STUDY OF THE MOST EFFECTIVE SETTING FOR HOUSING AND TREATMENT OF DWI OFFENDERS

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NORTH CAROLINA
SENTENCING AND
POLICY ADVISORY
COMMISSION

STUDY OF THE MOST EFFECTIVE SETTING FOR HOUSING AND TREATMENT OF DWI OFFENDERS

STUDY CONDUCTED IN CONSULTATION WITH THE DEPARTMENT OF PUBLIC SAFETY AND THE NORTH CAROLINA SHERIFFS' ASSOCIATION

SUBMITTED PURSUANT TO N.C. SESSION LAW 2018-5, SECTION 18B.2

MARCH 14, 2019

The Honorable Charlie Brown
Chairman

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NORTH CAROLINA
SENTENCING AND POLICY ADVISORY COMMISSION

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I. INTRODUCTION

Offenders convicted of misdemeanor driving while impaired offenses (DWI offenders) who receive an active sentence or have their probation revoked are committed to the Statewide Misdemeanant Confinement Program (SMCP).[1] The SMCP provides State funding to house eligible misdemeanants in jails that have available beds.[2] The creation of this program allowed the State to move misdemeanants from the state prison system to the local jails. However, jails have historically housed offenders with short sentences; DWI offenders in the most serious punishment levels can receive sentences of two or three years of imprisonment for a single conviction and even longer for multiple convictions.[3] This raises the question of whether jails are the appropriate place to house these offenders. In addition, many of these offenders need substance abuse treatment that is often not available in a jail.

During the 2018 Session, the General Assembly required the North Carolina Sentencing and Policy Advisory Commission (Sentencing Commission) to study the housing of DWI offenders. The legislation mandated the following:

> The North Carolina Sentencing and Policy Advisory Commission, in consultation with the Department of Public Safety and the North Carolina Sheriffs' Association, shall study the most effective setting to house and provide appropriate treatment services for Driving While Impaired Aggravated Level One and Level One offenders. The study shall consider whether State prisons, county jails, or dedicated multicounty jail treatment facilities are the most appropriate setting.
>
> The Commission shall report the findings and recommendations, including any legislative proposals, to the House of Representatives Appropriations Committee on Justice and Public Safety and the Senate Appropriations Committee on Justice and Public Safety by February 1, 2019.[4]

The Sentencing Commission reviewed staff's research and findings at their quarterly meeting on December 7, 2018 and identified considerations for determining the appropriate setting. At its meeting on March 1, 2019, the Sentencing Commission examined and deliberated the key findings and made formal recommendations for submission to the General Assembly.

Report Outline

The first section of this report provides information on DWI offenders in North Carolina, their offenses, sentences, place of confinement, and treatment options. The second section summarizes findings from studies and literature on housing and treating offenders. The third section highlights practices in other states for housing and treating DWI offenders. The final sections provide the Sentencing Commission's findings and recommendations.

[1] N.C. Gen. Stat. (hereinafter G.S.) 15A-1352(f) (2017).
[2] G.S. 148-32.1.
[3] G.S. 20-179.
[4] Session Law (hereinafter S.L.) 2018-5, s. 18B.2. The reporting date was subsequently extended to March 15, 2019, to accommodate the Sentencing Commission's meeting schedule.

The content of this report is informed in large part by extensive consultation with representatives from the Division of Adult Correction and Juvenile Justice (DACJJ) in the Department of Public Safety (DPS) and the North Carolina Sheriffs' Association (NCSA). In addition, Sentencing Commission staff conducted site visits at a number of county jails, regional jails, and state correctional facilities across North Carolina. The report contains information from the North Carolina General Statutes, the most recent data available, a literature review, and information on practices in other states.

This publication would not have been possible without the assistance of the various stakeholders consulted, for which the Commission and its staff offer their thanks. In particular, the Commission would like to thank the Division of Adult Correction and Juvenile Justice and the North Carolina Sheriffs' Association.

Site Visits

In addition to reviewing the relevant statutes, data, and legislative reports, Commission staff conducted site visits to select jurisdictions across the state. Commission staff met with jail administrators and staff to better understand the operation and administration of jails and the impact of housing DWI offenders. Commission staff visited a total of twelve jail facilities, including seven county facilities, two annexes, and three regional facilities. The seven county jails and annexes visited were located in Burke, Durham, McDowell, Orange, Richmond, Rowan, and Wayne counties.[5] The three regional facilities visited were Bertie-Martin Regional Jail, Burke-Catawba District Confinement Facility, and Albemarle District Jail. In choosing the sites, Commission staff aimed for maximum variety, while recognizing that it would not be possible to visit enough sites to obtain a representative sample of North Carolina jails. The following considerations informed the selection of these facilities: region of the state (East, West, Piedmont), population density (urban, rural, or suburban[6]), size, capacity, age of the facility, participation in the SMCP, and whether the facility was a regional model. In addition to the jail facilities, staff visited the Confinement in Response to Violation (CRV) Center in Burke County and two correctional residential treatment facilities: DART-Cherry and Black Mountain.

Commission staff developed a standardized set of questions to ask during the site visits. From these visits, Commission staff gained information on many different facets of jail administration, including challenges unique to housing DWI offenders, as well as the operation of correctional residential treatment facilities and a CRV center. Where relevant, information obtained from these interviews is referenced throughout this report.

[5] The southeastern counties in North Carolina were largely excluded from consideration due to the severe hurricanes and flooding in 2018.

[6] Urban, rural, and suburban were based on designations by the North Carolina Rural Center. *See* https://www.ncruralcenter.org/about-us/ for more information.

II. DWI OFFENDERS IN NORTH CAROLINA

DWI offenders are unique in North Carolina. They are not punished under the Structured Sentencing Act[7] like other criminal offenders; they are punished pursuant to a separate system with six punishment levels. The punishment level is determined based on the presence of grossly aggravating factors and aggravating and mitigating factors. The offenders are subject to different rules governing their sentences based on the punishment level. Finally, all DWI offenders are housed in local jails through the SMCP regardless of sentence length.

For context for this report, preliminary data on convictions and sentences imposed for DWI offenses were examined. These data come from the Administrative Office of the Courts' data management system, the Automated Criminal Infraction System (ACIS), and include all 100 counties. Convictions and sentences from FY 2016 (the most recent data available) are detailed below. In addition, DACJJ provided data on DWI inmates who exited prison in FY 2015;[8] this information is also described below, where relevant.

Offenses

The offense of driving while impaired is defined as follows:[9]

> A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:
>
> (1) While under the influence of an impairing substance; or
> (2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or
> (3) With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.

Several other offenses involve driving after having consumed alcohol and are punished in the same way. For purposes of this report, DWI offenses include impaired driving, impaired driving in a commercial vehicle, a second or subsequent conviction of operating a commercial vehicle after consuming alcohol, or a second or subsequent conviction of operating a school bus, school activity bus, child care vehicle, ambulance, other EMS vehicle, firefighting vehicle, or law enforcement vehicle after consuming alcohol.[10] In FY 2016 there were 34,092 convictions for impaired driving offenses in North Carolina.[11] (*See* Appendix A for additional data.)

Sentencing

As previously mentioned, DWI offenders are punished pursuant to a separate sentencing system under G.S. 20-179. That statute establishes a series of six punishment levels and sentencing is based on the

[7] Article 81B of Chapter 15A of the General Statutes.
[8] Prior to 2015, many DWI inmates served active sentences in prison; information on DWI inmates from DACJJ is based on data from those offenders housed in prison prior to the SMCP changes.
[9] G.S. 20-138.1(a).
[10] *See* G.S. 20-138.1, G.S. 20-138.2, G.S. 20-138.2A, and G.S. 20-138.2B.
[11] N.C. Sent. and Policy Advisory Comm'n, FY 2016 Preliminary DWI Conviction Data.

presence of grossly aggravating factors and aggravating and mitigating factors. This study focuses on offenders in punishment Level One and Aggravated Level One. Level One was the most serious punishment level under the original sentencing scheme enacted in 1983;[12] however, the General Assembly increased the punishment when it added Aggravated Level One in 2011.[13]

Sentencing for DWI offenders begins with considering grossly aggravating factors. The factors are specified in statute and are limited to the following:[14]

(1) A prior conviction for an offense involving impaired driving if:
    a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or
    b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing; or
    c. The conviction occurred in district court; the case was appealed to superior court; the appeal has been withdrawn, or the case has been remanded back to district court; and a new sentencing hearing has not been held pursuant to G.S. 20-38.7.

    Each prior conviction is a separate grossly aggravating factor.
(2) Driving by the defendant at the time of the offense while the defendant's driver's license was revoked pursuant to G.S. 20-28(a1).
(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.
(4) Driving by the defendant while (i) a child under the age of 18 years, (ii) a person with the mental development of a child under the age of 18 years, or (iii) a person with a physical disability preventing unaided exit from the vehicle was in the vehicle at the time of the offense.

If the judge in district court, or the jury in superior court, finds that either grossly aggravating factor #4 is present or two of the remaining three grossly aggravating factors are present, the judge will impose a Level One punishment.[15] If the judge, or the jury, finds that three grossly aggravating factors are present, the judge must impose an Aggravated Level One punishment.[16]

In FY 2016, there were a total of 3,691 convictions imposed in either Aggravated Level One (730) or Level One (2,961). Aggravated Level One and Level One convictions accounted for 11% of all DWI convictions in FY 2016.[17]

Once the punishment level is determined, the judge imposes a term of imprisonment from within the statutory range. For Level One, the judge imposes a term of imprisonment of at least 30 days and no more than 24 months. That term may be suspended if the judge imposes special probation, which includes a term of imprisonment of at least 30 days (or 10 days if the judge includes the condition that the offender abstain from alcohol consumption and be monitored by a continuous alcohol monitoring system). Similarly, for Aggravated Level One the judge imposes a term of imprisonment of at least 12 months and no more than 36 months (*see* Table 1). That term may be suspended if the judge imposes special probation, which includes a term of imprisonment of at least 120 days with the conditions that

[12] S.L. 1983-435, s. 29.
[13] S.L. 2011-191, s.1.
[14] G.S. 20-179(c).
[15] G.S. 20-179(g).
[16] G.S. 20-179(f3)
[17] N.C. Sent. and Policy Advisory Comm'n, *supra* note 11.

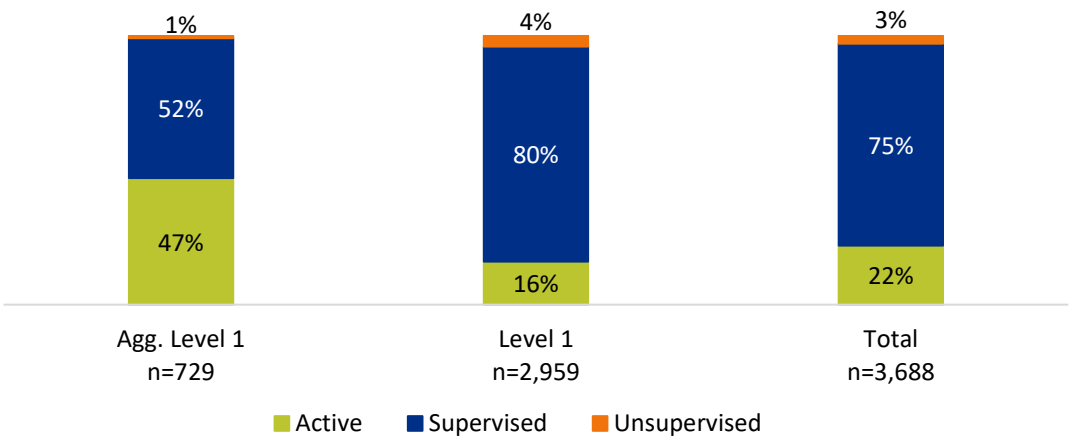
the offender abstain from alcohol consumption and be monitored by a continuous alcohol monitoring system, and that the offender obtain a substance abuse assessment and the required education or treatment. When the judge suspends the term of imprisonment and imposes probation, the judge may subsequently revoke probation and activate the sentence for violations of the conditions of probation.

Table 1: Sentence Ranges for Aggravated Level One and Level One DWI Convictions

Punishment Level	Minimum Sentence	Maximum Sentence
Aggravated Level One	12 months	36 months
Level One	30 days	24 months

Figure 1 shows the type of punishment (i.e., active, supervised probation, unsupervised probation) imposed for Aggravated Level One and Level One convictions. Of the Aggravated Level One convictions, 47% received active punishment and 52% received a supervised probation (which includes a term of imprisonment as a condition of special probation). Sixteen percent of Level One offenders were sentenced to active punishment, while over three-quarters (80%) received supervised probation (which includes a term of imprisonment as a condition of special probation). Overall, very few (3%) of Aggravated Level One and Level One convictions resulted in unsupervised probation.

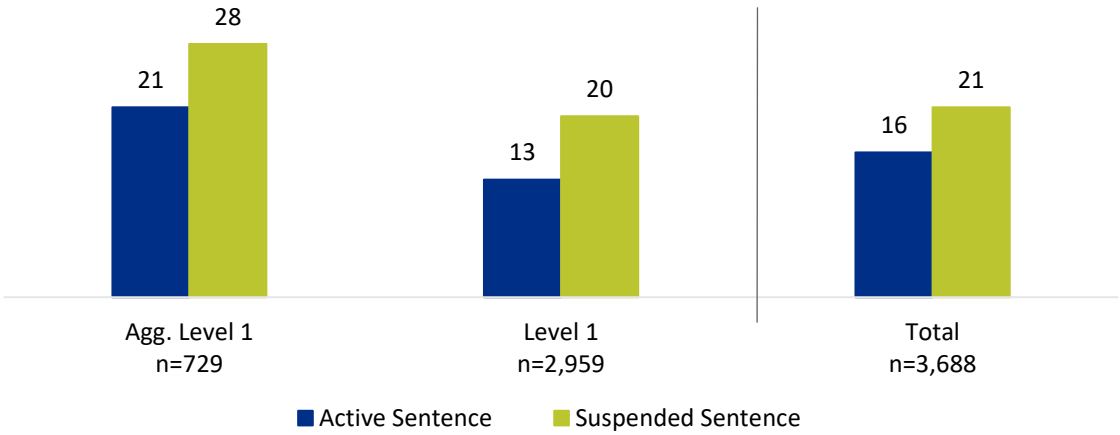
Figure 1: Type of Punishment Imposed by Punishment Level



Note: Of the 3,691 Aggravated Level 1 and Level 1 DWI convictions in FY 2016, 3 with missing values for type of punishment were excluded from this figure.
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2016 Preliminary DWI Conviction Data.

Figure 2 shows the average minimum sentence for Aggravated Level One and Level One convictions. For Aggravated Level One convictions with active punishment, the average minimum sentence imposed was 21 months. For Level One convictions with active punishment, the average minimum sentence imposed was 13 months. For both groups, the average sentence imposed for convictions with a suspended sentence was 7 months longer compared to those with an active sentence.

Figure 2: Average Length of Minimum Sentence Imposed by Punishment Level (in Months)



Note: Of the 3,691 Aggravated Level 1 and Level 1 DWI convictions in FY 2016, 3 with missing values for average length of minimum sentence imposed were excluded from this figure.
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2016 Preliminary DWI Conviction Data.

Sentence Credits

Offenders who are convicted of criminal offenses are generally eligible to earn sentence credits to reduce their sentence while imprisoned; for DWI offenders, eligibility for sentence credits and the types of sentence credits available vary by punishment level (*see* Table 2). Offenders in Level One are eligible for good time and gain time credits. These credits predate Structured Sentencing and DWI offenders in punishment levels One through Five are the only new offenders who are eligible for them. Good time is credit for time spent in custody without a violation of the offender conduct rules.[18] Currently, that rate is set at one day of credit for each day in compliance; this essentially reduces the time an offender serves by 50%. Gain time is credit awarded for working or participating in education or treatment programs while incarcerated.[19] The amount of credit varies by activity but gain time can reduce the time an offender serves by as much as 20%. According to data from DACJJ, in FY 2015, DWI offenders in Level One served an average of 44% of their imposed sentence.[20]

Regarding offenders in Aggravated Level One, the North Carolina General Statutes do not expressly exclude them from eligibility for sentence credits; however, in an advisory letter to the Department of Public Safety, attorneys for the N.C. Department of Justice (DOJ) determined that these offenders are not eligible based on their interpretation of the statutes.[21] Offenders in Aggravated Level One are expressly excluded from the Structured Sentencing Act so they are not eligible for credits available under that Act (earned time). Regarding good time and gain time credits, the DOJ attorneys reasoned that one purpose of those credits is to make an offender eligible for parole early; since offenders in Aggravated Level One are not eligible for parole (*see* below), it was determined that the General Assembly did not intend for them to receive any sentence credits. As a result, offenders in Aggravated

[18] N.C. Dep't of Pub. Safety, *Policy and Procedures Manual*, Chapter B, Section .0111 (2018).
[19] *Id.* at Section .0112.
[20] N.C. Dep't of Pub. Safety FY 2015 DWI Prison Exits.
[21] Aggravated Level One DWI Offenses under N.C. Gen. Stat. Section 20-179(f3), Advisory Letter N.C. Att'y Gen. (June 27, 2012).

Level One serve almost their entire sentence. According to data from DACJJ, DWI offenders in Aggravated Level One served on average, 84% of their imposed sentence in FY 2015.[22]

Table 2: Sentence Credit Eligibility and Amounts by Punishment levels

Punishment Level	Good Time	Gain Time	Earned Time
Aggravated Level One	Not eligible	Not eligible	Not eligible
Level One	Day for day credit	Up to 6 days per month	Not eligible

Sentence credits exist to give the entity who has custody of the offender a tool to encourage positive behavior (by awarding credits) and to discourage negative behavior (by removing credits). During the site visits, jail staff noted that there was a lack of meaningful opportunities for inmates to accrue sentence credits even though DWI offenders other than those in Aggravated Level One are technically eligible for them. While many counties had some variation of a trustee program, inmate job opportunities were often limited to laundry, kitchen, or janitorial work. Jail staff provided mixed responses regarding the behavior of DWI inmates. Generally, DWI offenders were not considered a problem population. However, when behavioral issues did arise in DWI offenders, it was often attributed to long sentence lengths and lack of activities and programming. Jail officials also indicated that DWI offenders tended to develop frustrations stemming from comparing their own sentences with those of DWI offenders sentenced at other levels or non-DWI offenders.

Housing

Prior to 2015, responsibility for housing DWI offenders was divided between the local jails and the state prison system based on several factors. If an offender did not have any prior convictions for impaired driving and had not previously been confined in a local jail for a violation of Chapter 20 of the General Statutes, he or she was housed in the local jail. If an offender did have a prior conviction for impaired driving or had previously been confined in a local jail for a violation of Chapter 20 of the General Statutes, his or her place of confinement depended on the sentence length: if less than or equal to 90 days, the local jail; if 91 to 180 days, the local jail or the state prison system in the court's discretion; if more than 180 days, the state prison system.[23] Each entity paid for the offenders it housed.

In 2011, the General Assembly created the SMCP as part of the Justice Reinvestment Act.[24] The SMCP provides State funding to house certain misdemeanants in local jails. These are jails that have available bed space and contract with the SMCP to house its offenders. Originally, this program excluded misdemeanants serving sentences for impaired driving offenses; however, beginning January 1, 2015, all misdemeanants sentenced for an impaired driving offense, regardless of sentence length, are sentenced to the SMCP.[25] As a result, these offenders are no longer housed in the state prison system, but the counties receive financial assistance to house them.

During site visits, most jail administrators and staff identified space as a primary concern with housing DWI offenders. Several jail administrators expressed a desire to have the capacity and/or space to divide

[22] N.C. Dep't of Pub. Safety, *supra* note 20.
[23] G.S. 20-176(c1) and G.S. 15A-1352(a) (2013).
[24] S.L. 2011-192, s. 7.
[25] G.S. 148-32.1(b2).

the inmate population into separate housing pods based on status or other factors (e.g., type of offense). Currently, inmate populations tend to be housed together in most jails.

Release from Imprisonment

Release from imprisonment also varies by punishment level (*see* Table 3). Offenders in Level One are eligible for discretionary parole release after serving the statutory minimum sentence or, if the judge imposed a higher minimum sentence, after serving the minimum sentence imposed or one fifth of the maximum penalty allowed by law, whichever is less, less any credit.[26] The offender may not be released on parole, however, unless he or she has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.[27] The term of parole is the unserved portion of the sentence to imprisonment[28] and an offender may refuse parole and elect to serve the remainder of his term of imprisonment instead.[29]

The General Assembly added Aggravated Level One to the impaired driving punishment levels in 2011; the rules for release are more like Structured Sentencing than the other impaired driving punishment levels. Offenders in Aggravated Level One are not eligible for discretionary parole release; instead, they are mandatorily released from confinement four months prior to the expiration of their sentence for post-release supervision (PRS). There is no requirement that they first obtain a substance abuse assessment and complete any recommended treatment or training program or be released into a residential treatment program.[30] The period of supervision is four months and an offender may not refuse PRS.[31]

In FY 2015, over three-quarters (77%) of Level One offenders exited prison at the expiration of their sentence (i.e., were not released onto parole); nearly two-thirds (63%) of Aggravated Level One offenders exited prison onto PRS.[32]

Table 3: Type of Release by Punishment Level

Punishment Level	Mechanism	Timing	Supervision
Aggravated Level One	Post-release supervision	Automatic, 4 months prior to expiration of sentence	4 months
Level One	Parole	Discretionary, after serving the minimum sentence	Unserved portion of the sentence

Jail administrators interviewed by staff identified communication and administrative issues that arise when housing DWI offenders. The process for placing recently sentenced DWI offenders within the SMCP takes longer than for non-DWI offenders because of the added step of coordinating with DPS

[26] G.S. 15A-1371(a). Also note that a prisoner serving a sentence of not less than 30 days nor as great as 18 months for impaired driving may be released on parole when he completes service of one-third of his maximum sentence unless the Post-Release Supervision and Parole Commission makes certain findings in writing. G.S. 15A-1371(g).
[27] G.S. 20-179(p)(3).
[28] G.S. 15A-1371(g).
[29] G.S. 15A-1371(e).
[30] G.S. 20-179(f3).
[31] G.S. 15A-1368.2(b).
[32] N.C. Dep't of Pub. Safety, *supra* note 20.

Combined Records. Most DWI offenders are eligible for parole and since the Post-Release Supervision and Parole Commission is part of DPS, the Department must establish and maintain a record of the offender. This adds a layer of communication between SMCP and DPS which is not present for non-DWI offenders in the SMCP. This extra layer can result in confusion over sentence credits awarded and actual release dates as well as create delays when a DWI parolee is brought in for a parole violation.

Treatment

Treatment for DWI offenders has been and continues to be limited. Treatment programs for DWI offenders who were sentenced to the local jails prior to 2015 were very rare. There was no state money available, so counties had to provide the funding for any programs and, even if funding was provided, the local jail often lacked the space for programming.

For DWI offenders sentenced to the state prison system, access to substance abuse treatment programs was limited. The Alcoholism and Chemical Dependency Programs Section (ACDP) of DACJJ developed programs for DWI offenders in certain prisons. Initially, ACDP developed a 35-day program which was available in two prisons (Haywood Correctional Center and Tyrrell Correctional Institution). The program served offenders who required treatment but did not have enough time remaining on their sentence to participate in a 90-day or long-term treatment program. Combined, the programs provided 88 treatment beds and had the capacity to serve 1,000 inmates annually. The first program closed when the Haywood prison closed in October 2011, the second program closed when the grant ended in June 2012.[33]

Subsequently, the ACDP developed one 35-90-day program at Neuse Correctional Institution. It focused on male offenders convicted of impaired driving offenses with short sentences. The program provided 32 beds and had the capacity to serve approximately 220 male inmates annually. During FY 2015, 81% percent of participants successfully completed the program requirements, the other 19% left the program for various reasons including removal for discipline, transfer to another prison, and release upon completion of sentence.[34] The program closed in February 2015 after the General Assembly changed the law and sent DWI offenders to the SMCP.[35]

DWI offenders who received longer sentences might have been able to take advantage of other substance abuse treatment options while in prison, but those options were limited by program capacity. For inmates with substance abuse issues in general, DPS reported that "[d]uring the fiscal year 2014-2015, ACDP resources provided one in three inmates the opportunity for placement in a long-term program and one in two inmates the opportunity for placement in an intermediate program."[36]

Currently, DWI offenders who are sentenced to the local jails through the SMCP still face very limited treatment options. SMCP funds cannot be used for treatment programs,[37] so it falls back on the county to fund any programs. In addition, most local jails lack the space for programming.

[33] N.C. Dep't of Pub. Safety, *Annual Legislative Report FY 2011-12,* 15 (Mar. 2013).
[34] N.C. Dep't of Pub. Safety, *Substance Abuse Treatment Programs Annual Report* 30 (Mar. 2016).
[35] *Id.* at 18.
[36] *Id.* at 6.
[37] G.S. 148-10.4(d).

The majority of jail facilities visited did not have programming opportunities or treatment available for DWI offenders or other offenders with a history of substance abuse. This was attributed to lack of funding, lack of space to accommodate programming needs, and lack of staff to supervise and facilitate programming. As such, most DWI offenders receive no substance abuse treatment or other programming while incarcerated. When treatment was offered in a jail setting, it was very limited and often coordinated by volunteers in the form of Alcoholics Anonymous (AA) or something similar. Jails that offered limited treatment options typically did not conduct any type of risk/needs assessment prior to placement in a treatment program. Even counties in the process of building new facilities indicated that adequate programming space was not always a consideration in design planning.

Of the jail facilities Commission staff visited, only one offered a substance abuse treatment program. Durham County's Substance Abuse Treatment and Recidivism Reduction (STARR) Program, a cooperative effort between the Durham County Criminal Justice Resource Center and the Durham County Sheriff's Department, serves both male and female inmates. Inmates can participate voluntarily or be court ordered into the program. The program is not specific to DWI offenders. Participants engage in addiction education, therapy, and community resources education, and have access to transitional services upon release from the Durham County Jail.

Of the three regional jail facilities in North Carolina, Albemarle District Jail is the only regional jail facility that receives SMCP inmates and is therefore the only regional jail facility that houses sentenced DWI offenders. In the past, Albemarle District Jail offered AA to inmates but terminated the program due to jail administrators' concerns that participants were attending but not taking the program seriously. Jail administrators also described the difficulty of tracking and reporting inmates' AA participation for court purposes.

When asked about the appropriate setting for incarcerating DWI offenders, jail staff almost unanimously expressed the opinion that DWI offenders should not serve their sentences in jails. Most thought the best solution would be a state-funded regional facility for DWI offenders based on the perception that the State has more funding and resources and could therefore offer more opportunities for treatment. They also believed DWI offenders would benefit from being housed with similarly situated offenders.

Beyond the confinement facilities, ACDP operates two residential treatment facilities where the Post-Release Supervision and Parole Commission can send DWI offenders for treatment as a condition of supervision. Black Mountain Substance Abuse Treatment Center for Women (Black Mountain) is a 60-bed residential facility located in Black Mountain that provides services to female probationers as well as parolees and post-release supervisees. The Center provides a 90-day program. In FY 2016, the facility had 293 offenders enroll in the program, 7 of whom were on parole.[38] DART Cherry (DART) is a 300-bed residential treatment facility located in Goldsboro that provides services to male probationers as well as parolees and post-release supervisees. The facility offers a 90-day modified therapeutic community program.[39] In FY 2016, DART had 1,354 offenders enroll in the program, 50 of which were on parole.[40] In order to participate, the DWI offender must have enough time remaining on their period of supervision,

[38] N.C. Dep't of Pub. Safety, *supra* note 34, at 21.

[39] The program offers a modified therapeutic community (TC) program based on the New York Department of Correction "Stay N Out" TC model; a social skills, structured community hierarchy. Programming embraces a cognitive- behavior approach using evidence-based practices and is dedicated to a holistic approach addressing individual needs in six major life areas: Drug/Alcohol, Psychological/Mental Health, Medical/Physical Health, Educational/Vocational, Family/Social, and Legal Status.

[40] N.C. Dep't of Pub. Safety, *supra* note 34, at 19.

the Post-Release Supervision and Parole Commission must order residential treatment as a condition of supervision, and the facility must have space available.

Commission staff visited Black Mountain and DART. The programming and treatment approaches are different at the two facilities based on the differences between the populations they serve. Black Mountain's treatment programming is based on curriculum by Stephanie Covington, which focuses on the intersection of addiction and trauma for women. DART's programming is a modified therapeutic community treatment program based on curriculum by the Hazelden Betty Ford Foundation. Both require participants to maintain a strict daily schedule, although staff at Black Mountain reported that their program offers a slightly more flexible schedule than DART. Treatment is not specific to alcohol or to any other substance.

Both facilities are staffed by Probation and Parole Officers (PPOs) who maintain offender caseloads. Because the offenders at Black Mountain and DART are technically on community supervision, the facilities are not locked down. Offenders may choose to leave without completing the program but, if they do so, they are considered absconders.

When asked about the behavior of DWI offenders, staff at DART reported that DWI offenders tend to behave better than other types of offenders, while staff at Black Mountain reported more difficulty with managing the behavior of DWI offenders. Staff at Black Mountain expressed the impression that DWI offenders tend to attribute their circumstances to bad luck and think they should not be placed in the same category as people they view as true addicts. Staff at both facilities expressed the opinion that offender buy-in to the program is necessary for positive behavior but can be a challenge.

Staff at Black Mountain opined that DWI offenders should be housed in a dedicated treatment facility with a step-down program to better facilitate a return to the community. They noted that making offender assignments based on co-occurring clinical needs, such as depression or a history of trauma, is a best practice as opposed to a one-size-fits-all approach. Staff at DART felt that jail is an inappropriate place to house DWI offenders as jails are primarily meant to house people rather than to provide treatment. They expressed a preference for the concept of a regional treatment facility for DWI offenders, or at least ensuring that each DWI offender serving an active sentence is paroled through DART or Black Mountain for treatment before returning to the community.

Staff also visited the CRV Center in Burke County, which is one of two correctional facilities that provide services to felony offenders confined in response to a technical violation of a condition of probation, parole, or PRS. While the CRV centers do not house misdemeanor DWI offenders, they do utilize an approach to programming that may be instructional in addressing the study request. CRV centers provide offenders with intensive behavior modification programming. Programming is primarily provided by GEO Group under a contract with DPS. Moral Reconation Therapy (MRT), a cognitive behavioral program, is the cornerstone of the CRV centers' programming. Other programming includes substance abuse intervention. The staff at the Burke CRV Center emphasized that their focus is not substance abuse treatment, but rather holistic behavior modification to improve the likelihood that offenders will succeed in the community. The centers do not offer any DWI-specific programming.

Survey of Jail Personnel

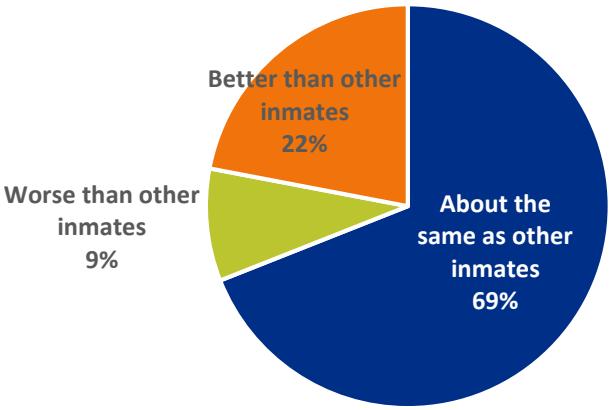
In addition to the site visits, Commission staff partnered with the NCSA to survey jail personnel present at five sessions of the 2018 SMCP Annual Training Classes. To inform the Commission's study,

Commission staff were interested in obtaining the opinions of attendees regarding inmate behavior, barriers to providing treatment in jails, and the best setting to house DWI inmates with long sentences. As staff and administrators currently dealing with the DWI inmate population in a variety of ways, those in attendance at the SMCP trainings were uniquely suited to provide input on these issues.

Attendance at the annual training is mandatory for at least one representative from each SMCP receiving county. Other counties are encouraged to have representatives present at the training, as well. Training sessions were held in September and October 2018, in Catawba, Haywood, Martin, and Wake counties, and in December 2018 in Duplin County. The following questions were asked of 194 respondents at the training sessions.

Question 1: How does the behavior of DWI offenders with longer sentences (1 year or more) compare with other inmates in your facility?

Figure 3: DWI Inmate Behavior

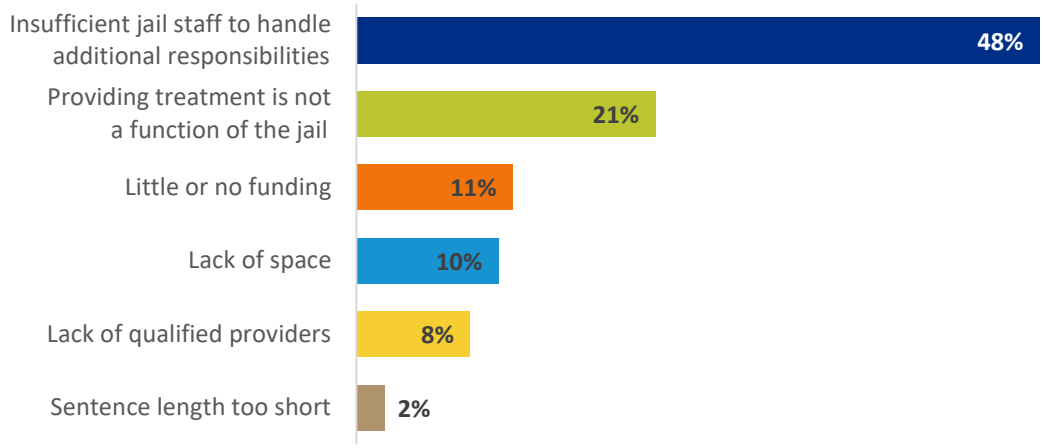


SOURCE: NC Sentencing and Policy Advisory Commission, SMCP Training Survey Questions, 2018.

As shown in Figure 3, the greatest percentage of respondents – over two-thirds (69%) – indicated the behavior of DWI inmates with long sentences was about the same as other inmates; 22% thought it was better than other inmates and only 9% thought it was worse than other inmates.

Question 2: What do you see as the primary barrier to providing treatment to DWI offenders in your jail?

Figure 4: Barriers to Providing Treatment in Jail

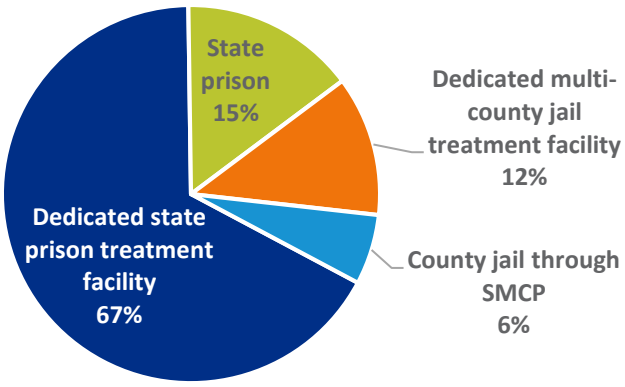


SOURCE: NC Sentencing and Policy Advisory Commission, SMCP Training Survey Questions, 2018.

For question 2, respondents were asked to identify the *primary* barrier to providing treatment for DWI offenders in jail – respondents were allowed to select only one option from a list of options. The largest percentage of respondents (48%) thought the primary barrier to providing treatment was related to staffing, with the second largest group of respondents (21%) citing that providing treatment is not a function of the jail (*see* Figure 4). The fewest number of respondents (2%) cited sentence length being too short as a barrier for treatment.

Question 3: In your opinion, which of these options would be the most appropriate setting for housing the most serious DWI offenders (Aggravated Level One and Level One)?

Figure 5: Most Appropriate Setting for Serious DWI Offenders



SOURCE: NC Sentencing and Policy Advisory Commission, SMCP Training Survey Questions, 2018.

Again, survey respondents were limited to the selection of just one response for question 3. As shown in Figure 5, the vast majority of respondents (82%) selected dedicated state prison treatment facility or state prison as the most appropriate setting for serious DWI offenders – with 67% choosing dedicated state prison treatment facility and 15% selecting state prison. Very few (6%) selected county jail through the SMCP.

Summary

- In FY 2016, there were 3,691 convictions for impaired driving offenses that received a punishment in Aggravated Level One or Level One.
    - 2,961 convictions that received a Level One punishment.
    - 730 convictions that received an Aggravated Level One punishment.
- 817 of those convictions for impaired driving offenses received an active sentence.
    - 474 (16%) of the convictions in Level One received an active sentence.
    - 343 (47%) of the convictions in Aggravated Level One received an active sentence.
- DWI offenders are not punished under Structured Sentencing, they are punished under their own sentencing system. The rules vary by punishment level.
    - Offenders in punishment Level One are eligible for good time and gain time credits while offenders in Aggravated Level One are not. Good time is based on behavior and is awarded automatically while gain time is based on activities and opportunities to earn are very limited in jails.
    - Offenders in punishment Level One are eligible for early parole release while offenders in Aggravated Level One receive PRS four months prior to the expiration of the sentence.
- All DWI offenders are housed in local jails through the SMCP.
- There are very few treatment opportunities for DWI offenders in the SMCP. Treatment is limited by physical space and funding.

III. LITERATURE REVIEW

As part of the study, Commission staff undertook a review of the literature to inform two aspects from the mandate: (1) what is the most appropriate place to house the most serious DWI inmates and (2) what is the most effective setting to provide appropriate treatment to the most serious DWI inmates. (*See* Appendix B.) In reviewing the literature, it became apparent that the research is silent as to both questions. However, some information is available from administrative code, statute, and professional organizations on basic physical requirements and standards for jails and prisons. In addition, despite not addressing the setting to provide treatment, there is a wealth of information on types of treatment and how to make treatment effective. This section will describe the available information on setting requirements and best treatment practices.

What is the Appropriate Place to House the Most Serious DWI Inmates?

Jail and Prison Defined

While the research does not specifically address where inmates should be housed (e.g., prison, jail) based on sentence length or offense type, one area that provides context for this question is how jails and prisons are defined. Across different organizations' definitions, experts agree that the term of confinement, managing entity, and type of population generally indicate whether the facility is a prison or jail. For example, the American Jail Association (AJA) defines a jail "as a correctional facility administered by a local law enforcement agency, such as a sheriff's office or local corrections department; confines adult offenders and juveniles under certain circumstances who are awaiting trial or sentenced to one year (12 months) or less."[41] In contrast the AJA defines prison "as a correctional facility that houses convicted offenders under long sentences, usually over one year. Prisons are administered by state governments, the federal government or a private corrections company."[42] For a synthesis of each organization's definitions of jails and prisons identified in this literature review, *see* Table 4.

Table 4: Industry Definitions of Jail and Prison

Facility Type	Term of Confinement	Managing Entity	Demographic	Status
Jail	Less than 1 year	Local law enforcement agency (e.g., sheriff's office, local corrections)	Adults Juveniles	Pretrial Sentenced Misdemeanant Awaiting Transfer
Prison	More than 1 year	State, federal, or private corrections company	Adults Juveniles (adjudicated as adults)	Sentenced High Risk

SOURCE: Definitions synthesized from the following resources: American Correctional Association; American Jail Association; Bureau of Justice Statistics; National Conference of State Legislatures.[43]

[41] *Jail Statistics*, Am. Jail Ass'n, https://www.americanjail.org/jail-statistics (last visited Nov. 30, 2018) (quoting Cornelius, Gary F. (2008). The American Jail; Cornerstone of Modern Corrections. Upper Saddle River, NJ: Pearson Prentice Hall).
[42] *Id.*
[43] Definitions synthesized from the following resources: Am. Corr. Ass'n, *Performance-Based Expected Practices for Adult Correctional Institutions* 280 (5th ed. 2018) (referred to jail as "adult detention facility or jail" and indicated a sentence served

Overall, the definitions align closely when discussing term of confinement. Specifically, they agree that length of sentence–usually a demarcation of less than one year or over one year—is an indicator of whether the confinement facility is a jail or prison. The other two categories are somewhat more disparate, but still largely refer to the same types of managing entities and populations.

Physical Plant Requirements and Facility Standards

In descriptions of both physical plant requirements and facility standards, the literature does not directly address where to house inmates based on their sentence. Instead, administrative code, statute, agency publications, and professional accreditation organizations provide basic requirements and standards for jails and prisons. These publications tend to focus on health and safety requirements, as well as constitutionally or humanely required features for jails and prisons. The following list provides some of the most commonly cited national and international resources for prison and jail standards and requirements:

- American Bar Association (ABA), *ABA Standards for Criminal Justice Third Edition: Treatment of Prisoners* (2011)[44]
- American Correctional Association (ACA), numerous publications[45]
- National Institute of Corrections (NIC), numerous publications[46]
- United Nations (UN), *Technical Guidance for Prison Planning: Technical and operational considerations based on the Nelson Mandela Rules* (2016)[47]

In North Carolina, jails are regulated and inspected by the Construction Section in the Division of Health Service Regulation of the Department of Health and Human Services (DHHS).[48] Among others, the DHHS code covers such topics as operations manuals, fire safety, security, health care, and jail design and construction. Some of the specifications are exact, like requiring dormitories to not exceed a capacity of 19 inmates; while others are more generalized, such as requiring the jail to use a classification system but not specifying the exact details of that system.

Architectural Standards Effect on Physical and Mental Health

Despite the lack of consensus on where offenders should be housed based on their sentence, there is some evidence indicating that the environment in which the offender is confined influences physical and mental health. Evidence from the health care world on how the architecture and design of treatment facilities can impact patient outcomes has been imported into the corrections setting.[49] Specifically,

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in jail could be at most two years); Am. Jail Ass'n, *supra* note 41; *Terms and Definitions: Corrections*, Bureau of Justice Statistics, https://www.bjs.gov/index.cfm?ty=tdtp&tid=1 (last visited Nov. 30, 2018); *What is the difference between jails and prisons?*, Bureau of Justice Statistics, https://www.bjs.gov/index.cfm?ty=qa&iid=322 (last visited Nov. 30, 2018); *Principles of Effective State Sentencing and Corrections Policy: A Report of the NCSL Sentencing and Corrections Work Group*, Nat'l Conf. of State Legs., (August 2011), http://www.ncsl.org/research/civil-and-criminal-jutice/principles-of-sentencing-and-corrections-policy.aspx.

[44]https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/Treatment_of_Prisoners.pdf

[45] http://www.aca.org/ACA_Prod_IMIS/ACA_Member/Home/ACA_Member/Home.aspx

[46] https://nicic.gov/

[47] https://content.unops.org/publications/Technical-guidance-Prison-Planning-2016_EN.pdf?mtime=20171215190045

[48] 10A N.C. Admin. Code (hereinafter N.C.A.C.) 14J.0304 (2016).

[49] Richard W. Dahl et al., *Improving Safety and Care Through Smarter Design in Secure Treatment Facilities*, BWBR Knowledge Series (Apr. 2012), http://www.bwbr.com/wp-content/uploads/2016/10/Improving-Safety-and-Care-through-Smarter-Design-WP.pdf.

using environmental and behavioral psychology, architects look at "how light, color, materials, texture, air quality, acoustics and access to nature affect mental and physical well being."[50]

These concepts have been employed in the correctional context for many years throughout Western Europe, with a focus on designing facilities so inmates will be prepared to reenter society upon release.[51] In the United States, facilities that commonly use these design considerations are primarily health care facilities. For example, some secure mental health and treatment facilities in the United States have tried to create a therapeutic environment through design while maintaining security and safety.[52] However, California presents the only example identified in this literature review that has implemented these design practices in some of their detention facilities, including the San Manteo Youth Services Center and the San Diego County Women's Detention Facility.[53]

One implication of this design movement is that it encourages a closer look at the current environment in jail and prison and how those environments will affect inmates serving their sentences (and perhaps on their eventual reentry into society). This is especially true when there are marked differences between most jail and prison facilities. To illustrate, the AJA's definition of "prison" includes a comparison of jails and prisons, noting that "where a jail may restrict inmate movement and have more confining architecture, such as cellblocks, prisons allow inmates more freedom of movement—in dormitories, program areas, exercise yards, etc., plus allowing a more flexible daily routine."[54] Therefore, environmental factors can inform decision making on where an inmate should serve their sentence.

What is the Most Effective Setting to Provide Appropriate Treatment to the Most Serious DWI Inmates?

Looking to the second aspect of the mandate, the literature does not address where DWI inmates should be housed to receive effective treatment. Moreover, the literature does not often assess tailored treatment programs for DWI offenders; therefore, this review looked at general substance abuse treatment programs, as they are most closely linked to a DWI offense. Overall, it appears there are large gaps in the literature in defining facility standards for specialized programming, especially substance abuse treatment. Commonly, organizations or government agencies that publish standards or provide accreditation (e.g., ACA, NC DHHS) focus solely on general facility requirements or health care facility requirements. If these organizations or agencies discuss treatment programs, it is often only to encourage their use and, in some instances, provide administrative guidance.[55] These resources do not provide information on housing requirements, space considerations, or facility design for implementing substance abuse treatment programs.

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[50] James Krueger and John A. MaCallister, *How to Design A Prison That Actually Comforts and Rehabilitates Inmates*, Fast Company (Apr. 30, 2015), https://www.fastcompany.com/3044758/how-to-design-a-prison-that-actually-comforts-and-rehabilitates-inmates.

[51] *Id.*

[52] Dahl et al., *supra* note 49, at 3-4.

[53] Erin Persky, Assoc. Am. Inst. of Architects, CCHP, Microsoft PowerPoint at the Academy for Architecture for Justice Conference (Nov. 2-5, 2016), https://network.aia.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=18cf9304-8c7a-a32f-f4f6-1d0be738bec2&forceDialog=1.

[54] Am. Jail Ass'n, *supra* note 41.

[55] *See, e.g.*, Am Corr. Ass'n, *Performance Based Standards for Adult Local Detention Facilities* 84-5 (4th ed. 2004).

There is, however, some movement on standardizing treatment programs within the health care context. The Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services designates certain organizations to provide accreditation specifically for opioid treatment programs. Two of those organizations, the National Commission on Correctional Health Care (NCCHC) and the Commission on Accreditation of Rehabilitation Facilities (CARF), publish standards and provide accreditation for the provision of health services in correction settings, as well as regular health and human services facilities. Here in North Carolina, ACDP incorporates CARF standards into their monitoring tool—which evaluates certain dimensions of the program (e.g., leadership, financial planning, health and safety).[56]

The few examples where the literature focuses on setting (i.e., space, facility design, housing, or administration) deal broadly with any type of correctional programming. The considerations apply to the provision of a wide range of common correctional programming such as recreation space, religious programming, or library services. Therefore, any specific concerns unique to providing substance abuse treatment are often not reflected. When discussing setting, the resources usually break out the topic into two areas: physical and administrative.

The NIC's publications, discussing physical requirements, explained that the touchstone for space or facility design is it must complement the programming being offered.[57] As such, depending on the type of programming the institution wants to offer, space or facility requirements may change. To determine the exact amount, size, and type of program space needed, it recommends administrators use population projections.[58] Once administrators have determined the amount, size, and type of programming space, they should consider six topics for creating a functional space: program location[59] and users of programming, separation and supervision of inmates,[60] quality of environment/space,[61] security measures,[62] multipurpose possibilities,[63] and suitability for counseling.[64]

Unlike the physical space considerations, the literature on administrative requirements deals more directly with substance abuse programming. Specifically, it identifies considerations that largely attempt to reconcile public safety and public health interests, which are often at cross purposes.[65] Administrative planning can balance the control elements of corrections with efforts to restore individuals to productive lives. Some of the administrative requirements discussed most often were:

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[56] N.C. Division MH/DD/SAS 2018 Record/Program Review, Alcoholism and Chemical Dependency Programs Monitoring Tool (Feb. 1, 2018).

[57] Dennis A. Kimme et al., U.S. Dep't of Justice, Nat'l Inst. of Corr., NIC 024806, *Jail Design Guide* (3rd ed. Mar. 2011); Mark D. Martin & Richard J. Kaledas, U.S. Dep't of Justice, Nat'l Inst. of Corr., NIC 024368, *Programs and Activities: Tools for Managing Inmate Behavior* (June 2010).

[58] Kimme et al., *supra* note 57, at 34.

[59] *Id.* at 238.

[60] Kimme et al., *supra* note 57, at 238 and Martin & Kaledas, *supra* note 57, at 74.

[61] Kimme et al., *supra* note 57, at 239.

[62] *Id.*

[63] *Id.* at 240-42.

[64] *Id.* at 242-44.

[65] Ctr. for Substance Abuse Treatment, Substance Abuse and Mental Health Serv. Admin., Public Health Serv., U.S. Dep't of Health and Human Serv., SMA 13-4056, *Substance Abuse Treatment for Adults in the Criminal Justice System: A Treatment Improvement Protocol TIP 44* 235-36 (5th ed. 2014).

- Facilitate interactions and collaboration with treatment systems and community stakeholders to provide formal endorsement and set goals for the program.[66]
- Conduct offender case management, which "is the process of linking the offender with appropriate resources; tracking the offender's participation and progress in the referred programs; reporting this information to the appropriate supervising authority and, when requested, to the court; and monitoring the conditions imposed by the court."[67]
- Cross-train correctional and treatment staff to create "mutual understanding" about each group's responsibilities.[68]
- Plan the location of the facility offering treatment so that there is access to highly trained counseling staff.[69]
- Institutionalizing treatment practices so that the program is not dependent on any one person or small group of people.[70]
- Engendering an ongoing commitment to use of evidence-based models, including identifying and continually updating any training and research on what are the best practices in the field. [71]
- Completing research and evaluation of programs offered to monitor the programs strengths and weakness, as well as demonstrate program effectiveness to policymakers.[72]

Given the lack of defined facility standards, information on program design and implementation and their relationship to program effectiveness would be helpful in considering establishing a substance abuse program. However, this is another gap in the literature–there is little to no meaningful evaluation of program fidelity in terms of design and implementation. Often researchers determine that a program "works," in that it may reduce recidivism or some other similar measure, but there is little research on trying to understand how and why the program works. For example, in a National Institute of Justice publication, one researcher noted that there is little research on "why programs succeed or fail" and almost no "attempt to identify the best policies and procedures for implementing evidence-based practices."[73] The author summarizes: "[i]n short, while we know a lot about 'what works' with prisoners, we know very little about making 'what works' work."[74]

This gap demonstrates that while there may be numerous examples of substance abuse programs that reduce recidivism, administrators and decision makers are often left in the dark on the who, what, where, and why of program design and implementation. To fill this void, researchers will need to focus on the actual methods of program implementation that led to the creation of an effective program. Ultimately, this lack of information makes it difficult to know what aspects of a "successful" program (in terms of outcomes) to replicate, when it comes to physical space or program design.

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[66] *Id.* at 237 and 240-42.
[67] *Id.* at 242.
[68] Daniel P. Mears et al., Urban Institute Justice Policy Center, *Drug Treatment in the Criminal Justice System: The Current State of Knowledge* 6-6 (Jan. 2003).
[69] *Id.*
[70] *Id.* at 6-5.
[71] Allison C. Colker et al., Nat'l Conf. of State Legs., *Treatment of Alcohol and Other Substance Use Disorders: What Legislators Need to Know* 57 (Jan. 2004).
[72] *See* Martin & Kaledas, *supra* note 57, at 23; Ctr. for Substance Abuse Treatment, *supra* note 65, at 247.
[73] Grant Duwe, Nat'l Inst. of Justice, Office of Justice Programs, U.S. Dep't of Justice, NCJ 250476, *The Use and Impact of Correctional Programming for Inmates on Pre- and Post-Release Outcomes* 23 (June 2017).
[74] *Id.*

Principles of Treatment

More prevalent in the literature than specifics relating to effective housing to provide treatment were general principles of substance abuse treatment programs that are widely accepted by the treatment community. Many of the following principles are adapted from the National Institute on Drug Abuse's (NIDA) publication *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research Based Guide*.[75]

- *Length:* Substance abuse treatment should last a minimum of 90 days because brain scans demonstrate that effects of drug use can last for months or even years.[76]
- *Factors:* Tailoring substance abuse treatment to the individual is important for effectiveness; for example, considering the individual's race, age, gender, and severity of substance abuse problem.[77]
- *Services:* The best practice is to offer a continuum of services (pretreatment, outpatient, and inpatient) and match the offender to the intensity of service (low to high) and treatment component(s) based on need.[78]
- *Assessment:* Individuals should be assessed, and periodically re-assessed, using an evidence-based tool that evaluates their substance abuse disorder, physical health, and mental health.[79]
- *Rewards and Sanctions:* Use rewards and sanctions in programming to encourage prosocial behavior, by reinforcing positive behavior while responding swiftly and proportionately to non-compliance.[80]
- *Drug Testing:* Drug testing should be part of substance abuse treatment[81] because it allows the program to immediately identify relapse and offer meaningful intervention.[82]
- *Criminal Thinking:* Address criminal thinking as part of substance abuse treatment because criminal mindsets commonly accompany drug abuse. Education can address attitudes of entitlement or justifying criminal behavior, as well as teaching about consequences of one's behavior.[83]
- *Multi-Modal Programming:* Substance abuse treatment should be multi-modal and include wrap around services, such as education, job training, life skills, anger management, or criminal thinking.[84]

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[75] Nat'l Inst. on Drug Abuse, Nat'l Inst. of Health, U.S. Dept. of Health and Human Serv., NIH Pub. No. 11-5316, *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide* (5th ed. Apr. 2014) (DACJJ reports incorporating these principles into their ACDP).

[76] *Id.* at 1 and 20-21.

[77] *Id.* at 2.

[78] Ctr. for Substance Abuse Treatment, *supra* note 65, at 43-47.

[79] Nat'l Inst. on Drug Abuse, *supra* note 75, at 2, 4-5, 16, and 19.

[80] *Id.* at 3 and 4

[81] *Id.* at 22.

[82] Bureau of Justice Assistance, Office of Justice Programs, U.S. Dept. of Justice, OMB No. 1121-0329, *Residential Substance Abuse Treatment (RSAT) for State Prisoners Program FY 2018 Formula Grant Announcement* 5 (May 2, 2018) (The federal Residential Substance Abuse Treatment (RSAT) Program mandates urinalysis, including periodic and random testing, as well as testing people who remain in custody after they complete the program. RSAT also requires many of the other concepts articulated in this study, including requiring a minimum of 90 days of treatment, using evidence-based programs, housing inmates in treatment separately from the rest of the population, addressing criminal thinking as part of treatment, and mandating the collection of data to support research activities).

[83] Nat'l Inst. on Drug Abuse, *supra* note 75, at 1 and 3.

[84] P. G. Miller et al., *Effectiveness of Interventions for Convicted DUI Offenders in Reducing Recidivism: A Systematic Review of the Peer-Reviewed Scientific Literature*, 41(1) Am. J. of Drug and Alcohol Abuse 16, 29 (2015); J. Mullen et al., *Treatment Needs of*

- *Timing:* Substance abuse treatment should span the different phases of incarceration—including reentry and reintegration. Research indicates the most successful results for reducing recidivism and substance abuse are generated when individuals receive treatment throughout their time incarcerated and after release. [85]
- *Aftercare:* Provide continuity of care or aftercare services when re-entering society, as evidence indicates that individuals have better outcomes when they receive aftercare. [86]
- *Mandatory Treatment:* Drug abuse treatment is effective even when legally mandated. Evidence over time has demonstrated that outcomes are the same for mandated versus voluntary treatment.[87]

Components of Treatment

There are varying forms of treatment, and while most researchers agree that a minimum of 90 days is required for effective treatment, SAMHSA, in the context of providing treatment in jails, has provided a menu of substance abuse treatment options depending on the length of incarceration. This prioritized approach reflects the reality that often in correctional settings treatment providers must make do with limited time and resources. Of these components, providers should identify priority treatments based on the length of time available to treat an inmate. In an ideal setting, the treatment components below in Table 5 would be added together into a more comprehensive program.

Table 5: Treatment Components by Available Treatment Time

Brief Level I (1-4 Weeks)	Short Term Level II (4-12 Weeks)		Long Term Level III (3 Months or More)
Motivational interviewing	Relapse prevention	Communication skills	Employment counseling
Orientation to treatment/treatment planning, and substance abuse education	12-step programs	Dealing with domestic violence	Therapeutic community
Information on community resources	Basic cognitive skills	Anger management	Family mapping and social networks
Facilitating access to community services	Identity and culture	Problem solving	Following through on 12 steps
Community linkage and transition services	Strengths building	Social skills training	Continued stabilization
Psychotropic medications: education and compliance			Cultural Factors
			Criminal Thinking

SOURCE: SAMHSA, Treatment Components[88]

Driving While Intoxicated Offenders: The Need for a Multimodal Approach to Treatment, 16(7) Traffic Injury Prevention 637, 644 (2015); and Ctr. for Substance Abuse Treatment, *supra* note 65, at 199 (calling the concept "blended" approaches).

[85] Colker et al., *supra* note 71, at 59.

[86] *Id.*

[87] Nat'l Inst. on Drug Abuse, *supra* note 75, at 18.

[88] Ctr. for Substance Abuse Treatment, *supra* note 65, at 168.

Of these various treatment components there are a few worth exploring further because they are discussed throughout the literature. The first, therapeutic communities (TCs), are probably considered the highest standard in substance abuse treatment.[89] TCs are staffed by treatment professionals, as well as individuals who are recovering from substance abuse disorders.[90] These programs are often long-term, lasting around a minimum of 6 months, with evidence demonstrating that 9 to 12 months have better results.[91] TCs have separate housing from the general population to create a safe space for recovery.[92] The goal of these programs is to encourage pro-social behavior by addressing chemical dependency through a "whole person" model. Core treatment interventions in a TC program often are comprised of individual and group counseling, group encounters, education classes, work responsibilities, and a system of incentives and sanctions.[93] In North Carolina, DACJJ's facilities DART and Black Mountain are examples of TCs or modified TCs.[94]

Another treatment component that is perhaps the most often used is evidence based behavioral interventions, such as Cognitive Behavioral Therapies (CBT) or Motivational Interviewing (MI). Behavioral interventions are used in TCs, as well as many other substance abuse programming. These components attempt to teach coping and decision-making skills. They also are designed to reinforce behaviors that increase abstinence and promote motivation for change.[95]

While pharmacotherapy, or medication assisted treatment (MAT), is not included in Table 5 above, it is a component discussed extensively in the literation; albeit there is a recognition that MAT is infrequently used in the corrections world.[96] MAT is a type of therapy that uses pharmaceutical drugs to treat alcohol and substance use disorders. MAT has proven effective for some forms of substance abuse, including alcohol dependency.[97] One study noted that "[t]he negative stigma associated with pharmacological therapies, misperceptions about the chronic nature of addiction and incorrect associations between curing dependence and forced detoxification prevent many prisoners nationwide from benefitting from these treatments."[98] When an institution offers MAT programs, it should be in conjunction with other forms of substance abuse treatment (e.g., counseling), including mental health treatment when co-occurring problems are present.

Finally, when there is a very limited opportunity for providing treatment the literature suggests using screening, brief intervention, and referral to treatment (SBIRT). The screening portion of this component attempts to identify if the individual has a substance use problem.[99] Often, the screening incorporates

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[89] Ctr. for Substance Abuse Treatment, *supra* note 65, at 199 (saying TCs "are among the most successful in-prison treatment programs").
[90] Steven Belenko et al., *Treating Substance Use Disorders in the Criminal Justice System*, 15(11) Current Psychiatry Rep. 414 (Nov. 2013).
[91] Ctr. for Substance Abuse Treatment, *supra* note 65, at 200.
[92] *Id.* at 201.
[93] *Id.* at 200-01.
[94] https://www.ncdps.gov/adult-corrections/alcohol-chemical-dependency-programs/dart-cherry; https://www.ncdps.gov/adult-corrections/alcohol-chemical-dependency-programs/black-mountain-treatment-center
[95] Redonna K. Chandler et al., *Treating Drug Abuse and Addiction in the Criminal Justice System: Improving Public Health and Safety*, 301(2) J. Am. Med. Ass'n 183–190 (Jan. 2009).
[96] The Nat'l Ctr. on Addiction and Substance Abuse at Columbia Univ., *Behind Bars II: Substance Abuse and America's Prison Population* 45 (Feb. 2010); Ctr. for Substance Abuse Treatment, *supra* note 65, at 45 and 177.
[97] *Behind Bars II*, *supra* note 96, at 45; Colker et al., *supra* note 71, at 39.
[98] *Behind Bars II*, *supra* note 96, at 45.
[99] Colker et al., *supra* note 71, at 41-2.

MI.[100] According to SAMHSA, MI is a technique that "help[s] clients to address their ambivalence about involvement in substance abuse treatment, and to identify methods of dealing with this ambivalence."[101] After a substance use disorder has been identified, the individual is referred to an appropriate treatment program based on their personal circumstances.[102] According to the National Center on Addiction and Substance Abuse at Columbia University, "[e]arly detection followed by appropriate interventions and treatments are key to preventing future substance-related crime."[103]

Summary

- The research is silent as to both questions from the mandate – (1) what is the most appropriate place to house the most serious DWI inmates and (2) what is the most effective setting to provide appropriate treatment to the most serious DWI inmates.
- The consensus of numerous professional organizations on the definitions of jail and prison provide some context for the appropriate sentence lengths to be housed in each type of facility. Generally, jails are defined as settings for those awaiting trial or those sentenced to *one year or less*, while prisons are defined as facilities for convicted offenders with longer sentences (*greater than one year*).
- Other differences in jail and prison definitions related to environment illustrate other factors to consider for appropriate setting. Generally, jails may restrict inmate movement and have more confining architecture, compared to prisons that allow more freedom of movement and may have additional program areas.
- Specific information on physical space is available from administrative code, statute, and professional organizations; however, it is focused largely on health and safety requirements.
- There is guidance from organizations on substance abuse programming, as we all as some physical and administrative requirements for offering correctional programs generally.
- One of the basic tenets of physical requirements for facility program space is the design must complement the programming offered.
- Administrative planning is essential for balancing the control elements of corrections with efforts to restore individuals to productive lives. Some of the key administrative requirement included collaborating with treatment systems and stakeholders, case management for participants, and commitment to evidence-based models and evaluation.
- Principles of treatment for substance abuse provide one area of consensus in the literature. Experts agree treatment should last a minimum of 90 days.
- Substance abuse treatment options are dependent upon the length of incarceration; offerings must take available time for treatment into account. Ideally, providers should offer multiple components (e.g., social skills training) along with substance abuse treatment for a comprehensive program.

[100] Steven Belenko et al., *supra* note 90.
[101] Ctr. for Substance Abuse Treatment, *supra* note 65, at 168.
[102] *Id.* at 167.
[103] *Behind Bars II*, *supra* note 96, at 78.

IV. PRACTICES IN OTHER STATES

Commission staff undertook a review of practices in a variety of different states to examine how they approach the issue of substance abuse treatment in prisons and jails. Staff started by looking for jail and prison programs specific to impaired driving offenders. From there, the search expanded to broader substance abuse treatment programs in correctional settings. In all, staff looked at 21 states. In order to study a diverse selection of states, staff used several criteria in identifying which states to consider:

- *Neighboring States:* Staff looked at North Carolina's neighboring states to ascertain what the practices are in the surrounding states. For the purposes of this report, neighboring states include Florida, Georgia, South Carolina, Tennessee, and Virginia.
- *States with Similar DWI Sentencing Structure as North Carolina:* Staff looked at states which, like North Carolina, have sentencing guidelines, but where DWI is excluded from those guidelines and subject to its own sentencing structure. Those states include Alabama, Florida, Maryland, Tennessee, and Virginia.[104]
- *States with Unique or Exemplary Approaches:* Staff looked at states that do things differently than North Carolina and seemed worthy of highlighting. Connecticut, Rhode Island, and Kentucky each has some element of their correctional substance use treatment programming that departs from North Carolina's approach. Connecticut and Rhode Island are 2 of only 6 states with unified correctional systems wherein the state corrections agency also oversees and manages jails and pretrial detainees.[105] Kentucky provides an example of expansive jail treatment programming, as well as residential substance abuse treatment (RSAT) implementation. Examining these three states led staff to 11 other states that were of interest. Those states include Arizona, Delaware, Illinois, Massachusetts, Minnesota, Missouri, Montana, New Hampshire, New Jersey, Ohio, and Texas.

Of the 21 states studied in preparing this report, the following programming models were given specific consideration: jail treatment programs, in-prison impaired driving specific programs, in-prison substance abuse treatment (not offense specific), and dedicated state prison substance abuse treatment facilities.

Jail Treatment Programs

Commission staff examined examples of jail treatment programs found in other states. While not exhaustive or representative of jail programming as a whole, these examples provide insight into the types of substance use treatment jails have employed. The following programs were examined: Jail Therapeutic Communities (Kentucky),[106] Montgomery County Jail Addiction Services (Montgomery County, Maryland),[107] St. Louis County Choices Program (St. Louis County, Missouri),[108] and In-House Therapeutic Communities (Strafford County, New Hampshire).[109]

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[104] N.C. Sent. and Policy Advisory Comm'n, DWI Sent. Subcomm., January 20, 2017.
[105] *Incarceration Trends*, Vera Inst., http://trends.vera.org/about (last visited Mar. 4, 2019).
[106] *Substance Abuse Treatment Modalities*, Ky. Dep't of Corr., https://corrections.ky.gov/Divisions/sap/Pages/modalities.aspx (last visited Mar. 4, 2019); Sam Quinones, *Addicts Need Help Jails Could Have the Answer*, N.Y. Times, June 16, 2017, https://www.nytimes.com/2017/06/16/opinion/sunday/opioid-epidemic-kentucky-jails.html.
[107] *Jail Addiction Services*, Montgomery Co. Dep't of Corr. and Rehab., https://www.montgomerycountymd.gov/cor/MCCF/JailAddictionServices.html (last visited Mar. 4, 2019).
[108] *Inmate Programs*, St. Louis Co., Mo. Justice Servs., https://www.stlouisco.com/Your-Government/Justice-Services/Inmate-Programs (last visited Mar. 4, 2019).
[109] *In-House Therapeutic Communities*, Strafford Co. N.H., https://www.co.strafford.nh.us/jail-therapeutic-communities (last visited Mar. 4, 2019).

These jail treatment programs have many elements in common but vary in other ways. The following elements illustrate the similarities and differences:

- *Scope:* By and large, jail treatment programs are individual endeavors on the county or local level (Montgomery County, St. Louis County, Strafford County). This is because most jails are primarily managed on the county or local level. One exception is the Kentucky program, which is part of a statewide initiative to provide TCs in jail settings and has been implemented in 24 jails across Kentucky.
- *Geographic location*: More robust jail programming tends to be found in larger metropolitan areas and their suburbs (Montgomery County, St. Louis County, Strafford County).
- *Program Type*: The majority of the programs looked at utilize a TC model where participants are housed together in therapeutic units, separate from the general population (Montgomery County, Strafford County, Kentucky). One exception was the St. Louis County program which primarily utilizes psycho-educational treatment curriculum that incorporates the 12-step process.
- *Additional Programming*: Each jail treatment program highlighted here offers programming beyond substance abuse treatment. Additional program offerings include but are not limited to GED and vocational courses, life skills training, and anger management.
- *Admission*: Admission to jail treatment programs varied; participation may be voluntary or court-ordered. Inmates may volunteer to participate in the Kentucky and Strafford County programs. By contrast, enrollment in the St. Louis County program is limited to those who have been sentenced or otherwise ordered to complete the program.
- *Duration*: Program duration varied, ranging from eight weeks to six months. Montgomery County's program lasts for eight weeks, with ongoing aftercare for as long as the participant remains incarcerated in the jail. The St. Louis County program has a duration of 90 days while Kentucky's therapeutic community jail programs have a duration of six months. By contrast, the length of the Strafford County program can vary based on the individual. The program is divided into three distinct phases, each of which lasts for a minimum of 30 days.

In-Prison Impaired Driving Specific Programs

Commission staff reviewed prison-based treatment programs specific to impaired driving offenses in the following states: Arizona,[110] Ohio,[111] Texas,[112] Montana,[113] and Connecticut.[114] In looking at prison treatment programs specific to impaired driving offenses, Commission staff found that most of the programs fit into one of three general categories: behavioral interventions model, therapeutic

[110] *Counseling & Treatment Services*, Ariz. Dep't of Corr., https://corrections.az.gov/addiction-treatment-services (last visited Mar. 4, 2019).
[111] J. Mitchell Miller et. al., U.S. Dep't of Justice, Nat'l Inst. of Justice, NJC 246125, *Effect of Prison-Based Alcohol Treatment: A Multi-Site Process and Outcome Evaluation* 70-74 (2013).
[112] *In-Prison Driving While Intoxicated (DWI) Recovery Program*, Tex. Dep't of Criminal Justice, Rehab. Programs Div., https://www.tdcj.texas.gov/divisions/rpd/dwi.html (last visited Mar. 4, 2019).
[113] *Warm Springs Addictions Treatment and Change*, Mont. Dep't of Corr. (Dec. 2009), https://leg.mt.gov/content/Committees/Interim/2009_2010/Law_and_Justice/Meeting_Documents/Dec09/Watch%20primer.pdf.
[114] *Cybulski Community Reintegration Center*, Conn. Dep't of Corr., https://portal.ct.gov/DOC/Facility/Cybulski-Community-Reintegration-Center (last visited Mar. 5, 2019).

community, or reintegrative. These categories and their respective examples are not exhaustive but are merely illustrative of the variety of prison treatment programs specific to impaired driving.

Behavioral Interventions Model

Cognitive behavioral curriculum focuses on building skills that improve decision-making, improve motivation, and reinforce positive behaviors.[115] While behavioral interventions like CBT are used in TCs, they may also be used outside that setting.[116] Programs in Arizona, Ohio, and Texas utilize a cognitive behavioral approach to treatment. The following elements illustrate the similarities and differences between the programs:

- *Facility Management:* More examples of programs were found to be owned and operated by private companies under contracts with the state than by the state itself.
    - In Arizona, all but one of the impaired driving programs are housed in privately run prison facilities. Treatment specific to male impaired driving offenders is offered at two prisons operated by GEO Group.[117] One facility is specifically designed for DUI and return-to-custody offenders (i.e., offenders whose parole has been revoked)[118] while the other facility is designated solely for DUI offenders.[119] Arizona has a designated prison facility for offenders who have demonstrated a need for substance abuse treatment, regardless of the offense committed.[120] That facility is operated by another private prison enterprise, Management and Training Corporation (MTC).[121]
    - In Texas, the In-Prison Driving While Intoxicated Recovery Program is located at East Texas Treatment Facility (ETTF), which is owned and operated by MTC.[122]
    - By contrast, Ohio's DUI/DWI program is operated by the Ohio Department of Rehabilitation and Correction (ODRC) at an ODRC facility, and Arizona offers treatment to female impaired driving offenders at a state-run facility.[123]
- *Service Providers*: As with facility management, more examples of treatment services provided by contractors were found. Program services for impaired driving offenders in Arizona and Texas are provided by private companies. In Arizona, GEO Group provides the services at the facilities it manages and, even though the Arizona program for women is housed at a state facility, the treatment services are provided by a private contractor. In Texas, MTC provides treatment services in addition to managing the facility itself. However, services in Ohio's state-operated program are provided by full-time ODRC staff.

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[115] Chandler et. al., *supra* note 95.

[116] *Id.*

[117] Among other things, the GEO Group operates privatized correctional facilities and provides behavioral, mental health, reentry, and substance abuse treatment services, both in its own facilities and on a contract basis in government-operated facilities. The Geo Group, https://www.geogroup.com (last visited Mar. 5, 2019).

[118] *Arizona State Prison-Florence West*, The GEO Group, Inc., https://www.geogroup.com/FacilityDetail/FacilityID/28 (last visited Mar. 5, 2019).

[119] *Arizona. State Prison-Phoenix West*, The GEO Group, Inc., https://www.geogroup.com/FacilityDetail/FacilityID/29 (last visited Mar. 5, 2019).

[120] *Marana*, Ariz. Dep't of Corr., https://corrections.az.gov/location/108/marana (last visited Mar. 5, 2019).

[121] Like the GEO Group, MTC operates privatized correctional facilities and provides other services in government-run facilities on a contract basis. Mgmt. & Training Corp., https://www.mtctrains.com (last visited Mar. 5, 2019).

[122] *East Texas Treatment*, Tex. Dep't of Criminal Justice, https://www.tdcj.texas.gov/unit_directory/xq.html (last visited Mar. 5, 2019).

[123] Impaired driving treatment is offered to female offenders through contract services at Arizona State Prison Complex-Perryville, a state-run facility. Ariz. Dep't of Corr., *supra* note 110.

- *Evaluation and program outcomes*: Two of the three states that utilize the cognitive behavior model had some type of evaluation conducted. For policymakers, an important element of these types of programs is an evaluation of program outcomes. Outcomes from Ohio and Texas have been evaluated by a team from the University of Texas at San Antonio's (UTSA) Department of Criminal Justice, funded by a federal grant from the National Institute of Justice.
    - The evaluation of Ohio's program found that program participants were negatively influenced by being housed together with the general prison population. Participants complained about a lack of aftercare programming and structure. A significant limitation on the evaluation was the very small sample size provided by ODRC. Any results were deemed too preliminary to draw any conclusions about program outcomes.[124]
    - With regard to Texas, the evaluation found that there is no statistically significant difference in outcomes between those who completed the program and those who did not. However, the evaluation also found that the time from the start of confinement to the beginning of the program was an important factor for success. A shorter time resulted in a greater likelihood of success.[125]
- *Capacity*: Capacity of the programs varies, ranging from 24 beds to 1,000 beds. The state-operated program in Ohio had the smallest capacity at only 24 treatment slots. By contrast, the programs run by private contractors had greater capacity. Arizona's program for women has only 96 beds, but the two private facilities providing impaired driving treatment to men have capacities of 750 and 500 beds, respectively. Texas' program at ETTF has a more considerable capacity of 1,000 beds.

Therapeutic Community

Therapeutic communities involve longer-term programming where participants reside together, separate from the general population. One instance identified, Montana's Warm Springs Addiction Treatment and Change (WATCh) Program provides an example of a prison-based TC.

- *Facility Management*: The non-profit Community, Counseling, and Correctional Services, Inc. (CCCS), under contract with the Montana DOC, operates two facilities that house the WATCh Program – one in the eastern part of the state and the other in the west.[126]
- *Service Providers*: CCCS staff provide treatment services for the WATCh Program.
- *Capacity*: The WATCh Program has 165 treatment beds between the two locations.
- *Evaluation*: As with the Ohio and Texas cognitive behavioral programs, Montana's WATCh Program was evaluated by UTSA's Department of Criminal Justice. The evaluation deemed the Montana Program holistic, well-resourced, and highly rated by program participants. It found that WATCh was "nearly ideal" in design and performance. However, it found no statistically significant difference in outcomes between those who completed the program and those who did not. The evaluation did find a statistically significant relationship between time spent in the program and likelihood of success.[127]

[124] Miller et. al., *supra* note 111 at 82-85, 90-92, 97, 129-131.
[125] *Id.* at 111, 114, 117, 120, 132.
[126] Cmty., Counseling, & Corr. Servs., Inc., http://www.cccscorp.com/ (last visited Mar. 5, 2019).
[127] Miller et. al., *supra* note 111 at 131, 135-136.

Reintegrative

Programs with a reintegrative approach to treatment focus on preparing offenders for reentry into society. Connecticut's DUI Reintegration Center is one example of a reintegrative prison-based impaired driving treatment program.

- *Facility Management*: Connecticut's DUI Reintegration Center is located within the greater Cybulski Community Reintegration Center at Willard-Cybulski Correctional Institution, operated by the Connecticut DOC.
- *Capacity*: Connecticut's DUI Reintegration Center has 118 beds for male offenders.

In-Prison Substance Abuse Treatment (Not Offense Specific)

Because programs specific to impaired driving offenses are somewhat limited, Commission staff expanded their survey to other types of in-prison substance abuse treatment programs. The following section of this report briefly outlines the other types of substance abuse treatment programs commonly found in correctional settings.

Therapeutic Community/Modified Therapeutic Community

Delaware and Minnesota use TCs, both of which are designated by the National Institute of Justice as "promising" RSAT programs.[128] Other states with programs based on the TC model include Georgia,[129] Illinois,[130] Kentucky,[131] Maryland,[132] Rhode Island,[133] South Carolina,[134] Tennessee,[135] Texas,[136] and Virginia.[137]

[128] Andrew Klein and Niki Miller, Advocates for Human Potential, Bureau of Justice Assistance, Office of Justice Programs, U.S. Dep't of Justice, Grant No. 2016-MU-BX-K021, *Residential Substance Abuse Treatment (RSAT) Training and Technical Assistance: Promising Practices Guidelines for Residential Substance Abuse Treatment* 3 (Nov. 2017), http://www.rsat-tta.com/Files/Re-edited-PPG-RSAT-after-BJA-review_EDITED_REFEREN.

[129] *Residential Substance Abuse Treatment*, Ga. Dep't of Corr., http://www.dcor.state.ga.us/Divisions/InmateServices/RiskReduction/RSAT (last visited Mar. 5, 2019).

[130] *Addiction Recovery Management Services Unit*, Ill. Dep't of Corr., https://www2.illinois.gov/idoc/programs/Pages/AddictionRecoveryServices.aspx (last visited Mar. 5, 2019).

[131] Ky. Dep't of Corr., *supra* note 106.

[132] Md. Dep't of Pub. Safety & Corr. Servs., Dep't of Health and Mental Hygiene, *Responding to the Opioid Overdose Epidemic: Department of Public Safety & Correctional Services Approach to Substance Abuse Treatment*, 4 (Sept. 2014), https://bha.health.maryland.gov/OVERDOSE_PREVENTION/Documents/Attachment%20C%20-%20DPSCS%20Approach%20to%20Substance%20Abuse%20Treatment.pdf.

[133] *Substance Abuse Treatment Services*, R.I. Dep't of Corr., http://www.doc.ri.gov/rehabilitative/health/behavioral_substance.php (last visited Mar. 5, 2019).

[134] *Division of Behavioral Health and Substance Abuse Services*, S.C. Dep't of Corr., http://www.doc.sc.gov/programs/substance.html (last visited Mar. 5, 2019).

[135] *Substance Use Disorder Program*, Tenn. Dep't of Corr., https://www.tn.gov/correction/redirect---rehabilitation/redirect---offender-health-care/substance-use-disorder-program.html (last visited Mar. 5, 2019).

[136] *Substance Abuse Treatment Program*, Tex. Dep't of Criminal Justice, Rehab. Programs Div., https://www.tdcj.texas.gov/divisions/rpd/substance_abuse.html (last visited Mar. 5, 2019).

[137] *Institutions Overview*, Va. Dep't of Corr., https://vadoc.virginia.gov/offenders/institutions/institutions-oview.shtm (last visited Mar. 5, 2019).

General Substance Abuse Treatment

This undefined category of substance abuse treatment can include such things as psycho-educational programming, CBT, MRT, substance abuse education, and relapse prevention. One example is the Thinking for a Change program.[138] This broad category includes programs that do not rise to the level of a full-scale TC and are not offered within a designated correctional treatment facility. Treatment programs within this sort of "catchall" category were found in Alabama,[139] Florida,[140] Rhode Island,[141] South Carolina,[142] Tennessee,[143] Texas,[144] Virginia,[145] and likely in other states that were not examined as part of this report.

Medication Assisted Treatment

MAT, also referred to as pharmacotherapy, is not a treatment model in itself but can be an element of many other treatment models.[146] Although it is indicated more for opiate addiction rather than alcohol abuse, MAT seems to be a growing trend in corrections substance abuse treatment. States with MAT prison programs include New Hampshire,[147] Kentucky,[148] Rhode Island,[149] and Virginia.[150]

Peer-Based/Self-Help Programming

Peer-based or self-help programming refers to programs such as Alcoholics Anonymous, Narcotics Anonymous, and the like. While this brand of programming is sometimes found in county jails, it is more commonly found in prisons. Inmates often serve as facilitators for this type of programming.

Dedicated State Prison Substance Abuse Treatment Facilities

Some states have dedicated substance abuse treatment facilities within their prison systems. Although not specific to impaired driving, these facilities are geared towards offenders with a history of substance abuse. Though not an exhaustive list, the following states provide examples of dedicated substance abuse treatment facilities within the prison context: Illinois Sheridan Correctional Center,[151]

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[138] *Thinking for a Change*, U.S. Dep't of Justice, Nat'l Inst. of Corr., https://nicic.gov/thinking-for-a-change (last visited Mar. 5, 2019).
[139] Ala. Dep't of Corr., *Annual Report for the Fiscal Year 2017*, 30 (2018).
[140] *Bureau of Readiness and Community Transition*, Fl. Dep't of Corr., http://www.dc.state.fl.us/development/readiness.html (last visited Mar. 5, 2019).
[141] R.I. Dep't of Corr., *supra* note 133.
[142] S.C. Dep't of Corr., *supra* note 134.
[143] Tenn. Dep't of Corr., *supra* note 135.
[144] Tex. Dep't of Criminal Justice, Rehab. Programs Div., *supra* note 136.
[145] Va. Dep't of Corr., *supra* note 137.
[146] *Medication-Assisted Treatment*, U.S. Dep't of Health & Human Servs., Substance Abuse & Mental Health Servs. Admin., https://www.samhsa.gov/medication-assisted-treatment (last visited Mar. 5, 2019).
[147] N.H. Dep't of Corr. Policy & Procedure Directive, Section 6.08.
[148] *Substance Abuse Services*, Ky. Dep't of Corr., https://corrections.ky.gov/Divisions/sap/Pages/default.aspx (last visited Mar. 5, 2019).
[149] R.I. Dep't of Corr., *supra* note 133.
[150] Va. Dep't of Corr., *Agency at a Glance 2018*, 13 (2018).
[151] *Sheridan Correctional Center*, Ill. Dep't of Corr., https://www2.illinois.gov/idoc/facilities/Pages/sheridancorrectionalcenter.aspx (last visited Mar. 5, 2019).

Massachusetts Alcohol and Substance Abuse Center at Plymouth (MASAC),[152] New Jersey Mid-State Correctional Facility,[153] and Virginia Indian Creek Correctional Center.[154]

The following elements are relevant with regard to dedicated state prison substance abuse treatment facilities:

- *Program Type*: The facilities looked at had varied programming models. Both the Illinois and Virginia facilities are modeled as TCs. New Jersey's facility is billed as a "rehab prison." MASAC is unique in that it provides treatment to two distinct populations: criminally sentenced maximum-security male inmates with substance use disorder and civilly committed males in forced detoxification.
- *Capacity*: Program capacity varies across these facilities. MASAC is on the smaller end of the spectrum, with a capacity of approximately 250, the majority of which is constituted by civilly committed individuals rather than inmates.[155] New Jersey's facility has a capacity of 696. Virginia and Illinois have two of the largest facilities of this kind. Virginia's facility has a capacity of approximately 1,000; Illinois' facility has 1,300 beds.

Programming in North Carolina

Jail Treatment Programs

Like in most other states, jails in North Carolina are operated on the county level. As a result, the availability of programming varies greatly between individual jails. Most county jails in North Carolina do not offer any type of substance abuse programming. Some jails in larger, more populated areas of the state have created their own substance abuse programs. An example, as mentioned previously, is the STARR Program in Durham County.[156] Pretrial and sentenced inmates in the Durham County jail may volunteer or be ordered to complete the program, which consists of addiction education, behavioral modification, and therapy. It is not limited to impaired driving offenders. Funding for the STARR Program is provided by the county.

Prison Programs

DWI offenders in North Carolina do not serve their sentences in state prisons, they serve their sentences in county jails through the SMCP. Therefore, there are no impaired driving specific treatment programs in North Carolina prisons. Substance abuse treatment of varying types is available to certain offenders in North Carolina's prisons through ACDP programming.

- *Therapeutic Community/Modified Therapeutic Community*: North Carolina uses the TC model in some of its prison-based alcohol and chemical dependency programs. The RSAT program at the Dan River Prison Work Farm and state-funded residential treatment programs at Morrison

[152] *MASAC at Plymouth*, Mass. Dep't of Corr., https://www.mass.gov/locations/masac-at-plymouth (last visited Mar. 5, 2019).
[153] Lilo H. Stainton, *State Poised to Open First "Rehab Prison" at Mid-State Correctional Facility*, NJ Spotlight, April 11, 2017, https://www.njspotlight.com/stories/17/04/10/state-poised-to-open-first-rehab-prison-at-mid-state-correctional-facility/.
[154] *Indian Creek Correctional Center*, Va. Dep't of Corr., https://vadoc.virginia.gov/facilities/eastern/indian-creek/ (last visited Mar. 5, 2019).
[155] Mass. Dep't of Corr., *2016 Annual Report* 5 (2017).
[156] *Substance Abuse Treatment & Recidivism Reduction*, Durham Co. Criminal Justice Res. Ctr., https://www.dconc.gov/government/departments-a-e/criminal-justice-resource-center/substance-use-disorder-treatment/starr (last visited Mar. 5, 2019).

Correctional, Eastern Correctional, and the NC Correctional Institution for Women are based on the modified TC model.[157]

- *General Substance Abuse Treatment*: Most of North Carolina's in-prison substance abuse treatment programs fall into this category. This broad category includes programs that do not rise to the level of a full-scale TC and are not offered within a designated correctional treatment facility.
- *Medication Assisted Treatment*: MAT is not offered in North Carolina's prisons, although some facilities do provide education on MAT for offenders to seek it out upon release. Some county jails in North Carolina have begun offering MAT to inmates.

Dedicated State Prison Substance Abuse Treatment Facilities

North Carolina does not currently have dedicated substance abuse treatment facilities for inmates in its prisons. However, North Carolina Community Corrections maintains two dedicated substance abuse treatment facilities for probationers and offenders on PRS or parole – DART in Goldsboro for men[158] and Black Mountain Treatment Center in Black Mountain for women.[159]

Summary

- Jail programming is much less prolific than programming in prisons.
    - The limited programming that is available is largely not specific to impaired driving offenses.
    - Treatment programming in jails is not statewide. No state staff reviewed had jail programming uniformly available across counties and municipalities.
    - More robust jail programming was found in major metropolitan areas and their suburbs.
    - Availability of programming varies greatly across states, and perhaps more importantly, it varies greatly within states. Some county jails offer extensive programming, but most jails have little to nothing in the way of substance use programming.
- Every state that was examined has some iteration of substance abuse treatment within its prisons. However, this too varies, both across and within states.
    - As with jail programs, in-prison programming is typically not impaired-driving specific.
    - It can be difficult to make a point-to-point comparison because there is so much variation in prison programs.

[157] N.C. Dep't of Pub. Safety, Div. of Adult Corr. & Juv. Justice, *Substance Abuse Program Annual Report* 26 (March 2018).
[158] *DART-Cherry*, N.C. Dep't of Pub. Safety, Div. of Adult Corr. & Juv. Justice, https://www.ncdps.gov/adult-corrections/alcohol-chemical-dependency-programs/dart-cherry (last visited Mar. 5, 2019).
[159] *Black Mountain Substance Abuse Treatment Center for Women*, N.C. Dep't of Pub. Safety, Div. of Adult Corr. and Juv. Justice, https://www.ncdps.gov/adult-corrections/alcohol-chemical-dependency-programs/black-mountain-treatment-center (last visited Mar. 5, 2019).

V. KEY FINDINGS

Taken together, the information provided in this report point to a number of key findings to inform the question of what the most effective setting to house and provide appropriate treatment services is for DWI Aggravated Level One and Level One offenders. Those findings, described below, are grouped into three categories: housing, treatment, and other.

For context, it is important to first recall the volume and significant characteristics of the population of interest. Aggravated Level One and Level One offenders comprise 11% of total DWI convictions in NC. In FY 2016, there were 3,691 convictions for impaired driving offenses that received a punishment in Aggravated Level One or Level One – 2,961 convictions in Level One and 730 convictions in Aggravated Level One. These figures represent the maximum number of convictions in one fiscal year that would need to be housed and provided treatment. It is also important to note the distribution between these groups – Level One represents over three-quarters (80%).

The type of punishment and sentence length are critical factors to consider when examining housing and treatment options. Of the Aggravated Level One and Level One offenders, 817 received an active sentence – 474 (16%) of the convictions in Level One and 343 (47%) of the convictions in Aggravated Level One. Active sentences represent the group that would need an immediate housing option following sentencing. However, suspended sentences represent a group that could be revoked for violations of conditions of probation and activated – also requiring housing and treatment. A large percentage of convictions (78% or 2,874) received a suspended sentence.

Regarding sentence length, these two groups of offenders are sentenced to a wide range of sentences. Offenders in Level One can have a sentence as short as 30 days while offenders in Aggravated Level One can have a sentence as long as 36 months, and multiple sentences can be run consecutively. In FY 2016, the average minimum active sentence length for Level One convictions was 13 months while the average minimum active sentence length for Aggravated Level One was 21 months. It is important to remember those lengths are what is imposed at sentencing, and do not take into account sentence credits (*see* Section II, Sentence Credits) which affect time served.

Housing

Currently, all DWI offender are housed in local jails through the Statewide Misdemeanant Confinement Program. Regarding where to house the most serious DWI offenders (Aggravated Level One and Level One inmates), site visits, the literature review and review of practices in other states yielded the following key findings:

- Jail administrators and staff identified space as a primary concern with housing DWI offenders.
- The vast majority of SMCP survey respondents (82%) selected dedicated state prison treatment facility or state prison as the most appropriate setting for serious DWI offenders. Very few (6%) selected county jail through the SMCP (6%).
- The research is silent as to what is the most appropriate place to house the most serious DWI inmates (either based on sentence length or type of offense).
- Generally, professional organizations agree on the definition of jail and prison: jails are defined as settings for those awaiting trial or those sentenced to *one year or less*, while prisons are defined as facilities for convicted offenders with longer sentences (*greater than one year*).

Treatment

Regarding the most appropriate setting to provide treatment for serious DWI inmates – site visits, the literature review and review of practices in other states yielded the following key findings:

- Currently, there are very few treatment opportunities for DWI offenders in the SMCP.
- Treatment is limited by physical space, funding, and in some cases, access to treatment staff.
- Prior to the creation of the SMCP, there were some programming options available for DWI inmates in prison (although opportunities were limited due to program capacity and sentence length).
- The largest percentage of SMCP survey respondents (48%) thought the primary barrier to providing treatment was related to staffing, with the second largest group of respondents (21%) citing that providing treatment is not a function of the jail.
- The literature is silent on the question of what is the most effective setting to provide appropriate treatment to the most serious DWI inmates. However:
    - Jail and prison definitions related to environment may point to other factors to consider for appropriate setting. Generally, jails may restrict inmate movement and have more confining architecture, compared to prisons that allow more freedom of movement and may have additional program areas.
    - One of the basic tenets of physical requirements for facility program space is the design must complement the programming offered.
    - Experts agree treatment should last a minimum of 90 days.
    - Substance abuse treatment offerings must take available time for treatment into account. Ideally, providers should offer multiple components (e.g., social skills training) along with substance abuse treatment for a comprehensive program.
- In other states, jail programming is much less prolific than programming in prisons.
    - Treatment programming in jails is not statewide.
    - More robust jail programming was found in major metropolitan areas and their suburbs.
    - The limited programming that is available is largely not specific to impaired driving offenses.
- Every state staff looked at has some iteration of substance use treatment within its prisons.
    - Varies across and within states.
    - Programming is typically not impaired-driving specific.

Other

Other issues should be considered in determining the most effective setting to house and provide appropriate treatment services.

Capacity

Counties contract with the DACJJ to provide available beds for the SMCP but they face competing demands for their jail beds.

- Counties are required to house offenders who are confined awaiting trial, misdemeanants sentenced to 90 days or less, and felons who are sentenced to prison and are awaiting

transport. An increase in any one of these populations can reduce the number of beds available in a jail for the SMCP.

- Counties have the option to house offenders in the SMCP, inmates from other counties, or Federal inmates. They get paid to house each of these populations and while the SMCP rate is set statewide, the rate for the other populations is negotiable. If the rate for housing another population becomes more attractive, that can also reduce the number of beds available in a jail for the SMCP.
- Currently, there is sufficient capacity in the SMCP for the population;[160] however, if the SMCP population should exceed capacity, the additional inmates may be transferred to a state prison.[161]

Funding

The General Assembly provides a direct appropriation to the SMCP to cover program costs including care, supervision, transportation, medical, and any other related costs, as well as the cost of managing the system.[162]

- The SMCP does not currently fund substance abuse treatment.
- If existing costs increase and the SMCP does not have enough funding to support the beds allocated to the program and/or the population exceeds capacity, the additional inmates may be transferred to a state prison.

[160] N.C. Sheriffs' Association, Statewide Misdemeanant Confinement Program Monthly Status Report, p. 3 (December 2018).
[161] G.S. 148-32.1(b4).
[162] G.S. 148-10.4.

VI. CONSIDERATIONS

On December 7, 2018, the Sentencing Commission met and reviewed the information contained in this report. From that information and its discussion, the Commission developed a list of considerations to help determine the most effective setting to house and provide appropriate treatment services for Driving While Impaired Aggravated Level One and Level One offenders.

Housing Considerations

- DWI offenders face a wide range of possible sentences, the maximum of which exceeds the maximum length for all other misdemeanor offenders.
- The DWI offenders are divided between two different sets of rules governing their confinement.
    - Level One offenders are eligible for good time and gain time and discretionary parole release while Aggravated Level One offenders are not. This can affect their behavior in the facility and their potential release date.
- All DWI offender are housed in local jails through the SMCP.
    - The SMCP is flexible, the 66 receiving counties operate independently.
- Regional jails require a different structure than local jails, they require a contractual arrangement.
- DACJJ does not have stand-alone treatment facilities.
    - DACJJ is limited in its capacity due to current staffing issues.
    - The DWI population would be mixed with the felon population and distributed among prisons without a special facility.
- The cost of establishing a prison is different from the cost of establishing a jail.

Treatment Considerations

- Providing treatment raises logistical considerations beyond those raised by housing an offender serving a sentence.
    - Because of the varying sentence lengths and release dates of the DWI misdemeanant population, it may be difficult to fill a program.
    - Housing based on programming may require sending offenders further away from their home counties and increase the time and cost of transporting offenders.
- There are very few treatment opportunities for DWI offenders in the SMCP. Treatment is limited by physical space, funding, and access to providers.
- There should be a continuity to the programs available across the state.
    - Consider dosage (how long is effective treatment) and fidelity (program consistency and quality).
- It requires creativity to provide treatment in any setting.
    - Treatment can still work even if it is not the ideal program; a program can be designed to fit existing resources and configuration.
- It is easier to achieve some treatment models in certain environments.
    - County jails can be chaotic and not necessarily conducive to treatment; DACJJ may provide a better environment for treatment.
- The facility needs to have clinical staff trained to provide adequate treatment.

    - Access may be an issue depending on the location of the facility; may be an issue in any setting due to the current job market.
- Programming is more effective when the population is grouped together and there is a culture of treatment among the correctional staff.
- Consider the needs of the population and their amenability to treatment.
    - Treatment should be incentivized to get buy-in from the offenders.
- Offenders should get into treatment quickly and for enough time to complete a program.
- When developing treatment programs, consider gender differences (e.g., females' experiences with trauma).
- Treatment toward the end of the sentence might be more effective.
    - Facilities could take advantage of individuals completing a program to serve as peer advisors prior to the completion of their sentences.
- A reintegration unit at the end of the sentence may help with the transition to the community.

VII. APPLICATION

On March 1, 2019, the Sentencing Commission met to determine the most effective setting to house and provide appropriate treatment services for DWI Aggravated Level One and Level One offenders. The mandate listed county jails, State prisons, and dedicated multicounty jail treatment facilities as possible settings, and the Sentencing Commission decided to add the option of dedicated State prison treatment facilities. Commission members pointed out that DACJJ has experience with residential treatment facilities, so it might be able to offer prison treatment facilities as well.

Focusing on the common attributes between the possible settings, the Commission discussed two issues: (1) whether the offenders should be housed in standard facilities across the state or in dedicated facilities for DWI offenders, and (2) whether the offenders should be housed in locally run facilities or in state facilities. For each issue, the Commission weighed the relevant Findings and Considerations (*see* above) both in favor of and against the choices. (*See* Appendix C.) The decision the Commission reached on each issue assisted with making the final decision as to which would be the most appropriate setting.

In discussing housing offenders across the state versus dedicated facilities, the Commission focused on three areas. First, which option would best be able to serve this population; second, which option could provide the appropriate treatment services; and third, which option would be the most cost effective. For reasons described below, the Sentencing Commission decided that these DWI offenders should be housed in dedicated facilities.

In discussing whether the facilities should be locally run or state run, the Commission focused on three other areas. First, which option could provide the necessary space to house and provide treatment services to this population; second, which option could provide appropriate treatment services; and third, which option would have access to the necessary funding. For reasons stated below, the Sentencing Commission decided that these DWI offenders should be housed in State run facilities.

VIII. RECOMMENDATIONS

The Sentencing Commission recommends that dedicated treatment facilities run by the State would be the most appropriate setting for housing and providing treatment services to DWI Aggravated Level One and Level One offenders.

Dedicated Treatment Facilities

The Commission recommends dedicated treatment facilities for several reasons. First, they would enable the entity with custody of the offenders to better manage the population. DWI Aggravated Level One and Level One offenders are a unique population, they are subject to different sentence credit rules and release rules than other misdemeanor offenders. Currently, they are housed with other misdemeanor offenders who are subject to completely different rules. Housing these offenders together, and separately from non-DWI offenders, would make it easier for the administrators to apply the appropriate sentence credits and to accurately determine release dates. It should be noted, however, that there are some differences in the sentence credit rules and the release rules between Aggravated Level One and Level One; the Commission suggests that those differences should be addressed in order to provide more consistency in administering the sentences imposed.

Second, housing the offenders together in dedicated treatment facilities would improve the ability to provide treatment services. These offenders are currently housed in local jails across the state and the availability of treatment is based on whether that county provides any services. Having the offenders grouped together in one or more facilities would reduce the number of treatment programs that would have to be provided and would ensure sufficient numbers of offenders to support those programs. In addition, having dedicated facilities would allow the treatment provider to ensure continuity among the programs being offered. These are similar offenders with similar needs and housing them together, and separately from other offenders, allows them to focus on their needs and provides a common purpose for the facility. The Sentencing Commission notes, however, that treatment needs do not necessarily correspond to punishment levels. The Commission suggests mandatory assessments at the beginning of the sentence in order to accurately determine the treatment services needed.

Facilities Run by the State

Regarding which entity should run the facilities, the Sentencing Commission recommends that the State, through DACJJ, should run the dedicated treatment facilities for the following reasons. First, these offenders have longer sentences than other misdemeanor offenders and DACJJ has experience managing offenders with longer sentences (i.e., felons). DACJJ facilities are designed to allow more freedom of movement for offenders throughout the day and to incorporate treatment and other programming needs. These factors assist the DACJJ in managing the population while also providing the offenders with opportunities to make positive changes in their lives, elements that are necessary when offenders are confined for longer periods of time.

Second, DACJJ has experience providing treatment services. When DWI offenders were housed in DACJJ, the Division developed and ran a DWI specific treatment program. In addition, the Division currently operates substance abuse treatment programs in units across the state. The SMCP does not fund treatment programs at this time and few local jails have experience doing so. Finally, DACJJ has experience operating other facilities that would be similar to the proposed facility. As mentioned

previously, DACJJ operates two residential treatment facilities (Black Mountain and DART), as well as the two CRV Centers which, while they do not provide treatment, provide programming to offenders.

While the State is the recommended entity for running the facilities, it should be noted that DACJJ currently faces a staffing shortage. The lack of correctional officers and clinical staff would present a challenge to opening dedicated treatment facilities for a population DACJJ does not currently house. However, local facilities face similar challenges and they lack the experience that DACJJ possesses.

Finally, the Sentencing Commission considered the issue of cost. This would be a new type of facility since North Carolina does not have dedicated treatment facilities for DWI offenders and it would require funding for the facility, staff, and programming. The SMCP is dependent upon county resources for its facilities and those resources vary across the state. The Commission believes DACJJ would be in a better position than the SMCP to support these facilities because it has the necessary infrastructure, resources, and experience providing treatment and other programming as well as building new facilities or repurposing existing facilities.

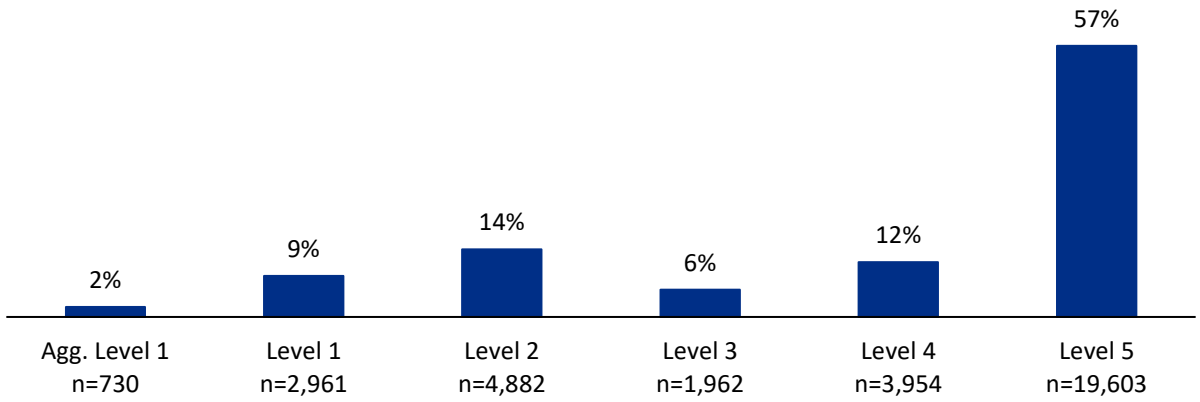
The Sentencing Commission was asked to study the most effective setting to house and provide appropriate treatment services for Driving While Impaired Aggravated Level One and Level One offenders. These offenders make up a small percentage of the DWI offenders, but they present unique challenges. They can receive longer sentences than any other misdemeanor offenders and are more likely to be repeat DWI offenders. While the mandate addresses these offenders, it is important to note that they are not the only offenders in the criminal justice system that need treatment. These recommendations focus on DWI offenders in the most serious punishment levels, but it is possible that lessons learned from this proposal could be applied to other populations in the future.

APPENDIX A
DWI CONVICTION DATA

Total DWI Convictions

Figure 1 shows the distribution of DWI convictions in FY 2016 by punishment level. Overall there were 34,092 convictions statewide. The majority (57%) were for DWI convictions in Level 5; the fewest number of convictions (2%) were for convictions in Aggravated Level One.

Figure 1: Convictions by Punishment Level

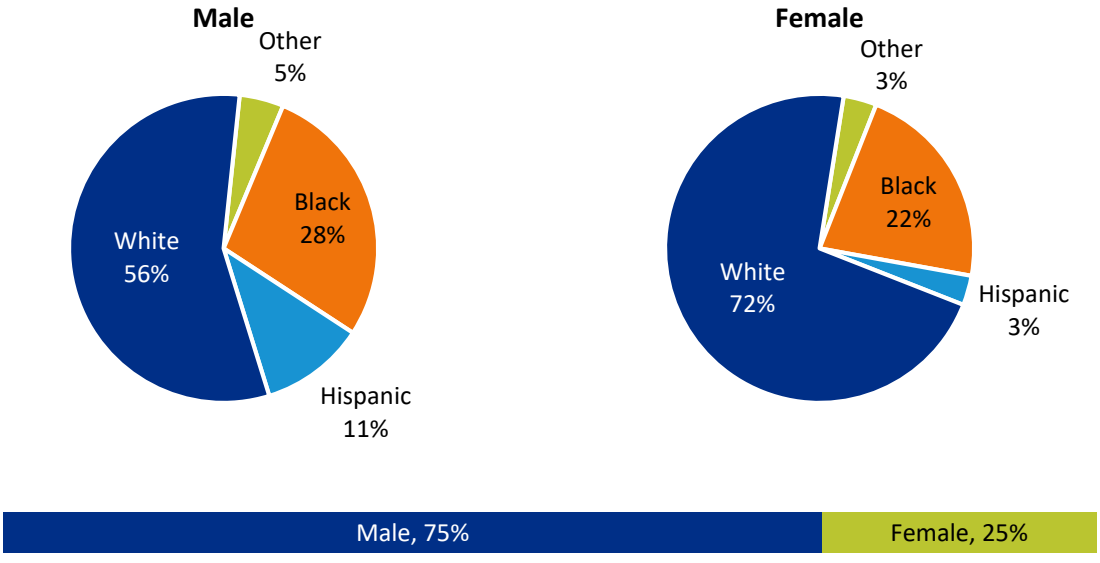


SOURCE: NC Sentencing and Policy Advisory Commission, FY 2016 Preliminary DWI Conviction Data.

Demographics

Figure 2 shows the distribution of DWI convictions by sex and race. Overall, 75% of convictions were for male offenders and 25% were for female offenders. For both males and females, the majority of convictions (56% and 72% respectively) were for white offenders.

Figure 2: Convictions by Sex and Race



SOURCE: NC Sentencing and Policy Advisory Commission, FY 2016 Preliminary DWI Conviction Data.

Table 1 details the age at offense by punishment level in FY 2016. Overall, the average age at offense for all DWI offenders was 36; for Aggravated Level 1 the average age was 38 and for Level 1 the average age was 37. The majority of DWI offenders were between the ages of 21-40.

Table 1: Convictions by Age at Offense and Punishment Level

Punishment Level	N	Average Age	Age at Offense				
			<21	21-30	31-40	41-50	>50
			%	%	%	%	%
Agg. Level 1	728	38	2	30	33	21	14
Level 1	2,961	37	2	34	29	21	14
Level 2	4,878	37	2	34	27	21	16
Level 3	1,959	39	3	26	27	24	20
Level 4	3,949	37	4	33	26	20	17
Level 5	19,585	35	6	42	22	16	14
Total	**34,060**	**36**	**5**	**38**	**24**	**18**	**15**

Note: Of the 34,092 DWI convictions in FY 2016, 32 convictions with missing values for offenders' age were excluded from this table.
SOURCE: NC Sentencing and Policy Advisory Commission, FY 2016 Preliminary DWI Conviction Data.

APPENDIX B
LIST OF LITERATURE REVIEW REFERENCES

List of Literature Review References

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APPENDIX C
WORKSHEET FOR APPLYING FINDINGS AND CONSIDERATIONS

STUDY APPROPRIATE HOUSING/TREATMENT FOR DWI OFFENDERS

The North Carolina Sentencing and Policy Advisory Commission (Commission), in consultation with the Department of Public Safety and the North Carolina Sheriffs' Association, shall study the most effective setting to house and provide appropriate treatment services for Driving While Impaired Aggravated Level One and Level One offenders. The study shall consider whether State prisons, county jails, or dedicated multicounty jail treatment facilities are the most appropriate setting. (S.L. 2018-5, s. 18B.2)

1. Should DWI offenders be housed across the state or in dedicated facilities?

Population		
Options	**Positives**	**Negatives**
Across the State	• Large population (817 active sentences, 2,874 suspended sentences in FY 2016) • Able to keep offenders in or near home counties	• DWIs are different from other offenses
Dedicated Facilities	• Only misdemeanor population subject to good time and gain time, parole/post-release supervision	• Different sentence lengths and rules between Aggravated Level One and Level One
Treatment		
Options	**Positives**	**Negatives**
Across the State	• No considerations mentioned	• Not all facilities can provide programming • Difficult to have continuity in programming • Mixed populations dilute programs • Difficult to fill a program • Access to clinical staff limited by location
Dedicated Facilities	• Population has common needs • Population available to fill a program • Easier to provide programming • Easier to have continuity in programming • Housing like-minded individuals together provides a communal purpose • Program is more effective when the population is similar and there is a culture of treatment among staff	• Different levels of treatment • Amenability to treatment • No dedicated facilities in the state • Structure of regional model is very different from local facilities
Cost		
Options	**Positives**	**Negatives**
Across the State	• Able to keep offenders in or near home counties	• No considerations mentioned
Dedicated Facilities	• No considerations mentioned	• Cost to establish a dedicated facility • May require transporting and housing offenders further from their home counties

2. Should DWI offenders be in locally run facilities (through the SMCP) or in state facilities run by DPS?

Space		
Options	**Positives**	**Negatives**
Local Facilities	• Offenders are misdemeanants • Programs can be designed to fit existing resources and configurations	• Jails are generally defined as housing those sentenced to one year or less • Jails are generally considered to restrict inmate movement and have more confining architecture • DWIs are different from other offenses • Sentence lengths are longer than non-DWI misdemeanants • Limited space for treatment • SMCP capacity is based on available beds that are volunteered by the counties
State Facilities	• Prisons are generally defined as those housing offenders with sentences greater than one year • Prisons are generally considered to allow more freedom of movement and may have additional program areas • More consistent capacity • Process for establishing a prison is different from a jail	• DACJJ's current staffing issues makes it more difficult to add populations
Treatment		
Options	**Positives**	**Negatives**
Local Facilities	• Programs can be designed to fit existing resources and configurations	• Jail treatment programs in other states are not statewide but generally found in major metropolitan areas, and are not DWI specific • Limited treatment opportunities • Limited space for treatment • County jails are chaotic and not necessarily conducive to treatment
State Facilities	• Previously offered DWI specific programming • DACJJ is a better environment for treatment • Better able to achieve continuity of programs across the state	• Programming is limited due to funding • Programs are diluted because of lack of standalone facilities • Access to clinical staff limited by current job market
Funding		
Options	**Positives**	**Negatives**
Local Facilities	• SMCP has flexibility because of the funding stream from the state	• Is the state willing to invest more
State Facilities	• More stable funding source	• Competing needs