



STUDY OF DWI
SENTENCING
AND CORRECTIONAL
POLICIES AND
PRACTICES

NOVEMBER
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I. INTRODUCTION

On January 7, 2016, David Guice, then Commissioner for the Division of Adult Correction and Juvenile Justice (DACJJ) of the North Carolina Department of Public Safety (DPS), submitted a letter to the North Carolina Sentencing and Policy Advisory Commission (Sentencing Commission or Commission), requesting the Commission review sentence credit policies concerning Driving While Impaired (DWI) offenders. (See Appendix A.)

Mr. Guice noted that for at least 25 years, prison policies have included the use of both good time and gain time credits for driving while impaired (DWI) offenders, resulting in an automatic reduction of time served in most cases. Recent changes, including the implementation of Structured Sentencing and the Justice Reinvestment Act (JRA), as well as the move of all DWI offenders from state prisons to county jails through the Statewide Misdemeanant Confinement Program (SMCP), prompted DACJJ officials to seek the Commission's input. Specifically, DACJJ sought an analysis of sentence credit policies that would help the division ensure that practices regarding DWI offenders are consistent with other misdemeanor areas and to incorporate any changes that may be appropriate.

At its meeting on March 4, 2016, the Commission voted to accept the request. Judge W. Erwin Spainhour, then Chairman of the Sentencing Commission, announced the formation of the DWI Sentence Credit Policy Review Subcommittee (Subcommittee) and appointed members. The Subcommittee convened its first meeting on May 6, 2016.

On May 24, 2016, the co-chairs of the Joint Legislative Oversight Committee on Justice and Public Safety of the North Carolina General Assembly submitted a letter to Chairman Spainhour requesting the Commission study North Carolina's sentencing and correctional policies and practices for impaired driving offenses. (See Appendix B.)

The legislators referred to the JRA and its creation of the SMCP, specifically the placement of all DWI offenders into the SMCP, as prompting questions regarding the availability of treatment and programming for DWI offenders, the awarding of sentence credits, and the amount of time DWI offenders actually serve. The legislators requested a study of those policies and how they interact in practice, as well as input from the Commission regarding any recommended changes and the projected impact of such changes. At its meeting on June 17, 2016, the Commission voted to accept the study request. Chairman Spainhour referred the request to the Subcommittee (renamed the DWI Sentencing Subcommittee).

The Subcommittee met 12 times between 2016 and 2019. It provided regular updates to the Sentencing Commission and received input from the other members. On June 7, 2019, the Subcommittee submitted its package of recommendations to the Sentencing Commission. The Commission reviewed and adopted most of the Subcommittee's recommendations; however, the Commission instructed the Subcommittee to consider making revisions to DWI sentence length ranges to alleviate the impact of its recommendation to eliminate good time. The Subcommittee met once more on September 13 and developed a recommendation for the Commission. The Commission met on September 27, 2019, and approved the Subcommittee's final recommendation.

Report Outline

Section II of this report contains information about the approach taken by the Subcommittee in addressing the two study requests. Members of the Subcommittee identified the primary issues for consideration and developed a set of working goals as the framework for its analysis. Section III summarizes the recommendations adopted by the Commission. Section IV details the three primary areas of the study: pretrial (from arrest to conviction), sentencing (the elements of a DWI sentence), and post-conviction (serving the sentence). This section includes details of the Commission's findings and recommendations for DWI offenses in North Carolina.

The content of this report is informed in large part by consultation with representatives from DACJJ and the North Carolina Sheriffs' Association (NCSA), as well as the North Carolina Post-Release Supervision and Parole Commission (PRSP Commission), the University of North Carolina School of Government (SOG), the North Carolina Department of Health and Human Services (DHHS), stakeholders in law enforcement, prosecutors and defense attorneys who deal with DWI cases, and entities involved in substance abuse treatment. The content is also informed by site visits Commission staff conducted at a number of county jails, regional jails, and state correctional facilities across North Carolina.

II. PROCESS

The Subcommittee began with an overview of DWI sentencing in North Carolina. Unlike most criminal offenses, DWI offenses are not sentenced under Structured Sentencing but under their own system which places the offender in one of six punishment levels based on the presence of grossly aggravating, aggravating, and mitigating factors. (See Appendix C.) Punishment Levels One through Five were enacted as part of the Safe Roads Act in 1983 while Aggravated Level One, the most serious level, was enacted in 2011. Each punishment level has a statutory sentence range and the judge imposes a sentence from within the appropriate range.

After reviewing the DWI sentencing laws and policies, the Subcommittee examined DWI sentencing and correctional data. In FY 2015 there were 34,278 DWI convictions. The majority (58%, or 19,720) of DWI convictions were in Punishment Level Five, and only 2% of DWI convictions were in Aggravated Level One. The majority of DWI prison entries were in Punishment Levels One and Two (34% and 28%, respectively); Aggravated Level One offenders comprised 14% of DWI prison entries. In terms of population, Aggravated Level One offenders accounted for 36% of the DWI Prison Population, while Level One offenders accounted for 37%. Levels Three, Four, and Five offenders made up a total of 7% of the DWI prison population. (See Appendix D for FY 2018 sentencing and correctional data.)

Identified Concerns

Upon reviewing the DWI laws, policies, and data, the Subcommittee began identifying concerns about the system. Members identified their individual concerns and then worked as a group to consolidate similar concerns and to clarify them. Finally, members identified their top five concerns. The top five concerns as identified by the DWI Sentencing Subcommittee are as follows:

1. The availability and adequacy of treatment.
2. Swift resolution of cases.
3. The structured and administration of the sentences.

4. The complexity of the laws in general and as they relate to other sections of the General Statutes.
5. No access to existing tools for treatment and administration of sentences.

Developed Working Goals

Similar to the process the Sentencing Commission used in developing Structured Sentencing, the Subcommittee developed a set of goals to guide their discussions and decisions and to address their concerns. The Subcommittee developed the following goals:

DWI policies should

1. be swift and certain.
2. be truthful in sentencing.
3. reduce recidivism.
4. enhance public safety.

Developed Approach

Once working goals were developed, the Subcommittee discussed possible approaches to making changes to the DWI laws that would make them consistent with the goals. The Subcommittee considered amending the existing statutes or changing the existing laws to bring DWI offenses under Structured Sentencing. The Subcommittee ultimately decided that DWI offenses are different from other criminal offenses and should be treated as such.

Developed Recommendations

Using the working goals as a primary framework, the Subcommittee studied the DWI laws and practices in three parts: pretrial – those that dealt with issues from arrest to conviction; sentencing – those that dealt with the elements of the sentence; and post-conviction – those that dealt with serving the sentence. The Subcommittee also studied treatment and programming for DWI offenders in each of the three parts. Studying these aspects of the DWI laws led the Subcommittee to develop a set of recommendations as well as the impact of each recommendation on the system.

III. SUMMARY OF RECOMMENDATIONS

The Sentencing Commission presents the following recommendations:

1. Promote a state-funded pretrial continuous alcohol monitoring (CAM) pilot program in smaller counties through the Governor’s Crime Commission and collect data for further analysis.
2. Ask the Chief Justice to direct judicial districts to update their case management plans and continuance policies consistent with the North Carolina Commission on the Administration of Law and Justice’s recommendations to the Administrative Office of the Courts in implementing its case management plan.
3. Simplify the prosecutor’s dismissal and explanation requirements by eliminating G.S. 20-138.4(b)(5); combining subsections (2), (3), and (4) of G.S. 20-138.4(b); and deleting the last line of G.S. 20-138.4(a).
4. Study the idea of a lesser included offense for DWI.

5. Enumerate a mitigating factor for use in DWI sentencing if “the defendant has accepted responsibility for the defendant’s criminal conduct at an early stage of the criminal process.”
6. Authorize conditional discharge for certain eligible DWI offenses.
7. Authorize an expunction option for DWI Levels 4 and 5 after a guilty plea.
8. Eliminate the requirement that the judge impose a minimum term of imprisonment for DWI offenders.
9. Eliminate good time credits for DWI offenders by repealing G.S. 148-13(b) and amending related statutes.
10. Eliminate gain time credits for DWI offenders by repealing G.S. 148-13(b) and amending related statutes. Amend earned time credit statutes for misdemeanor offenders to apply to all DWI offenders.
11. Amend the sentence ranges assigned to the DWI punishment levels in order to reduce the impact of eliminating good time credits.
12. Eliminate discretionary parole release for DWI offenders.
13. Expand post-release supervision (PRS) to DWI offenders in Aggravated Level One or Level One who receive a sentence of 12 months or more. PRS for DWI offenders should have the following elements:
 - a. A nine-month period of supervision in the community.
 - b. Six months of confinement for violation of a condition of supervision; confinement may be imposed in three-month increments for technical violations.
 - c. The term of supervision and the suspended period of confinement should be added on to the end of the active sentence and pronounced as part of the sentence.
14. Authorize DPS to use delegated authority on DWI offenders who are sentenced to probation.
15. Develop state-run dedicated treatment facilities for housing and providing treatment services to DWI offenders in Aggravated Level One and Level One, as recommended by the Sentencing Commission in its Effective Setting Study.

IV. FINDINGS AND RECOMMENDATIONS

This section details topics and information the DWI Sentencing Subcommittee considered in developing its recommendations. Information is organized by the typical process flow of a case – from pretrial to post-conviction. Where relevant, recommendations are detailed, including commentary. Areas where the Commission opted not to recommend changes are also noted.

Pretrial – From Arrest to Conviction

Resources

DWI offenders have a right to pretrial release under conditions set by a judicial official. Given the nature of the offense, it may be desirable to provide supervision/monitoring as well as substance abuse screening/assessment to minimize the risk of re-offending while the case is pending. However, such resources are costly and not always available. Commission staff conducted a survey of pretrial services providers and district attorneys to better understand the landscape of pretrial services available to DWI offenders. (See Appendix E for full survey results.) The majority of survey respondents indicated that their districts did not offer any type of pretrial services. Of those who did offer pretrial services, all indicated that their districts provide treatment referrals and at least one form of offender supervision. Few respondents indicated that their districts provide assessments and treatment services. Survey

results revealed a wide disparity amongst judicial districts with regard to which types of pretrial resources are available to offenders. Resources tend to be concentrated in more urban areas with larger populations while significantly fewer resources are available to offenders in more rural parts of the state. The Subcommittee discussed many pretrial resources but ultimately focused on CAM (see below).

Continuous Alcohol Monitoring

CAM involves transdermal testing to detect and report alcohol consumption, typically through the use of an ankle bracelet device. The device is engineered to report instances of alcohol consumption to monitoring agencies or court officials. CAM is authorized as a condition of pretrial release for offenders charged with DWI (and other criminal offenses) pursuant to G.S. 15A-534. Currently the SCRAMx device by Alcohol Monitoring Systems (AMS) is the only brand of CAM systems approved for use in North Carolina. CAM operates throughout North Carolina via independent franchised service providers. Fees for CAM services are paid directly to the provider by the offender. Costs include an initial installation fee and a daily monitoring fee that varies based on the provider and the monitoring method. Providers may not terminate monitoring for nonpayment unless authorized by the court. There are no statutory provisions enabling indigent offenders to obtain CAM services for free, at a discount, or on a sliding scale. There are few data nationally on the effectiveness of CAM at reducing recidivism – only one study has been conducted with data from North Carolina, which has limited applicability due to its small sample size. (See Victor E. Flango and Fred L. Cheeseman, *Effectiveness of the SCRAM Alcohol Monitoring Device: A Preliminary Test*, *Drug Court Review*, Vol. VI, 2).

Recommendation 1: The Sentencing Commission recommends promoting a state-funded pretrial CAM pilot program in smaller counties through the Governor’s Crime Commission and collect data for further analysis.

Commentary: Because CAM is offender-funded, cost can be prohibitive and indigent offenders may not be able to avail themselves of the opportunity to bail out of jail subject to CAM. Availability of providers and access to services are varied throughout different parts of the state. The Commission decided that piloting a state-funded program would help inform whether CAM can be made more affordable and therefore used more frequently.

With regard to the use of pretrial CAM for DWI offenders, the Commission noted the following outstanding issues:

- Whether there should be prerequisites for the pretrial imposition of CAM, such as a substance abuse assessment indicating a need for monitoring, prior DWI convictions, or a blood alcohol concentration threshold.
- Whether CAM should be a mandatory or discretionary condition of pretrial release for DWI offenders.
- Lack of an option for indigent defendants to access CAM services.
- How long an offender on pretrial release should be subject to CAM.
- Availability of providers and access to services.

It is the Commission’s hope that data collected through the recommended pilot program might inform these issues as well.

Time to Disposition

DWI cases have a longer average time to disposition than other case types in North Carolina, including felonies. In FY 2015, the average time to disposition for non-DWI misdemeanors was 129 days. For felonies, the average time to disposition was 234 days. For DWI misdemeanors, the average time to disposition was 295 days. Chief among the concerns raised by those numbers is the potential that DWI offenders could re-offend in the interim period before their cases are adjudicated.

Case Management

DWI case management, particularly in regard to the number of court date continuances, was identified as an issue in the timely disposition of DWI cases. Using responses from a survey of district attorneys (see Appendix E) and input from stakeholders, the Subcommittee identified some practices and issues that contribute to the longer disposition time for DWIs. One reason district attorneys gave for the length of time to disposition was that defendants come to court not having retained counsel, which necessitates continuances to allow them to obtain representation. Another factor was witnesses (including law enforcement officers) not being present in court for case settings, which also necessitates continuances. Some DWI cases also require making special arrangements to procure the testimony of expert witnesses, such as laboratory analysts, who may have to travel in order to appear in court. This can make scheduling more challenging. The complexity of DWI laws results in more intensive trial preparation and motions practice for DWIs than for other misdemeanor cases. Another frequently cited issue was backlog at the State Crime Lab, causing delays in obtaining the results of blood analyses in DWI cases. Some defendants need time to obtain substance abuse treatment or to save money for court costs, community service fees, fines, and other related expenses prior to resolving their cases. Sometimes more than one of these factors are present in a given DWI case, compounding the delay and further lengthening the amount of time it takes to ultimately resolve the case. In addition to the obstacles mentioned above, case management practices vary greatly amongst judicial districts and counties in North Carolina.

In the late 1990s, at the direction of the General Assembly, the NC Supreme Court devised a caseflow management plan. The plan specified that chief district court judges and senior resident superior court judges are responsible for establishing continuance policies which shall be promulgated and implemented as local rules. These rules are to be filed with AOC and shall incorporate timelines for the disposition of cases. From there, a subcommittee was designated to devise a district court model continuance policy. Although each judicial district was required to develop its own case management plan and continuance policy, few are currently on file with AOC. Many that are on file are out of date. It is unclear to what extent these plans and policies are known or followed in practice in the various judicial districts.

The North Carolina Commission on the Administration of Law and Justice (CALJ) was convened in 2015 to undertake a comprehensive evaluation of North Carolina's judicial system and make recommendations for improvements within its existing framework. Pursuant to the findings of CALJ, the Administrative Office of the Courts (AOC) is in the process of developing and launching an integrated case management system. A time to disposition initiative is in progress and performance metrics are expected to be incorporated into the new case management system.

Recommendation 2: The Sentencing Commission recommends that the Chief Justice of the North Carolina Supreme Court direct judicial districts to update their case management plans and

continuance policies consistent with the Commission on the Administration of Law and Justice's recommendations to AOC in implementing its case management plan.

Commentary: Many local caseload management plans were either out of date or no longer in existence according to AOC's records. As identified by CALJ, lack of standards leads to delays and increased costs for everyone involved. AOC is in the process of developing an integrated case management system, the Commission thought it would be an ideal time for districts to update their plans so that they comply with the new standards that AOC is setting.

Prioritizing Among DWI Cases

There is no statutory guidance as to how prosecutors or courts should prioritize DWI cases. Some cases are resolved rather quickly while others pend much longer. In a survey of district attorneys, case age seemed to be the primary priority factor. Prosecutors feel more pressure to resolve older cases than newer ones. Other relevant factors, such as the complexity of a given case or an offender's prior record, may establish exigency that takes precedence over case age.

No Recommendation: The Subcommittee considered possible options for improving the current approaches to case prioritization and ultimately decided not to make a recommendation in this area.

Commentary: There are a variety of factors that are considered in prioritizing among DWI cases. No common factor dictates priority in every case.

Statutory Requirements on Prosecutors

G.S. 20-138.4 details the statutory requirements incumbent upon prosecutors when dismissing or pleading down impaired driving cases. (See Appendix F.) Such requirements involve voluminous paperwork, including the completion and submission of an official form to the court record, and detailed justification of the exercise of prosecutorial discretion. The information that prosecutors must provide includes the defendant's alcohol concentration or the fact that the defendant refused a test, a list of the defendant's prior offenses involving implied consent or driving with a revoked license, whether the defendant had a valid driver's license at the time of the offense, a statement of any other pending charges against the defendant, the elements the prosecutor believes in good faith can be proved and a list of the elements the prosecutor believes he or she cannot prove and why, the name and agency of the charging officer and whether the officer is available to testify, and a detailed explanation of why the charges are being dismissed. A copy of the form must then be sent to the head of the law enforcement agency that employed the charging officer and to the district attorney who employs the prosecutor. Prosecutors do not have such stringent constraints when dismissing any other types of criminal charges.

Recommendation 3: The Sentencing Commission recommends that the General Assembly make the following amendments to G.S. 20-138.4:

- **Eliminate G.S. 20-138.4(b)(5), the requirement that the prosecutor describe the elements the prosecutor believes in good faith can be proved and a list of those elements the prosecutor cannot prove and why.**
- **Combine subsections (2), (3), and (4) of G.S. 20-138.4(b), all of which deal with verifying the defendant's prior record, driving history, and current pending charges.**

- **Delete the last line of G.S. 20-138.4(a) which states that “general explanations such as ‘interests of justice’ or ‘insufficient evidence’ are not sufficiently detailed to meet the requirements of this section.”**

Commentary: Stakeholders indicated that such strict requirements and extensive documentation are burdensome for prosecutors. Prosecutors may be reluctant to dismiss or plead down DWI charges, even when it might be appropriate. Much of the information required by subsections 2, 3, 4, is already in the case file. The Commission decided that eliminating redundancy may increase efficiency in processing cases and allow prosecutors to exercise appropriate discretion.

Incentives for Defendants to Plead

Ninety-five percent of non-DWI convictions in North Carolina are resolved by plea agreement.¹ Where appropriate, the prosecutor is able to offer an incentive that benefits the defendant while the State processes the case and obtains a conviction in an efficient manner. For DWI convictions, only about 85% are resolved by plea agreement.² The DWI laws are constructed in such a way that they do not offer as many options to resolve cases by plea negotiation. As a result, DWI cases take longer to resolve, using more court resources and potentially increasing the risk of the defendant reoffending while awaiting trial. In addition, the outcome of the case is less certain for both the State and the defendant.

Lesser Included Offense

Currently, there is not a lesser included offense of DWI. Until 1983, North Carolina had an alcohol-related reckless driving offense (referred to as “wet reckless”), that was a lesser included offense of DWI. This offense was repealed with the passage of the Safe Roads Act. Many other states allow some degree of plea bargaining in impaired driving cases, although there are some that specifically prohibit DWI plea deals, including specific prohibitions on the concept of a “wet reckless.”

Recommendation 4: The Sentencing Commission recommends that the General Assembly study the idea of a lesser included offense for DWI.

Commentary: The presence of a lesser included offense for many non-DWI offenses often allows prosecutors and defense attorneys to reach plea agreements. Plea bargaining to a lesser included offense, where appropriate, may allow for greater efficiency in the disposition of DWI cases, saving court time and resources.

Mitigating Factor

In DWI cases, the existence of a mitigating factor can affect the punishment level. North Carolina currently recognizes eight enumerated mitigating factors that apply to DWI sentencing, including a “catch all” factor. Sentencing judges have discretion as to which mitigating factors apply in a given case and how to weigh them against aggravating factors. As it stands now, the judge could find that a defendant’s guilty plea or acceptance of responsibility satisfies the “catch all” factor, but there is no expressed factor for acceptance of responsibility that applies to DWI sentencing. For use in felony sentencing, North Carolina recognizes a mitigating factor where the defendant accepts responsibility for his criminal conduct.

¹ NC Sentencing and Policy Advisory Commission, FY 2018 Felony and Misdemeanor Statistical Report Data.

² NC Sentencing and Policy Advisory Commission, FY 2018 DWI Statistical Report Data.

Recommendation 5: The Sentencing Commission recommends that the General Assembly enumerate a mitigating factor for use in DWI sentencing if “the defendant has accepted responsibility for the defendant’s criminal conduct at an early stage of the criminal process.”

Commentary: The Commission determined that accepting responsibility for criminal conduct is an important factor in getting the defendant to acknowledge the seriousness of the offense. The enumeration of a mitigating factor for accepting responsibility could serve to incentivize defendants to plead guilty, where appropriate.

Conditional Discharge

G.S. 90-96 allows conditional discharge for certain drug offenses if the defendant meets certain qualifications. Under a conditional discharge pursuant to G.S. 90-96, the defendant is technically convicted of the offense but is placed on probation without the court actually entering judgment. If the defendant succeeds on probation, the court will discharge and dismiss the case. If the defendant is noncompliant with the terms of probation, the court may enter judgment and proceed to sentencing. In 2015 the General Assembly specifically excluded DWI from any provisions of the law that might have otherwise allowed for a conditional discharge.

Recommendation 6: The Sentencing Commission recommends that the General Assembly authorize a conditional discharge option for certain eligible DWI offenses, including the condition that a prior conditional discharge be counted as a prior DWI conviction for any subsequent DWIs. The Commission did not determine the specific eligibility requirements.

Commentary: Conditional discharge gives offenders the opportunity to avoid a criminal conviction. Allowing this option for DWI offenses may allow for more efficient processing of eligible cases but the Commission noted that it was important to retain the offense as part of the offender’s criminal history if the offender should be convicted of a subsequent DWI.

Expunction

North Carolina law allows for expunction of certain convictions for particular offenders. As with conditional discharge, the General Assembly specifically disallowed expunctions for DWI offenses as of 2015.

Recommendation 7: The Sentencing Commission recommends that the General Assembly enact an expunction option for DWI convictions in Levels 4 and 5 following a guilty plea, with the caveat that an expunged DWI conviction could still be used in calculating prior record if the offender is charged and convicted of any subsequent DWIs.

Commentary: While there are concerns about the value of expunctions in the Internet age, they continue to be an attractive option for those seeking relief from the consequences of a criminal conviction. The Commission decided that this could be beneficial to the offenders who only receive a single DWI conviction in their lifetime, but that it was important to retain that conviction as part of the offender’s criminal history if the offender should be convicted of a subsequent DWI.

Sentencing – Elements of the Sentence

Minimum Sentence

DWI laws require the judge to impose a maximum sentence for a DWI offense and authorize the imposition of a minimum sentence. That minimum sentence can be the statutory minimum term, the same as the maximum sentence, or any length in between. FY 2015 data showed that 86% of the active sentences imposed and 97% of the suspended sentences imposed had a minimum sentence equal to the maximum sentence. If a minimum sentence is imposed, the offender must serve it but it is reduced by good time, and that minimum sentence is also used in determining the offender's parole eligibility date.

Recommendation 8: The Sentencing Commission recommends that the General Assembly eliminate the requirement that the judge impose a minimum term of imprisonment for DWI offenders.

Commentary: The Commission decided that the minimum sentence was no longer necessary. First, there is no guidance as to how the judge determines the length of the minimum sentence so it varies between defendants and between judges. Second, since the Commission has decided to recommend eliminating parole release (*see below*), a minimum sentence no longer has any meaning in relation to the actual time the defendant will serve. Imposing a single term selected from within the appropriate statutory sentence range is the same process the judge uses for sentencing non-DWI misdemeanor offenders and should simplify the sentencing process.

Sentence Credits

DWI offenders are eligible for a variety of sentence credits, more than non-DWI offenders. These credits reduce the percent of the sentence the offender serves and thereby affect the truthfulness of the sentence imposed by the court.

Good Time

Good time is sentence credit awarded at the rate of one day deducted for each day served in custody for good behavior and/or without an infraction of offender conduct rules. (State of North Carolina, Department of Public Safety, Prisons Policy and Procedure Manual, Chapter B, Section .0110) It exists to encourage the offender to comply with the facility rules but it results in an automatic deduction of fifty percent of the sentence. DWI offenders have received good time since before the current DWI laws were enacted in 1983; however, it only applies to offenders in punishment levels One through Five, offenders in Aggravated Level One are not eligible for good time. With the enactment of Structured Sentencing in 1993, good time was eliminated for all non-DWI offenders.

Recommendation 9: The Sentencing Commission recommends that the General Assembly eliminate good time credits for DWI offenders by repealing G.S. 148-13(b) and amending related statutes.

Commentary: The Commission decided that eliminating good time would bring the time an offender serves closer to the sentence imposed, thereby instilling truth in DWI sentencing. In addition, it would establish consistency in the percent of the sentence served among DWI offenders and in comparison to non-DWI offenders. The Commission noted, however, that eliminating good time will double the amount of time DWI offenders serve and that will have an impact on the number of beds required for housing DWI offenders (*see Appendix G for an estimated impact of proposed changes*). The Commission

recommended amending the statutory sentence ranges to compensate for the elimination of good time credits. (See Recommendation 11.)

Gain Time

Gain time is sentence credit awarded for participation in approved work and/or program activities. (State of North Carolina, Department of Public Safety, Prisons Policy and Procedure Manual, Chapter B, Section .0110) Like good time, DWI offenders have received gain time since before the current DWI laws were enacted in 1983; however, only offenders in punishment levels One through Five are eligible. Gain time is currently awarded at the rate of 2/4/6 days per month, depending upon the activity. Misdemeanor offenders sentenced under Structured Sentencing are not eligible for gain time but receive a similar credit known as earned time. For misdemeanor offenders, earned time is awarded at a rate of up to 4 days per month.

Recommendation 10: The Sentencing Commission recommends that the General Assembly eliminate gain time credits for DWI offenders by repealing G.S. 148-13(b) and amending related statutes. The Sentencing Commission also recommends that the General Assembly amend the earned time credit statutes for misdemeanor offenders to apply to all DWI offenders.

Commentary: Earned time serves as an incentive to participate in treatment and other programs and the Commission believed that all DWI offenders should be eligible for that incentive. In addition, DWI offenders are currently housed in the same facilities as non-DWI offenders (local jails through the SMCP) and putting them all under the same system of sentence credits (up to four days per month) would simplify management of the inmate population for sheriffs. It noted that awarding gain time to DWI offenders can produce an inconsistency in the amount of time served among misdemeanor offenders.

Statutory Sentence Ranges

Sentence ranges for DWI sentences were established as part of the Safe Roads Act of 1983. (See Appendix C.) They are generally longer than Structured Sentencing misdemeanor sentence ranges but DWI offenders are eligible for sentence reductions in the form of good time credits.

Recommendation 11: The Sentencing Commission recommends that the General Assembly amend the sentence ranges assigned to the DWI punishment levels in order to reduce the impact of eliminating good time credits. (See Recommendation 9.)

Commentary: Eliminating good time while retaining the same sentence ranges could result in DWI offenders serving up to twice the amount of time they are currently serving, which would also increase the number of beds required to house DWI offenders. In order to reduce the impact of the recommendation, it would be necessary to reduce the sentence ranges available. The Commission noted that while reducing sentence ranges may produce shorter sentences, eliminating good time means DWI offenders will serve a greater percentage of the sentence imposed than they currently do. This is similar to what occurred when the General Assembly enacted Structured Sentencing – sentence lengths were reduced to compensate for the elimination of good time credits, but offenders serve a much larger percentage of the sentence imposed by the court.

The Commission specifically recommended changing the sentence ranges by adjusting the statutory maximum terms so that the average time DWI offenders currently serve becomes the midpoint of each

range. (See Table 1.) Because the average time served is currently the midpoint of the ranges in Levels Three through Five, the effect of this change is that only the statutory maximum terms in Levels One and Two would be reduced. The Commission decided not to change the range for Aggravated Level One; offenders in this punishment level are not eligible for good time thus the elimination of good time would not impact the amount of time they serve. It is estimated that this approach would eliminate the need for additional beds due to the recommendation to eliminate good time. (See Appendix G.)

Table 1
Proposed Sentence Ranges for DWI Offenses
Using Current Average Time Served as Midpoint of New Range

Punishment Level	Current Law		Proposed Ranges	
	Minimum	Maximum	Minimum	Maximum
Agg. Level 1*	12 months	36 months	12 months	36 months
Level 1	30 days	24 months	30 days	15 months
Level 2	7 days	12 months	7 days	10 months
Level 3	72 hours	6 months	72 hours	6 months
Level 4	48 hours	120 days	48 hours	120 days
Level 5	24 hours	60 days	24 hours	60 days

*The Commission decided not to change the sentence range for Aggravated Level 1.
 Note: Highlights indicate the numbers that would change.

Multiple DWI Convictions

The General Statutes prohibit a judge from consolidating multiple DWI convictions but allow the judge to run them consecutively without any limit. This can result in DWI offenders receiving significantly longer sentences; it is also the opposite of the rules for non-DWI convictions.

No recommendation: The Sentencing Commission did not recommend changing the statutory prohibition on consolidating two or more impaired driving charges for judgment. The Commission also did not recommend changing the judge’s ability to impose consecutive sentences for impaired driving offenses.

Commentary: The Commission decided that DWI offenses are different from other types of offenses and that the judge should have the discretion to run sentences consecutively.

Release

Under the DWI laws, offenders can be released and supervised in the community for the last portion of their active sentence with the type and extent of supervision varying by the offender’s punishment level. In most cases, the offender can also refuse supervision and serve out his or her sentence.

Parole

Most DWI offenders are eligible for parole release. DWI offenders in Levels One through Five are eligible for parole release at any time if there is no minimum sentence, or after serving the minimum sentence imposed or one-fifth of the maximum penalty allowed by law for the offense, whichever is less, less

good time. The decision is in the discretion of the PRSP Commission; however, the offender has the right to refuse parole and finish his or her sentence in confinement. DWI offenders in Aggravated Level One are not eligible for parole release. Non-DWI misdemeanor offenders do not receive any supervision upon release.

Recommendation 12: The Sentencing Commission recommends that the General Assembly eliminate discretionary parole release for DWI offenders.

Commentary: The Commission decided that discretionary parole release conflicts with truthful sentencing. It allows the offender to serve an undetermined and variable portion of the sentence imposed. In addition, it is not consistently available among DWI offenders and it is not available for non-DWI offenders. Eliminating discretionary parole release would increase consistency and truth in sentencing as offenders would serve a longer and more consistent portion of their sentence before release. It would also make DWI sentences easier to understand since they would be similar to non-DWI sentences.

Post-Release Supervision

DWI offenders in Aggravated Level One automatically receive four months of post-release supervision prior to the end of their sentence. DWI offenders in Levels One through Five are not eligible for post-release supervision but may receive parole supervision. Non-DWI misdemeanor offenders do not receive any supervision upon release.

Recommendation 13: The Sentencing Commission recommends that the General Assembly expand post-release supervision to DWI offenders who are sentenced to Aggravated Level One punishment or sentenced to Level One punishment and received a sentence of 12 months or more. PRS for DWI offenders should have the following elements:

- a. **A nine-month period of supervision in the community.**
- b. **Six months of confinement for violation of a condition of supervision, confinement may be imposed in three-month increments for technical violations.**
- c. **The term of supervision and the suspended period of confinement should be added on to the end of the active sentence and pronounced as part of the sentence.**

Commentary: Post-release supervision is designed “to monitor and control the prisoner in the community, to assist the prisoner in reintegrating into society, to collect restitution and other court indebtedness from the prisoner, and to continue the prisoner’s treatment or education.” (G.S. 15A-1368(a)(1)) The Commission felt that the most serious DWI offenders who have been incarcerated for a long period of time (i.e., one year or longer) should be supervised upon release to be monitored but also to help them obtain treatment.

Based on consultations with DACJJ and the PRSP Commission, the Sentencing Commission decided that the period of supervision should be nine months. Supervision is not based on the class of the offense but on the offender’s risk-needs assessment, risk of rearrest, and other factors. The longer period of supervision will give the offender time to participate in a treatment program and allow DACJJ to respond to violations.

The Commission recommended six months as the revocation period for similar reasons. Based on consultations with DACJJ and the PRSP Commission, a four-month revocation period is not long enough. The Sentencing Commission decided that a longer period was necessary, especially if the offender

needed to be placed in a treatment program. The period could be divided into three-month increments to address technical violations.

Finally, the Commission decided that the post-release supervision portion of the sentence should be imposed separately and pronounced at sentencing. This eliminates the need to release the offender early so that they will still have time to serve in case of a violation and it promotes truth in sentencing.

Post-Conviction – Serving the Sentence

Delegated Authority

Delegated authority is a tool provided by the court that enables probation and parole officers (PPOs) to impose graduated sanctions in response to non-compliant offenders. It allows the PPO to impose swift responses to violations of the conditions of probation without having to wait to take the offender back to court. Currently, it is limited to offenders sentenced to probation under Structured Sentencing and is not authorized for DWI offenders.

Recommendation 14: The Sentencing Commission recommends that the General Assembly authorize DPS to use delegated authority on DWI offenders who are sentenced to probation.

Commentary: Currently, PPOs have to take DWI offenders who are alleged to have violated the conditions of probation back to court for every violation. In addition, PPOs who have mixed caseloads of DWI offenders and non-DWI offenders have to follow two different sets of rules when managing their caseload. The Commission felt that authorizing DPS to use delegated authority on DWI offenders on probation would allow the officer to provide a swift response to a violation while reducing the amount of court time spent on probation violations.

The Commission also considered whether delegated authority would be appropriate to use with DWI offenders on PRS. The Commission noted that delegated authority is not currently authorized for non-DWI offenders on PRS either. Because delegated authority is not authorized for offenders of any type on PRS, the Commission did not recommend any changes.

Split Sentence (Special Probation) Location

DWI offenders can receive a split sentence at the time of sentencing in lieu of an active sentence or in response to a violation of a condition of probation. The judge may order the offender to serve up to one-fourth of the maximum sentence authorized by law in confinement. An offender in Aggravated Level One, for example, could serve up to nine months. DWI offenders serve CRVs in the SMCP but they serve split sentences in the local jail in the county in which they were convicted. The Commission considered whether the local jail was the appropriate place for serving a split sentence.

No recommendation: The Sentencing Commission did not recommend any changes to the location where DWI offenders who are sentenced to special probation serve the active portion of their sentences.

Commentary: The Commission expressed concern about offenders with potentially long sentences filling their local jails as well as the different locations based on whether the condition is a split sentence or a

CRV. In FY 2015, there were 9,469 sentences where a split sentence was ordered but the average length was only 19 days. The Commission felt that because the average time served in a split sentence is relatively short, jails seemed to be an appropriate location.

CRVs for Probation Violations

Confinement in Response to Violation (CRV) is a sanction imposed by the court in response to a violation of a condition of probation other than committing a new crime or absconding. CRVs were instituted as part of the Justice Reinvestment Act in 2011 as a way to reduce the number of probation revocations and to help the offender succeed on probation. An offender must receive two CRVs before probation can be revoked and the suspended sentence activated. Initially, felons received a CRV of 90 days while misdemeanants received a CRV of up to 90 days. In 2015, the Sentencing Commission studied the use of CRVs with misdemeanants. The Commission recommended eliminating CRVs for non-DWI misdemeanants because there was not enough time available on a misdemeanor sentence to receive two CRVs and because there was no meaningful opportunity for treatment (felons served CRVs in dedicated CRV centers while misdemeanants served them in local jails through the SMCP). The Commission recommended using quick dips of two or three days in jail instead. The General Assembly adopted these changes but because DWI offenders are not eligible for quick dips, they continue to receive CRVs.

No recommendation: The Sentencing Commission did not recommend any change to the use of CRV with DWI offenders sentenced to probation who commit technical violations. Likewise, the Commission did not recommend any change to the place of confinement for DWI offenders serving CRVs.

Commentary: The Commission discussed the purposes of CRVs and agreed that, while treatment was not available in the SMCP for these offenders, using the CRV did reduce their length of confinement for technical violations and allowed them to return to probation afterward. The Commission discussed the length of the CRV term and noted that, unlike non-DWI sentences, DWI sentences can be up to three years and a term of up to 90 days would be proportionate. In addition, DWI offenders are not eligible for quick dips.

The Commission also considered where DWI offenders should serve CRVs. Felons serve CRVs in dedicated CRV centers that offer programming to help them succeed when they return to probation. Misdemeanor DWI offenders serve CRVs in the same location they would serve their active sentence - local jails participating in the SMCP. The Commission decided that this was still appropriate given the potential length of the CRV.

Active Sentence Location

DWI offenders currently serve their active sentences in local jails that participate in the SMCP. Offenders sentenced in Aggravated Level One and Level One can receive sentences of one year or more, even longer if there are multiple convictions run consecutively. Concerns have been raised about the limited physical space available for the offenders in local jails as well as the access to any sort of treatment. In March 2019 the Sentencing Commission completed a separate study of the Most Effective Setting for Housing and Treatment of DWI Offenders; it recommended that dedicated treatment facilities run by the State would be the most appropriate setting for housing and providing treatment services to DWI offenders in Aggravated Level One and Level One.

Recommendation 15: The Sentencing Commission recommends that the State develop and operate dedicated treatment facilities for housing and providing treatment services to DWI offenders in Aggravated Level One and Level One, as recommended by the Sentencing Commission in its Effective Setting Study.

Commentary: In its Study of the Most Effective Setting for Housing and Treatment of DWI Offenders (March 14, 2019), the Sentencing Commission recommended that dedicated treatment facilities run by the State would be the most appropriate setting for housing and providing treatment services to DWI offenders in Aggravated Level One and Level One. The Commission stated that housing these offenders in dedicated treatment facilities would enable the entity with custody of the offender to better manage the population and it would improve the ability to provide treatment facilities. The Commission recommended that the State run the facilities because of its experience with housing offenders with longer sentences (i.e., felons) and its experience providing treatment services. The Commission adopted these findings and recommendations for this report. (See Appendix G for impact of proposal.)

Treatment/Programming

There are a variety of assessment, education, and treatment programs available for DWI offenders. Programs are provided by local providers as well as DACJJ and DHHS, and range from community-based to residential to confinement.

No recommendation: The Sentencing Commission agreed that gaps exist in the availability of programs and that it would help DWI offenders if there were a continuum of programs, but that the Commission lacked the expertise to identify the appropriate programs. The Commission did not make any recommendation.

Commentary: The Subcommittee reviewed the programs that are available for DWI offenders. It noted that program availability varied by county due, in part, to resources. It also noted that the effectiveness of the programs varied depending on internal as well as external factors.

List of Appendices

Appendix A – Request Letter from Department of Public Safety

Appendix B – Request Letter from Co-Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety

Appendix C – DWI Punishment Chart

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Appendix E – Pretrial Resource Survey Results and District Attorney Survey Results

Appendix F – G.S. 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge in implied-consent case.

Appendix G – Estimated Impact of Proposed Changes

APPENDIX A

LETTER FROM THE DEPARTMENT OF PUBLIC SAFETY



North Carolina Department of Public Safety

Adult Correction and Juvenile Justice

Pat McCrory, Governor
Frank L. Perry, Secretary

W. David Guice, Commissioner

To: Michelle Hall
Executive Director
NC Sentencing & Policy Advisory Commission

From: W. David Guice 
Commissioner
Division of Adult Corrections & Juvenile Justice
Department of Public Safety

Re: Examination of Prisons Sentence Credit Policy on DWI Offenders

Date: January 7, 2016

Director Hall:

The Division of Adult Correction and Juvenile Justice and Secretary of the Department of Public Safety request the assistance of the NC Sentencing and Policy Advisory Commission to review our current sentence credit policies within Prisons concerning DWI Offenders. With the statutory authority to set these guidelines, the Secretary and I believe it is time for this area to be reviewed.

Specifically, for at least the past 25 years, Prisons policies have included the use of both good time and earned time credits for DWI offenders; resulting in an automatic reduction in most cases. With the incorporation of Structured Sentencing, the changes resulting from Justice Reinvestment, and the recent changes moving all misdemeanors including DWI's into the Statewide Misdemeanor Confinement Program; we believe your analysis will assist us in ensuring that the practices in this area are consistent with mandatory minimums in other misdemeanor areas as well as assisting us to incorporate any changes that may be needed.

We appreciate your consideration of this request and look forward to having our staff work with yours on this review.

MAILING ADDRESS:
4201 Mail Service Center
Raleigh NC 27699-4201

www.ncdps.gov



An Equal Opportunity employer

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512 N. Salisbury St.
Raleigh, NC 27604
Telephone: (919) 733-2126
Fax: (919) 715-8477

APPENDIX B

**LETTER FROM THE CHAIRS OF THE
JOINT LEGISLATIVE OVERSIGHT COMMITTEE
ON JUSTICE AND PUBLIC SAFETY**



North Carolina General Assembly
Senate

SENATOR SHIRLEY B. RANDLEMAN
30TH DISTRICT

OFFICE: 628 LEGISLATIVE OFFICE BUILDING
300 N. SALISBURY STREET
RALEIGH, NC 27603-5925
PHONE: (919) 733-5743
EMAIL: shirley.randleman@ncleg.net

COMMITTEES:

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
APPROPRIATIONS ON JUSTICE AND PUBLIC SAFETY
APPROPRIATIONS/BASE BUDGET
HEALTH CARE
JUDICIARY II
PENSIONS & RETIREMENT AND AGING
PROGRAM EVALUATION

May 24, 2016

Judge W. Erwin Spainhour, Chairman
North Carolina Sentencing and Policy Advisory Commission
P.O. Box 2448
Raleigh, NC 27602

Dear Judge Spainhour,

We write to ask the North Carolina Sentencing and Policy Advisory Commission to study the State's sentencing and correctional policies and practices for impaired driving offenses.

Under the Justice Reinvestment Act, the General Assembly created the Statewide Misdemeanant Confinement Program to house misdemeanants who were previously housed in the state prison system. In January of 2015, the General Assembly expanded the Program to include all offenders convicted of impaired driving offenses. Placing these offenders in the Program highlighted a number of questions, some of which predated the change, including the availability of treatment and programming, the awarding of sentence credits, and the amount of time offenders actually serve.

We believe that a study of the policies and how they interact in practice could be beneficial to the criminal justice system and also ask the Sentencing Commission to provide us with the any changes it might recommend as well the projected impact of those changes.

Sincerely,


Senator Shirley B. Randleman
North Carolina Senate
300 N. Salisbury St., Rm 628
Raleigh, NC 27603


Representative Jamie Boles
NC House of Representative
300 N. Salisbury St., Rm 528
Raleigh, NC 27603


Representative Pat Hurley
NC House of Representative
300 N. Salisbury St., Rm 532
Raleigh, NC 27603



APPENDIX C

DWI PUNISHMENT CHART

SENTENCING FOR IMPAIRED DRIVING OFFENSES

PUNISHMENT LEVELS	FACTORS	PUNISHMENT	SENTENCE CREDITS	RELEASE
Aggravated Level One (20-179(f3))	3 grossly aggravating factors apply. (20-179(c))	Active sentence range: Min: 12 months Max: 36 months Or split sentence: at least 120 days	Not eligible.	Not parole eligible; Release at maximum imposed term less 4 months; 4 months PRS (20-179(f3))
Level One (20-179(g))	Grossly aggravating factor #4 ¹ or 2 other grossly aggravating factors apply.	Active sentence range: Min: 30 days Max: 24 months Or split sentence: at least 30 days ²	Eligible. <ul style="list-style-type: none"> • Good time: day-for-day. • Gain time: days per month for participation in programs or work. • Merit time: days per event. (15A-1355(c), (d), 20-179(p), 148-13) 	Parole eligible: <ul style="list-style-type: none"> • At any time if there is no minimum sentence, or • After serving minimum sentence imposed or one-fifth of the maximum penalty allowed by law for the offense, whichever is less, less good time. • Must have served statutory minimum for that level. • Must have obtained a substance abuse assessment and completed any recommended treatment or training program or be paroled into a residential treatment program. (15A-1371, 20-179(p)(3))
Level Two (20-179(h))	1 grossly aggravating factor (other than #4 ^a) applies.	Active sentence range: Min: 7 days Max: 12 months Or split sentence: at least 7 days ³		
Level Three (20-179(i))	Aggravating factors substantially outweigh mitigating factors. (20-179(d) and (e))	Active sentence range: Min: 72 hours Max: 6 months Or split sentence: at least 72 hours Or community service: 72 hours		
Level Four (20-179(j))	No aggravating or mitigating factors or factors substantially counterbalance each other.	Active sentence range: Min: 48 hours Max: 120 days Or split sentence: 48 hours Or community service: 48 hours		
Level Five (20-179(k))	Mitigating factors substantially outweigh aggravating factors.	Active sentence range: Min: 24 hours Max: 60 days Or split sentence: 24 hours Or community service: 24 hours		

¹ Child under 18 or person with mental or physical disability in the vehicle at the time of the offense.

² Not less than 10 days if a condition of special probation is imposed to require that a defendant abstain from alcohol consumption and be monitored by a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety, for a period of not less than 120 days.

³ Abstain from consuming alcohol for at least 90 consecutive days, as verified by a continuous alcohol monitoring system.

Offenses

- Impaired driving. (G.S. 20-138.1)
- Impaired driving in a commercial vehicle. (G.S. 20-138.2)
- Operating a commercial vehicle after consuming alcohol. (Second or subsequent) (G.S. 20-138.2A)
- Operating a school bus, school activity bus, child care vehicle, ambulance, other EMS vehicle, firefighting vehicle, or law enforcement vehicle after consuming alcohol. (Second or subsequent) (G.S. 20-138.2B)

Sentence

A sentence to imprisonment must impose a maximum term and may impose a minimum term. The impaired driving judgment may state the minimum term or may state that a term constitutes both the minimum and maximum terms. (G.S. 15A-1351(b))

Place of confinement for active sentences

For convictions before January 1, 2015:

- DWI defendants who have no prior DWI convictions under G.S. 20-138.1 and who have never been previously imprisoned in a local confinement facility for a violation of Chapter 20 must be sentenced to the local jail. The rule, which applies “notwithstanding any other provision of law,” does not turn on the length of the sentence. (G.S. 20-176(c1))
- DWI defendants being sentenced for a subsequent conviction under G.S. 20-138.1 or who have previously been imprisoned in a local confinement facility for a violation of Chapter 20:
 - Must be sentenced to the jail if the sentence imposed is for 90 days or less, except as provided in G.S. 148-32.1(b).
 - May probably be sentenced to the local jail or to DAC, in the court’s discretion, if the sentence imposed requires confinement of 91 to 180 days, although no statute addresses this category of DWI defendant directly.
 - Must be sentenced to DAC if the sentence or sentences imposed require confinement for more than 180 days. (G.S. 15A-1352(a))

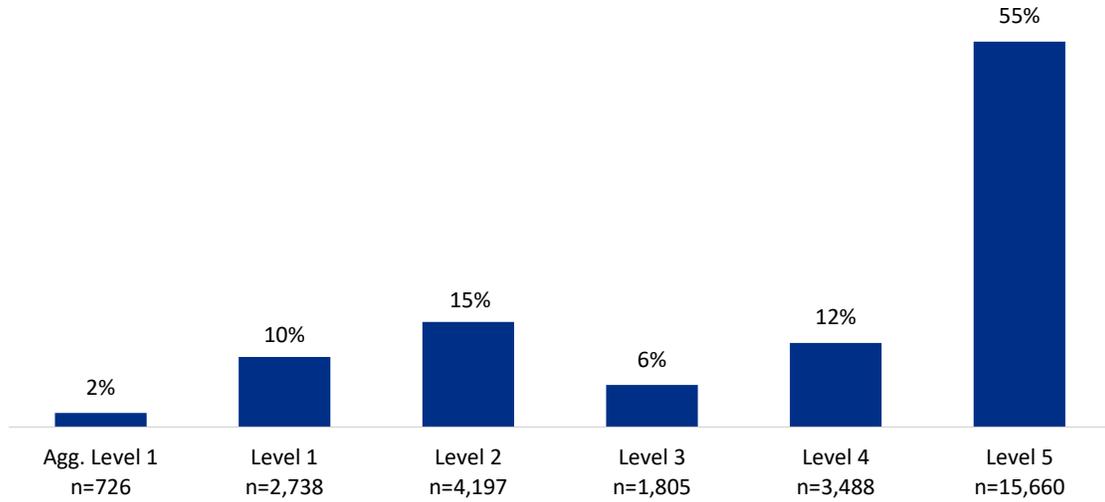
For convictions on or after January 1, 2015:

- DWI defendants must be sentenced to the Statewide Misdemeanant Confinement Program. (G.S. 15A-1352(f))

APPENDIX D

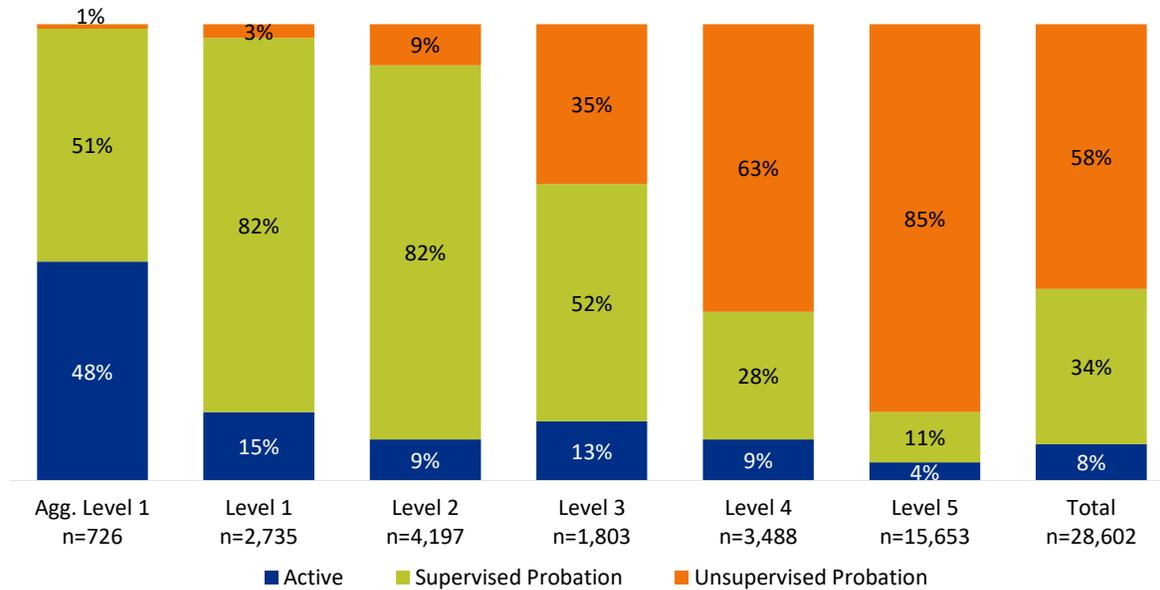
DWI SENTENCING AND CORRECTIONAL DATA

Figure D.1
FY 2018 DWI Convictions by Punishment Level (N=28,614)



SOURCE: NC Sentencing and Policy Advisory Commission, FY 2018 DWI Conviction Data

Figure D.2
Type of Sentence Imposed by Punishment Level



Note: This figure excludes 12 of the 28,614 DWI convictions in FY 2018 for which a type of sentence imposed could not be determined.

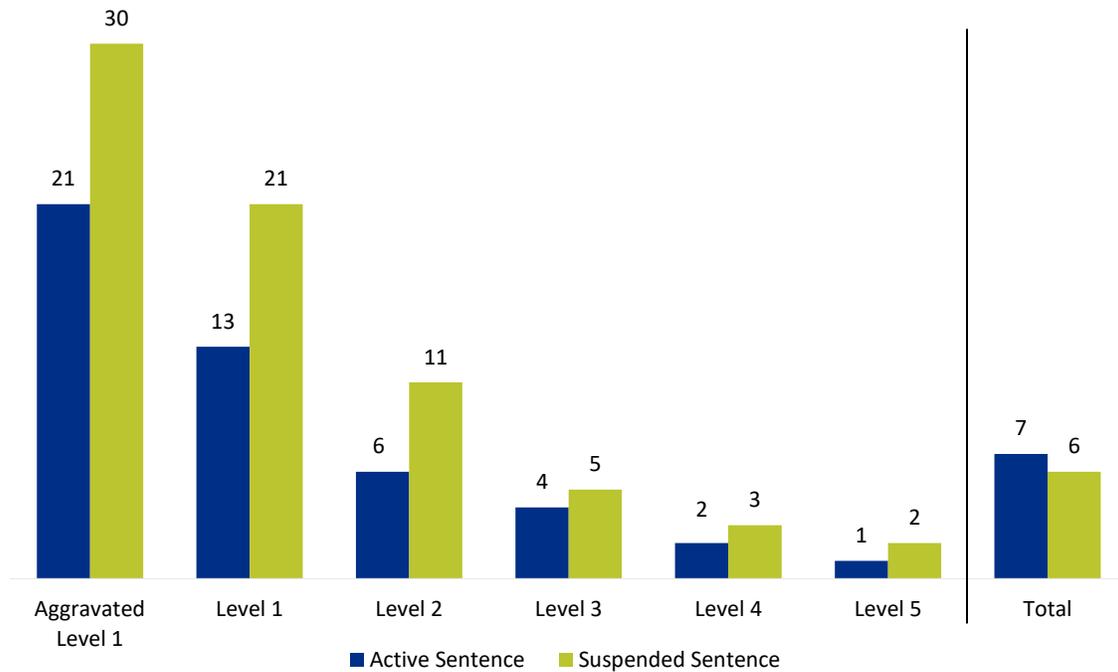
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2018 DWI Conviction Data

Table D.3
Average Length of Maximum Active Sentence Imposed by Punishment Level

DWI Punishment Level	Statutory Minimum	Average Maximum Active Sentence	Statutory Maximum
Agg. Level 1	12 months	21 months	36 months
Level 1	30 days	13 months	24 months
Level 2	7 days	6 months	12 months
Level 3	72 hours	4 months	6 months
Level 4	48 hours	2 months	120 days
Level 5	24 hours	1 month	60 days
Total		7 months	

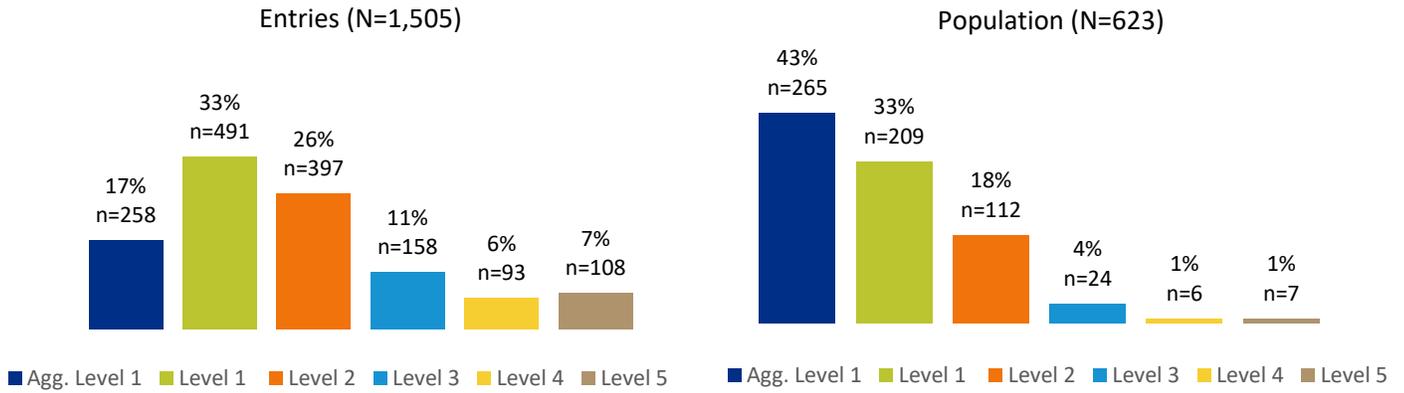
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2018 DWI Conviction Data

Figure D.4
Average Length of Maximum Sentence Imposed by Punishment Level (in months)



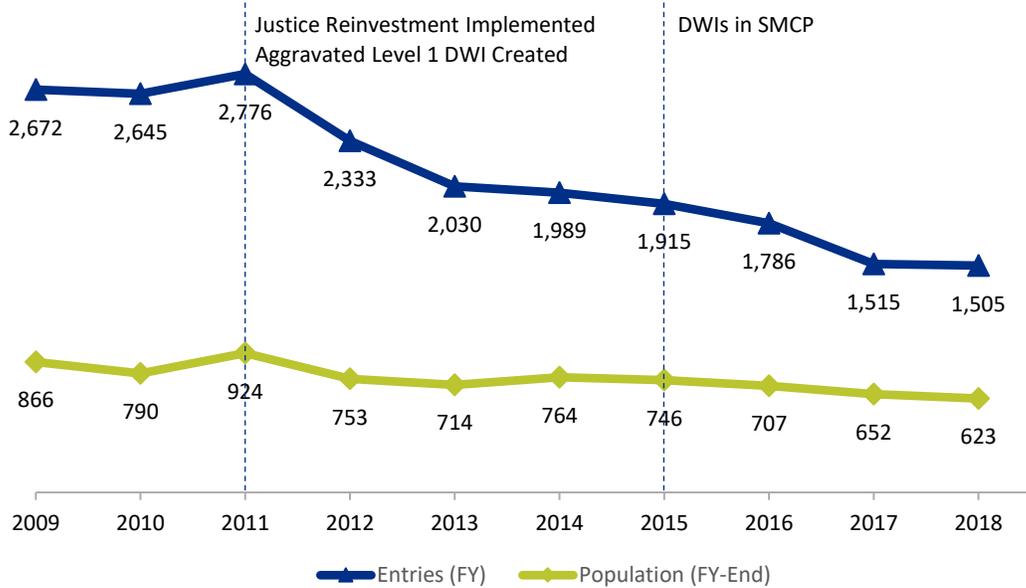
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2018 DWI Conviction Data

Figure D.5
FY 2018 DWI Incarceration Entries and Population by Punishment Level



Note: For this analysis, DWI entries with no level (n=16) were categorized as Level 5 DWIs.
 SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice, Automated System Query (ASQ), FY 2018.

Figure D.6
DWI Incarceration Entries and Population: Ten-Year Trends



SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice, Automated System Query (ASQ), 2009 – 2018.

Table D.7
DWI Incarceration Exits: Maximum Term Imposed, Time Served, and Percent of Sentence Served
by Punishment Level

DWI Punishment Level	Statutory Minimum	Statutory Maximum	Average Maximum Term Imposed (Months)	Average Time Served (Months)	Average % of Sentence Served
Agg. Level 1	12 months	36 months	21	17	77%*
Level 1	30 days	24 months	18	8	47%
Level 2	7 days	12 months	10	5	48%
Level 3	72 hours	6 months	5	3	49%
Level 4	48 hours	120 days	3	2	50%
Level 5	24 hours	60 days	2	1	50%

* Aggravated Level 1 offenders are released onto post-release supervision 4 months prior to the expiration of their maximum term.

SOURCE: NC Department of Public Safety, FY 2018 DWI Incarceration Exit Data

APPENDIX E

**SURVEY RESULTS:
PRETRIAL SERVICES AND DWI DISTRICT PRACTICES,
AS PRESENTED AT THE DWI SENTENCING
SUBCOMMITTEE MEETING ON OCTOBER 6, 2017**

DWI SENTENCING SUBCOMMITTEE

OCTOBER 6, 2017

Surveys: Pretrial services and DWI District Practices

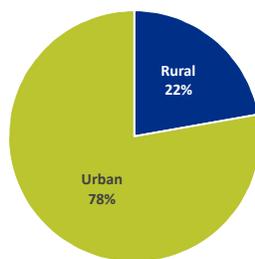
Pretrial Services Survey

- What pretrial services are available for DWI offenders?
- 9 out of 30 association members
- Challenges obtaining information about pretrial services

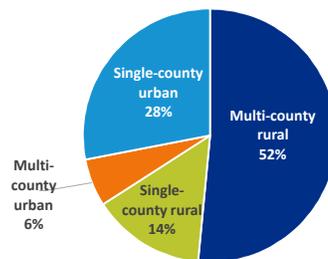
DWI District Practices Survey

- Why do DWI cases take longer to dispose of than other case types?
- Also asked about availability of pretrial services for DWI offenders
- 132 respondents who were DAs and ADAs

Pretrial Services Program Respondents

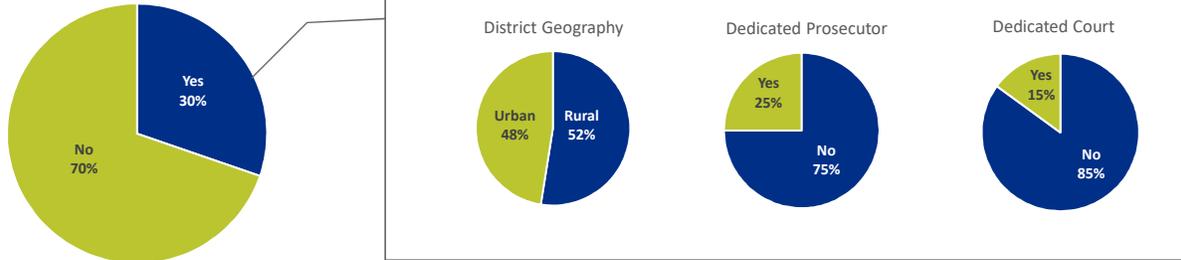


DWI District Practices Respondents



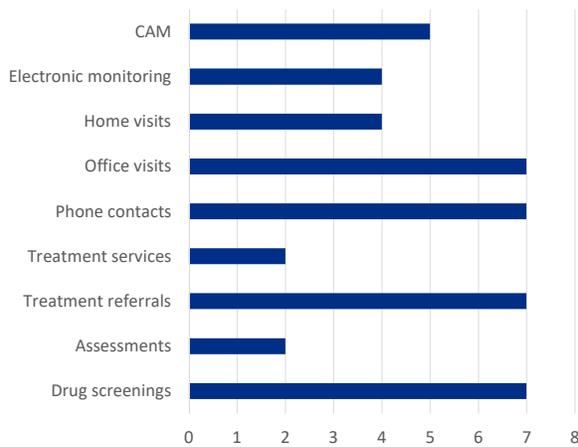
DA Survey: Pretrial Services

Of those responding that pretrial services are available for people charged with DWI:

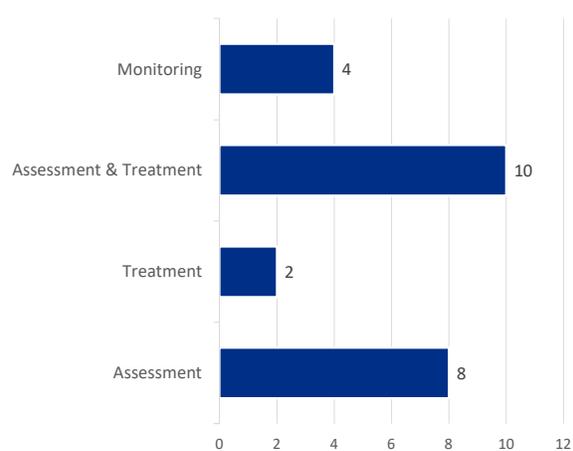


Survey results: What pretrial services are offered?

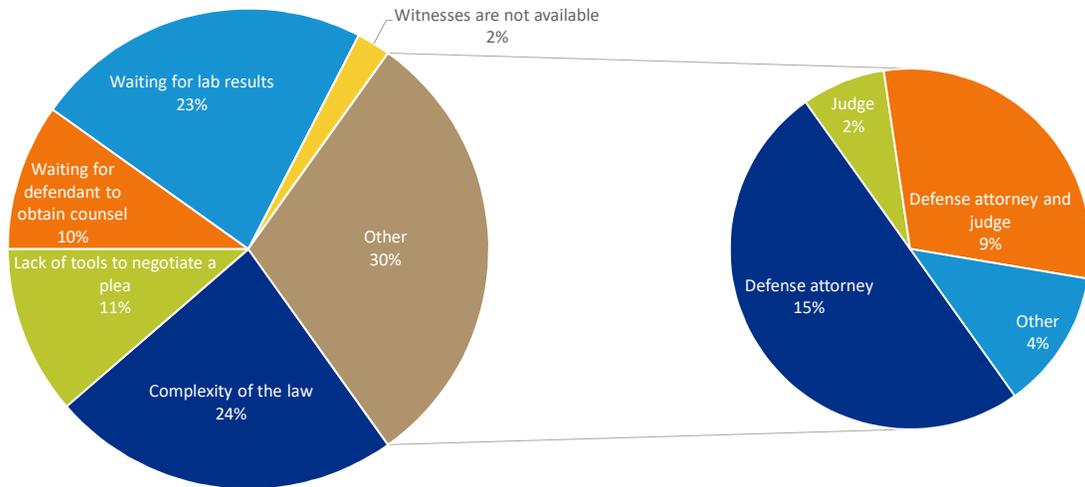
Most commonly selected services – pretrial programs



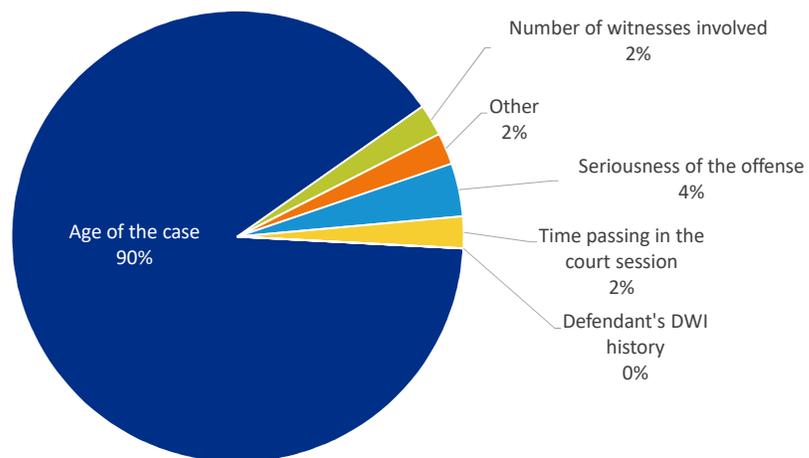
Most commonly cited services - DAs



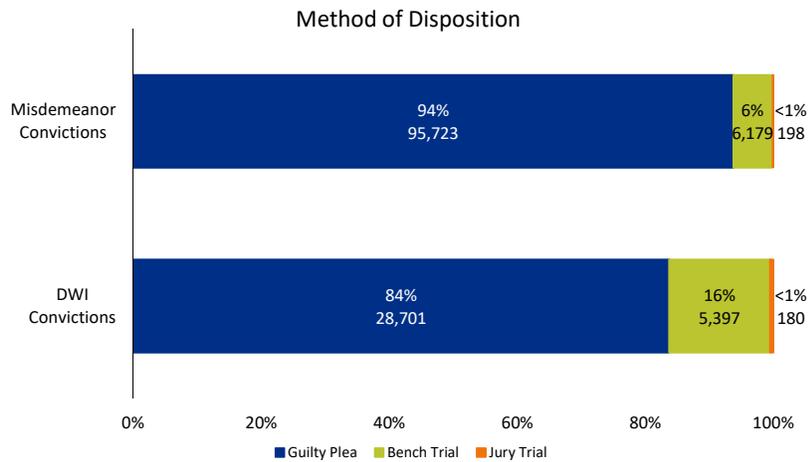
DWI District Practices Survey: Reasons for longer time to disposition



DA Survey: Main factor for prioritizing cases



Issue 5: Incentives to Plead



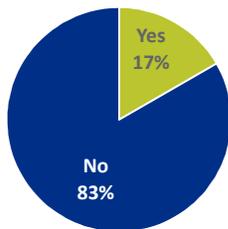
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2015 Misdemeanor Statistical Report Data and FY 2015 DWI Sentencing Data

DA Survey: Sentence Recommendations

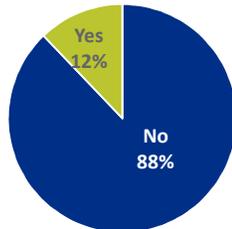
Recommendations for sentence type or length are rarely made.

Majority responded that if s/he makes a recommendation, the court does not follow it.

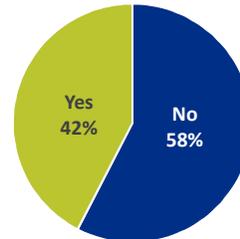
Do you make recommendations for sentence type?



Do you make recommendations for sentence length?



If you make a recommendation, does the court generally follow it?



APPENDIX F

N.C. GEN. STAT. 20-138.4

§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge in implied-consent case.

(a) Any prosecutor shall enter detailed facts in the record of any case subject to the implied-consent law or involving driving while license revoked for impaired driving as defined in G.S. 20-28.2 explaining orally in open court and in writing the reasons for his action if he:

- (1) Enters a voluntary dismissal; or
- (2) Accepts a plea of guilty or no contest to a lesser included offense; or
- (3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not a case subject to the implied-consent law; or
- (4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in a case subject to the implied-consent law.

General explanations such as "interests of justice" or "insufficient evidence" are not sufficiently detailed to meet the requirements of this section.

(b) The written explanation shall be signed by the prosecutor taking the action on a form approved by the Administrative Office of the Courts and shall contain, at a minimum:

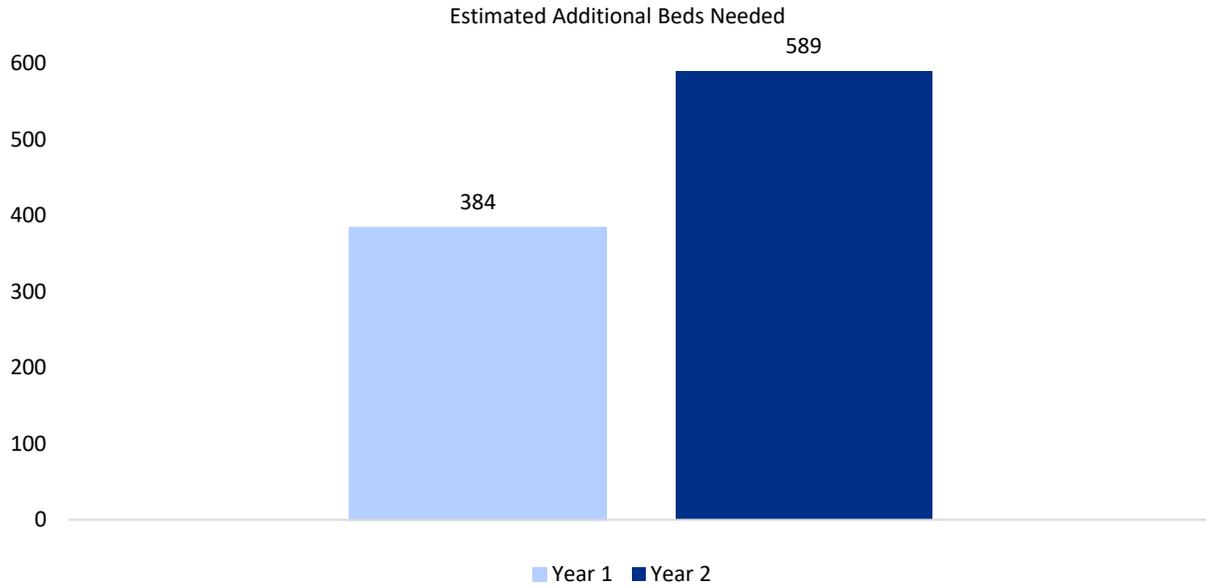
- (1) The alcohol concentration or the fact that the driver refused.
- (2) A list of all prior convictions of implied-consent offenses or driving while license revoked.
- (3) Whether the driver had a valid drivers license or privilege to drive in this State as indicated by the Division's records.
- (4) A statement that a check of the database of the Administrative Office of the Courts revealed whether any other charges against the defendant were pending.
- (5) The elements that the prosecutor believes in good faith can be proved, and a list of those elements that the prosecutor cannot prove and why.
- (6) The name and agency of the charging officer and whether the officer is available.
- (7) Any reason why the charges are dismissed.

(c) **(See Editor's note on effective date)** A copy of the form required in subsection (b) of this section shall be sent to the head of the law enforcement agency that employed the charging officer, to the district attorney who employs the prosecutor, and filed in the court file. The Administrative Office of the Courts shall electronically record this data in its database and make it available upon request. (1983, c. 435, s. 25; 1987 (Reg. Sess., 1988), c. 1112; 1989, c. 771, s. 18; 2006-253, s. 19; 2007-493, s. 16.)

APPENDIX G

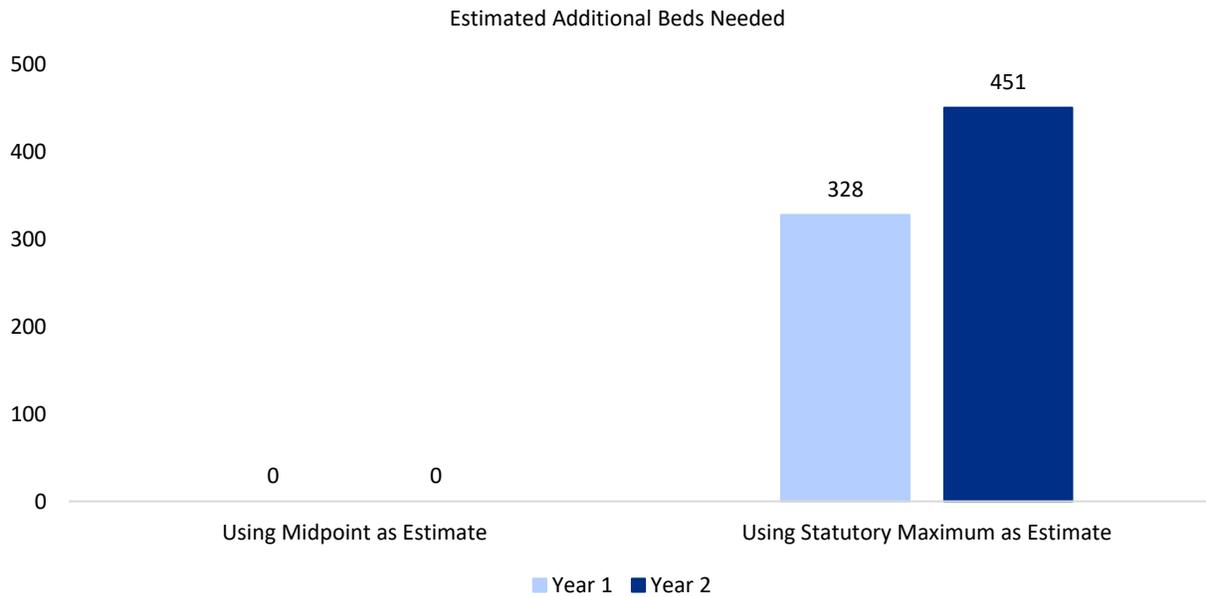
ESTIMATED IMPACT OF PROPOSED CHANGES

Figure G.1
Estimated Impact of Eliminating Good Time and Keeping Current Ranges



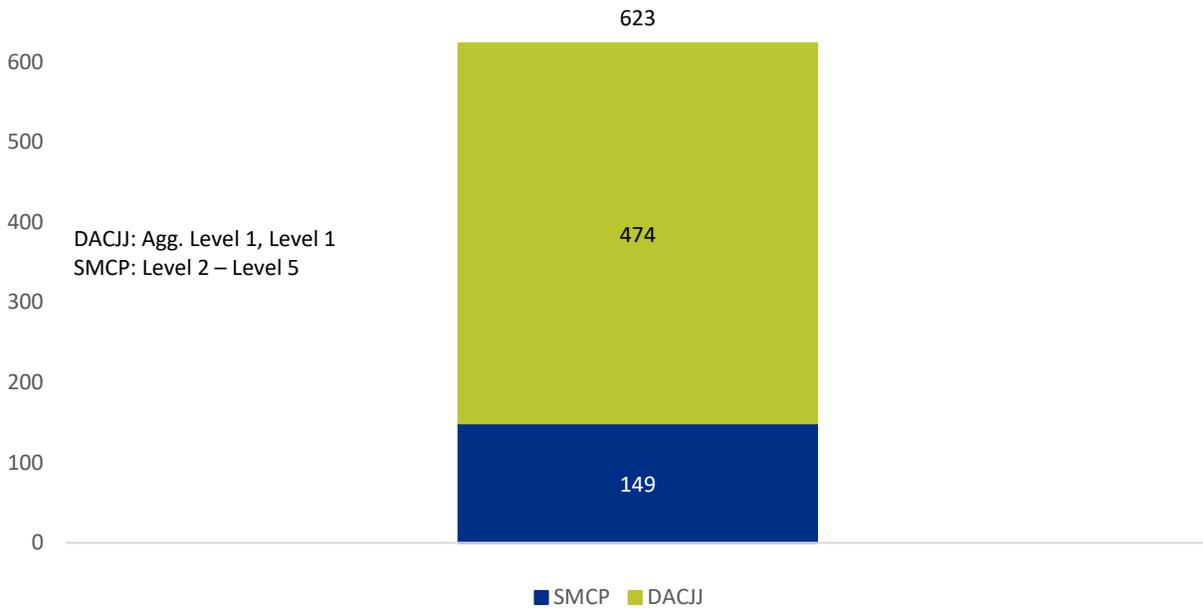
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2018 DWI Incarceration Estimates

Figure G.2
Estimated Impact of Eliminating Good Time and Modifying Ranges by Using Average Time Served as the Midpoint



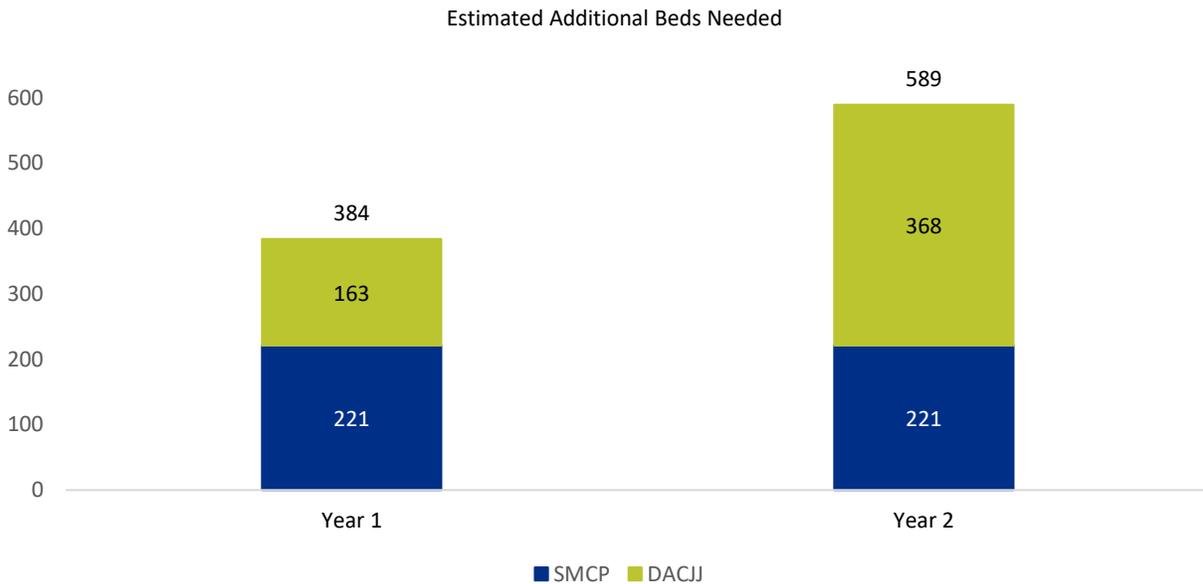
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2018 DWI Incarceration Estimates

Figure G.3
Figure 2018 DWI Population as Distributed under the Effective Settings Study Recommendation



SOURCE: NC Department of Public Safety (Automated System Query) and NC Sentencing and Policy Advisory Commission

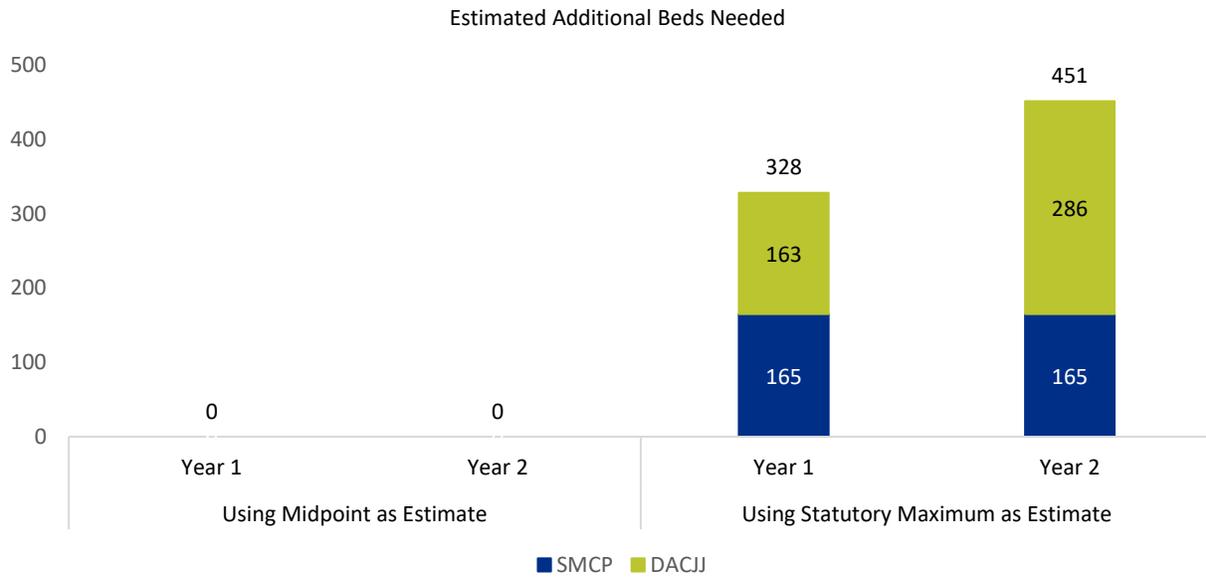
Figure G.4
Estimated Impact of Eliminating Good Time and Keeping Current Ranges as Distributed under Effective Settings Study Recommendation



Note: The current difference between SMCP capacity and population is 205.

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2018 DWI Incarceration Estimates

Figure G.5
Estimated Impact of Changing the Sentence Ranges as Distributed under Effective Settings Study Recommendation



Note: The current difference between SMCP capacity and population is 205.

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2018 DWI Incarceration Estimates