



NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

February 2014¹

Prison Population Projections: Fiscal Year 2014 to Fiscal Year 2023

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 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, 2013 (new population). The Rehabilitative Programs and Services Section of the DACJJ prepared projections for all offenders in prison as of June 30, 2013 (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).² 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.³ 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 2013 (July 1, 2012 through June 30, 2013) provide the foundation for the prison population projections. By using the most recent empirical data available, the projections account for changes in criminal justice trends (arrests, court filings, dispositions, and convictions) that occur from year to year.

Following the 2011 Session of the North Carolina General Assembly, North Carolina implemented substantial changes to the state's sentencing practices and correctional policies in response to the

¹ Prison capacity estimates were updated by the Adult and Juvenile Facilities Section of the Division of Adult Correction and Juvenile Justice in March 2014.

² 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, 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 Fair Sentencing Act or pre-Fair Sentencing Act may be eligible for parole.

³ To produce the prison population projections, SAS[®] Simulation Studio (herein also referred to as the simulation model) simulates releases for the resident prison population while simultaneously processing new prison admissions that occur over the projection period.

passage of the Justice Reinvestment Act (JRA) of 2011.⁴ 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 required certain misdemeanants to be housed in county jails as part of the Statewide Misdemeanant Confinement Program. The Act created a new status offense of habitual breaking and entering, changed habitual felon punishments, authorized early release from prison under certain conditions through Advanced Supervised Release, and expanded post-release supervision to include all felons. To keep offenders in the community, the new law 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. The changes to the criminal justice system under JRA have impacted prison admissions, prison releases, and time to be served – all critical factors in determining the prison population.

The projections provide estimates of the prison population over the next ten years based on empirical data from FY 2013, the first full fiscal year of data since the provisions of JRA went into effect. With the various effective dates relating to the JRA provisions (*e.g.*, offenses on or after December 1, 2011; probation violations on or after December 1, 2011), the parameters empirically derived from the data and used in the projections are based on a mixture of pre-JRA and JRA provisions. It is also important to recognize that these data reflect evolving JRA practices during the early stages of implementation and, as a result, are not necessarily representative of future practices. The annual adjustment to the ten-year projections, using updated empirical information, will reflect the shift in JRA cases and criminal justice practices, ultimately enhancing the accuracy of the projections.

Table 1 and Figure 1 present the projected prison population and capacity for FY 2014 through FY 2023. Prison capacity projections were provided by the Adult and Juvenile Facilities Section of the DACJJ. The prison population is projected to increase from 37,679 in June 2014 to 38,812 in June 2023 – an increase of 3%. 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, with a wider gap between the projected population and capacity for FY 2015 through FY 2021.

As shown in Table 1, the current projection indicates an increase in the prison population compared to last year's projection. The increase in the projected prison population is most likely related to the use of empirical data that includes more information about practices under JRA. The FY 2012 data used for last year's projection was limited in its applicability for estimating the changes under JRA because cases were only processed through the court and correctional systems under JRA during the second half of the fiscal year. Although the current projection is higher than last year's projection, it still represents an overall decline in the prison population from previous years.

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 2004 through FY 2009, the prison population increased nearly 17%, with an average yearly increase of about 3%. The prison population leveled off

⁴ Further information on the Justice Reinvestment Act can be found on the following websites: <http://jr.nc.gov/index.html>, <http://www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2011&BillID=hb+642>, <http://www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2011&BillID=h335>, <http://www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2011&BillID=h1021>, <http://www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2013&BillID=h361>, and <http://www.sog.unc.edu/node/2044>.

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**Table 1
Prison Population Projections and Capacity
February 2014**

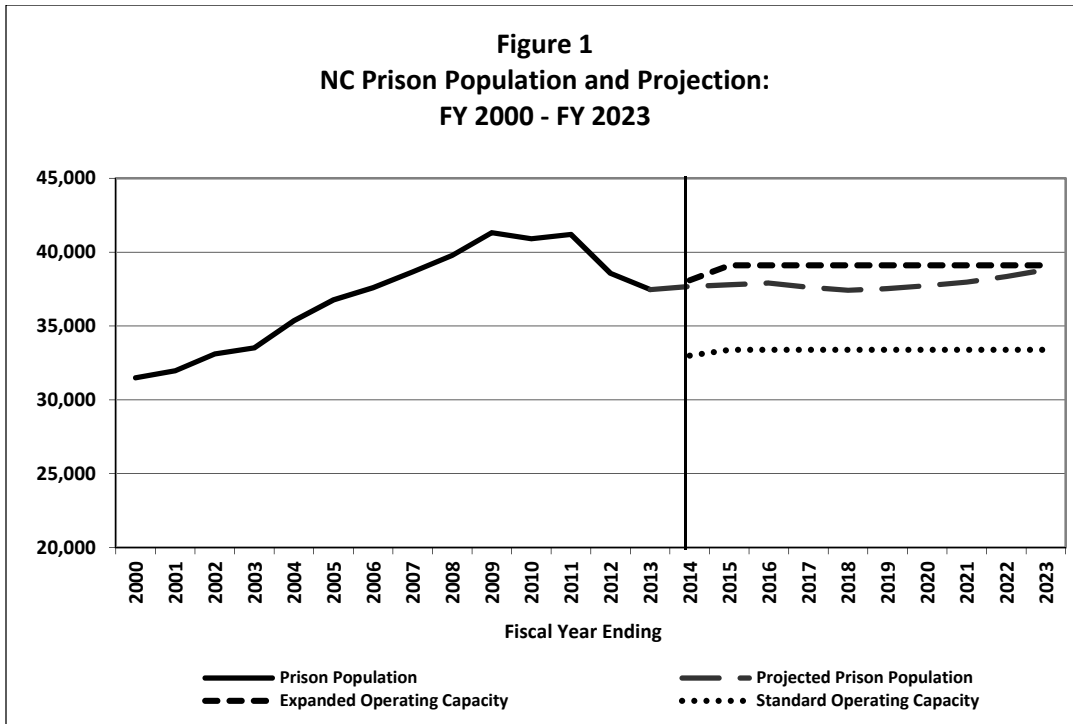
**Prepared in Conjunction with the
North Carolina Department of Public Safety’s Division of Adult Correction and Juvenile Justice**

Fiscal Year End	Prison Population as of June 30 ⁵		Prison Capacity ^{6,7}	
	Previous Projection	Current Projection	Expanded Operating Capacity	Standard Operating Capacity
2014	36,967	37,679	38,095	32,994
2015	37,107	37,795	39,103	33,382
2016	36,861	37,913	39,103	33,382
2017	36,748	37,626	39,103	33,382
2018	36,722	37,419	39,103	33,382
2019	36,894	37,533	39,103	33,382
2020	37,179	37,741	39,103	33,382
2021	37,468	37,971	39,103	33,382
2022	37,680	38,357	39,103	33,382
2023	N/A	38,812	39,103	33,382

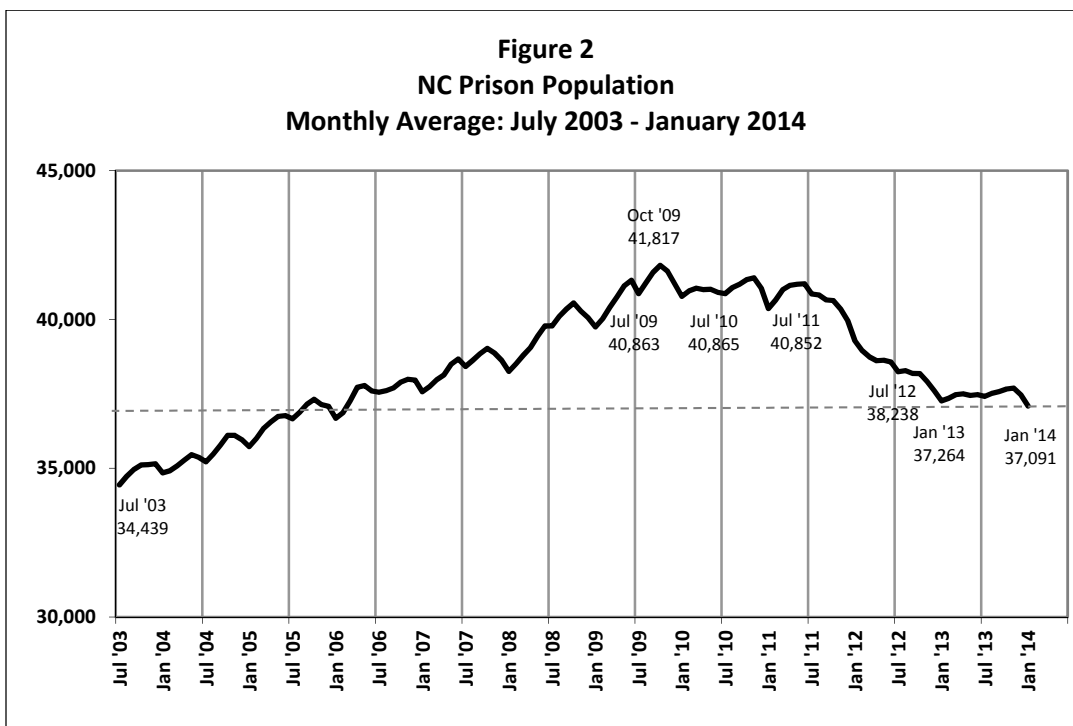
⁵ See <http://www.nccourts.org/Courts/CRS/Councils/spac/Publication/Projections/Adult.asp> for previous prison population projections.

⁶ Prison capacity estimates were updated by the Adult and Juvenile Facilities Section of the DACJJ in March 2014. 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.

⁷ Capacity estimates are based on projects funded or authorized. The EOC and SOC capacity estimates include one-half of the expansion at Lanesboro (252 medium custody); decreases in EOC (1,912) and SOC (1,638) from the closure of Bladen CC, Duplin CC, Robeson CC, Wayne CC, and Western Youth Institution; an increase in EOC at North Carolina CIW (66) for acute mental health and medical; a decrease in EOC (21) and SOC (19) from the closure of 21 single rooms at Fountain CCW; and defers expansion of Maury CI (504 medium custody), Bertie CI (504 medium custody), and Tabor CI (252 minimum custody) to FY 2015.



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



Note: Vertical lines separate each fiscal year. The horizontal dashed line allows for a comparison of the current prison population with historical prison populations.

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

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 resulted from 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. Currently, the prison population is just over 37,000 (an average of 37,091 for January 2014), which represents a decrease of over 11% since the high of 41,817 in October 2009.

Figure 3 and Figure 4 further highlight criminal justice trends that factor into the lower prison population. As shown in Figure 3, felony convictions decreased from FY 2009 to FY 2012. From FY 2012 to FY 2013, there was a slight increase in felony convictions (0.7%). Consistent with the decrease in felony convictions, total prison entries also have decreased since FY 2009. However, prison entries experienced a sharper decrease beginning with FY 2011, primarily as a result of the JRA changes described above. Overall, prison entries decreased nearly 26% from FY 2011 to FY 2013. Correspondingly, there has also been a sharp decrease in prison exits.

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.⁸

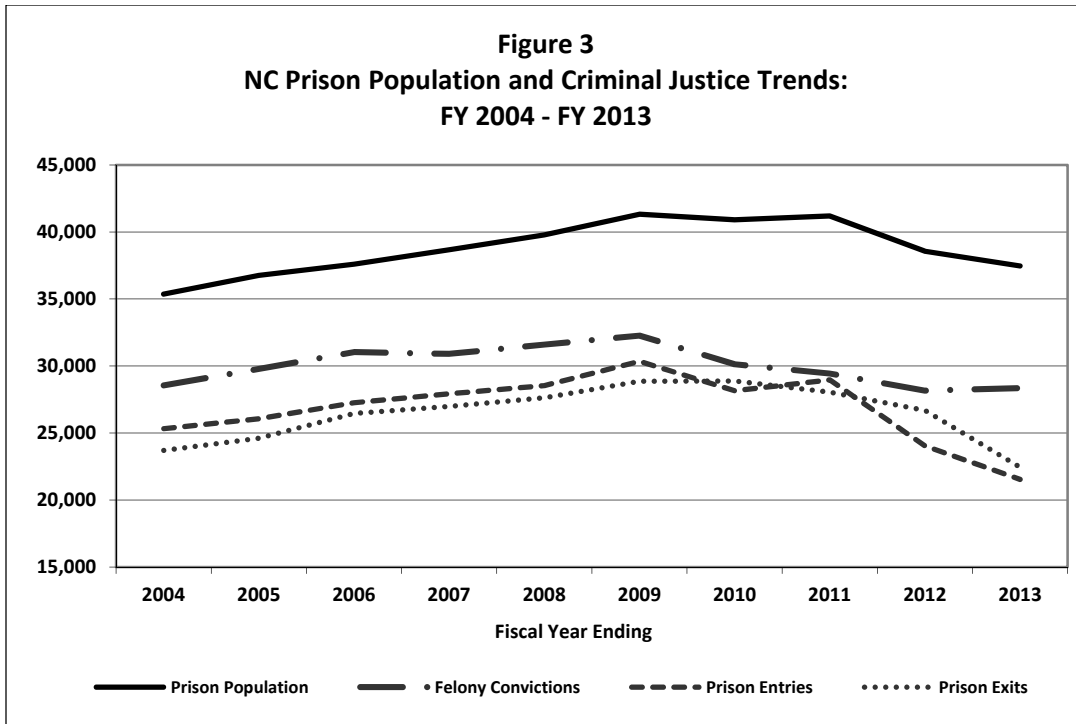
For the majority of the past decade, the accuracy of the prison population projections has been within two percent.⁹ A comparison of the actual average prison population with the projected prison population for June of each year is provided in Figure 5. The projected prison population for June 2013 was 36,838. The actual average population for June 2013 was 37,470 – a difference of 1.7%.

Assumptions

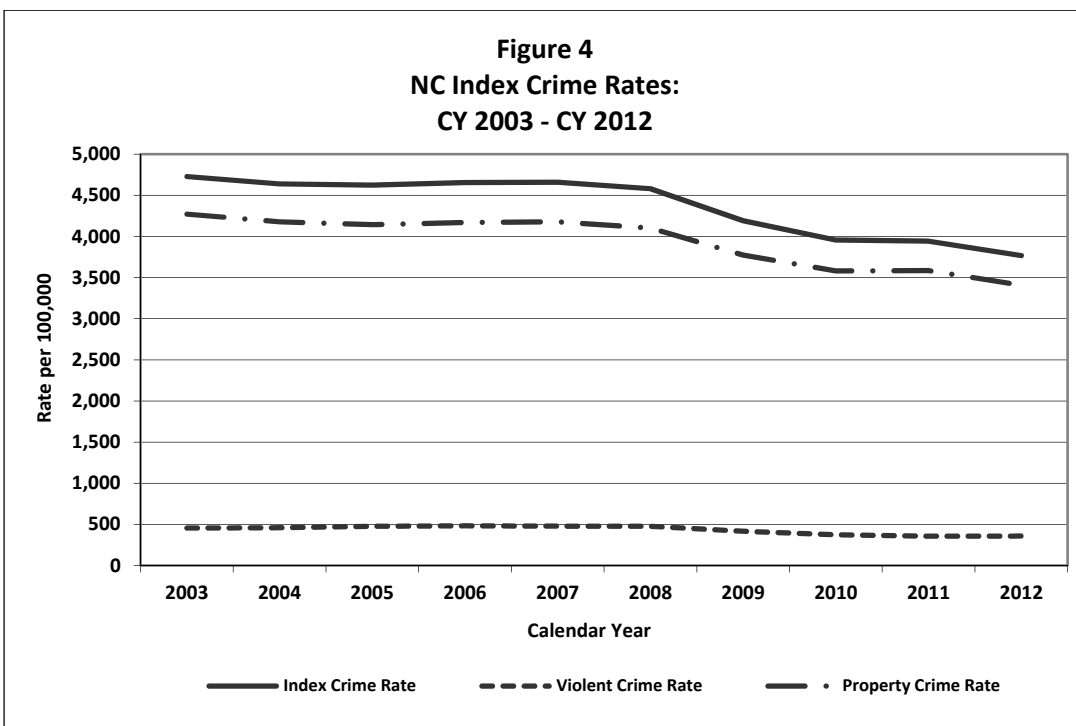
This section details the assumptions that were used to develop the prison population projections for FY 2014 through FY 2023. The assumptions were determined using data from the most recent fiscal year (FY 2013). As noted previously, the data from FY 2013 represent the first full fiscal year of data since implementation of JRA began in late 2011, offering a first look at the changes in criminal justice practices brought forth by JRA.

⁸ 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.

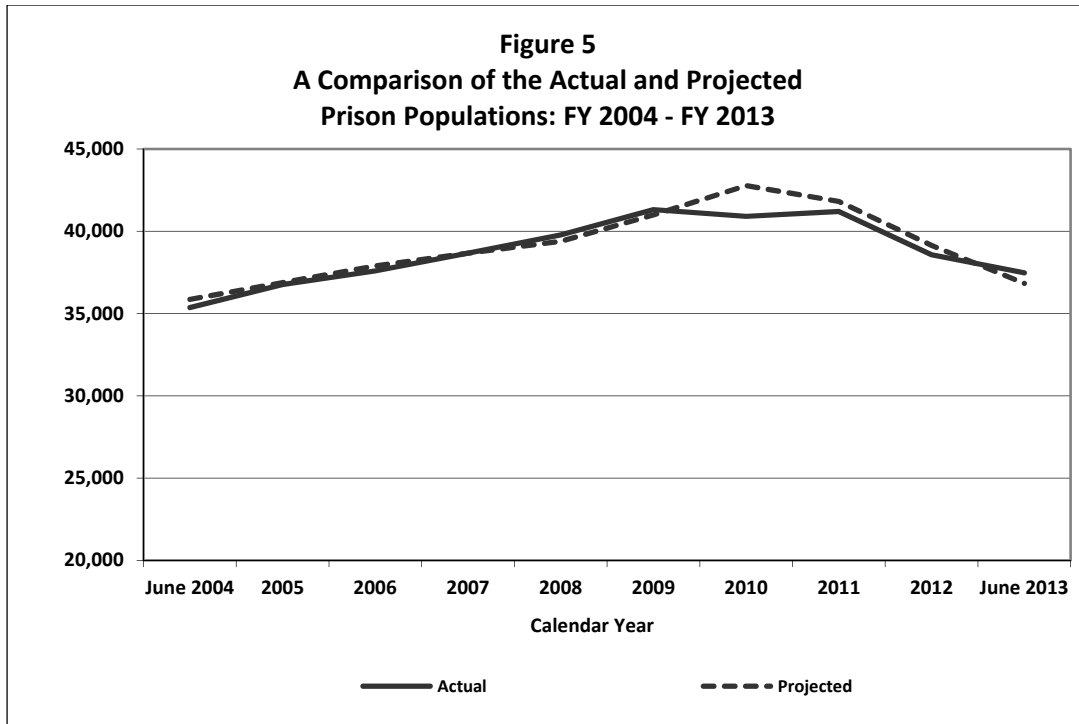
⁹ While the accuracy of the 2010 projection was within the acceptable accuracy range for projections (under 5%), it was less accurate than the projections have been over the past decade. Factors contributing to the lesser accuracy of the 2010 projection include unexpected and substantial decreases in court filings, dispositions, and convictions.



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



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



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

- **Growth Rates:** The projections assume no growth (0%) in felony convictions for FY 2014 through FY 2015 and assume 1% growth per year for FY 2016 through FY 2023, as adopted by the Sentencing Commission’s *Forecasting Advisory Group*. The projected growth rates for felony convictions were adopted after considering continued decreases in juvenile justice system (delinquent complaints) and criminal justice system indicators (index crime rates, prison population, and prison entries). 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.¹⁰
- **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, 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.
- **Prison Admissions:** In FY 2013, 63% of all felony admissions to prison resulted from Active sentences for a new conviction, 33% resulted from probation violations other than a new crime (*i.e.*, absconding or technical violation), and 4% 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

¹⁰ 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, Conference of Clerks of Superior Court, Office of Indigent Defense Services, Division of Adult Correction and Juvenile Justice, State Bureau of Investigation, Governor’s Crime Commission, Office of State Budget and Management, UNC 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.

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 2013, 39% 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 2013.
- *Percent of Active Sentence Served:* On average, all Structured Sentencing Act (SSA) felons will serve 106% of their minimum Active sentences (the average percentage served by SSA felons released from prison during FY 2013).¹¹ 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., 104% for Class C, 109% for Class I).
- *Probation:* In FY 2013, 27% of exits from probation for felons resulted from revocation of probation. It is assumed that confinement rates,¹² 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):*¹³ In FY 2013, 21% of exits from post-release supervision 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):* The projections assume that ASR sentences will be imposed at the same frequency as found in FY 2013. It is assumed that all offenders who received ASR as part of their active sentence 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 habitual felons will be sentenced four offense classes higher than the class of the current offense, but no higher than Class C, and according to the felony punishment chart. It is assumed that the rates of Active sentences will match the rates for FY 2013, based on the dispositions available in the felony punishment chart as determined by offense class and prior record points.

¹¹ 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.

¹² 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).

¹³ 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.

- *Habitual Breaking and Entering (Class E)*: The projections assume the same frequency of habitual breaking and entering convictions and rates of Active sentences as found in FY 2013.
- *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.¹⁴ Projections for the remaining SSA misdemeanants who serve their sentences in prison were prepared by the Rehabilitative and Program Services Section of the DACJJ.
- *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, 2013, there were 2,463 FSA and pre-FSA offenders in prison (including 1,846 with life sentences and 64 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 2013 and that parole revocation rates will match FY 2013 rates.
- *Legislative Changes to Criminal Penalties*: The projections take into account the increase in penalties for sexual servitude and for child abuse that were ratified during the 2013 Session of the North Carolina General Assembly. The projections provided do not account for potential impact from the amendments to the firearms laws (including the creation of the new armed habitual felon offense or the firearm/deadly weapon sentencing enhancements) or for potential impact from other legislative changes to criminal penalties from the past legislative session. The potential impact for these changes 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.

¹⁴ 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 (SMCP). 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. On December 31, 2013, the SMCP population was 631.