19 pandemic were made by making estimates based upon actions taken by the court and correctional systems in response to the pandemic. Quarterly data for the remainder of CY 2020 were also considered where possible. Empirical data representing court and correctional practices during the pandemic will be taken into account as they become available.

Growth

- **Growth Rates:** As adopted by the *Forecasting Technical Advisory Group*,¹³ the projections assume a growth rate of -1% for FY 2021, 0% for FY 2022, 1% for FY 2023, 0% for FY 2024, and 1% for the

¹³ 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

remaining projection years. In adopting these rates, the group focused on the impact of COVID-19 on all factors, particularly related to the suspension of certain court proceedings and the corresponding decline in felony filings.

- *COVID-19 Adjustment:* Felony convictions decreased 16% from FY 2019 to FY 2020, primarily as a result of the COVID-19 pandemic. Adjustments based on this decrease were applied to the projections for FY 2021 (-8%) and FY 2022 (-4%) to account for the continued effects of the pandemic.

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). This punishment chart incorporates changes to the minimum sentence lengths and prior record point distributions that were passed during the 2009 Session and changes to maximum sentence lengths that were passed during the 2011 Session and the 2013 Session of the General Assembly.
- *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 2020, 7% of convictions were for Class A – D felonies, 28% were for Class E – G felonies, and 65% were for Class H – I felonies.
- *Active Rates and Time Served for Active Sentences:* In FY 2020, 37% 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 and average estimated time served will match the rates for FY 2020.
- *Percent of Active Sentence Served:* The projections assume that, on average, all SSA felons will serve 106% of their minimum active sentences (the average percentage served by SSA felons released from prison during FY 2020).¹⁴ 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, 112% for Class I).
- *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.

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.

¹⁴ The maximum sentence length is set at 120% of the minimum sentence length rounded to the next highest month plus the period of PRS.

Prison Admissions

- *Prison Admissions:* The distribution of prison admissions is expected to match the distribution from FY 2020. In FY 2020, 44% of all felony admissions to prison resulted from active sentences for a new conviction, 28% resulted from probation violations other than conviction for a new crime, and 28% resulted from PRS violations other than conviction for a new crime.¹⁵
- *Probation:* It is assumed that probation revocation rates, lag-time from placement on probation to revocation, and time served will match FY 2020 figures. In FY 2020, 19% of exits from probation for felons resulted from revocation of probation.
- *PRS:* It is assumed that PRS revocation rates, lag-time from placement on PRS to revocation, and time served will match FY 2020 figures. In FY 2020, 22% of exits from PRS resulted from revocation.

Select Populations Housed in Prison Facilities

- *Sentences under the FSA and Prior:* 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, 2020, there were 1,544 FSA and pre-FSA offenders in prison (including 1,489 with life sentences and 55 with death sentences), representing 5% of the state's inmates.
- *CRV Centers:* 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).¹⁶ On December 31, 2020, there were 129 offenders in CRV Centers (89 probationers and 40 post-release supervisees) and 255 in traditional prison facilities (103 probationers and 152 post-release supervisees).
- *ELC:* As a response to COVID-19, DACJJ implemented ELC to transition certain offenders from prison to the community to serve their remaining sentence under the supervision of community corrections officers. ELC is not considered a release from custody. On December 31, 2020, there were 391 offenders in ELC status.
- *Misdemeanor Sentences:* 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, 2020, the SMCP population was 576.
- *Inmates Backlogged in County Jails:* When applicable, the projections account for jail backlog as part of the prison population. On December 31, 2020, there were 657 inmates backlogged in county jails.

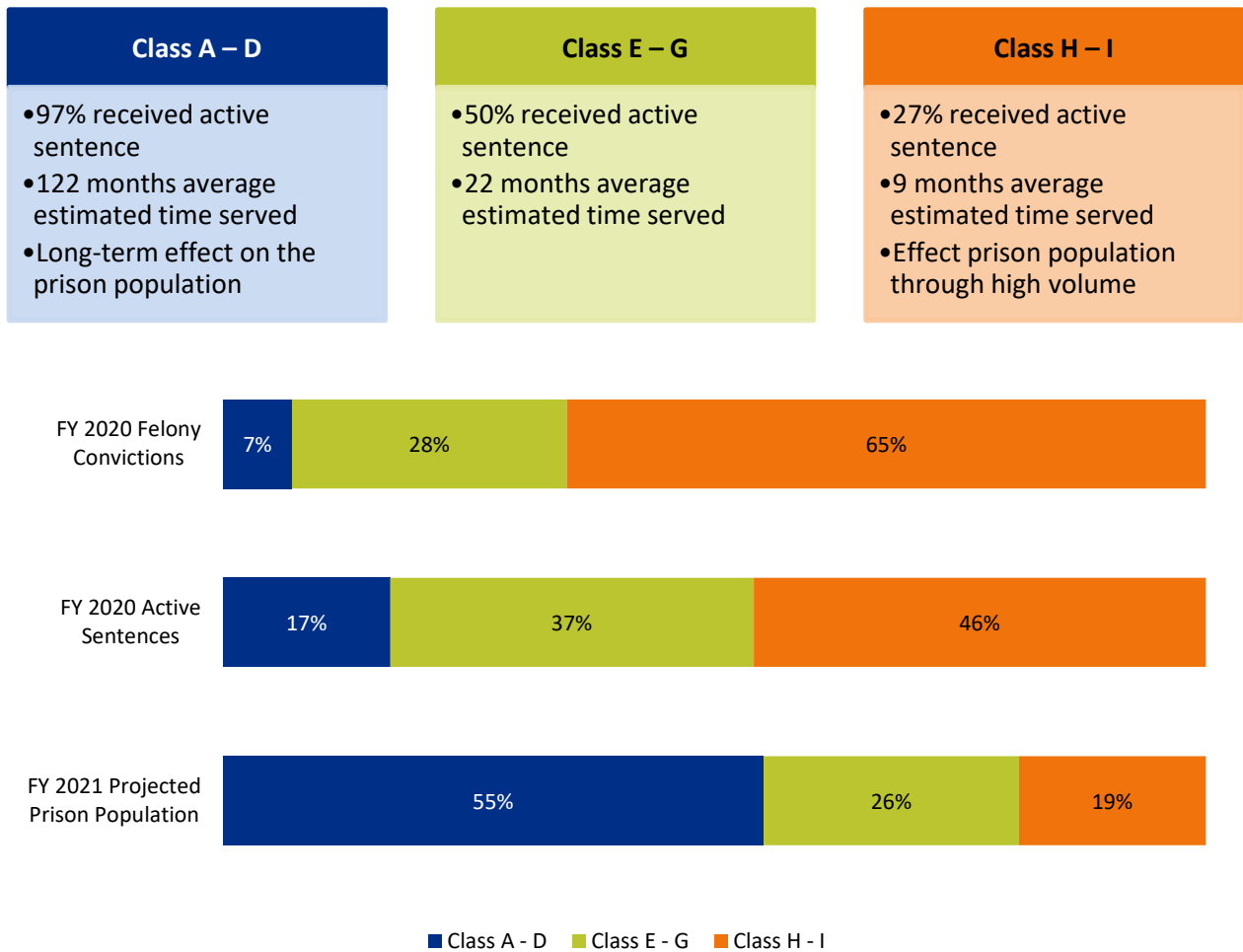
¹⁵ This distribution is based on all felony prison entries, including offenders entering a CRV Center.

¹⁶ Technical violations of conditions of supervision include, for example, missing appointments, curfew violations, and positive drug screens.

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 (55%) of the projected prison population but represent only 7% 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 nearly one-half (46%) of active sentences, account for just under one-fifth (19%) of the projected prison population due to their lower rate of active sentences (27%) and shorter time served (an average of 9 months).

Figure 4
Dynamics of Sentences Imposed and the Prison Population
FY 2020 Felony Convictions and FY 2021 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