

SMCP CAPACITY PROJECTIONS: FISCAL YEAR 2023 TO FISCAL YEAR 2027

Introduction

In 2011, the General Assembly created the Statewide Misdemeanant Confinement Program (SMCP) as part of the Justice Reinvestment Act (JRA).¹ The SMCP provides state funding to house misdemeanants serving sentences of more than 90 days and all impaired driving sentences (regardless of sentence length)² in local jails. Every county is required to send eligible misdemeanants to the SMCP but becoming a “receiving county” is voluntary; counties not volunteering beds are referred to as “sending only” or “sending” counties. The creation of this program allowed the State to move misdemeanants from the state prison system to the local jails. However, if the SMCP lacks capacity, additional sentenced misdemeanants may be transferred to a state prison.³ This dynamic raises the possibility that misdemeanants returning to prison could place an additional burden on the prison system. For planning and budgetary purposes, policymakers need to know how many beds are and will be available in the SMCP.

North Carolina General Statute § 164-51 requires the North Carolina Sentencing and Policy Advisory Commission (Sentencing Commission), with the assistance of the North Carolina Sheriffs’ Association (NCSA) to annually develop projections of available bed space in the SMCP for the next five fiscal years. The SMCP capacity projections were developed using data and information from the NCSA on SMCP capacity, population, and participating counties; Department of Health and Human Services (DHHS) jail project information; and information from architectural firms and jails building additions or new facilities.

COVID-19 Pandemic and the Jail Population

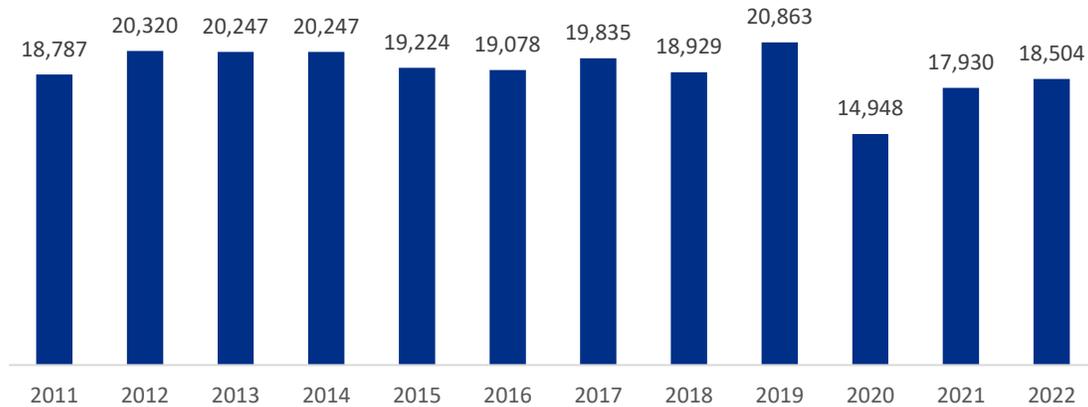
The COVID-19 pandemic, beginning in March 2020, affected the overall jail population, as well as the SMCP population, and capacity. The court and correctional systems have largely recovered in terms of case processing and operations, however, significant staffing issues in the correctional system (which existed prior to but were exacerbated by the pandemic) remain a problem across the state. The overall jail population has not reached pre-pandemic levels but has increased over the past few years. As shown in Figure 1, the overall average daily population (ADP) in jails has increased since 2020 with a 3% increase from July 2021 to July 2022. According to the capacity information reported to DHHS by local jails, the total statewide capacity was 26,982 in July 2022.

¹ N.C. Session Law (hereinafter S.L.) 2011-192, s. 7.

² N.C. Gen. Stat. (hereinafter G.S.) 148-32.1(b2) (2022).

³ G.S. 148-32.1(b4).

Figure 1
Total Jail Average Daily Population (ADP)
July 2011 – July 2022



NOTE: Some jails' ADP are not included in the July 2022 ADP due to unreported data.

SOURCE: DHHS Construction Section, *Local Confinement Report*, 2011 – 2022; analysis conducted by NC Sentencing and Policy Advisory Commission.

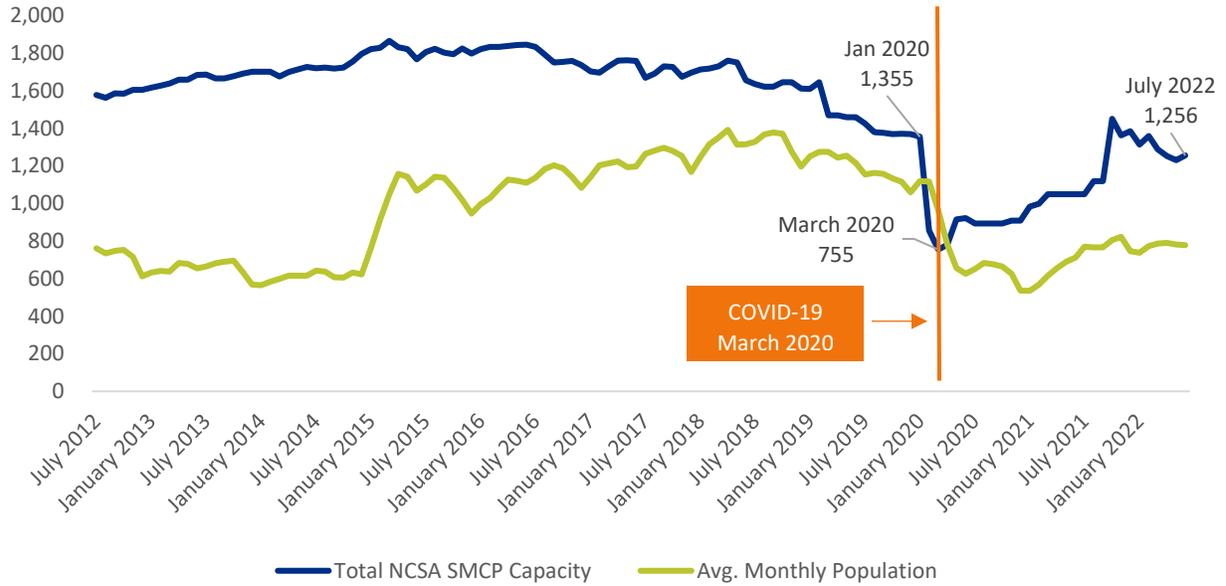
Historical SMCP Capacity and Average Monthly Population

Historical SMCP capacity data are a key component for producing the five-year SMCP capacity projections. The average monthly population also provides additional context for the projections. Figure 2 shows the total SMCP capacity and the average monthly population beginning in July 2012. The most notable increase in population occurred in FY 2015 due to legislative changes that expanded the eligible population for the program. In the month prior to the onset of the pandemic (February 2020), the average monthly population was 1,118. In June 2022, the SMCP average monthly population increased 13% from the previous year (from 691 in June 2021 to 782 in June 2022).

Capacity remained relatively consistent through the first years of the program but began to decline in FY 2017 (prior to the pandemic, an average 4% decrease per year). In February 2020, the SMCP capacity was 1,355. Beginning in March 2020, with the onset of the pandemic, the SMCP experienced unprecedented decreases in capacity. At the lowest point in April 2020, capacity was 755 beds or 44% of pre-COVID historic average capacity (1,721 beds).

Starting in June 2021, the overall capacity increased due to a change in reporting in the NCSA's monthly status reports. They estimated that without changes in SMCP participation due to the effects from the pandemic, the SMCP capacity would have been 1,368 at the end of FY 2021 (similar to the reported 1,355 capacity for FY 2020). If COVID had not affected the SMCP, the estimated capacity for FY 2021 would have been a 6% decrease from the end of FY 2019 and a 25% decline from the end of FY 2015. Using the new reporting method, by June 2022, the NCSA reported that the SMCP capacity rebounded to 1,231 beds, an increase of 63% from the lowest capacity figure in FY 2020.

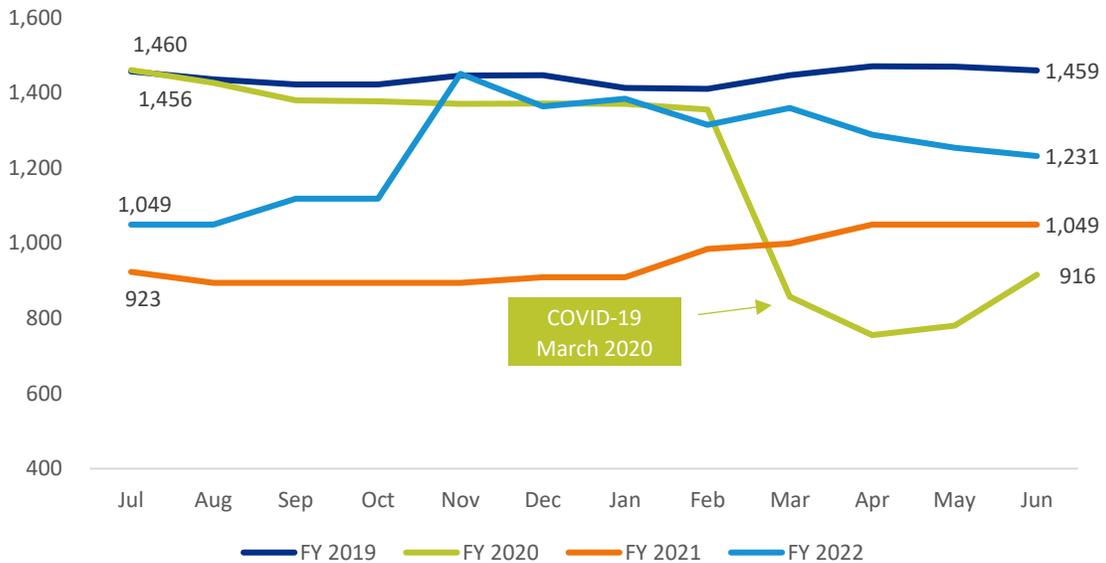
Figure 2
SMCP Capacity and Population Trends: July 2012 – July 2022



SOURCE: NC Sentencing and Policy Advisory Commission; NC Sheriffs' Association

Figure 3 provides an additional examination of the effects of the COVID-19 pandemic on the reported SMCP capacity. FY 2019 capacity was substantially higher compared to the end of FY 2020 and FY 2021. However, FY 2021 capacity increased over the course of the year; FY 2022 fluctuated, returning to near pre-pandemic levels at one point (November 2021 at 1,450 beds), before declining again.

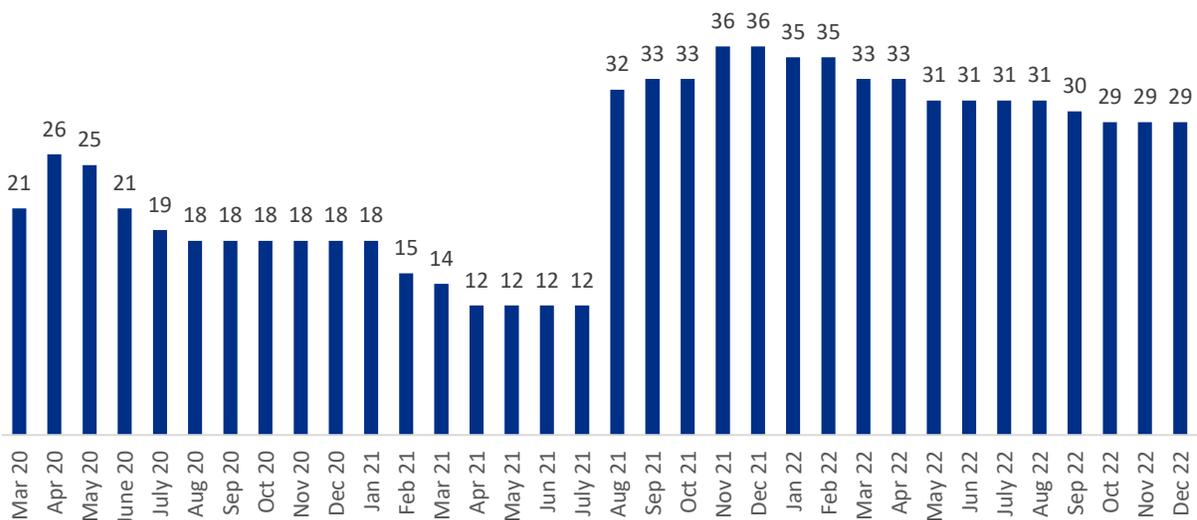
Figure 3
SMCP Capacity by Fiscal Year (2019-2022)



SOURCE: NC Sentencing and Policy Advisory Commission; NC Sheriffs' Association

Beginning in March 2020 and over the course of the pandemic, the NCSA permitted some counties to change their participation in the SMCP to only receiving inmates from within their own county (referred to as “temporary moratorium counties”), which affected SMCP capacity (see Figure 4). Overall, the number of counties on a temporary moratorium fluctuated with participation changes coinciding with prominent events during the pandemic (e.g., onset of the pandemic, vaccine availability, emergence of variants, etc.). Notably, there was a 167% increase in the number of temporary moratorium counties in one month (from July to August 2021). The increase continued from August 2021, peaking in November and December of 2021, as jails also reported increased staffing issues. As of February 1, 2023, the NCSA's Executive Committee decided to revert to pre-COVID operations and has ended the option for counties to enter a temporary moratorium.

Figure 4
Total Number of Temporary Moratorium Counties
March 2020 – December 2022



SOURCE: NC Sentencing and Policy Advisory Commission; NC Sheriffs' Association

Methodology and Assumptions

This section details the assumptions used to develop the SMCP bed capacity projections for FY 2023 through FY 2027. Two scenarios were developed to account for ongoing facility issues, primarily staffing, that were brought about initially by the COVID-19 pandemic. Short-term assumptions, specific to each scenario (unless otherwise noted) are presented first, followed by long-term assumptions which apply more broadly to both scenarios.

Scenario 1 Methodology and Short-Term Assumptions

Short-term assumptions for scenario 1 were developed using the monthly status reports from the NCSA and supplemental information received from the NCSA. Scenario 1 includes the broadest definition of capacity for the SMCP, described below by county status:

- *Sending only counties:* Sending only counties will send their inmates to receiving counties.
- *Temporary moratorium counties:* While these counties have limited SMCP participation (only housing SMCP inmates from within their own county), the projection assumes these counties provide capacity at full participation/allocation levels.
- *Receiving counties:* The projections assume receiving counties will experience no disruptions to participation and/or bed allocation and will provide beds at their current levels.

Scenario 2 Methodology and Short-Term Assumptions

Assumptions for scenario 2 were developed using data from allocation forms submitted to the NCSA⁴ as well as housing reimbursement data from the NCSA's monthly status reports.⁵ This scenario presents a narrower definition of capacity, accounting for beds that have been taken offline by receiving counties who are in a temporary moratorium, as described below.

- *Sending only counties:* Sending only counties will send their inmates to receiving counties.
- *Temporary moratorium counties:* Temporary moratorium counties will participate in the program at a reduced capacity using an estimation of occupied beds.⁶ When possible, counties will re-allocate beds to the program as local issues within facilities resolve.
 - *Rate of Return:* Assumes counties will re-allocate previous capacity to the program using a rate of return based on reimbursement history in FY 2022.
 - *Elimination of Temporary Moratorium:* Assumes some offline beds will be recovered over the projection period, based on the elimination of temporary moratorium status effective in February 2023.
- *Receiving counties:* The projection assumes that these counties will operate with the same level of participation as before the COVID-19 pandemic.

Long-Term Assumptions

Long-term assumptions were developed using data from the past five fiscal years (FY 2018 through FY 2022) and apply across both scenarios.

- *State and local practices and administrative rules:* The projections assume no change in judicial or prosecutorial behavior relating to convictions and sentencing. They also assume no change in

⁴ The allocation forms received provide the overall capacity for receiving counties; however, counties may not submit updated forms and/or may informally change their capacity via phone calls or emails. Given this, the capacity information used from allocation forms may not be the most up to date. However, when looking at historical trends, allocation forms track closely with the published monthly status reports from the NCSA.

⁵ Due to changes in NCSA's reporting starting in June 2021, it is not possible to determine the fluctuation of capacity for receiving counties in a temporary moratorium status. Receiving counties in a moratorium status often continue to house SMCP inmates from within their jurisdiction. Information on the frequency of this occurring and accompanying data on capacity were not provided; as a result, alternative sources were needed and used to estimate the overall effect from these occurrences on program capacity.

⁶ Occupied beds were estimated using monthly housing reimbursements to determine an average number of beds used by receiving counties to house SMCP inmates within their jurisdictions.

local practices (e.g., practices related to pretrial release).⁷ In addition, the projections assume there will be no changes to administrative rules that affect jail capacity.

- *Mandated SMCP population:* The projections assume no legislative changes to the population currently mandated to serve sentences through the SMCP.
- *JJDPA:* The reauthorized Juvenile Justice Delinquency Prevention Act (JJDPA) requires that by December 21, 2021, juveniles awaiting trial as adults not be held in any jail for adults. While some jails may have gained bed space due to the JJDPA, the projections assume no new beds will be volunteered to the SMCP as a result of this change.
- *Inmates backlogged in county jails:* Jail backlog (i.e., inmates in county jails awaiting transfer to prison) may limit the number of beds available for jails to hold other inmates, including SMCP inmates. The jail backlog on December 31, 2022 was 8. If any SMCP beds were removed in the past three years due to jail backlog, they are accounted for in the FY growth rate in SMCP capacity used to produce the projection.
- *Jail population distribution:* The projections assume the general population distribution of all jail inmates (e.g., percentage of pretrial inmates, percentage of male inmates, etc.) remains constant throughout the projection period.
- *Planned jail projects:* Known projects at this time are assumed to be the only ones affecting statewide capacity during the projection period.⁸ Receiving and sending counties building jails were asked about SMCP participation. Their responses regarding potential new volunteered beds are reflected in the relevant years of the projection.
- *Receiving counties:* The projections assume receiving counties (as of June 30, 2022) will remain receiving counties throughout the projection period.
- *Sending counties:* The projections assume sending only counties (as of June 30, 2022) that are not building jails during the projection period will remain sending only counties.
- *SMCP capacity average growth rate:* The current three-year average growth rate (FY 2019 – FY 2021) is -2%.

SMCP Capacity Projections

The projections include planned jail projects that anticipate participation in the SMCP (listed as newly built SMCP beds),⁹ information on annual changes to the SMCP capacity, and assumptions about projecting future bed capacity to determine a five-year capacity projection for the SMCP. As a result of to the COVID-19 pandemic, in conjunction with the various adaptations across counties, already existing caveats, fluctuations, and factors that influence local jails' determinations about SMCP participation and number of beds committed to the SMCP, two scenarios were developed for the five-year projection. The projection scenarios detailed below provide the total number of beds over the five-year projection period.

⁷ There are many discrete reform efforts across the state focused on pretrial release practices. If implemented statewide, they may affect future projections.

⁸ Counties building new jail facilities or expanding a jail facility during the projection period include Cleveland (458 beds, FY 2026 estimated completion), Davidson (400 beds, FY 2026 estimated completion), Duplin (156 beds, design phase no estimated completion) Haywood (155 beds, FY 204 estimated completion), Johnston (469 beds, FY 2022 estimated completion), Nash (94 beds, FY 2025 estimated completion), Pender (222 beds, FY 2025 estimated completion), Randolph (211 beds, FY 2023 estimated completion), Surry (299 beds, FY 2023 estimated completion), and Wayne (220 beds, FY 2024 estimated completion).

⁹ One county provided SMCP capacity updates for their jail projects with an estimated completion date of April 2023. Surry estimates 25 SMCP beds (20 male beds, 5 female beds) will be committed.

Table 1 shows the capacity projections for FY 2023 through FY 2027 for scenario 1 (which reflects the broadest definition of capacity for the Program). The SMCP capacity in scenario 1 begins with 1,145 beds (capacity as of December 31, 2022). Capacity is projected to decrease from 1,170 in the first year of the projection, to 1,089 in June 2027 – a reduction of 81 beds, or -7%.

Table 1
SMCP Capacity Projections: Scenario 1
FY 2023 – FY 2027

	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Total Bed Change	0	-21	-20	-20	-20
Newly Built SMCP Beds	25	0	0	0	0
<i>Subtotal</i>	25	-21	-20	-20	-20
Total Capacity	1,170	1,149	1,129	1,109	1,089
5-Year Projection	Percent Change -7%		Bed Change -81		

SOURCE: Prepared by the NC Sentencing and Policy Advisory Commission with the assistance of the NC Sheriffs' Association.

Table 2 shows the capacity projections for FY 2023 through FY 2027 for scenario 2. The SMCP capacity in scenario 2 begins with 1,031 beds (capacity as of December 31, 2022, based on the narrower definition). Capacity is projected to decrease from 1,106 beds in the first year of the projection, to 1,036 in June 2027 – a reduction of 70 beds, or -6%.

Table 2
SMCP Capacity Projections: Scenario 2
FY 2023 – FY 2027

	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Receiving Bed Change	0	-21	-21	-20	-20
Temp. Moratorium Bed Change	50	12	0	0	0
Newly Built SMCP Beds	25	0	0	0	0
<i>Subtotal</i>	75	-9	-21	-20	-20
Total Capacity	1,106	1,097	1,076	1,056	1,036
5-Year Projection	Percent Change -6%		Bed Change -70		

SOURCE: Prepared by the NC Sentencing and Policy Advisory Commission with the assistance of the NC Sheriffs' Association.

The first scenario indicates a decline in SMCP capacity over the projection period from 1,170 in FY 2023 to 1,089 in FY 2027 – a decrease of 81 beds or 7% overall. However, capacity may increase if a number of jail projects that are expected to be completed between FY 2023 and FY 2026 switch from undecided and/or sending only to a receiving county status.

The second scenario indicates a decline in SMCP capacity over the projection period from 1,106 in FY 2023 to 1,036 in FY 2027 – a decrease of 70 beds or 6% overall. In the first year of the projection, there is an increase in beds due to the anticipated recovery of offline beds as a result of the temporary moratorium ending in the second half of FY 2023. However, counties can change the number of beds

volunteered at any point, which ordinarily creates some uncertainty for future planning. It is important to note for both scenarios that the projected capacity could be further altered by other unexpected factors as well as those related to ongoing staffing shortages.

The projections do not address any potential issues related to funding. The SMCP pays local jails to house offenders; capacity is, in part, based on adequate funding to pay for the use of the beds. Without sufficient funds, capacity would likely be reduced, and additional sentenced misdemeanants may be transferred to a state prison, potentially burdening the prison system.

The relationship between state and local facilities in the unique context of the SMCP highlights the importance of accurately understanding both capacity and population for the program. Without a projection of the SMCP population, it is not possible to assess whether the projected capacity will meet future population needs. The Sentencing Commission has determined it would be feasible to project the SMCP population.¹⁰ Taken together, the projected population in context with projected capacity would inform policymakers whether the committed and expected beds will be sufficient to meet the needs of the program while also allowing for more accurate resource planning.

¹⁰ See <https://www.nccourts.gov/assets/documents/publications/SMCP-Population-Projection-Feasibility-Study.pdf?Xug6iQe2QYmxFvdAxLYj1HNslW9T605A> for the Sentencing Commission's report on the SMCP population projection feasibility.