

Sentencing Law for Superior Court Judges

North Carolina Judicial College
September 9, 2011

Learning Objectives

At the conclusion of this program you will:

1. Have a better sense of the collective sentencing practices of North Carolina's trial court judges.
2. Be able to recognize and avoid common sentencing errors, including errors related to restitution.
3. Have a refreshed understanding of DWI sentencing, including recent legislative changes.
4. Know how the Division of Community Corrections assesses and supervises offenders on probation, and how to use that knowledge to inform your decision-making.
5. Know more about programs within the Division of Prisons and which defendants are eligible for them.

North Carolina
Sentencing and Policy Advisory Commission



**Structured Sentencing Statistical Report
for Felonies and Misdemeanors**

**Fiscal Year 2009/10
(July 1, 2009 – June 30, 2010)**

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**STRUCTURED SENTENCING STATISTICAL REPORT
SUMMARY OF FINDINGS
FISCAL YEAR 2009/10 CONVICTIONS**

Felony Convictions

- During Fiscal Year 2009/10, sentences for 30,138 felony convictions were imposed under Structured Sentencing. (Note: This number excludes sentences imposed for drug trafficking and violent habitual felon convictions, which are subject to mandatory penalties.)
- The greatest number of convictions fell into Offense Class H with Prior Record Level II (n=3,593 or 13%).
- The majority of felony convictions (57%) were for offenders with Prior Record Levels I and II. Nine percent of convictions were for offenders with serious prior criminal histories (Prior Record Levels V and VI).
- Eighty-five percent of convictions were for male offenders; 38% of convictions were for offenders under the age of 26; and 53% of convictions were for Black offenders.
- Forty percent of felony convictions resulted in an Active punishment, 44% resulted in an Intermediate punishment, and 16% resulted in a Community punishment.
- Of the four crime types, property offenses (37%) and non-trafficking drug offenses (31%) accounted for the largest group of felony convictions. Person offenses represented 18% of convictions and other felonies accounted for 14% of convictions.
- Sixty-nine percent of all Active sentences fell within the presumptive range; 27% fell within the mitigated range; and 4% fell within the aggravated range.
- Where a specific intermediate sanction was indicated in the AOC database, Intensive Supervision Probation was the most frequently invoked punishment (55%). Offenders who received an Intermediate punishment were most frequently convicted of a Class H offense (n=6,616).
- Of all felony offenders who received a Community punishment, 96% received supervised probation; 3% received unsupervised probation; and 1% were ordered to perform community service, pay restitution and/or a fine as their most serious punishment.
- Other information of interest includes: 2 death sentences and 79 life without parole sentences were imposed; there were 4 violent habitual felon convictions; there were 734 habitual felon convictions; there were 808 convictions for drug trafficking offenses; performance of community service was ordered for nearly 13% of all felony convictions; and payment of restitution was ordered for 30% of all felony convictions.

Misdemeanor Convictions

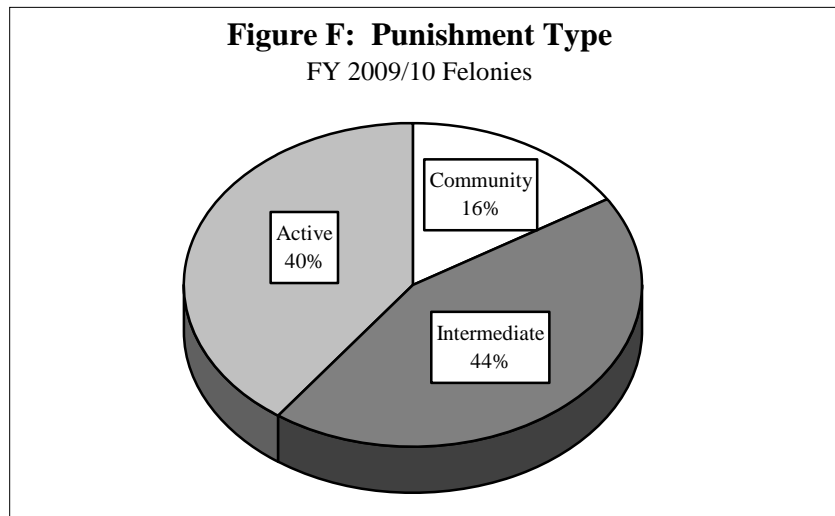
- During Fiscal Year 2009/10, sentences for 154,233 misdemeanor convictions were imposed under Structured Sentencing. (Note: This number excludes Driving While Impaired convictions, cases disposed of by magistrates, Class 2 and Class 3 criminal traffic offenses, and local ordinance offenses.)
- Nine percent of misdemeanor convictions fell into Offense Class A1, 58% fell into Offense Class 1, 16% fell into Offense Class 2, and 17% fell into Offense Class 3.
- Thirty-eight percent of misdemeanor convictions fell into Prior Conviction Level I (0 points), about 39% fell into Prior Conviction Level II (1-4 points), and 23% fell into Prior Conviction Level III (5 or more points).
- The greatest number of misdemeanor convictions fell into Offense Class 1 with Prior Conviction Level II (n=35,574 or 24%), followed by Offense Class 1 with Prior Conviction Level I (n=30,013 or 20%).
- Seventy-five percent of convictions were for male offenders; 36% of convictions were for offenders under the age of 26; and 47% of convictions were for Black offenders.
- Twenty-five percent of misdemeanor convictions resulted in an Active punishment, 3% resulted in an Intermediate punishment, and 72% resulted in a Community punishment.
- Public order offenses accounted for the majority of misdemeanor convictions (47%), while misdemeanor person offenses accounted for the lowest proportion (11%). Convictions for person offenses were most likely to result in an Active punishment (30%). Person offenses resulted in the longest average Active sentences.
- Where a specific intermediate sanction was indicated in the AOC database, Special Probation was the most frequently invoked punishment (63%). Offenders who received Special Probation were most likely convicted of a Class 1 offense with Prior Conviction Level III.
- Of all misdemeanor offenders who received a Community punishment, 45% received unsupervised probation; 36% received supervised probation; and 11% were ordered to perform community service, pay restitution and/or a fine as their most serious punishment. The remainder had no sanction specified.

III. PUNISHMENT IMPOSED FOR FELONIES

This section details the type of sentence imposed (Active, Intermediate, or Community) for convictions during Fiscal Year 2009/10. The tables in this section also show the average minimum and maximum sentences for convictions for which an Active punishment was imposed. *The reader should note that this information is based on the most serious sentence an offender received.*¹

A. Overall Punishment

An Active punishment was imposed for 40% of felony convictions, an Intermediate punishment was imposed for 44% of felony convictions, and a Community punishment was imposed for 16% of felony convictions (see *Figure F*).

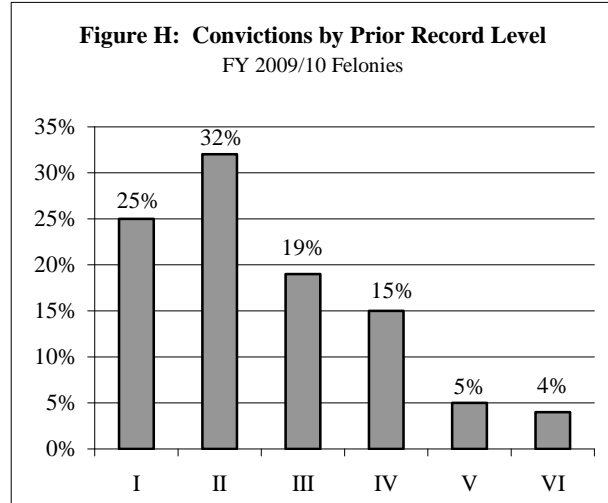
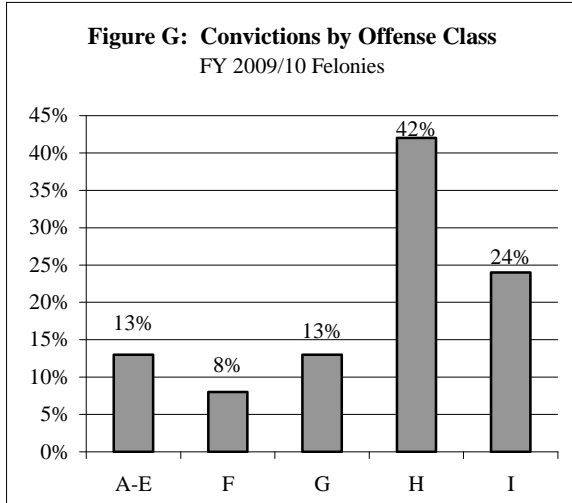


Source: NC Sentencing and Policy Advisory Commission, FY 2009/10 Statistical Report Data

B. Punishment Imposed by Offense Class and Prior Record Level

Figure G shows the percentage of convictions by offense class. The majority of felony convictions (66%) were for Class H and Class I offenses. (See *Appendix B* for sample offenses for each offense class.) As shown in *Figure H*, the majority of felony convictions (57%) were for offenders with Prior Record Levels I and II, indicating little or no prior criminal record. Nine percent of convictions were for offenders with serious prior criminal histories (Prior Record Levels V and VI).

¹ Convictions that did not fit within the Felony Punishment Chart were excluded from this section (n=2,022 or almost 7%). These convictions did not fit within the appropriate cell in the Felony Punishment Chart due to discrepant offense classes, prior record levels, or for other reasons (such as consecutive sentencing or extraordinary mitigation).



Source: NC Sentencing and Policy Advisory Commission, FY 2009/10 Statistical Report Data

Table 4 presents felony convictions and sentences imposed within the context of the Felony Punishment Chart (see also Table 1). The table also includes the average minimum and maximum sentences for convictions for which an Active sentence was imposed.² The greatest number of convictions fell within Offense Class H with Prior Record Level II (n=3,593 or 13%).

The data presented in Table 4 indicate that the percentage of offenders receiving an Active sentence typically increases as the offense seriousness increases. As shown in the vertical “Total” column in Table 4, the average minimum and maximum sentences imposed increase as offense class increases. The average minimum sentence for all convictions resulting in an Active punishment (n=11,178) was 31 months. The lowest average minimum sentence was imposed for Class I convictions (7 months). Excluding life and death sentences, the highest average minimum sentence was imposed for Class B1 convictions (242 months).

Convictions for offenders falling into Prior Record Levels I and VI resulted in the highest average minimum sentences (37 months and 34 months respectively). The higher minimum sentences for Prior Record Level I can be attributed to the fact that the majority of offenders eligible for an Active sentence in these prior record levels are those convicted in the more serious offense classes (i.e., Class B1 through E felonies). For information on punishment imposed by judicial division, see Appendix C.

² Sentences resulting in life without parole or death were excluded from the calculation of the average minimum and maximum sentences.

**Table 4: Convictions and Sentences by Offense Class and Prior Record Level
FY 2009/10 Felonies**

Offense Class	Prior Record Level						Total
	I	II	III	IV	V	VI	
A	A A = 31 (100%) (n = 31) Life/Death	A A = 21 (100%) (n = 21) Life/Death	A A = 14 (100%) (n = 14) Life/Death	A A = 12 (100%) (n = 12) Life/Death	A A = 1 (100%) (n = 1) Life/Death	A A = 1 (100%) (n = 1) Life/Death	A A = 80 (100%) (n = 80) Life/Death
B1	A A = 49 (100%) (n = 49) 193 min 241 max	A A = 36 (100%) (n = 36) 235 min 292 max	A A = 14 (100%) (n = 14) 285 min 351 max	A A = 13 (100%) (n = 13) 299 min 369 max	A A = 6 (100%) (n = 6) 357 min 437 max	A A = 3 (100%) (n = 3) 480 min 585 max	A A = 121 (100%) (n = 121) 242 min 300 max
B2	A A = 101 (100%) (n = 101) 140 min 178 max	A A = 99 (100%) (n = 99) 173 min 217 max	A A = 53 (100%) (n = 53) 201 min 250 max	A A = 24 (100%) (n = 24) 233 min 289 max	A A = 6 (100%) (n = 6) 234 min 291 max	A A = 6 (100%) (n = 6) 264 min 327 max	A A = 289 (100%) (n = 289) 175 min 219 max
C	A A = 122 (100%) (n = 122) 60 min 82 max	A A = 142 (100%) (n = 142) 76 min 100 max	A A = 182 (100%) (n = 182) 85 min 112 max	A A = 290 (100%) (n = 290) 96 min 124 max	A A = 142 (100%) (n = 142) 104 min 135 max	A A = 126 (100%) (n = 126) 120 min 153 max	A A = 1,004 (100%) (n = 1,004) 91 min 119 max
D	A A = 351 (100%) (n = 351) 49 min 68 max	A A = 267 (100%) (n = 267) 61 min 83 max	A A = 145 (100%) (n = 145) 81 min 107 max	A A = 108 (100%) (n = 108) 92 min 120 max	A A = 27 (100%) (n = 27) 107 min 137 max	A A = 23 (100%) (n = 23) 113 min 145 max	A A = 921 (100%) (n = 921) 66 min 89 max
E	I/A I = 366 (67%) A = 182 (33%) (n = 548) 22 min 35 max	I/A I = 279 (60%) A = 188 (40%) (n = 467) 25 min 39 max	A A = 154 (100%) (n = 154) 29 min 44 max	A A = 109 (100%) (n = 109) 40 min 57 max	A A = 31 (100%) (n = 31) 45 min 63 max	A A = 27 (100%) (n = 27) 49 min 68 max	I/A I = 645 (48%) A = 691 (52%) (n = 1,336) 29 min 44 max
F	I/A I = 422 (66%) A = 220 (34%) (n = 642) 14 min 17 max	I/A I = 337 (50%) A = 342 (50%) (n = 679) 16 min 19 max	I/A I = 204 (44%) A = 263 (56%) (n = 467) 18 min 22 max	A A = 235 (100%) (n = 235) 20 min 25 max	A A = 80 (100%) (n = 80) 27 min 33 max	A A = 65 (100%) (n = 65) 32 min 39 max	I/A I = 963 (44%) A = 1,205 (56%) (n = 2,168) 18 min 22 max

**Table 4: Convictions and Sentences by Offense Class and Prior Record Level (continued)
FY 2009/10 Felonies**

Offense Class	Prior Record Level						Total
	I	II	III	IV	V	VI	
G	I/A I = 536 (74%) A = 193 (26%) (n = 729) 11 min 13 max	I/A I = 790 (70%) A = 345 (30%) (n = 1,135) 13 min 16 max	I/A I = 528 (55%) A = 436 (45%) (n = 964) 14 min 17 max	I/A I = 258 (43%) A = 347 (57%) (n = 605) 17 min 21 max	A A = 138 (100%) (n = 138) 19 min 23 max	A A = 118 (100%) (n = 118) 26 min 32 max	I/A I = 2,112 (57%) A = 1,577 (43%) (n = 3,689) 15 min 19 max
H	C/I/A C = 1,451 (48%) I = 1,206 (40%) A = 376 (12%) (n = 3,012) 5 min 7 max	I/A I = 2,642 (74%) A = 951 (26%) (n = 3,593) 6 min 8 max	I/A I = 1,208 (55%) A = 1,003 (45%) (n = 2,211) 8 min 10 max	I/A I = 633 (36%) A = 1,103 (64%) (n = 1,736) 10 min 12 max	I/A I = 169 (27%) A = 452 (73%) (n = 621) 13 min 16 max	A A = 531 (100%) (n = 531) 18 min 22 max	C/I/A C = 1,451 (12%) I = 5,858 (50%) A = 4,416 (38%) (n = 11,725) 10 min 12 max
I	C C = 1,515 (100%) (n = 1,515) N/A	C/I C = 1,465 (57%) I = 1,106 (43%) (n = 2,571) N/A	I I = 1,119 (100%) (n = 1,119) N/A	I/A I = 516 (53%) A = 462 (47%) (n = 978) 7 min 8 max	I/A I = 108 (36%) A = 189 (64%) (n = 297) 8 min 10 max	I/A I = 80 (26%) A = 223 (74%) (n = 303) 9 min 11 max	C/I/A C = 2,980 (44%) I = 2,929 (43%) A = 874 (13%) (n = 6,783) 7 min 9 max
TOTAL	C/I/A C = 2,966 (42%) I = 2,530 (35%) A = 1,625 (23%) (n = 7,121) 37 min 53 max	C/I/A C = 1,465 (16%) I = 5,154 (57%) A = 2,391 (27%) (n = 9,010) 31 min 40 max	I/A I = 3,059 (57%) A = 2,264 (43%) (n = 5,323) 29 min 37 max	I/A I = 1,407 (34%) A = 2,703 (66%) (n = 4,110) 28 min 36 max	I/A I = 277 (20%) A = 1,072 (80%) (n = 1,349) 32 min 41 max	I/A I = 80 (7%) A = 1,123 (93%) (n = 1,203) 34 min 43 max	C/I/A C = 4,431 (16%) I = 12,507 (44%) A = 11,178 (40%) (n = 28,116) 31 min 40 max

Note: Of the 30,138 felony convictions in FY 2009/10, 2,022 convictions were excluded from this table. These convictions did not fit within the appropriate cell in the Felony Punishment Chart due to discrepant offense classes, prior record levels, or for other reasons (such as consecutive sentencing or extraordinary mitigation). Death and life without parole sentences were excluded from the calculation of the average minimum and maximum sentences.

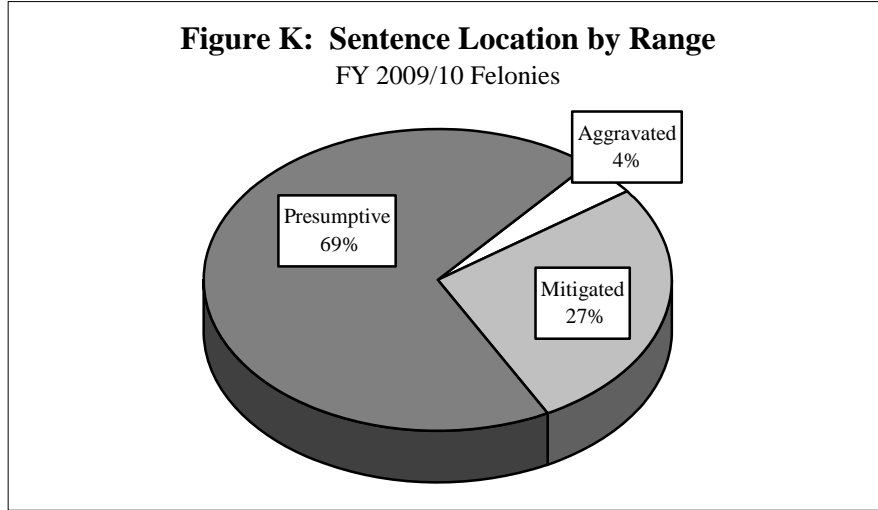
Source: NC Sentencing and Policy Advisory Commission, FY 2009/10 Statistical Report Data

C. Punishment Imposed in Discretionary Cells

As shown in *Table 4*, where the judge had the option of imposing either an Active or community-based punishment (*i.e.*, either an Intermediate or Community punishment), an Intermediate punishment was most likely to be imposed for convictions falling within Offense Class G with Prior Record Level I or Class H with Prior Record Level III (74% each), while an Active sentence was most likely to be imposed for convictions falling within Offense Class I with Prior Record Level VI (74%).

A. Sentence Location

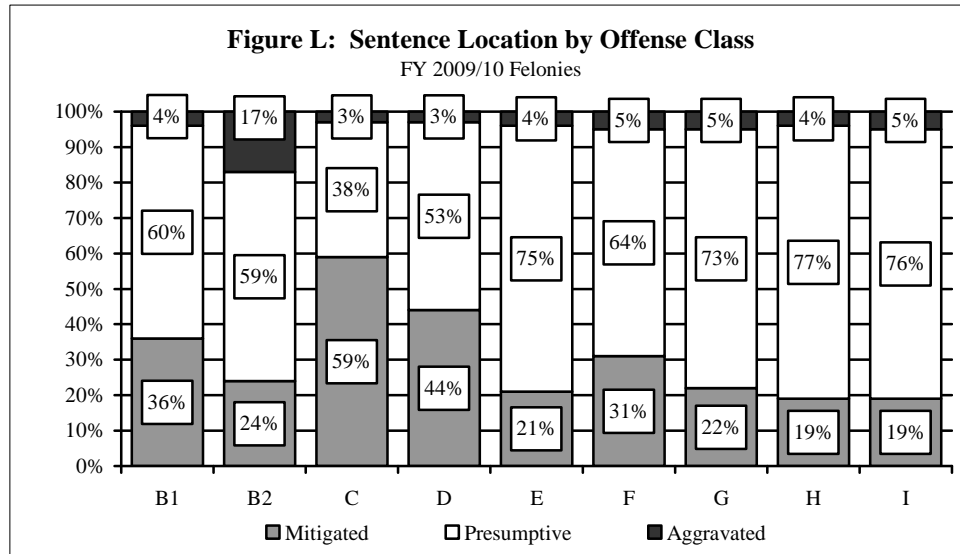
Figure K shows that 69% of all Active sentences fell within the presumptive range; 27% fell within the mitigated range; and 4% fell within the aggravated range.



Source: NC Sentencing and Policy Advisory Commission, FY 2009/10 Statistical Report Data

B. Sentence Location by Offense Class and Prior Record Level

Figure L displays the percentage of convictions falling within the mitigated, presumptive, and aggravated ranges by offense class for Active sentences.

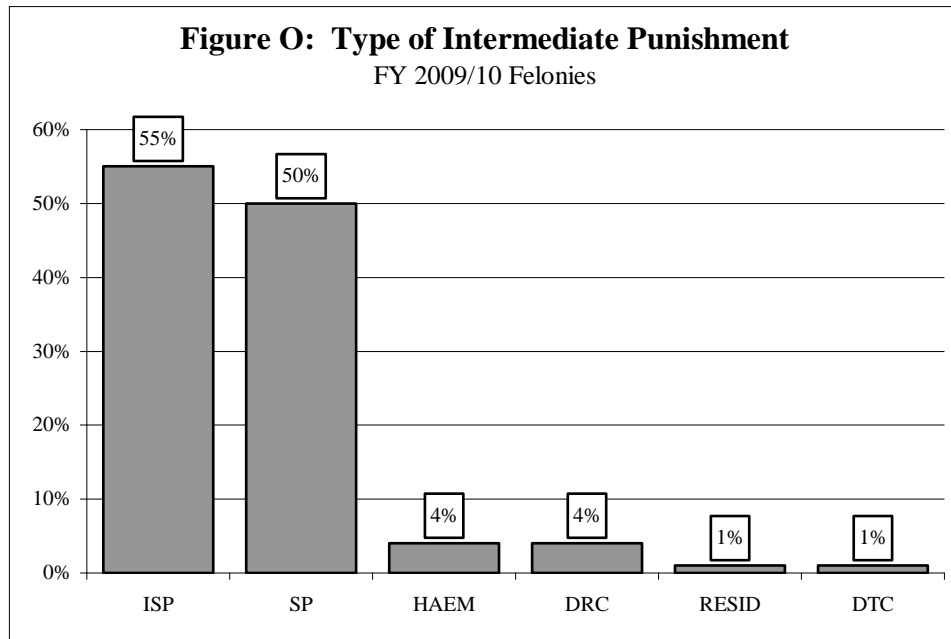


Source: NC Sentencing and Policy Advisory Commission, FY 2009/10 Statistical Report Data

For information regarding sentence location by offense class and prior record level, see *Table 6*. Convictions for Class H and Class I offenses had the highest percentages of Active sentences in

A. Intermediate Punishments Imposed

Figure O illustrates the percentage of convictions for which specific intermediate sanctions were imposed. The figure indicates that Intensive Supervision Probation accounted for the highest percentage of convictions for which a specific intermediate sanction was reported (55%). Assignment to Drug Treatment Court or a Residential Treatment Facility accounted for the smallest percentage of convictions for which a specific intermediate sanction was reported (1% each).



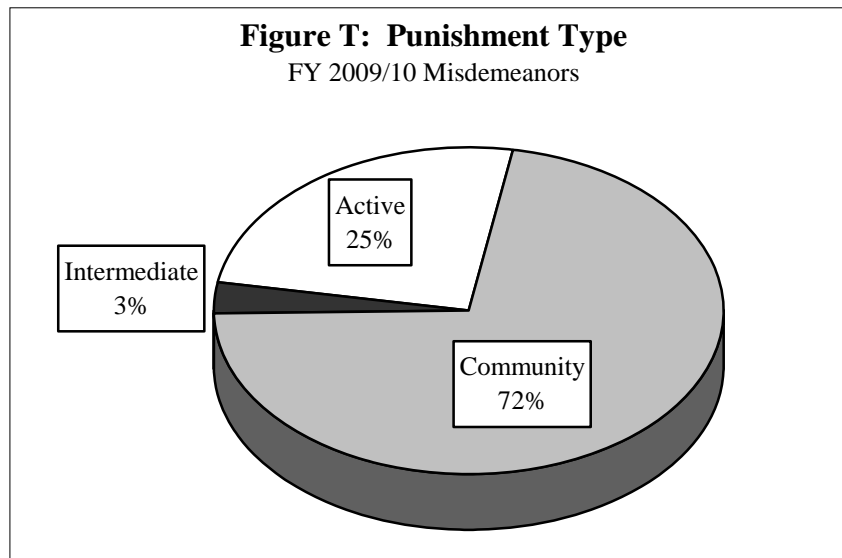
Note: The percentages in this figure do not add to 100%.

Source: NC Sentencing and Policy Advisory Commission, FY 2009/10 Statistical Report Data

B. Intermediate Punishments by Offense Class and Prior Record Level

Table 10 shows the frequency and average probation length of Intermediate punishments by offense class and prior record level. Of those convictions for which specific intermediate sanctions were reported, the greatest number was imposed for Class H felonies (n=6,616). For Class H, Intensive Supervision Probation was the most frequently invoked sanction (n=3,131), followed by Special Probation (n=2,845). Convictions for Class E felonies resulted in the longest average probation sentences for Intermediate punishments (36 months). Convictions for which a Residential Facility sanction was imposed resulted in the longest average probation sentence of all the Intermediate punishments (35 months). Overall, convictions for which an Intermediate punishment was imposed resulted in an average probation sentence of 31 months.

imposed, 90% were for sentences of 90 days or less, with the remaining 10% for sentences greater than 90 days.



Source: NC Sentencing and Policy Advisory Commission, FY 2009/10 Statistical Report Data

B. Punishment Imposed by Offense Class and Prior Conviction Level

Misdemeanor convictions and sentences imposed are presented within the context of the Misdemeanor Punishment Chart in *Table 19*. Most convictions – regardless of the offense class or prior conviction level – resulted in the imposition of a Community punishment. Nine percent of misdemeanor convictions fell into Offense Class A1, 58% fell into Offense Class 1, 16% fell into Offense Class 2, and 17% fell into Offense Class 3. Thirty-eight percent of misdemeanor convictions fell into Prior Conviction Level I, 39% fell into Prior Conviction Level II, and 23% fell into Prior Conviction Level III.

Convictions for Class A1 misdemeanors accounted for the largest percentage of Active sentences imposed relative to other offense classes (32%). The majority of convictions fell into Offense Class 1 with Prior Conviction Level II (n=35,574). The likelihood of receiving an Active punishment increased as prior conviction level increased.

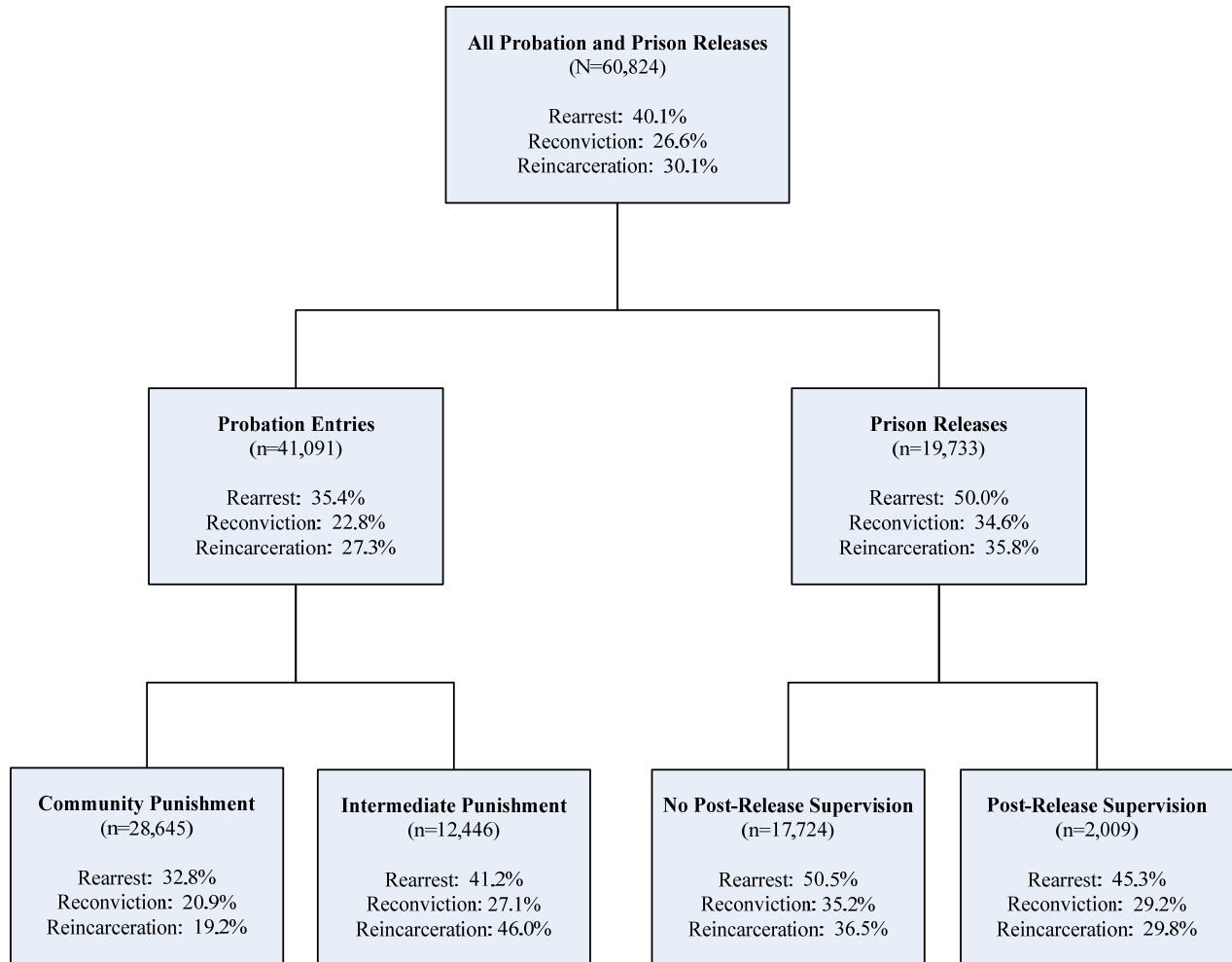
**Table 19: Convictions and Sentences by Offense Class and Prior Conviction Level
FY 2009/10 Misdemeanors**

Offense Class	Prior Conviction Level			Total
	I 0 Points	II 1-4 Points	III 5+ Points	
A1	C/I/A C = 2,407 (74%) I = 123 (4%) A = 723 (22%) (n=3,253) 33.8 days	C/I/A C = 3,675 (67%) I = 300 (6%) A = 1,476 (27%) (n=5,451) 48.3 days	C/I/A C = 2,027 (46%) I = 356 (8%) A = 2,047 (46%) (n=4,430) 97.0 days	C/I/A C = 8,109 (62%) I = 779 (6%) A = 4,246 (32%) (n=13,134) 69.3 days
1	C C = 25,222 (84%) I = 181 (1%) A = 4,610 (15%) (n=30,013) 20.2 days	C/I/A C = 27,013 (76%) I = 981 (3%) A = 7,580 (21%) (n=35,574) 26.6 days	C/I/A C = 12,016 (55%) I = 1,327 (6%) A = 8,467 (39%) (n=21,810) 64.0 days	C/I/A C = 64,251 (73%) I = 2,489 (3%) A = 20,657 (24%) (n=87,397) 40.5 days
2	C C = 8,862 (82%) I = 21 (0%) A = 1,938 (18%) (n=10,821) 14.0 days	C/I C = 7,039 (74%) I = 138 (2%) A = 2,293 (24%) (n=9,470) 20.3 days	C/I/A C = 2,300 (53%) I = 103 (2%) A = 1,952 (45%) (n=4,355) 30.0 days	C/I/A C = 18,201 (74%) I = 262 (1%) A = 6,183 (25%) (n=24,646) 21.4 days
3	C C = 9,436 (77%) I = 7 (0%) A = 2,883 (23%) (n=12,326) 5.5 days	C/I C = 6,477 (75%) I = 65 (1%) A = 2,077 (24%) (n=8,619) 7.9 days	C/I/A C = 2,192 (51%) I = 46 (1%) A = 2,057 (48%) (n=4,295) 10.4 days	C/I/A C = 18,105 (71%) I = 118 (1%) A = 7,017 (28%) (n=25,240) 7.7 days
TOTAL	C/I/A C = 45,927 (81%) I = 332 (1%) A = 10,154 (18%) (n=56,413) 15.8 days	C/I/A C = 44,204 (75%) I = 1,484 (2%) A = 13,426 (23%) (n=59,114) 25.0 days	C/I/A C = 18,535 (53%) I = 1,832 (5%) A = 14,523 (42%) (n=34,890) 56.5 days	C/I/A C = 108,666 (72%) I = 3,648 (3%) A = 38,103 (25%) (n=150,417) 34.6 days

Note: Of the 154,233 misdemeanor convictions in FY 2009/10, 3,816 (2.5%) were excluded from this table. These convictions did not fit within the appropriate cell in the Misdemeanor Punishment Chart due to discrepant offense classes, prior conviction levels, or for other reasons. Active sentences in cells in which an Active punishment is not a sentencing option may be attributed to the use of credit for time served.

Source: NC Sentencing and Policy Commission, FY 2009/10 Statistical Report Data

Figure 8
Three-Year Recidivism Rates for the FY 2005/06 Sample



SOURCE: NC Sentencing and Policy Advisory Commission, FY 2005/06 Correctional Program Evaluation Data

APPENDIX B-2
SUMMARY INFORMATION FOR CORRECTIONAL PROGRAMS

Name	N	Risk Level			Criminal Justice Outcomes: Three-Year Follow-Up		
		Low	Med	High	Rearrest	Reconv.	Reincarc.
PROBATION ENTRIES	41,091	49.8%	43.9%	6.3%	35.4%	22.8%	27.3%
Community Punishment	28,645	55.3%	40.2%	4.5%	32.8%	20.9%	19.2%
Intermediate Punishment	12,446	37.2%	52.3%	10.5%	41.2%	27.1%	46.0%
Intensive Supervision	6,046	36.5%	53.0%	10.5%	40.2%	26.2%	49.3%
Special Probation	5,595	38.2%	50.9%	10.9%	41.3%	27.0%	44.9%
Community Service	11,250	48.6%	45.5%	5.9%	34.3%	21.9%	29.2%
House Arrest with Electronic Monitoring	703	41.7%	47.6%	10.7%	37.3%	22.6%	43.8%
Drug Treatment Court	167	28.1%	56.3%	15.6%	55.1%	41.3%	47.9%
PRISON RELEASES	19,733	24.3%	56.6%	19.1%	50.0%	34.6%	35.8%
No Post-Release Supervision	17,724	23.6%	56.5%	19.9%	50.5%	35.2%	36.5%
Post-Release Supervision	2,009	30.2%	57.3%	12.5%	45.3%	29.2%	29.8%
Correctional (Academic) Education	6,824	23.4%	57.6%	19.0%	50.8%	34.8%	34.5%
Correction Enterprises	1,988	25.3%	55.5%	19.2%	48.0%	33.2%	34.2%
DACDP (DART – Prison)	4,195	20.0%	55.8%	24.2%	52.1%	36.0%	36.6%
SOAR	34	70.6%	29.4%	0.0%	17.7%	8.8%	29.4%
Vocational Education	4,172	24.5%	57.3%	18.2%	49.2%	33.4%	32.8%
Work Release	1,098	29.1%	55.1%	15.8%	41.7%	26.1%	23.6%
ENTIRE SAMPLE	60,824	41.6%	48.0%	10.4%	40.1%	26.6%	30.1%

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2005/06 Correctional Program Evaluation Data