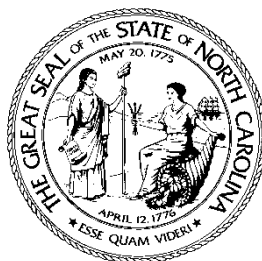


***North Carolina
Sentencing and Policy Advisory Commission***

**Justice Reinvestment Act
Implementation Evaluation Report**



***Project Conducted in Conjunction with the
Division of Adult Correction and Juvenile Justice of the
North Carolina Department of Public Safety***

Submitted pursuant to N.C. Gen. Stat. § 164-50 (2015)

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I. INTRODUCTION

In 2011, the North Carolina General Assembly directed the Sentencing and Policy Advisory Commission (Sentencing Commission) and the Division of Adult Correction and Juvenile Justice (DACJJ) of the Department of Public Safety (DPS) to jointly conduct ongoing evaluations regarding the implementation of the Justice Reinvestment Act (JRA).¹ This report constitutes the fifth report in compliance with the directive.

The Sentencing Commission's implementation evaluation reports have followed the process from the early stages of implementation of the JRA to the current, more settled phase of implementation. This report highlights recent legislative changes to the JRA; policies and practices that have been adjusted in 2015 in response to feedback related to their effectiveness; new initiatives undertaken by agencies to further the goals of the JRA; and data examining the usage of JRA tools and preliminary outcomes under the JRA.²

The information for the report comes from updates provided by agencies at meetings of the Justice Reinvestment Implementation Report Subcommittee (*see infra*), from agency and organizational reports submitted to the Legislature, and from data collected by agencies. Given that the correctional system was most affected by the changes under the JRA, the management information system used by DPS, the Offender Population Unified System (OPUS), is the primary source for data presented in this report. Much of the information was obtained from DACJJ's Rehabilitative Programs and Services Section, as well as from their online Automated System Query (ASQ). Information about the Statewide Misdemeanant Confinement Program (SMCP) was obtained from the North Carolina Sheriffs' Association (NCSA).³

This first section of the report provides background on the JRA and subsequent, related legislation that made changes to it. Section II of the report includes information related to sentencing practices under the JRA (e.g., data on special probation and habitual felon status offenses). Section III provides information on community supervision including recent policy changes and data on the population of offenders under supervision in North Carolina. Section IV details the effect of the JRA on incarceration practices for both local confinement facilities and state prisons. Section V examines population and crime trends in North Carolina, the impact of the JRA on both the community corrections and prison populations, and outlines broad categories of savings and reinvestment in the state following the enactment of the JRA.

Justice Reinvestment Implementation Report Subcommittee

In response to the mandate to conduct ongoing evaluations of the implementation of the JRA, the Sentencing Commission established the Justice Reinvestment Implementation Report Subcommittee. The purpose of the Subcommittee is to gather information, review data where available, and report to the Commission any recommendations regarding the implementation of the JRA. The Subcommittee met three times after the submission date of the previous report (April 15, 2015): November 6, 2015, February 12 and March 18, 2016.

¹ N.C. Gen. Stat. (G.S.) § 164-50.

² See Appendix A for a full timeline of the JRA implementation.

³ See Appendix B for a full list of acronyms used in this report.

Background

In 2009, North Carolina's executive, legislative, and judicial leadership requested technical assistance from the Council of State Governments (CSG) Justice Center to study North Carolina's criminal justice system. The bi-partisan request was made in response to the state's increasing prison population and with the hope the CSG would determine ways North Carolina could curb expenditures for building prisons as well as ways to reinvest in strategies to reduce corrections spending overall.⁴

From 2009 to 2010, the CSG analyzed North Carolina data, examined the criminal justice system, and engaged stakeholders and policymakers to identify potential areas for improvement in sentencing, supervision, and treatment practices. The CSG found that probation revocations and various sentence enhancements were two factors straining the prison system. The CSG also noted the lack of supervision for many offenders leaving prison, as well as inadequately targeted treatment in the community. The CSG developed and recommended a legislative package designed to increase public safety while curbing spending on corrections by reinvesting in community treatment.⁵

The policy options presented by the CSG were incorporated into House Bill 642, The Justice Reinvestment Act. Representatives Bordsen, Faircloth, Guice, and Parmon introduced HB 642 in the North Carolina General Assembly during the 2011 Session. Both the House of Representatives and Senate ultimately passed the legislation with overwhelming support. Governor Perdue signed the JRA into law on June 23, 2011.

Major Provisions of the Justice Reinvestment Act

The JRA makes changes to North Carolina's court system and corrections system (encompassing prisons, probation, and post-release supervision (PRS)). The JRA also creates a statewide confinement program for misdemeanants, refocuses community resources, creates a new habitual breaking and entering felony offense, and modifies the punishment for habitual felons. A summary of the major provisions of the JRA is provided below, by system.⁶

Changes to the Court System

The JRA expands the existing drug diversion program⁷ to make it mandatory. All first-time offenders convicted of a misdemeanor or Class I felony possession of drugs or paraphernalia offense are placed in the program. However, the General Assembly subsequently amended the statute to allow a judge to find that an offender is inappropriate for the program⁸ (see Related Legislation).

⁴ Due to a confluence of factors, the prison population in North Carolina has declined since 2009. Legislative changes made to the felony punishment chart in 2009, as well as changes to earned time credits made in 2011, contributed to the decline. North Carolina has also experienced changes in demographic trends (including a decrease in the rate of growth in the state's population, particularly for males ages 16-24) and decreases in crime trends overall. (For a full report on North Carolina's prison population, see NC Sentencing and Policy Advisory Commission, *Prison Population Projections FY 2016-FY 2025*).

⁵ For the full report from CSG, see Council of State Governments Justice Center, *Justice Reinvestment in North Carolina, Analysis and Policy Framework to Reduce Spending on Corrections and Reinvest in Strategies to Increase Public Safety*, April 2011.

⁶ Additional information on the JRA is available in multiple places. See NC Sentencing and Policy Advisory Commission, *Justice Reinvestment Implementation Evaluation Report, 2012-2015*, available at

<http://www.nccourts.org/Courts/CRS/Councils/spac/Publication/JRIReports.asp>; *The North Carolina Justice Reinvestment Act* by James Markham, UNC SOG, published December 7, 2012; and <http://www.sog.unc.edu/node/2044>.

⁷ G.S. 90-96.

⁸ Session Law (S.L.) 2013-210.

An habitual breaking and entering status offense is created; offenders who commit their second felony breaking and entering offense are sentenced in Class E according to the felony punishment chart.⁹

The existing habitual felon law is modified under the JRA; habitual felons are sentenced four classes higher than the class of the current offense, but no higher than Class C.¹⁰

The JRA redefines Community and Intermediate punishments.¹¹ Community punishment is defined as any sentence other than an Active punishment, drug treatment court, or special probation (split sentence). Intermediate punishment is defined as supervised probation. It may include any other condition of probation. Drug treatment court and special probation (split sentence) are limited to intermediate punishment sentences. The court has the discretion to impose supervised probation with no additional conditions as an intermediate punishment.

The JRA creates short periods of confinement (“quick dips”) in jail as a new condition of probation.¹² The court is authorized to impose up to six days per month in jail. This condition can be imposed as part of a community or intermediate punishment.

Advanced Supervised Release (ASR) is created under JRA for certain offenders receiving active sentences.¹³ ASR allows judges, without objection from the prosecutor, to decide at sentencing whether eligible offenders will be ordered to this prison program which, if completed, leads to their release after serving a reduced minimum sentence.

Changes to Probation

The JRA codifies the use of risk and need assessments as a strategy in managing offenders and allocating resources in the community and directs the DACJJ to perform an assessment on all offenders.¹⁴ Supervision and other resources are targeted based on offenders’ levels of risk and need.

The JRA expands delegated authority for probation officers. They are authorized to impose most of the current conditions of probation and to respond to violations by imposing quick dips. The officer may impose a quick dip without a court hearing if the offender signs a waiver.¹⁵

Under the JRA, prison time imposed for technical violations of probation (i.e., violations other than absconding or commission of a new crime) is limited. Originally, the penalty for a first or second technical violation of probation was set at 90 days imprisonment for a felon and up to 90 days for a misdemeanor.¹⁶ Subsequently, the law was amended to eliminate the Confinement in Response to Violation (CRV) period for misdemeanants sentenced to probation under the Structured Sentencing Act (SSA).¹⁷

⁹ G.S. 14-7.31.

¹⁰ G.S. 14-7.6.

¹¹ G.S. 15A-1340.11(2), (6).

¹² G.S. 15A-1343 (a1)(3).

¹³ G.S. 15A-1340.18.

¹⁴ G.S. 15A-1343.2(b1).

¹⁵ G.S. 15A-1343.2(e) and (f).

¹⁶ G.S. 15A-1344(d2).

¹⁷ S.L. 2015-191.

Changes to Prisons

See Advanced Supervised Release above – “Changes to Court System.”

Changes to Post-Release Supervision

PRS under the JRA is expanded to include all felons. After serving an active sentence, a period of nine months of supervision is required for Class F-I felons and five years of supervision is required for Class F-I felons convicted of a sex offense. The revocation period for these offenders is nine months. PRS for Class B1-E felons who are not convicted of a sex offense is expanded to twelve months; the revocation period is expanded to twelve months as well.¹⁸

Similar to probation, prison time imposed for technical violations on PRS is limited. The penalty for a first, second, or third technical violation is set at 90 days of imprisonment. Upon the fourth technical violation, the Post-Release Supervision and Parole (PRSP) Commission may revoke PRS and impose the rest of the prison sentence.¹⁹

Resources

The Criminal Justice Partnership Program (CJPP) is repealed under the JRA and the Treatment for Effective Community Supervision (TECS) Program is created.²⁰ The DACJJ is authorized to enter into contractual agreements with eligible entities for the operation of community-based corrections programs. TECS focuses on certain offenders: (1) offenders convicted of a felony; (2) offenders participating in the felony drug diversion program; and (3) offenders who are identified by the DACJJ to have a high likelihood of re-offending and who have a moderate to high need for substance abuse treatment. Programs eligible for funding include substance abuse treatment programs, cognitive-behavioral programming, and other evidence-based programming (EBP).

Under the JRA, the SMCP is created.²¹ Most misdemeanants will be housed in local jails instead of state prisons. The NCSA operates the SMCP; it is funded by the Statewide Misdemeanant Confinement (SMC) Fund. The SMCP finds space to house eligible misdemeanants in participating local jails. If the participating local jails are full, the DACJJ houses the offenders. Originally, misdemeanants who received a sentence of between 91 and 180 days of confinement, excluding sentences for impaired driving²² offenses, were placed under the SMCP; misdemeanants who received a sentence greater than 180 days were housed in the state prison system. However, the General Assembly subsequently amended the statutes to provide that all misdemeanants who receive a sentence greater than 90 days, and all offenders convicted of impaired driving offenses regardless of sentence length, will serve their time in participating local jails through the SMCP²³ (see Related Legislation).

¹⁸ G.S. 15A-1368.1 to -1368.2.

¹⁹ G.S. 15A-1368.3(c).

²⁰ G.S. 143B-1150 to -1160.

²¹ G.S. 148-32.1(b2) to (b4).

²² Impaired driving is also referred to as “driving while impaired” or “DWI.”

²³ S.L. 2014-100.

Effective Dates

The JRA went into effect in 2011 and early 2012 (see Table 1). Tracking the effective dates and events that determine offender eligibility is critical to proper application of the law.

The varied effective dates of the JRA created difficulties for agencies with regard to implementation. There is not a simple distinction between “old” and “new” law; practitioners must be aware of when each provision went into effect in order to determine which offenders are eligible for certain offenses, conditions, and punishments. The General Assembly has also amended the JRA (see Related Legislation), creating additional effective dates for new and amended JRA provisions which also must be tracked to ensure proper application of the law.

**Table 1
JRA Effective Dates by Provision**

Date	Application	Provision
July 1, 2011	N/A	TECS program SMC Fund
December 1, 2011	Probation violations occurring on or after:	CRV
	Offenses committed on or after:	Habitual Breaking and Entering Habitual Felon Redefine Community and Intermediate punishment Expand Delegated Authority Expand PRS
January 1, 2012	Pleas or guilty findings on or after:	Drug diversion ASR
	Sentences imposed on or after:	SMCP

Having multiple effective dates also created some inconsistencies: for example, an offender who committed a Class F through H offense prior to December 1, 2011, but who is not found guilty until after January 1, 2012, could be eligible for the ASR program even though they would not be subject to PRS. As more time passes under the new law, however, these inconsistencies will phase out (i.e., fewer cases will have offense dates prior to December 1, 2011).

Related Legislation

The Legislature passed the JRA in June 2011 and made clarifying changes in September 2011 before the JRA went into effect. S.L. 2011-412 clarified probation officers’ delegated authority for Community and Intermediate punishments. Confinement periods imposed through delegated authority must run concurrently and may total no more than six days per month for offenders on probation for multiple judgments. The legislation also specified that any time spent in confinement awaiting a hearing for a probation violation must be credited towards the CRV period, and that CRV periods must run concurrently for offenders on probation for multiple offenses. This statute was amended in 2014 to prohibit any credit from being applied to the CRV period (see *infra*).

Table 2 provides a list of all JRA amendments, their effective dates, and their application. In June 2012, the Legislature made additional clarifications to the JRA. S.L. 2012-188 clarified that offenders sentenced to community or intermediate punishments and ordered to perform community service shall pay a community service fee. This provision became effective July 16, 2012, and applies to any community service conditions ordered as part of a community or intermediate punishment on or after that date. The legislation amended the requirements for probation officers exercising delegated authority to allow two probation officers to witness a probationer’s waiver of rights (previously one probation officer and his/her supervisor had to witness the waiver). It also clarified that judges can impose a CRV period of less than 90 days for misdemeanants (effective July 16, 2012). The legislation provides that the period of PRS is tolled during confinement for offenders re-imprisoned for violating conditions of PRS. This provision became effective on July 16, 2012, and applies to supervisees violating conditions of PRS on or after that date. S.L. 2012-188 amended the maximum sentences for drug trafficking convictions to allow for twelve months of PRS for drug trafficking convictions in Classes B1-E and nine months of PRS for drug trafficking convictions in Classes F-I. These maximum sentence lengths are effective for offenses committed on or after December 1, 2012. Lastly, S.L. 2012-188 granted the PRSP Commission expanded authority to conduct hearings using videoconferencing, effective December 1, 2012.

**Table 2
JRA Amendment Effective Dates by Provision**

Date	Application	Provision
July 16, 2012	PRS violations occurring on or after:	PRS period tolled during re-imprisonment
	CRVs imposed on or after:	CRVs less than 90 days authorized for misdemeanants
December 1, 2012	Offenses committed on or after:	Drug trafficking maximum sentences increased
October 1, 2013	Offenses committed on or after:	Certain Class B1-E maximum sentences increased
December 1, 2013	Offenses committed on or after:	Drug diversion change
October 1, 2014	Probation violations occurring on or after:	Credit for time already served cannot be applied to CRV period
October 1, 2014	Persons placed on probation or sentenced to imprisonment on or after:	Misdemeanor sentences greater than 90 days (not impaired driving) to be served in SMCP
January 1, 2015	Persons placed on probation or sentenced to imprisonment on or after:	Misdemeanor impaired driving sentences to be served in SMCP
December 1, 2015	Persons placed on probation on or after:	SSA misdemeanants not eligible for CRVs
		SSA misdemeanants eligible for revocation after two previously imposed quick dip confinements

In June 2013, the Legislature again made clarifications to the JRA. S.L. 2013-101 amended the regular conditions of probation to make it clear that the requirement to not abscond applies to offenders on supervised probation only. It also amended the CRV statute to make it clear that the confinement period

must consist of consecutive days (i.e., they cannot be separated). The legislation repealed the requirement that the Sentencing Commission report biannually on recidivism rates for offenders on probation, parole, and PRS participating in programming funded by the TECS program. These changes became effective June 12, 2013. The legislation also amended three maximum sentences specified for Class B1-E felonies that were incorrectly calculated in the original JRA bill. These maximum sentences are effective for offenses committed on or after October 1, 2013.

At the same time, the General Assembly changed one of the policies in the original JRA. S.L. 2013-210 allows the court to determine, with a written finding and agreement of the District Attorney, that an offender is inappropriate for conditional discharge under G.S. 90-96 for factors related to the offense. JRA originally made this provision mandatory for certain offenders. This change applies to offenses committed on or after December 1, 2013.

In 2014, the Legislature made changes to the SMCP. Session Law 2014-100 eliminates the provision that mandates longer misdemeanor sentences be served in the state prison system, and instead requires them to be served in local jails. Pursuant to the change, misdemeanants with sentences greater than 90 days, other than those sentenced for impaired driving, will serve their sentences in local jails that participate in the SMCP (misdemeanor sentences of 90 days or less will continue to be served in local jails). This change applies to persons placed on probation or sentenced to imprisonment on or after October 1, 2014. In addition, S.L. 2014-100 amended the statutes to require that all misdemeanants sentenced for impaired driving offenses, regardless of sentence length, serve their sentences in local jails that participate in the SMCP. This change applies to persons placed on probation or sentenced to imprisonment on or after January 1, 2015.

The General Assembly also changed the policy regarding the awarding of credit to the CRV period for felons. Session Law 2014-100 provides that the term of any CRV shall not be reduced by credit for time already served in the case. Any such credit shall instead be applied to the suspended sentence. Originally, the judge was required to award prehearing credit to the CRV period. This change applies to probation violations occurring on or after October 1, 2014.

In 2015, the Legislature again made changes to the application of CRVs. Session Law 2015-191 eliminates the CRVs for misdemeanants sentenced to probation under the SSA; the CRV remains as a sanction for offenders sentenced to probation for impaired driving offenses. The amendment also provides that the court may revoke probation for the misdemeanant after they have received two separate periods of short-term confinement, which may be imposed either by the court or by the probation officer through delegated authority. This change applies to persons placed on probation on or after December 1, 2015.

II. SENTENCING PRACTICES

The primary changes to sentencing under the JRA included redefining Community and Intermediate punishments, modifications to the existing habitual felon status offense, the creation of a new status offense for habitual breaking and entering, and the establishment of ASR. The utilization of ASR and habitual felon status offenses could have an impact on prison bed resources; however, these options are currently used for only a portion of eligible offenders. The usage of these tools reflects the practices within local jurisdictions and therefore varies across the state.

Community and Intermediate Punishments

With the redefinition of Community and Intermediate punishments under the JRA, special probation (split sentence) is one of two punishment conditions limited to intermediate punishment sentences (the other being drug treatment court, which is not available statewide).

Table 3 provides data on the imposition of special probation from CY 2011 through CY 2015, with a breakdown by origin – whether special probation was ordered as part of the sentence at initial judgment or whether it was ordered through a modification of probation conditions. While the use of special probation has declined over the past few years, the data indicate a slight increase in the use of special probation at initial judgment. In CY 2011, 85% of the 19,943 special probation sentences ordered were ordered as part of the sentence at initial judgment compared to 88% in CY 2015.

Table 3
Special Probation by Origin

Origin	Use of Special Probation				
	CY 2011	CY 2012	CY 2013	CY 2014	CY 2015
Initial Judgment	85%	83%	86%	89%	88%
Probation Modification	15%	17%	14%	11%	12%
Total	19,943	20,184	19,792	18,799	18,377

SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice

Habitual Felon

The effect of the modifications to the habitual felon law can be seen by examining the composition of habitual felon sentences by offense class. Previously, habitual felons were sentenced in Class C. Under the new law, habitual felons may be sentenced in Class C, D, or E depending on the offense class of their substantive offense. Table 4 shows the change in the offense class distribution of habitual felon sentences (as the most serious offense) since the passage of this change. Overall, 42% were sentenced in Class C, 22% were sentenced in Class D, and 34% were sentenced in Class E in CY 2015. Looking at the change over time, the percentage of habitual felons sentenced as Class C felons has decreased from 97% in CY 2011 to 42% in CY 2015. Based on the statute, it is possible that an offender convicted as a Class E habitual felon could receive a non-active sentence, depending on prior record level. However, ASQ indicates that there have been no Class E habitual felon entries to probation during this time frame.²⁴

The volume of habitual felon prison entries increased 29% from CY 2011 (prior to the JRA) to CY 2015 (from 761 to 979 respectively). This increase comes during a time period of primarily decreasing felony convictions.²⁵ Habitual felon penalties that are more proportional with the underlying offense may result in an increase in habitual felon convictions. While modifications to the habitual felon law have affected

²⁴ Court data on convictions and sentences imposed indicate that there were 50 non-active sentences for Class E habitual felons in FY 2014/15. NC Sentencing and Policy Advisory Commission, *Structured Sentencing Statistical Report for Felonies and Misdemeanors*, 2016.

²⁵ While felony convictions generally have been decreasing since FY 2009/10, there was a 4% increase in felony convictions from FY 2013/14 to FY 2014/15.

the offense class composition of habitual felon convictions and possibly the volume of convictions, the practice of sentencing habitual felons in the mitigated range has continued. In FY 2014/15, 59% of Class C, 71% of Class D, and 49% of Class E habitual felons were sentenced in the mitigated range.²⁶

**Table 4
Habitual Felon Prison Entries by Offense Class**

Offense Class	CY 2011		CY 2012		CY 2013		CY 2014		CY 2015	
	#	%	#	%	#	%	#	%	#	%
Class C	741	97	695	85	492	56	430	47	408	42
Class D	n/a	n/a	55	7	182	21	248	27	221	22
Class E	n/a	n/a	57	7	194	22	237	26	332	34
Other	20	3	10	1	13	1	6	0	18	2
Total	761	100	817	100	881	100	921	100	979	100

Note: The category “other” includes safekeepers, CRVs, and possible discrepant data.

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

Habitual felons continue to account for a substantial proportion of the prison population. Overall, habitual felons accounted for nearly 15% (or 5,377) of the December 31, 2015, prison population of 36,902. Although there was a substantial increase in habitual felon prison entries over the same time period, the population of habitual felons in prison has increased only 2% since December 31, 2011 (with a population of 5,269). While there are more habitual felon prison entries, those sentenced as Class D and Class E habitual felons receive shorter sentences than those sentenced as Class C habitual felons. The composition of habitual felons in prison reflects the legislative change and the difference in sentence lengths by class. At the end of 2015, 75% of habitual felons in prison were sentenced in Class C, 14% were sentenced in Class D, and 11% were sentenced in Class E.

Habitual Breaking and Entering Felon

Based on ASQ data, there were 146 entries to prison and one (1) entry to probation in CY 2015 for offenders convicted and sentenced for the habitual breaking and entering offense, which is a Class E felony. The monthly prison entries ranged from 6 to 17, with an average of 12 entries per month. Usage increased 23% from CY 2014 (with 119 prison entries).

Advanced Supervised Release

Data from DPS continue to indicate limited usage of ASR. Table 5 provides information on the overall number of inmates receiving ASR sentences over the past four years, as well as the offense class for their most serious offense (which is not necessarily the offense for which ASR was imposed). The number of inmates receiving ASR sentences increased slightly from CY 2014 to CY 2015 (from 89 to 95

²⁶ NC Sentencing and Policy Advisory Commission, *Structured Sentencing Statistical Report for Felonies and Misdemeanors*, 2016.

respectively). For CY 2015, the number of inmates receiving ASR each month ranged from 5 to 12, with an average of 8 inmates per month. The offense class composition of ASR sentences has been fairly consistent over the past few years.

**Table 5
Inmates Receiving ASR Sentences by Offense Class of Most Serious Offense**

Offense Class	CY 2012		CY 2013		CY 2014		CY 2015	
	#	%	#	%	#	%	#	%
Class D	31	20	26	24	20	22	24	25
Class E	21	14	20	19	19	21	18	19
Class F	23	15	15	14	12	14	15	16
Class G	32	21	18	17	17	19	13	14
Class H	45	30	25	24	21	24	24	25
Class I	0	0	2	2	0	0	1	1
Total	152	100	106	100	89	100	95	100

Note: The offense class of the most serious offense is not necessarily the offense for which ASR was imposed. This table reflects all inmates receiving ASR sentences regardless of whether the offense classes are correct. For example, according to statute, offenders in Class I are not eligible for ASR.

SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice

Data on ASR usage by county of conviction indicate that ASR has been used in 59 of the 100 counties in the state over the past four years. Last year, it was used in 28 counties, with four (4) counties accounting for 46% (n=44) of inmates receiving an ASR sentence.

The prison population of 36,902 on December 31, 2015, included 168 inmates with ASR sentences. The number of inmates with ASR at the end of 2015 was slightly higher than at the end of 2014 (n=163). In CY 2015, 114 inmates with an ASR sentence exited prison. DPS data indicate that the majority (n=100 or 88%) were released at their ASR date (i.e., following completion of their reduced minimum sentence length).

New Initiatives

To further the principles set forward in the JRA, DPS has worked to identify and extend targeted services and evidence-based practices to be used at the sentencing stage. While some of the work on the initiatives described below began prior to CY 2015, both were expanded and improved upon during the past year.

Pre-Sentence Investigation Pilot Expansion

In 2014, DPS started a Pre-Sentence Investigation (PSI) pilot program in Chatham County; the program has recently been expanded to Orange County. In this program, probation officers compile information

on offenders and prepare reports for the court's use at sentencing. Officers use the same risk and needs assessment (RNA) they use at intake with offenders who are sentenced to probation. DPS reports that these PSIs will provide more information to help the court make sentencing decisions based on risk and needs, decide whether an ASR sentence would be appropriate, and determine what specific supervision conditions should be imposed. In addition, the PSI will help the court match conditions based on offender risk and potentially provide pathways for certain offenders to move from supervised to unsupervised probation. PSIs will also assist DPS in assigning those offenders sentenced to probation to the appropriate officers and allow identified treatment services to begin immediately after sentencing. In 2015, DPS began training probation officers in the nine surrounding counties on how to conduct PSIs for offenders sentenced in Orange or Chatham counties.

Veteran Treatment Courts

DPS is working with the Governor's Crime Commission to establish veteran treatment courts across the state. Veteran treatment courts are therapeutic courts, similar to mental health treatment courts, where the court defers punishment, so long as defendants comply with program requirements designed to address underlying issues connected to their criminal misconduct. Currently, there are three courts (in Cumberland, Harnett, and Buncombe counties) and the potential to expand to at least seventeen sites. Expansion sites are focused on areas that have a Veteran's Administration (VA) Hospital, a VA Clinic, or a military base nearby. The focus of the veteran treatment court is to first divert the military population from jails and prisons and then determine what resources should be allocated to the military population to keep them from reoffending.

III. COMMUNITY SUPERVISION

The majority of the changes under the JRA affected how offenders are supervised in the community. As JRA provisions have been further amended by legislation, adjusted by policy, or reexamined based on initial outcomes, community supervision has continued evolving since 2011. Each year following the enactment of the JRA, the field becomes more settled and established in their understanding and usage of the available tools. Correspondingly, each year offers more information and data related to the use of available tools, their effectiveness, and whether practices have been implemented with fidelity to the intent of the JRA. DPS has demonstrated willingness to continually reexamine its policies and practices for improvement and has made enhancements to existing practices, many in response to available data. The information provided below describes any changes in policies and practices that affected Community Corrections (where relevant) alongside data (where available). As a point of reference for this section, in 2015 the community corrections population, which includes both probationers and post-release supervisees, was 100,290 offenders.

Risk and Need Assessment and Supervision Level²⁷

For supervision of the community corrections population, the JRA requires DPS to use a validated instrument to assess each offender's risk of reoffending and criminogenic needs, and to place the offender in the appropriate supervision level. The Offender Traits Inventory-Revised (OTI-R) is used to

²⁷ See NC Sentencing and Policy Advisory Commission, *Justice Reinvestment Implementation Evaluation Report*, 2013, for a more detailed description of these instruments.

assess offender risk and the Offender Self-Report and the Officer Interview and Impressions are used to assess offender need. Using these instruments, there are five levels of risk and five levels of need: extreme, high, moderate, low, and minimal. Table 6 shows the distribution of the community corrections population by risk, need, and supervision level. Overall, 13.1% were assessed as being extreme risk, 22.3% as high risk, 34.7% as moderate risk, 24.4% as low risk, and 5.5% as minimal risk; 20.8% were assessed as extreme need, 15.0% as high need, 38.9% as moderate need, 21.1% as low need, and 4.1% as minimal need.

Table 6
Supervision Level Distribution Based on Risk and Need Assessments:
Assessed Community Corrections Population on December 31, 2015

Need Level	Risk Level					# / % by Need Level
	Extreme R1	High R2	Moderate R3	Low R4	Minimal R5	
Extreme N1	L1 2,365 2.9%	4,192 5.1%	7,071 8.6%	3,127 3.8%	409 0.5%	17,164 20.8%
High N2	2,001 2.4%	3,211 3.9%	4,419 5.4%	L3 2,437 3.0%	320 0.4%	12,388 15.0%
Moderate N3	3,939 4.8%	6,649 8.1%	11,189 13.6%	8,346 10.1%	1,959 2.4%	32,082 38.9%
Low N4	2,267 2.7%	L2 3,811 4.6%	5,071 6.2%	L4 4,996 6.1%	1,277 1.5%	17,422 21.1%
Minimal N5	254 0.3%	509 0.6%	846 1.0%	1,228 1.5%	L5 562 0.7%	3,399 4.1%
# / % by Risk Level	10,826 13.1%	18,372 22.3%	28,596 34.7%	20,134 24.4%	4,527 5.5%	82,455

Note: The assessed community corrections population includes offenders who were available for assessment and in the population at least 60 days prior to population date. Percentages may not add to totals due to rounding. SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice

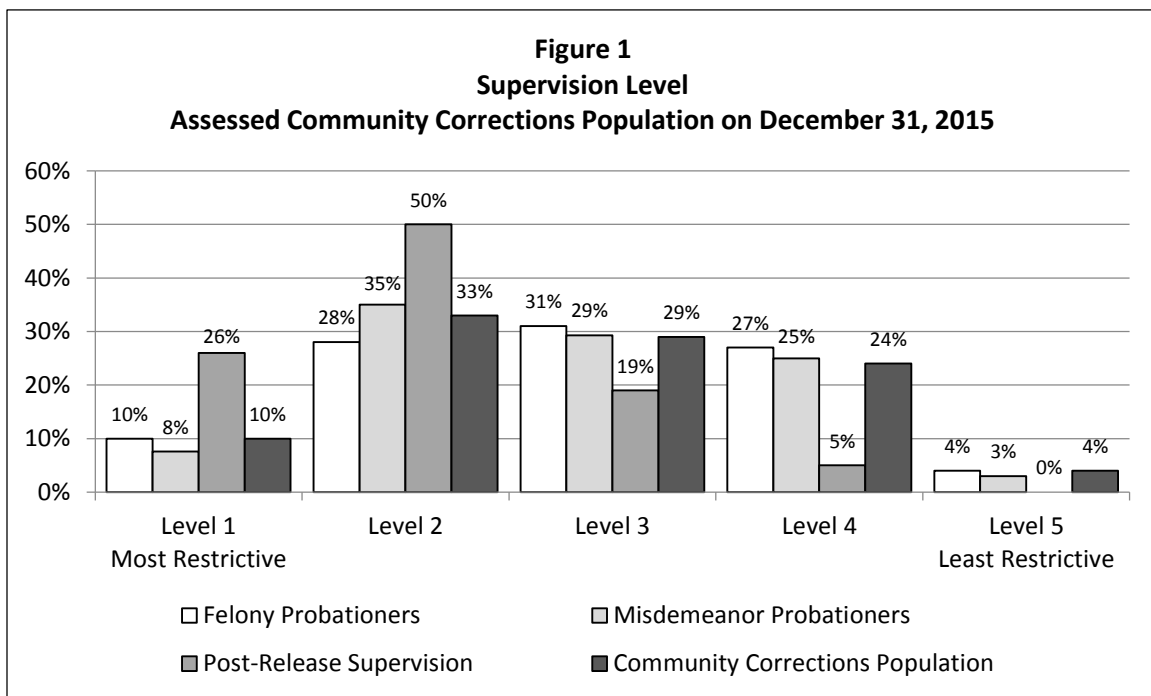
An offender's supervision level, which determines the minimum contact requirements for supervision, is determined by the intersection of the offender's level of risk and level of need. There are five supervision levels, with Level 1 being the most restrictive. Overall, 10% of offenders were assessed in Supervision Level 1, 33% were in Level 2, 29% were in Level 3, 24% were in Level 4, and 4% were in Level 5 (as shown in Figure 1).²⁸

Community Corrections provides supervision and services to all offenders released to the community, regardless of their status as a probationer or post-release supervisee or as a felon or misdemeanor.

²⁸ The Supervision Level distribution for Table 6 is based on DPS's RNA process. Additional risk assessments are completed for sex offenders and impaired driving offenders that may result in supervision at a higher level than indicated by the RNA.

Once in the community, the various groups are not supervised based on their group status but based on their risk, need, and supervision level. Figure 1 examines the supervision level distribution of these different populations of offenders – specifically, felony and misdemeanor probationers, as well as offenders on PRS.

In comparing probation populations, felony and misdemeanor probationers had very similar supervision level distributions; however, felony probationers had a slightly higher percentage in Supervision Level 1 (10% compared to 8% of misdemeanants) and a lower percentage in Supervision Level 2 (28% compared to 35% of misdemeanants). Over 75% of offenders on PRS were in Supervision Level 1 (26%) and Supervision Level 2 (50%), the most restrictive supervision levels.



SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice

Caseloads

The JRA set a caseload goal for probation officers of 60 probationers to 1 officer for offenders who are determined to be high or moderate risk.²⁹ To achieve this goal, DPS created a new template model. The new model, implemented in 2014, separates offenders by risk level, reducing caseloads for officers with higher risk offenders and increasing caseloads for officers with lower risk offenders. In some of the more rural areas across the state, probation officers maintain an “All Risk” template because staffing levels, frequency of court sessions, and/or the makeup of the offender population do not make it feasible to separate caseloads by risk.

To assist DPS in reaching its caseload goal, the General Assembly appropriated funding for 175 new probation officer positions. In 2015, DPS completed the hiring process for all 175 positions. To complete the hiring process for the positions, DPS employed a new hiring strategy, using a regional interview process. The regional interview process expedited hiring, reduced the number of overall vacancies, and

²⁹ G.S. 15A-1343.2(c).

brought the number of average vacant days down to 47. With the increase in new hires came a corresponding need for additional training classes; DPS added five new BASIC Probation and Parole Officer (PPO) classes in 2015, bringing the total number of classes to 14. Overall, 341 new officers were trained in 2015.

Mental Health Pilot

As reported in 2014, DPS launched a pilot program with the UNC School of Social Work to respond to the increasing population of offenders under community supervision with mental health needs.³⁰ Officers participating in the pilot carry specialized caseloads comprised of offenders with serious and persistent mental illness (SPMI). The goals of the pilot include development of a standard process to identify offenders with SPMI and implementing evidence-based strategies for case management of those offenders. Additionally, all staff will be trained to identify and respond to SPMI offenders through programs such as Mental Health First Aid.³¹ DPS hopes the pilot will improve communication and coordination with community providers to best address the needs of this population. In 2016, the pilot is expected to expand to additional counties across the state due to an award of the Smart Supervision Grant from the U.S. Department of Justice.

Treatment for Effective Community Supervision

As required by statute, TECS programs target high risk and/or high need offenders with evidence-based practices to reduce recidivism.³² TECS programs are funded through an appropriation from the General Assembly and funds remaining from the Broaden Access to Community Treatment program.³³ The Department uses both sources of funding to contract with vendors for the provision of services and the operation of community-based programming. CY 2013 represented the first full year of operation of the TECS program. While the year-end TECS population increased from 2012 to 2014, it decreased substantially over the past year (see Table 7). This decrease is likely related to the beginning of a new three-year contract cycle on July 1, 2015, with new vendors beginning operation at that time and other vendors discontinuing operations. However, there were only slight changes in the composition of the TECS population by supervision type. Of the overall TECS population on December 31, 2015, 14% of offenders were supervised in Supervision Level 1, 36% in Level 2, 28% in Level 3, 6% in Level 4, and 0% in Level 5. Supervision level had not been established for 16% of the population.

In 2014, DPS expanded the services organized under TECS, and therefore eligible for TECS funding, to encompass a wider range of services. TECS services now include the two traditional TECS programs, substance abuse and cognitive behavioral intervention (CBI) classes (now referred to as Recidivism Reduction Services, or RRS), as well as transitional housing, temporary housing, intensive outpatient treatment (IOP), community intervention centers, and local reentry councils.

The overwhelming majority of offenders served through TECS programs have participated in RRS programs. In 2015 DPS issued a request for proposals (RFP) soliciting vendors for RRS to provide four core services: CBI, CBI Boosters, regular outpatient substance abuse therapy, and aftercare/relapse

³⁰ According to DPS, as of February 12, 2016, 30% of the community corrections population was identified as having a mental health issue.

³¹ Mental Health First Aid is a course that teaches citizens how to help and respond to people that may be experiencing mental health issues and/or crisis. For more information, see www.mentalhealthfirstaid.org.

³² G.S. 143B-1154.

³³ The General Assembly appropriated approximately \$12 million to TECS for FY 2015/16.

prevention. In addition, vendors were required to offer mandatory supportive services of employment skill building, education, and health and nutrition classes, with optional services of family counseling, parenting, and child care education courses to supplement the curriculum. Through the initial RFP, the Department was able to award contracts covering 80 counties. An RFP for the 20 areas remaining, as well as six of the initial 80 that have since become vacant, was issued in March 2016.

**Table 7
Offenders Enrolled in TECS by Supervision Type**

Supervision Type	Offenders Enrolled in TECS							
	12/31/2012		12/31/2013		12/31/2014		12/31/2015	
	#	%	#	%	#	%	#	%
Probation Alone	1,001	95	1,867	89	2,073	83	1,113	79
PRS Alone	27	3	89	4	223	9	167	12
Probation & PRS	0	0	40	2	61	2	57	4
90-96	27	3	95	5	136	6	69	5
Total	1,055	100	2,091	100	2,493	100	1,406	100

Note: Percentages may not add to 100% due to rounding.

SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice

Securing and retaining vendors that can provide robust programming has been an ongoing challenge for the Department. The Department pays vendors for RRS on performance-based contracts, as opposed to fee-for-service contracts. Each contract begins with a base award, with additional payments made to vendors for reaching certain milestones (e.g., 30-day completion rates, 60-day completion rates, etc.). In 2015, DPS sought input from vendors regarding the RFPs and payment process. Vendors shared challenges related to payment-based performance, due mostly to difficulty engaging high risk offenders (i.e., the target group of offenders for RRS programs). DPS had previously identified high risk offenders as one of the main contributors to RRS' below-goal completion rates.³⁴ In response, the Department adjusted some of the payment milestones and continues to work with vendors to ensure they have flexibility in the programming, and in their contracts, to target that challenging population.

Recognizing the importance of stable housing to offender success, DPS has added housing programs under TECS; however, the ability to acquire housing options has been met with mixed success. Transitional housing is provided for homeless, non-sex offender, adults. Currently, the Department has 64 beds available in transitional housing, 8 of which are beds for females. While there is not a target risk or need level for transitional housing eligibility, the Department reports that the population is usually more medium and high risk offenders. While offenders stay in transitional housing, they have access to CBI programming and employment skill-building. Temporary housing, which is reserved for sex offenders, has been more difficult to obtain due to the lack of availability across the state; however, it continues to be a priority for DPS.

³⁴ DPS is pursuing a goal of a 60% completion rate; in November 2015, the rate was approximately 37%.

In 2015, DPS was able to contract for IOP services in a few areas across the state. Vendors that provide IOP services are a particular challenge because while not many offenders need the services, it is a very expensive service for those who do. The Department is considering taking a regional approach as they continue to recruit vendors, dividing the state into clusters and contracting vendors by clusters.

Delegated Authority

Prior to the JRA, probation officers had delegated authority from the court that enabled them to graduate sanctions in response to non-compliant offenders. The JRA expanded probation officers' delegated authority in order to provide more tools for addressing offenders' risk and needs and to better manage offenders unwilling to comply with conditions of probation. The expansion of delegated authority did not extend to supervision of offenders on PRS. As a result, the tools reported in this section cannot be used on the PRS population. Information reported below is limited to the probation population, unless noted otherwise.

The Department reported adopting a "Swift and Certain Sanctions" model to deal with offender non-compliance; officers respond to all detected offender non-compliance as soon as possible by imposing additional conditions of probation or other sanctions. Available sanctions for probationers include quick dip confinements, curfews, electronic house arrest, community service, and/or increased reporting requirements. This model also informs how probation officers "staff" cases; decisions related to offender non-compliance are made based on the nature of the violation(s) and the appropriate corresponding response. Responses are intended to be graduated in terms of severity, with officers first using less restrictive responses (where appropriate) to address non-compliance before using the more restrictive options.

For high risk offenders, officers have the additional option to use high risk delegated authority. Those offenders determined to be high risk according to the Department's risk assessment tool, the OTI-R, are eligible to have conditions added to their probation without being in violation. An OTI-R score of 50 or higher is considered to be high risk. Officers staff high risk delegated authority cases with chief probation officers to decide when and which offenders may need additional conditions. Available conditions include referrals to substance abuse treatment or CBI classes, electronic house arrest, or other controlling conditions. Quick dip confinement may not be imposed through high risk delegated authority.

The expanded delegated authority available to probation officers under the JRA took time to develop due to delayed implementation of various tools and initial hesitation by officers in the field. In 2014, the Department reported chief probation officers were working with staff to encourage the use of new delegated authority tools, resulting in an increased usage of the tools, particularly with quick dip confinement. As officers have become more familiar and comfortable with the tools of delegated authority over time, the data show a corresponding increase in usage. The use of delegated authority has increased substantially over the past few years (see Table 8).³⁵ Overall, probation officers used delegated authority 6,993 times in response to violations in CY 2015. The use of delegated authority nearly doubled and the use of high risk delegated authority nearly tripled over the past year. The Department credits this increase to their expanded training efforts and the inclusion of programs for courtroom clerks, jail staff, and some assistant district attorneys.

³⁵ An offender may be represented more than once in these data if there are multiple violation dates.

**Table 8
Use of Delegated Authority in Response to Violations**

Origin	Use of Delegated Authority				
	CY 2011	CY 2012	CY 2013	CY 2014	CY 2015
Delegated Authority	390	614	1,513	2,128	4,007
High Risk Delegated Authority	0	58	686	986	2,986
Total	390	672	2,199	3,114	6,993

SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice

Short-Term Jail Confinement

Short-term jail confinement, or quick dip confinement, is a tool of delegated authority used as an immediate response to offender non-compliance. While quick dip confinements can be ordered by the court at sentencing or at a probation violation hearing, they are most often used by probation officers through expanded delegated authority under the JRA. Quick dip confinements are imposed in two- or three-day increments, and cannot exceed six days per month during any separate three months of the offender’s period of probation.

DPS continues to refine policies regarding the use of quick dip confinement. DPS emphasizes that when staffing cases, officers consider all of the graduated sanctions available to respond to non-compliance; quick dip confinement is not appropriate for all violations. For example, it is Departmental policy that quick dip confinement should not be the first response to non-compliance and cannot be used as a response to non-willful violations (e.g., monetary violations).

Offenders have the statutory right to a court hearing before a quick dip confinement can be issued, but offenders may waive their right to a hearing through written waiver with DPS; DPS reports that less than 1% of offenders decline to waive this right.

From initial implementation (July 1, 2012) through November 30, 2015, offenders eligible for quick dip confinements were only those supervised in Supervision Levels 1, 2, and 3 – offenders with the highest levels of supervision.³⁶ Overall, 4,465 offenders accounted for 5,183 quick dip confinements in CY 2015. As shown in Table 9, the usage of quick dip confinement increased substantially over the past year. Quick dip confinement was ordered nearly equally for felons and misdemeanants (52% and 48% respectively). Of the 5,183 quick dip confinements ordered in CY 2015, 59% were for two-day periods and 41% were for three-day periods.

Consistent with DPS policy for the current time period, nearly all quick dip confinements ordered were for offenders in Supervision Levels 1, 2, and 3 (see Table 10). The overwhelming majority (80%) of quick dip confinements ordered in CY 2015 were for offenders in Supervision Levels 2 or 3. A higher percentage of felons with quick dip confinements ordered were in Supervision Level 1 compared to misdemeanants (22% compared to 13% respectively).

³⁶ In response to legislative changes, effective December 1, 2015, DPS revised its policy to reflect that offenders in all supervision levels are eligible for quick dip confinement.

**Table 9
Quick Dip Confinement**

Offense Type	Quick Dip Confinements Ordered					
	CY 2013		CY 2014		CY 2015	
	#	%	#	%	#	%
Felony	332	48	912	48	2,698	52
Misdemeanor	367	52	973	52	2,485	48
Total	699	100	1,885	100	5,183	100

SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice

**Table 10
Quick Dip Confinement by Supervision Level
CY 2015**

Supervision Level	Quick Dip Confinements Ordered				Total	
	Felons		Misdemeanants			
	#	%	#	%	#	%
Level 1 (Most Restrictive)	593	22	324	13	917	18
Level 2	1,209	45	1,016	41	2,225	43
Level 3	855	32	1,091	44	1,946	37
Level 4	22	1	35	2	57	1
Level 5 (Least Restrictive)	1	0	1	0	2	0
Not Established	18	0	18	0	36	1
Total	2,698	100	2,485	100	5,183	100

SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice

A subsequent violation process (as of March 3, 2016) was reported for 70% of offenders with quick dip confinements ordered in CY 2015 (see Table 11). Probationers in Supervision Level 1 had the highest rate of subsequent violations (77%), with a decreasing rate of subsequent violations for Supervision Levels 2 and 3 (70% and 68% respectively). The findings for the other groups should not be interpreted due to the small number of probationers in those groups.

A subsequent violation process was reported for 67% of felons with quick dip confinements (n=2,078) and 74% of misdemeanants with quick dip confinements (n=1,554). The average time to the subsequent violation process was slightly longer for felons (86 days compared to 79 days for misdemeanants).

Table 11
Violations Following Quick Dip Confinement
CY 2015

Supervision Level	N	Subsequent Violation as of March 3, 2016	
		#	%
Level 1 (Most Restrictive)	917	710	77
Level 2	2,225	1,546	70
Level 3	1,946	1,317	68
Level 4	57	29	51
Level 5 (Least Restrictive)	2	2	100
Not Established	36	28	78
Total	5,183	3,632	70

SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice

Results from a 2014 DPS study indicated that offenders who received quick dip confinements had better supervision outcomes than a matched comparison group.³⁷ In 2016, DPS conducted an updated examination of the effect of quick dip confinement on compliance with supervision.³⁸ The study focused on offenders that received a quick dip in FY 2013/14 and examined supervision outcomes in the year following the quick dip. Offenders who received quick dip confinements were more likely to still be on probation (and less likely to be revoked) at the end of follow-up (48%) compared to a matched comparison group (29%). In addition, offenders who received quick dip confinements were less likely to enter prison during follow-up (20% compared to 28%). The results from these studies suggest that quick dip confinement is an effective tool in improving offender compliance with probation supervision.

Administrative Response Pilot

The Department launched an Administrative Response Pilot in June of 2013 to collect and track information on offender outcomes related to officer responses to behavior. Participating probation offices track when officers respond to offender behavior and the effect of officer actions on offender behavior. The information tracked serves to remind officers to respond to non-compliance as soon as possible. In 2015, the pilot was expanded to one officer and one chief in all 31 districts, as well as to three full units across the state.

The Department learned through the pilot that while their graduated sanction model was successful in responding to negative behavior, the model needed a robust incentive program to offer responses to positive behavior. While some areas established local incentive programs, incentives to encourage positive behavior had not been part of the Department’s statewide approach. DPS also reported the

³⁷ NC Department of Public Safety, Rehabilitative Programs and Services, Research and Decision Support Analysis, *Analysis Summary, Short-Term Jail Confinement (Quick Dips) Efficacy*, June 23, 2014.

³⁸ NC Department of Public Safety, Rehabilitative Programs and Services, Research and Decision Support Analysis, *Analysis Summary, Short-Term Jail Confinement (Quick Dips) Efficacy*, January 21, 2016.

usefulness of the automated components and enhanced automation for the program. For those participating in the pilot, there is an additional screen included in the automated case plan that shows a list of incentives available for the officer to use when an offender exhibits positive behavior (e.g., negative drug screen). The use of both positive and negative responses creates a more holistic behavior log that officers can use to inform the judiciary when and if the offender must return to court. Due in part to the success and lessons learned from this pilot, the Department plans to revise their probation policy from a “non-compliance policy” to a “Comprehensive Behavior Management” policy to ensure that officers are responding to all behavior, both positive and negative.

Confinement in Response to Violations

CRVs were designed as a response to technical violations of probation that would address offender non-compliance, while also reducing the number of offenders whose probation is revoked. Probationers under supervision for a felony, or for a misdemeanor (sentenced prior to December 1, 2015),³⁹ can be ordered to serve a CRV; however, the CRV functions much differently in the felony context than in the misdemeanor context. The Department made substantial changes to the practice of the CRV for felons in 2014 and 2015, and significant legislative changes were made affecting misdemeanor CRVs in 2015.

Probation data for CY 2015 indicate a total of 8,184 CRV dispositions ordered as a result of probation violation hearings – 35% for felons and 65% for misdemeanants (see Table 12). The majority of CRV dispositions (97% or n=7,971) were for offenders with a single CRV disposition. Overall, there was an 11% decrease in CRV dispositions over the past year, with an 8% decrease in felony CRV dispositions and a 12% decrease in misdemeanor CRV dispositions. As noted previously, effective December 1, 2015, CRVs are no longer available to misdemeanants. It is likely that some portion of the decrease in misdemeanor CRV dispositions is attributable to the legislative change that went into effect just before the end of CY 2015.⁴⁰ Furthermore, as mentioned previously, there has been a change in how cases are staffed which may also influence the decrease; probation officers are encouraged to use graduated sanctions, such as imposing quick dip confinements, prior to recommending a CRV.

**Table 12
Offenders with CRV Dispositions**

Offense Type	Offenders with CRV Dispositions					
	CY 2013		CY 2014		CY 2015	
	#	%	#	%	#	%
Felony	3,025	34	3,087	34	2,853	35
Misdemeanor	5,896	66	6,086	66	5,331	65
Total	8,921	100	9,173	100	8,184	100

SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice

³⁹ G.S. 15A-1344(d2).

⁴⁰ Pursuant to S.L. 2015-191, effective December 1, 2015, CRVs are eliminated as an available sanction for misdemeanants sentenced to probation under Structured Sentencing; the CRV remains a sanction available for offenders sentenced to probation for impaired driving offenses.

Misdemeanants

As the CRV has evolved, the Department has identified two critical components to its potential for success as a tool to reduce recidivism- providing intensive programming geared towards rehabilitation while the offender is confined and returning the offender to supervision following the confinement period to put into practice the programming learned. Both of these components are uniquely challenging in the misdemeanor context, which led to the changes in eligibility for CRVs for Structured Sentencing misdemeanants (effective for offenses on or after December 1, 2015).

An offender's opportunity to participate in programming while in custody is heavily influenced by resource availability in the confinement facility. Misdemeanor offenders ordered to serve a CRV in 2015 served their CRV in local jails, either directly or through the SMCP. Programming offered for misdemeanants in jails varies across the state, but is not required, and largely unavailable. When the SMCP was launched, DPS and NCSA discussed programming in the local facilities, which could then potentially be used for misdemeanor CRV offenders. Such plans have not yet materialized for a variety of reasons (e.g., space restrictions, funding, etc.).

Not only do the facilities need to offer intensive programming for the CRV to be successful, but the offender must be in the facility long enough to reap the benefits of any programming provided. Both DPS and the NCSA reported that they rely on research that the programming this population needs is optimal at 90 days, and that any time less than that actually could be detrimental. However, misdemeanor offenders were rarely receiving CRVs of that length, due to the structure of the misdemeanor grid and the correspondingly shorter available sentences.⁴¹ Also, depending on the length of the misdemeanor's suspended sentence, many judges began ordering a terminal CRV, which occurs when the probation period is terminated following the period of confinement. Because of this practice, a misdemeanor offender returning to supervision following a CRV period was rare. Without returning to supervision, and the opportunity to implement the lessons learned while serving the CRV, the promise of the CRV as a tool to reduce offender recidivism was severely undermined. Despite the Department's efforts to train and educate both their officers and the judiciary on the goal of returning offenders to probation following the CRV, the practice continued to be used.

In 2014, the Sentencing Commission studied the issue of terminal CRVs in the misdemeanor context, and ultimately recommended they be eliminated for misdemeanor offenders. This recommendation was passed into law and went into effect for misdemeanants ordered on to probation on or after December 1, 2015.⁴² The legislation created a pathway to revocation for misdemeanor probationers via quick dip confinement, providing that the court may revoke probation for the misdemeanor after they have received two separate periods of short-term confinement, which may be imposed either by the court or by the probation officer through delegated authority.

Felons

Felons who are found in violation of their probation for technical violations (e.g., missed appointments, positive drug screens) can be ordered to serve a 90-day CRV period. In 2015, the majority of offenders sentenced to a CRV were eligible to serve that period of confinement in the CRV Centers (*see infra*, CRV

⁴¹ See 2015 Justice Reinvestment Act Implementation Evaluation Report, Section V. Study of Justice Reinvestment Act Issues, Terminal CRVs, available at <http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/JRIReports-2015.pdf>.

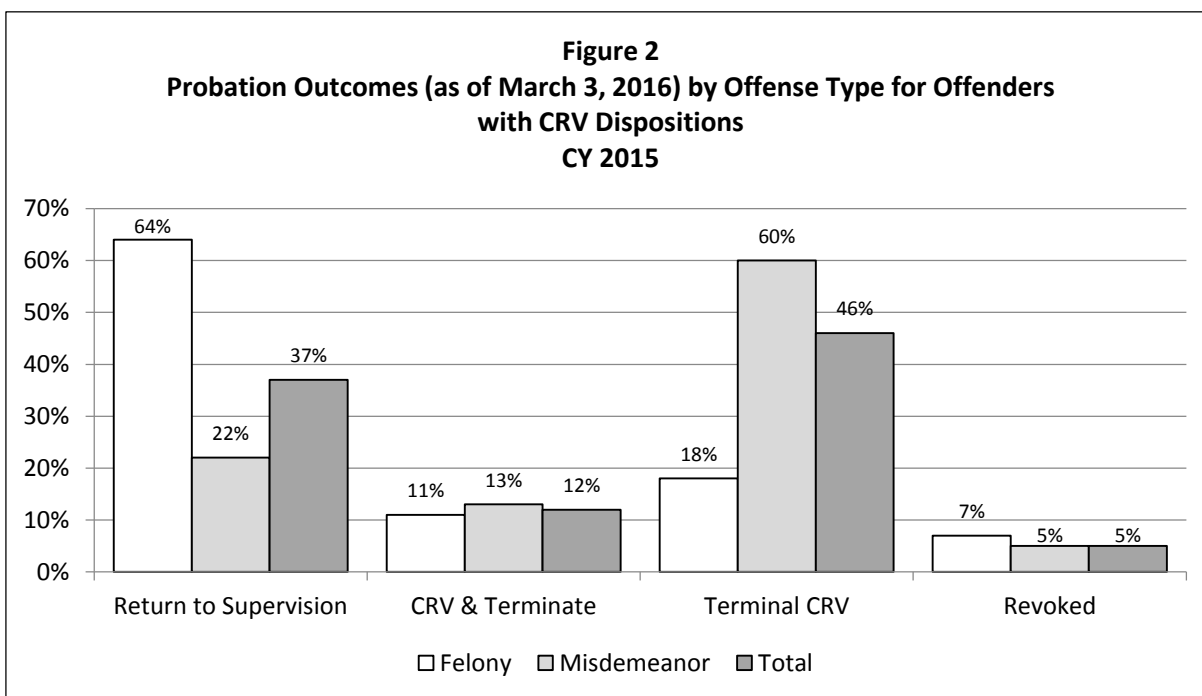
⁴² G.S. 15A-1344(d2), as amended by S.L. 2015-191.

Centers). However, there are and will continue to be a contingency of offenders ordered to serve a CRV that will do so in prison because of eligibility requirements, safety concerns, or other reasons. The Department continues to work on enhancing the CRV Centers to handle offenders with more advanced medical/mental health issues while exploring more options within prisons for male⁴³ CRV offenders not housed at the CRV Centers.

While offenders are serving CRVs in prison, they have access to the same programming as non-CRV inmates. Programming offered while in prison includes Brief Intervention Tool worksheets with topics such as “Decision Making” and “Problem Solving,” self-directed journaling, substance abuse intervention, and some GED preparation.

Outcomes after Serving a CRV

The intent of the CRV was for offenders to receive programming and treatment during confinement, possibly leading to improved outcomes after their return to supervision in the community. As discussed above, in certain cases, offenders were not returning to the community for a variety of reasons. Figure 2 and Table 13 provide preliminary probation outcomes for the CRV dispositions ordered in CY 2015.⁴⁴ Outcomes differed for felons and misdemeanants (see Figure 2). The majority of felony probationers returned to supervision following a CRV disposition (64%), while the majority of misdemeanants received a terminal CRV (60%). A slightly higher percentage of misdemeanants (13%) than felons (11%) had their probation terminated upon completion of the CRV period (i.e., CRV and terminate).



SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice

⁴³ See *infra* CRV Center Enhancements, for a discussion of CRVs for female offenders.

⁴⁴ Terminal CRV refers to a CRV period that uses up all of the time on the suspended sentence. CRV and terminate refers to terminating probation upon completion of the CRV period.

Table 13
Probation Outcomes by Supervision Level and Offense Type
for Offenders with CRV Dispositions
CY 2015

Supervision Level	Offense Type	Probation Outcomes as of March 3, 2016				Total
		Return to Supervision	CRV & Terminate	Terminal CRV	Revoked	
Level 1 (Most Restrictive)	Felony	65%	9%	16%	10%	614
	Misdemeanor	31%	10%	52%	7%	595
	Subtotal	48%	10%	34%	8%	1,209
Level 2	Felony	65%	11%	18%	6%	1,098
	Misdemeanor	27%	12%	56%	5%	1,764
	Subtotal	41%	12%	41%	6%	2,862
Level 3	Felony	64%	10%	22%	4%	730
	Misdemeanor	17%	14%	65%	4%	1,635
	Subtotal	32%	13%	51%	4%	2,365
Level 4	Felony	58%	15%	22%	5%	242
	Misdemeanor	17%	15%	66%	2%	839
	Subtotal	26%	15%	56%	3%	1,081
Level 5 (Least Restrictive)	Felony	67%	11%	22%	0%	9
	Misdemeanor	21%	14%	61%	4%	51
	Subtotal	29%	13%	55%	3%	60
Not Established	Felony	67%	8%	15%	10%	160
	Misdemeanor	15%	15%	64%	6%	447
	Subtotal	29%	13%	51%	7%	607
Felony Total		64%	11%	18%	7%	2,853
Misdemeanor Total		22%	13%	60%	5%	5,331
Total		37%	12%	46%	5%	8,184

SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice

Examination of probation outcomes within the context of supervision level and offense type indicates that offense type is of primary importance (i.e., more important than supervision level) in determining what happens following a CRV (see Table 13). This is likely due to the differences in sentence lengths for

felons as compared to misdemeanants. More felons return to supervision following a CRV because serving a CRV typically does not use up all of the active time remaining on their sentences, while more misdemeanants receive terminal CRVs because serving a CRV uses up all of the active time remaining on their sentences.⁴⁵

On December 31, 2015, there were 586 offenders in prison serving CRV periods, accounting for nearly 2% of the total prison population. Overall, 232 (40%) of these offenders were serving their CRV periods in a CRV Center, discussed below.⁴⁶ The majority of offenders in prison serving probation CRV periods were felons (95%), as most misdemeanants serve their CRV periods in local jails under current law.⁴⁷ Of offenders in prison serving CRV periods, 26% were in Supervision Level 1, 36% were in Level 2, 19% were in Level 3, 8% were in Level 4, and no offenders were in Level 5. Supervision level had not been established for the remaining 11%.

CRV Centers

As DPS continued to expand and update policies and programs to further the rehabilitative goals of the JRA, it sought to improve and tailor its approach to the CRV population. In 2014, DPS began its pilot program for designated CRV Centers, where offenders serving CRVs would go to specific facilities and not be included in the general prison population. To create the CRV Centers, the Department repurposed two previously closed prison facilities in Burke and Robeson counties. The Burke CRV Center has a capacity of 248 beds for male offenders and the CRV Center in Robeson has beds for 192 male offenders. The CRV Centers began receiving offenders in December of 2014.⁴⁸

All felons ordered to serve a CRV serve it in a CRV Center unless they are found ineligible. According to DPS policy, an offender is ineligible for acceptance at a CRV Center if any of the following criteria apply:

- The offender is female.
- The offender has pending charges that are a Class E felony or higher.⁴⁹
- The offender has a concurrent active sentence they are also serving.
- The offender has chronic medical issues that are unstable or is under psychotropic medications.

Eligible offenders are sent to the CRV Center location closest to them. If an offender is later found to be ineligible, they are transported back to a prison facility.

Each CRV Center is managed by a facility director and assistant facility director, a residential manager, and several unit and assistant unit supervisors. The CRV Centers also have case managers (former correctional officers), probation officers, and chief probation officers on staff. Directors report they will be seeking additional staff for the current facilities in 2016.

⁴⁵ Pursuant to S.L. 2015-191, and as noted in the CRV section above, effective December 1, 2015, CRVs are eliminated as an available sanction for misdemeanants sentenced to probation under Structured Sentencing; the CRV remains a sanction available for offenders sentenced to probation for impaired driving offenses.

⁴⁶ DPS opened two pilot CRV Centers in December 2014. During the initial pilot, CRV Center beds were classified as prison beds. Following the pilot, DPS reclassified CRV Center beds as treatment beds effective January 1, 2016. From January 2016 forward, offenders in CRV Centers are not considered part of the prison population.

⁴⁷ As noted previously, the JRA required misdemeanants with a sentence imposed of more than 90 days and up to 180 days to be housed in county jails through the SMCP. During the 2014 Session, the SMCP was expanded to include misdemeanants with sentences greater than 180 days, as well as those sentenced for impaired driving.

⁴⁸ Around the same time, DPS converted Eastern Correctional Institute into a hybrid facility, with a wing exclusively for female CRV offenders.

⁴⁹ This criteria is effective for offenders sentenced to the CRV Centers on or after December 1, 2015. Prior to that time, an offender was ineligible for acceptance to a CRV Center if they had pending charges of a Class D felony or higher.

While serving their CRV period, offenders' days are structured with mandatory programming, chores, free time, and community service projects. Vendors providing intensive behavior modification programming are contracted through a bidding process; for 2016, the Department solicited bids and awarded a contract for their identified core services of CBI, substance abuse education, and journaling, as well as the computer lab. DPS has been able to increase programming to six days and evenings a week and has connected with community resources to bring additional programs into the CRV Centers. The Department has also secured additional computer lab programming. The Department is working to determine if offenders can have access to a secure computer programs so they can work independently.

The sites use an evidence-based behavior management system, which employs incentives and sanctions to reinforce or change behavior. Offenders are rewarded with certain privileges (e.g., use of a radio) for positive behavior (e.g., providing peer support when participating in programs). Conversely, any earned privileges can be taken away in response to negative behavior. Offenders also participate in weekly group facility meetings, designed to give them the opportunity to share grievances and issues with case managers and supervisors. The Department reports that these structured meetings have reduced the number of complaints from offenders and have increased compliance in the CRV Centers.

Sentencing Commission Site Visits to CRV Centers

The Sentencing Commission and its staff were invited by the Department to visit both Burke and Robeson CRV Centers, and did so in September of 2015. Members were able to tour the grounds and quarters the offenders stayed in, the classrooms and computer lab, as well as speak with staff. Members that toured the Burke CRV Center reported what they considered to be a very structured environment, with offenders attending classes, studying workbooks, cleaning, as well as participating in their free blocks. The members also spoke with a case manager at the Burke CRV Center about his relationships with the offenders in the CRV Centers versus in the field. Commissioners were impressed to hear firsthand the benefits of the individual and frequent counseling available to offenders. Additionally, Commissioners and staff heard about the implementation of the incentive-sanction behavior modification model and the adjustments CRV Center staff continue to make in their weekly staffing to ensure its viability.

Commissioners visiting the Robeson CRV Center felt the CRV Center did not have the same level of structure that was reported at the Burke CRV Center. The Department reported it was aware of the discrepancies between the two CRV Centers and was working to identify the causes and respond to them. For example, the layout of the facilities is considerably different. The Robeson CRV Center campus does not have separate buildings for classroom space like the Burke CRV Center campus. Instead, at Robeson, the dayrooms, found in the offenders' quarters, must also function as the classrooms, which impacts what the staff is able to accomplish and the focus of the offenders. Programming on both campuses is affected by what is available locally, which has proven more of a challenge for the Robeson CRV Center than the Burke CRV Center. Recently, however, the Department has been able to connect and build a relationship with Robeson Community College to augment its program offerings.

CRV Center Enhancements

DPS collected and examined information from the CRV Center pilot stage (2014-2015) to determine what enhancements were needed to improve the model. During the pilot phase, DPS identified several issues to be addressed including: improved mental health and medical care, the need for certain types of programming, eligibility for certain offenders, continued non-compliance at the CRV Centers, and

implementing a stand-alone facility for females. Plans for CRV Center changes and enhancements are described below.

Offenders with mental health issues and severe medical issues are currently not eligible for the CRV Centers because the facilities do not have staff on hand with the expertise to provide such specialized care. The Department continues to work towards being able to provide this type of care in the CRV Centers, and has looked to neighboring prison facilities for resources to support some inmates with less severe mental health and medical issues. Because offenders are housed in CRV Centers for a long period of time (90 days), they are more likely to require routine medical and dental care while in the CRV Center. Providing routine medical and dental care at the CRV Centers is challenging because the CRV Centers do not have medical facilities on-site. The Department is looking at the residential treatment facilities of DART-Cherry and Black Mountain for ways to address these needs.

DPS reports that many offenders entering the CRV Centers need substance abuse treatment (different from the substance abuse intervention provided) and general education. Substance abuse treatment programs are typically much longer than the 90 days allotted for the felony CRV period, and DPS reports that partial programming can be more detrimental to the offender than not providing any substance abuse programming. It is difficult for other aspects of the programming to be successful if an offender has a serious substance abuse problem and is not able to receive treatment. The Department is exploring options to address this issue.

Initially, there was some confusion related to whether offenders on PRS should serve three-month revocation periods at CRV Centers. At first, the Department reported the PRSP Commission was sending post-release supervisees that had violated PRS and were ordered to serve a three-month revocation to the Centers. However, upon further review of the intent of the CRV Centers and the eligible population set forth in statute, DPS determined that only those probationers serving a 90-day CRV could do so at a CRV Center. Post-release supervisees will serve any three-month revocation periods in prisons.

While DPS reports that offenders were generally receptive to the model of the CRV Center, some offenders continued to be non-compliant. DPS developed a disciplinary process a step above the sanctions that come along with the behavior management system. If needed, an offender can be sent to restrictive housing at a local prison for two to five days. In line with the CRV Centers' mission, the offender is sent with worksheets to complete that examine the behavior(s) leading to their disciplinary action. It is the goal of the CRV Centers to have staff visit with the offender within 24 hours of their placement in restricted housing. DPS continues to work on plans for chronic violators, recognizing that some offenders may remain non-compliant and negatively impact the other offenders in the CRV Centers. The Department hopes to create a process for removing offenders with chronic disciplinary issues and place them elsewhere for the remaining portion of their confinement period.

Given the initial success of the model serving male offenders, DPS recognizes the development of a stand-alone female center as a top priority. One of the challenges in creating a center for females is finding an appropriately sized facility; currently the Department has 75-80 females eligible for CRV Centers. While the Department believes that the stand-alone model created at Burke and Robeson is superior to a CRV program offered within a prison facility, some programming for the female inmates ordered to a CRV remains available while DPS plans for a female CRV Center. At Eastern Correctional Institution, DPS designated one floor with four pods for females that were ordered to a CRV. DPS is not able to contract with private providers for the provision of certain types of programming for the pods, but the female offenders are receiving a hybrid of programming including programs already offered at

Eastern to the general population, as well as some additional tools (such as journaling) that prison staff can provide. DPS has received positive reports from the females participating in these programs, and will maintain this unit while actively pursuing a stand-alone facility for the female population.

Another population that is currently excluded from the eligible pool of offenders for the CRV Centers are youthful offenders, categorized as offenders under the age of 18. There are federal requirements regarding housing youthful offenders in the same facilities as adult offenders, and currently, the CRV Centers are not equipped to meet those requirements. However, DPS has identified this population as another target group to address in 2016.

The Department continues to revise its policies, to improve the programming offered to offenders at the CRVs Centers, and to learn as the Centers grow and develop. To help inform the need for future policy changes, the Department is beginning an evaluation process of the CRV Centers in March 2016. Additionally, they plan to develop an automated offender exit survey for the CRV Centers.

Probation Outcomes

As the JRA was intended to limit certain types of entry to prison (e.g., revocations of probation for technical violations), it is important to examine data related to probation outcomes. Below, data are provided detailing exits from probation due to revocation and entries to prison for probation violations by type (e.g., absconding). An examination of the data reveal that probation exits due to revocations have declined over the past five calendar years, but rates have started to flatten out. While data on probation violations and entries to prison show stability, shifts in the nature of violations can be attributed in part to improvements in the collection and capturing of more nuanced data.

As shown in Table 14, 23% of felony exits from probation in CY 2015 were for revocation, compared to 40% in CY 2011 – an overall decrease of 43%. Misdemeanor exits from probation due to revocation decreased 54% over this same time period. However, the largest declines occurred from CY 2011 to CY 2012 with the implementation of the changes in the JRA and have subsequently leveled off.

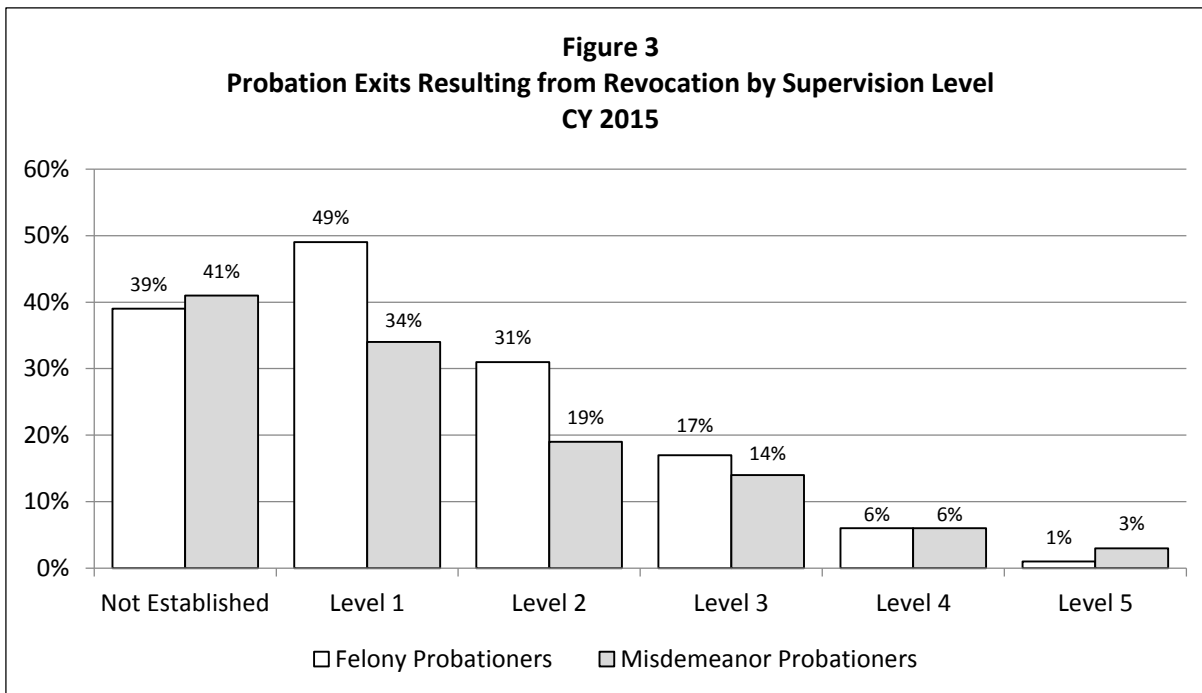
**Table 14
Probation Exits Resulting from Revocation**

Offense Type	Revocation Exits				
	CY 2011	CY 2012	CY 2013	CY 2014	CY 2015
Felony	40%	28%	25%	24%	23%
Misdemeanor	37%	23%	19%	17%	17%
Total	38%	24%	20%	19%	18%

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

Figure 3 examines probation revocation rates by supervision level. As expected, revocation rates were highest for probationers in Supervision Level 1 (49% for felony probationers and 34% for misdemeanor probationers) and lowest for those in Supervision Level 5 (1% for felony probationers and 3% for misdemeanor probationers). Felony probationers in Supervision Levels 1, 2, and 3 had higher revocation

rates than misdemeanor probationers in the same levels. The revocation rates for felony and misdemeanor probationers in Supervision Levels 4 and 5 were similar. The revocation rates for felony and misdemeanor probationers whose supervision level had not been established were more closely aligned with the revocation rates for probationers in Supervision Level 1 than those in the other levels.⁵⁰



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

Felony Prison Entries^{51,52}

As shown in Table 15, felony probation violation entries to prison have remained remarkably stable over the past three years at just over 7,200 each year. The composition of felony probation violation entries shifted beginning in CY 2014 with the ability to capture data on the imposition of terminal CRVs. Terminal CRVs accounted for 8% of prison entries in CY 2014 and CY 2015. The majority of probation violation entries in CY 2015 resulted from absconding supervision (34%), followed by imposition of a CRV (24%). There were very few entries for revocation following the imposition of two prior CRVs. Entries for pre-JRA technical revocations have continued to decrease (1% in CY 2015). Data for entries categorized as JRA technical revocations will continue to be examined. It is not clear whether these data reflect actual practices or are related to how information is captured in OPUS.

⁵⁰ Offenders with no supervision level established are typically offenders within the first 60 days of supervision during which the RNA process is being completed or offenders who have absconded supervision prior to completion of the RNA process.

⁵¹ This section focuses only on felony prison entries since nearly all misdemeanants serve their sentences in local jail facilities. See *infra*, Incarceration in Local Confinement Facilities.

⁵² DPS opened two pilot CRV Centers in December 2014. During the initial pilot, CRV Center beds were classified as prison beds. Following the pilot, DPS reclassified CRV Center beds as treatment beds effective January 1, 2016. From January 2016 forward, offenders in CRV Centers are not considered part of the prison population.

**Table 15
Felony Entries to Prison for Probation Violations by Type**

Type of Prison Entry		Felony Entries to Prison					
		CY 2013		CY 2014		CY 2015	
		#	%	#	%	#	%
New Crime		1,505	21	1,578	22	1,463	20
JRA	Technical	1,036	14	959	13	914	13
	CRV	2,253	31	1,647	23	1,726	24
	Revoked after 2 CRVs	0	0	27	0	29	0
	Terminal CRV*	n/a	n/a	580	8	612	8
	Absconding	2,163	30	2,351	33	2,421	34
Pre-JRA	Technical	291	4	94	1	57	1
Total		7,248	100	7,236	100	7,222	100

*Data were not available to break out terminal CRVs in CY 2013. As a result, any terminal CRVs would be included in the CRV category for CY 2013.

SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice

IV. INCARCERATION AND REENTRY

The JRA and subsequent related legislation made substantial changes to the confinement location for felons and misdemeanants in North Carolina. Gradually, from 2011 to 2015, misdemeanants were shifted out of state prisons to local confinement facilities. The bifurcation of the confinement location for felons and misdemeanants has been fully established and implemented as of CY 2015, with felons serving active sentences in state prisons and almost all misdemeanants serving active sentences in local jails.⁵³ Information provided in this section is divided into two parts: policies and data related to misdemeanants serving active sentences in local confinement facilities (including the SMCP), and policies and data related to felons serving active sentences in prison. Particular focus is also given to felons exiting prison on to PRS, due to the expansion of PRS under the JRA and recent initiatives by DPS to improve reentry efforts for inmates returning to the community.

⁵³ The Section of Prisons (SOP) continues to receive all felons as well as misdemeanants with heightened needs, such as medical or safekeeping; there is also a small population of misdemeanants remaining in prison who were sentenced prior to their respective effective dates. Additionally, SOP will receive any misdemeanants in the event that space in the SMCP runs out in the future.

Incarceration in Local Confinement Facilities

Because incarceration in state prisons is the most costly correctional option for managing offenders, it should be reserved for those who commit the most serious offenses and pose the greatest public safety threat. One of the ways the JRA addressed its goal of reducing correctional spending was shifting the less serious offenders (misdemeanants) out of costly state prisons and into local confinement facilities. This shift brought North Carolina in line with most other states in that misdemeanants are now housed in jails as opposed to the state-run prison systems. Originally, the JRA reassigned only those misdemeanants serving 91 to 180 day sentences to local confinement facilities; in 2015, changes to the JRA brought about the shift of *all* remaining misdemeanants (with few exceptions) to local jails.

The changes related to shifting misdemeanants to local confinement facilities had several implications. First, the legislation created the SMCP, necessitating that an entity provide administration for the Program on behalf of the state (in this case, the NCSA). Second, the changes under the JRA increased demand on jail resources due to the increased population of offenders sentenced to local jails, which required funding. Lastly, it required planning and preparation by sheriffs and jail administrators. All of these changes are discussed below, with particular focus on recent legislative and funding changes to the SMCP, as well as CY 2015 data on SMCP inmates.

Beyond the confinement location mandated for misdemeanants under the JRA, there are other provisions in the legislation affecting jails. Quick dip confinements imposed by probation officers through delegated authority for both felons and misdemeanants are served in local jails. Some CRVs (those imposed for misdemeanants prior to December 1, 2015) are also served in jails. Much of the impact of these provisions on jails in terms of capacity and resources is not measureable at this stage because North Carolina lacks a statewide automated jail database.

Statewide Misdemeanor Confinement Program

In 2015, changes to eligibility for the SMCP were implemented. Prior to the JRA, misdemeanants with sentences of 90 days or more served their sentences in prison facilities, while those with sentences less than 90 days served their sentences in local confinement facilities. As noted above, the JRA established the SMCP, which required misdemeanants sentenced to 91 to 180 days serve their sentences in local confinement facilities (effective on or after January 1, 2012). During the 2014 Session of the General Assembly, the SMCP was expanded to include misdemeanants with sentences greater than 180 days (effective October 1, 2014), as well as those sentenced for impaired driving (effective January 1, 2015). As a result, nearly all misdemeanants who receive an active sentence under Structured Sentencing serve their sentences in local jails either directly or through the SMCP. The recent change in confinement location for the non-Structured Sentencing population of misdemeanants (i.e., impaired driving offenders), has also brought about changes to the composition of misdemeanants in prison and a corresponding change in the SMCP population. The driving while impaired (DWI) population has decreased considerably (330 on December 31, 2015, compared to 752 the previous year), with further declines expected as more DWI offenders become eligible for the SMCP.

CY 2015 also brought substantial changes in funding for the SMCP. When the SMCP was formed under the JRA, the General Assembly created the SMC Fund to finance the program. In so doing, they established a dedicated fee to finance the SMC Fund; the fee was to be collected from persons found responsible for an improper equipment infraction. Subsequently, the Richmond County Board of

Education sued members of the executive branch in their official capacity,⁵⁴ arguing that the fee was a fine in nature and, therefore, proceeds of the fee must be used for public schools pursuant to the North Carolina Constitution.⁵⁵ The case proceeded to the North Carolina Court of Appeals, which ruled in favor of Richmond County, holding that the proceeds of the improper equipment fee belonged to the county and were to be “used exclusively for maintaining free public schools.”⁵⁶ The state parties did not appeal the ruling to the North Carolina Supreme Court.

Anticipating that the improper equipment fee proceeds might be redirected to the counties, and to protect the viability of the Fund and the SMCP itself, the 2015 General Assembly authorized a recurring direct appropriation in the amount of \$22.5 million per fiscal year (FY 2015/16 through FY 2016/17), effective July 1, 2015.⁵⁷ In addition, the General Assembly amended the statutes relating to costs in criminal actions to eliminate the provisions directing the proceeds to the SMC Fund.⁵⁸

In their issued opinion, the Court also ordered the Defendants to reimburse Richmond County for the revenue the Fund collected from the improper equipment fee.⁵⁹ Subsequently, other school boards and counties have joined the lawsuit, seeking recoupment of their portion of the proceeds of the fee. In December 2015, members of the General Assembly anticipated the statewide total to be repaid at more than \$43 million.

Despite changes to the funding in 2015, the NCSA reported it collected about \$29 million and paid out \$15.9 million in county reimbursements (including approximately \$500,000 in medical payments). This left the SMC Fund with a balance of over \$38 million going into 2016. It is unclear at this stage how the Fund will be affected by the court ruling.

In its operations, the SMCP is supported by counties volunteering excess bed space to receive inmates from other jurisdictions (i.e., “receiving counties”), for which the county receives a reimbursement rate of \$40 a day.⁶⁰ Counties that send inmates are reimbursed for costs associated with transporting inmates between jurisdictions and housing prior to their transport. Not surprisingly, the decision to participate in the SMCP as a receiving county is dependent upon the availability of bed space. The North Carolina Jail Administrators’ Association (NCJAA) reported other factors contributing to local jails’ decisions about participating as a receiving county including staffing levels, geographic location, and the reimbursement amount. According to the NCJAA, most areas reported the reimbursement rate for housing an inmate under the SMCP is below the average daily cost incurred by the facility, leading some areas to not participate. The NCSA reports they are aware of the issue and continue to work with the General Assembly on increasing the rate.

The SMCP currently has 57 receiving counties with a capacity of 1,825 (see Table 16). As a result of the program expansion mandated during the 2014 Session, SMCP entries and, correspondingly, the SMCP

⁵⁴ Defendants in the suit were Janet Cowell, North Carolina State Treasurer; David T. McCoy, North Carolina State Controller; Art Pope, North Carolina State Budget Director; Frank L. Perry, Secretary of the North Carolina Department of Public Safety; and Roy Cooper, Attorney General of the State of North Carolina.

⁵⁵ Article IX, Section 7(a) of the North Carolina Constitution mandates that the “clear proceeds” of all fines, penalties and forfeitures collected for the breach of the penal laws of the State “shall belong to” the counties and be “used exclusively for maintaining” our public schools” No. COA14-1115 (N.C. Ct. App. Sept. 15, 2015).

⁵⁶ N.C. Const. art. IX, § 7(a).

⁵⁷ S.L. 2015-241.

⁵⁸ G.S. 7A-304(a), as amended by S.L. 2015-241.

⁵⁹ No. COA14-1115 (N.C. Ct. App. Sept. 15, 2015).

⁶⁰ Receiving counties are also reimbursed for medical expenses associated with SMCP inmates.

population have increased substantially. The SMCP population was 979 on December 31, 2015, an increase of 400 from the previous year. Entries to the SMCP increased 39% from CY 2014 to CY 2015. This increase is primarily driven by DWI entries, which accounted for 29% of all SMCP entries in CY 2015.

Table 16
Statewide Misdemeanant Confinement Program (SMCP)

SMCP Capacity and Population	12/31/2012	12/31/2013	12/31/2014	12/31/2015
Receiving Counties	50	54	56	57
Capacity	1,604	1,691	1,756	1,825
Population	697	631	579	979
SMCP Entries	CY 2012	CY 2013	CY 2014	CY 2015
Total Entries	3,156	2,945	2,960	4,112
CRV Entries	30	224	309	374
DWI Entries	N/A	N/A	N/A	1,180

SOURCE: NC Sheriffs' Association

As noted earlier, CY 2015 brought the final shift of the remaining misdemeanor population (i.e., DWI offenders) out of state prisons and to the SMCP. In preparation for an anticipated increase in population, the NCSA's annual training focused on handling DWI offenders in local confinement facilities. Some topics covered during the training included the application of sentencing credits, Aggravated Level One DWI offenders, the probation process, DART-Cherry, and DWI revocations. Because this change requires the coordination of many entities for recordkeeping, processing, and inmate release, the NCSA reported working with DPS Combined Records and the PRSP Commission to ensure that DWI offenders' good time is recorded and awarded properly. *See infra*, Offenders Convicted of Driving While Impaired Offenses.

Programming is particularly important for these populations because they serve longer sentences and the DWI offenders often need substance abuse treatment. When the SMCP was launched, DPS and NCSA discussed programming in local facilities. To date, the agencies have not been able to develop any additional programs for SMCP inmates for a variety of reasons (e.g., funding restrictions, lack of space, etc.). DPS has suggested the concept of regional facilities for these populations so that there could be dedicated space for programming, there would be enough offenders in one place to support a program, and the offenders would have sentences long enough to complete a program.

The SMCP has been positively received by participating jails, as reported by the NCJAA. While local jails continue to work through paperwork and recordkeeping issues, the NCJAA reports support from the NCSA as well as appreciation for the opportunity to bring additional revenue into their facilities. Jails operating beyond capacity also reported relief in being able to send this population to other facilities, sometimes quicker than with prison transfers. Additionally, some receiving counties have been able to rely on SMCP offenders for inmate work detail within the facility and for other work in the county.

While the SMCP has run smoothly since it was originally established, some unique challenges arose with the shift of DWI offenders to the program related to the opportunity for sentencing credits and the availability of treatment options.

Offenders Convicted of Driving While Impaired Offenses

As part of the JRA, the General Assembly created the SMCP to house misdemeanor offenders who were previously housed in the state prison system; however, DWI offenders were expressly excluded. In part, this may have been because DWI offenders are subject to parole, which is granted by the PRSP Commission and supervised by DPS.⁶¹ In 2014, however, the General Assembly expanded the SMCP so that all DWI offenders, regardless of sentence length, would be sentenced to the SMCP.⁶²

Moving DWI offenders to the SMCP meant that the offenders would be housed locally in jails but that their sentences would be regulated at the state level by DPS and the PRSP Commission. This created a unique situation and presented a number of challenges for the agencies involved. Agencies first had to develop a new method for collecting necessary information on an offender in order to implement the sentence and facilitate the review process for release. Second, they had to address the statutory requirements for treatment in the new setting. Throughout 2014, entities from DPS – Combined Records, Community Corrections, Prisons, Information Technology, and the PRSP Commission – met with the other stakeholders, such as the NCSA, the Administrative Office of the Courts, and the Treatment Accountability for Safer Communities program, to address these issues.

Records

Having a complete record of an offender's sentences, assessments, work and program activities, and sentence credits, is necessary for DPS to calculate the offender's release date and for the PRSP Commission to make decisions related to release. All offenders in the prison system have an electronic record in OPUS. Because DWI offenders were no longer in the prison system, it became necessary to find a new way to create and maintain that record. The Combined Records Section of DPS worked closely with the SMCP to develop a joint process that involves passing an electronic copy of the judgment form from the jail to the SMCP to Combined Records. Combined Records then creates an OPUS file, calculates the projected release date, and provides that information to the SMCP and the PRSP Commission.

This manual collection process continues while the offender serves his or her sentence. When the SMCP receives new information, it notifies Combined Records of any credit awarded, pending charges, sentence changes, or releases from confinement. Combined Records verifies any credits awarded and notifies the SMCP of the updated projected release date.

The PRSP Commission reviews the files of offenders who will be released from prison in order to set the conditions of PRS or, where applicable, grant parole and set the conditions. The PRSP Commission reported having one parole case analyst on staff dedicated to screening all DWI cases and a second analyst who serves as a back-up, if necessary. When the DWI offenders were housed in prison, the DWI parole case analyst was able to access all of the necessary information in OPUS – information from the

⁶¹ DWI offenders sentenced to an Aggravated Level One punishment are subject to four months of PRS. The PRSP Commission sets the conditions and DPS supervises the offender.

⁶² S.L. 2014-100.

Diagnostic Center, Combined Records, and past prison incarcerations. With the DWI offenders being housed in jails through the SMCP, the DWI parole case analyst begins with the audited sentence information in OPUS, but must then search various criminal databases and request additional information from the jail housing the offender. This new process requires sending certain forms to the jail and waiting for them to be completed and returned. The PRSP Commission reported that in some cases this results in offenders being eliminated from parole consideration because they do not have enough time left on their sentence once all the information is collected.

Finally, the PRSP Commission reported that some changes that occur to the offender's sentence while they are incarcerated were not being reported to Combined Records in a timely manner. Sometimes the information affects the review process and the offender's eligibility for release. DPS and the NCSA have worked to develop a standard form to address the issue.

Treatment

DWI offenders who are parole-eligible are required by statute to obtain a substance abuse assessment and complete any recommended treatment or training programs prior to parole release or be paroled into a residential treatment program.⁶³ When DWI offenders served their active sentences in prison, the Alcoholism and Chemical Dependency Program (ACDP) Section within DPS approved programs that, generally, were substance abuse treatment programs of at least 90 days in length.⁶⁴ The PRSP Commission reported that it is not aware of any substance abuse treatment programs in local jail facilities that would qualify as 90 days of treatment. As a result, all parole-eligible DWI offenders are considered for release to residential treatment programs. The ACDP defines residential treatment programs as 90-day treatment programs such as the DART-Cherry facility for men and the Black Mountain facility for women.

Paroling DWI offenders from jail to residential treatment programs presented some logistical issues. Because DWI offenders are not in the prison system, the PRSP Commission is not able to utilize that system to handle the parole. Instead, the Commission reported that the DWI parole case analyst must contact a probation officer to meet with the offender in the jail, complete the paperwork, and eventually parole the offender. If the offender reaches the program and refuses to participate, the probation officer must request an arrest warrant from the PRSP Commission.

In addition, the residential treatment programs have different admission processes. While DART-Cherry accepts offenders approved by the PRSP Commission, Black Mountain requires that their staff prescreen any case prior to the PRSP Commission's approval. For DWI offenders in prison, DPS staff worked with Black Mountain staff until all parties approved or disapproved the admission. For DWI offenders in the SMCP, Black Mountain staff review information obtained by the DWI parole case analyst and then send their prescreen checklist to jail staff for completion. Jail staff then sends it back to Black Mountain staff for further review. This has added another cumbersome layer to the process.

It should be noted that DWI offenders sentenced to Aggravated Level One punishment, the most serious punishment level, are subject to PRS and the statute does not require that they obtain treatment.⁶⁵ The

⁶³ G.S. 20-179(p).

⁶⁴ The ACDP plans, administers, and coordinates chemical dependency screening and substance abuse treatment services within the Department.

⁶⁵ G.S. 20-179(f3).

PRSP Commission made an administrative decision not to consider PRS cases for release to a residential treatment program. PRS violators are considered for release to such a program if the reported violations indicate the offender has developed significant substance abuse problems in the community.

DWI offenders who are convicted of a DWI offense with a Level One through Five punishment and a second DWI offense with an Aggravated Level One punishment or a non-DWI felony offense are eligible for both parole and PRS. The PRSP Commission reported releasing these offenders on “early post-release supervision.” In that situation, the offender is released prior to their projected release date and they must have either obtained a substance abuse assessment and completed any recommended treatment or training program or, alternatively, they must be released into a residential treatment program. The PRSP Commission will consider these cases for supervised release to DART-Cherry or Black Mountain since early PRS would occur prior to the projected release date. The number of these types of cases increased in 2015.

The PRSP Commission also reported that there are a number of DWI offenders who are not receiving treatment prior to their release back into the community or on to parole. In some cases, the DWI sentence lengths are too short for offenders to attend a treatment program; in other cases, inmates refuse treatment because they do not want to participate in the program or because they can earn more time off of their sentence by working. Finally, there are a lack of qualified treatment options in jails and the PRSP Commission is limited by statute to paroling offenders to residential treatment programs; it cannot release an offender to other options, such as a nonresidential treatment program in the community.

The process for sharing and gathering information related to DWI offenders appears inefficient, although many of the recordkeeping issues have been resolved through coordinated efforts on the part of DPS Combined Records, the PRSP Commission, the NCSA, and local jails . As described above, there are challenges in paroling DWI offenders to treatment, sometimes compounded by delays in processing their records. Treatment options are limited for DWI offenders as most local jails are not able to provide approved substance abuse treatment due to space limitations. It is unclear what options might be available to address the treatment needs of this population.

The SMCP populations, including DWI offenders, will continue to be monitored. While the NCSA reported available capacity to manage the sentenced misdemeanants, it is possible DWI direct entries and probation revocations, along with longer DWI sentences, may have an impact on the SMCP. As more data become available, it will be possible to examine trends in DWI entries and the SMCP population within the SMCP.

Prisons

As noted previously, the majority of provisions in the JRA primarily affected offenders under community supervision. However, as DPS has seen success in the implementation of evidence-based policies and practices related to Community Corrections, it has shifted focus to expanding those types of practices in prisons. In 2015, DPS reported recent efforts within the Section of Prisons (SOP) on changing the culture (similar to its efforts over the past several years in Community Corrections), from one of control, to a more evidence-based, behavior modification approach.

Advanced Supervised Release

ASR allows judges to decide at sentencing whether eligible offenders will be ordered to this prison program which, if completed, leads to their release at a reduced minimum sentence. In order for inmates to be released on their ASR date, they not only must have been ordered into the ASR program at sentencing, without objection from the prosecutor, but they must also complete the recommended prison programs while maintaining positive behavior during their incarceration.

Inmates with ASR sentences are housed in the same facilities as non-ASR inmates; at this time, there are no dedicated facilities to house ASR inmates. During intake, inmates with ASR sentences receive an ASR release date and a Structured Sentencing release date. ASR inmates also complete a RNA at diagnostic processing, as do non-ASR inmates, which informs the creation of the inmate's ASR case plan. The ASR case plan includes the recommended prison programs the inmate will need to complete in order to be released on their ASR release date. ASR inmates have a case management officer that monitors and tracks their progress on their ASR plan. Any non-compliance with the ASR case plan or repeated disciplinary infractions may lead to disqualification. However, DPS data indicate that the majority (88%) of ASR inmates who exited prison in CY 2015 were released at their ASR date.

As mentioned previously, the prison population of 36,902 on December 31, 2015, included 168 inmates with ASR sentences. There are a variety of possible explanations as to why ASR is still so infrequently used. Initially, the Department sought to expand training and education efforts for courts and prosecutors to encourage the use of ASR; however, site visits in 2013 revealed that prosecutors were still hesitant to consent to such a sentence. In the Sentencing Commission's study of the issue in 2014, some prosecutors suggested that while they did not object to ASR in theory, they had a hard time envisioning who the appropriate candidate might be for the tool and, instead, declined to use it. The Department has reported that its pre-sentence investigation pilot (*see supra*, New Initiatives) will create a possible avenue to inform the court which offenders might benefit from ASR.

Evidence-Based Practices and Programming

As part of its plan to develop and implement evidence-based programs, SOP examined existing practices and programs within their facilities. SOP offers a number of programs focused on reentry for offenders. SOP offers adult basic education classes, high school equivalency programs, post-secondary degrees, and English as a second language classes. In the vocational realm, SOP offers apprenticeship programs, computer training, logistics training, and service animal training. Focusing on self-enrichment, SOP offers CBI classes, anger management classes, human resources development, and JOBSTART training. To supplement these programs, SOP offers a number of activities (e.g., journaling) and services (e.g., vocational rehabilitation).

SOP also uses an RNA at diagnostic processing; it was their goal to match needs identified through the RNA to programs offered in the facility. To accomplish this, SOP developed a committee to look at the programs currently offered and to match each program to a RNA "life area." Some dimensions of need measured by the RNA include academic/vocational, anti-social personality, criminal peers, dysfunctional family, and substance abuse. The committee then matched those needs to case plan life areas (e.g., behavior, family, life skills, sobriety, employability, etc.). Program participation will be imported into the offender's comprehensive case plan, which focuses on preparing the inmate for entry back into the community. While a large volume of the matching has been completed, there are still a few remaining programs in the process of being matched.

In addition to the programs, services, and activities offered, SOP is evaluating how technology access for inmates can be used as an incentive for compliance. Drawing on the lessons learned from the Behavior Modification Model used by Community Corrections, SOP reports that offering rewards (such as listening to music on a tablet) in response to good behavior is well-received by inmates, supported by research and efforts in other states, and is a tool SOP hopes to expand upon in the future.

To prepare for the implementation of EBP that would serve the inmate population, the Department provided training to prison staff. All 56 of the facility administrators attended EBP overview training, as well as the two directors of the CRV Centers. Additionally, 32 trainers completed refresher sessions on EBP case management and motivational interviewing. Training provided to prison staff not only focused on the implementation and execution of EBP, but also included crisis intervention team training (CIT). CIT skills are used to respond to persons exhibiting symptoms of mental illness; staff work to defuse or deescalate situations, creating a safer environment for the inmate and the correctional officer. DPS wrote a model of CIT training specifically for prisons and reports to be the first in the nation to do so. To date, 3,159 of their prison staff and 49 of their Community Corrections staff have been trained in accordance with the prison CIT program model.

In addition to focusing on the EBP offered in prisons for all offenders, SOP has been exploring how to target special populations with unique risks and needs. Similar to the creation of the CRV Centers, the Department is exploring repurposing facilities in order to create environments conducive to the needs of these groups. One particular group with acute needs is the growing population of older inmates with long-term medical conditions. Despite a decline in the prison population, DPS reports that the medical and mental health needs of the prison population are higher because, in general, the population is older, sicker and staying in prison longer. DPS reports that they were recently able to transfer eight million dollars to repurpose a mental health wing at an existing facility in order to provide bed space for the aging population with long term medical needs. Additionally, the Department has identified existing facilities they can use for reentry and transition and plans to contract for step-down transitional housing for offenders going on to PRS after their release from prison. Other special populations include: restrictive housing, offenders with mental health issues, sex offenders, and a female CRV facility (*see supra*, CRV Center Enhancements).

Reentry Planning

The purpose of offering rehabilitative, evidence-based programming while in custody is, ultimately, to prepare the offender for entry back into the community. In November 2015, DPS reported that it had received a \$1.75 million grant from the Bureau of Justice Assistance to be used on the prison population for reentry efforts.⁶⁶ SOP is using the funds to undertake a three-year project, “Pathways to Successful Reentry,” which has three phases: the institutional phase, the transitional phase, and the community phase. The institutional phase focuses on the enhanced programming discussed in the section above, as well as establishing pre-release planning conducted in collaboration with Community Corrections. The transitional phase draws on this collaboration to streamline the process for offenders as they exit prison on to PRS. Lastly, the community phase works to connect offenders with resources in their home community.

SOP has identified common needs of offenders when they exit prison and is working to address them where they are able as part of the pre-release planning process. One such need is the procurement of an

⁶⁶ The grant application was open only to states who have adopted the Justice Reinvestment Initiative

identification card, which is necessary for a number of reasons, including application for public benefits. Currently, offenders are released with a duplicate prison identification card, which, while eligible for exchange for a non-driving license at all NC Division of Motor Vehicle (DMV) offices, has not been as successful as hoped. Instead, DPS has partnered with the DMV to have DMV mobile units come to a prison facility and aid offenders in the pre-release planning stage obtain an identification card or a license, if they are otherwise eligible.

Another need SOP is working to address is the challenge offenders face applying for and ultimately acquiring a job after release from prison. In addition to the many vocational programs offered while in custody, DPS is partnering with the Division of Workforce Solutions to help offenders with application assistance, such as helping them draft letters explaining their prior conviction(s). Additionally, the Division of Workforce Solutions employs six former offender specialists as part of the Workforce Enhancement Initiative, who will visit prison facilities to assist offenders with resume and interview preparation.

SOP, and DPS in general, has a long standing working partnership with the Department of Health and Human Services (DHHS), Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, which continues to be enhanced by the partnership with Community Corrections and mental health probation officers (*see supra*, Mental Health Pilot). Community Corrections has developed a process for referrals to DHHS for offenders that may be in need of mental health or substance abuse services, and SOP is working to make sure that offenders who were identified with such needs, or participants in such services while in custody, have a plan for continuing care upon exit.

Offenders often lose public benefits while they are incarcerated and have difficulty recovering them upon exit; the gap in coverage can be very difficult for the offender. To assist these offenders, DPS has looked to the local communities to create assistance for offenders in need of food stamp applications and has received support from the Food Bank of Central and Eastern North Carolina. DPS is working with the Department of Social Services and the Food Bank to create a process whereby offenders can apply for food stamps at their local social services office with expert assistance.

Perhaps the most important part of ensuring that the offender's release plan can be executed is the support they receive during the transition process. To that end, SOP is working diligently with Community Corrections to develop a smooth hand-off from prison to PRS. One way DPS is approaching this is through the use of institutional probation officers, whose role is similar to that of the officers in DPS' current residential substance abuse treatment programs and CRV facilities. Institutional probation officers will be placed in prison facilities to help guide the offender through pre-release planning and to prepare the offender for PRS. DPS reports that having these officers as part of the transition process will help offenders maintain compliance with their supervision during what can be a particularly risky time.

DPS is also working with community-based organizations to develop support systems for offenders within their community. As mentioned earlier, Community Corrections is working to expand local reentry council models as part of their TECS programming. The local reentry council works to help offenders connect with local services and reintegrate them into their community. As offenders return to the community, their needs vary and can be many; a council with multiple areas of expertise helps provide a coordinated approach to what the offender may need. Additionally, DPS reports receiving strong support from local faith-based organizations providing mentoring to offenders.

Prison Exits

For all offenders sentenced under the provisions of the JRA, a period of supervision in the community (i.e., PRS) is required following completion of an active sentence in prison. This period of supervision requires coordination between SOP, Community Corrections, and the PRSP Commission. As the number of offenders exiting prison and on to supervision continues to increase, these entities have worked to make the release process more efficient and to better manage the transition of offenders back into the community.

Direct Release Program

In anticipation of the increasing number of inmates exiting prison on to PRS, DPS established a direct release pilot program. The Direct Release Program creates a process in which an offender being released on PRS or parole can be released to certain screened and approved family members or friends for transportation from a prison facility to their pre-approved residence in the community. Inmates are not eligible for direct release if they are homeless, sex offenders, have pending charges or outstanding warrants, or are being released from restrictive housing. The program has saved time and resources for probation officers across the state. DPS reports that Community Corrections began its implementation of taking the program statewide in March 2015; prisons, however, did not finalize its release policies until March 2016.

Exits on to PRS

Under JRA, all felony inmates sentenced for offenses committed on or after December 1, 2011, who receive an active sentence must be released on to PRS. Class F-I felons are now released on to nine months of PRS and Class B1-E felons are released on to 12 months of PRS. This expansion of PRS to all felons who serve an active term, and a longer term for the more serious felons, has had a significant impact on the PRSP Commission in processing prison releases, and on Community Corrections in supervising this increasing population.

Prior to the passage of the JRA, Class F-I felons were released from prison without PRS. As a result of the expansion of PRS to Class F-I felons, the number of offenders released from prison on to PRS and the population of offenders supervised on PRS have increased substantially (see Table 17). The considerable increase in entries is a result of the volume of Class F-I entries to PRS (e.g., the number of Class F-I entries increased from 7,155 to 8,770 from CY 2014 to CY 2015). There has been a corresponding increase in the PRS population, with a 19% increase over the past year (from 9,553 to 11,387). These data indicate that the PRS population is now primarily comprised of offenders sentenced under JRA terms.

The PRSP Commission sets the conditions of PRS and responds to possible violations of those conditions. To determine the conditions of PRS, the PRSP Commission relies heavily on the work of the parole case analysts and their work in conjunction with Community Corrections staff. The role of the parole case analyst is to determine parole/PRS eligibility and to review the offender's requested release plans with Community Corrections staff. The case analyst presents an offender's case plan to the PRSP Commissioners for a vote approving, denying, or recommending other actions on the plan.

Table 17
Post-Release Supervision Entries and Population by Offense Class

Post-Release Supervision Entries										
Offense Class	CY 2011		CY 2012		CY 2013		CY 2014		CY 2015	
	#	%	#	%	#	%	#	%	#	%
Class B1 – E	2,585	99	3,019	84	3,048	42	3,162	30	3,478	28
Class F – I	n/a	n/a	581	16	4,099	57	7,155	68	8,770	70
Other	17	1	11	0	102	1	228	2	284	2
Total	2,602	100	3,611	100	7,249	100	10,545	100	12,532	100

Post-Release Supervision Population										
Offense Class	12/31/2011		12/31/2012		12/31/2013		12/31/2014		12/31/2015	
	#	%	#	%	#	%	#	%	#	%
Class B1 – E	2,619	99	2,931	83	3,112	47	3,438	36	3,839	34
Class F – I	n/a	n/a	577	17	3,454	52	6,018	63	7,439	65
Other	30	1	10	0	49	1	97	1	109	1
Total	2,649	100	3,518	100	6,615	100	9,553	100	11,387	100

Note: The category “other” includes safekeepers, Aggravated Level One impaired driving, and possible discrepant data.

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

This partnership in creating a case plan with Community Corrections helps with offender transition from custody on to supervision in the community. One important component in this transition has been to streamline the flow of information regarding the offender. The section of Combined Records in DPS has served as the hub for offender information for years and has been vital in ensuring that the transitions occurring under the JRA run smoothly. Combined Records enters the information from the judgment form into OPUS, which allows the prison system to access the record and add information regarding the offender’s case while in prison. The PRSP Commission can then view that information to inform the determination of PRS conditions, and then input those conditions into OPUS as well. The probation officer then accesses OPUS to see the information from the offender’s prison period as well as notes from the PRSP Commission, which assist in determining their supervision strategies for the offender when they return to the community.

While on PRS, offenders are supervised in the same general manner as those offenders on probation; however, the violation process and responses to such are very different. As mentioned previously, Community Corrections does not have the same delegated authority to respond to violations of PRS as it does to respond to violations of probation. All potential violations of PRS must be heard by a hearing officer for the PRSP Commission. The PRSP Commission can respond to violations by continuing

supervision, issuing a letter of reprimand, modifying the conditions of supervision, or revoking PRS. The PRSP Commission responds to violations of conditions of PRS on a case-by-case basis; there are no written policies for responding to violations.

Violations of PRS

As with probation, the JRA changed the responses to violations of PRS. If an offender’s violation is for a new crime or for absconding, the offender may have PRS revoked for up to the time remaining on their maximum imposed term; if the violation is for other conduct, the offender may have PRS revoked, but only for three months (similar to a CRV period). In CY 2015, the PRSP Commission imposed 620 three-month revocations, which represented a 49% increase from CY 2014, where 415 three-month-revocations were imposed. Also, in 2015, three offenders on PRS were revoked after having previously served two three-month revocations.

The increase in the PRS population has also led to an increase in entries to prison as a result of violations of supervision, with much of the increase attributable to revocations for Class F-I felons with PRS. Table 18 summarizes PRS violation entries to prison. The distribution of violation entries has changed substantially over the past two years, and is expected to change further, due to the volume of Class F-I offenders placed on PRS under the JRA. Over the past year, the percentage of pre-JRA violation entries continued to decrease (from 13% to 8%), while JRA violation entries continued to increase (from 64% to 68%). The largest group of violation entries were in the JRA violation categories of absconding (34%), technical (17%), and three-month revocation (17%). Data for entries categorized as JRA technical revocations will continue to be examined. It is not clear whether these data reflect actual practices or are related to how information is captured in OPUS.

**Table 18
Felony Entries to Prison for Post-Release Supervision Violations by Type**

Type of Prison Entry		Felony Entries to Prison					
		CY 2013		CY 2014		CY 2015	
		#	%	#	%	#	%
New Crime		193	12	345	12	418	11
JRA	Technical	219	14	485	18	691	17
	Three Month Revocation	148	10	486	18	655	17
	Absconding	331	21	763	28	1,337	34
Pre-JRA	Technical	452	29	358	13	334	8
Other	Warrant/Pending Charges	126	8	235	8	314	8
	Contempt	86	6	79	3	198	5
Total		1,555	100	2,751	100	3,947	100

SOURCE: NC Department of Public Safety, Division of Adult Correction and Juvenile Justice

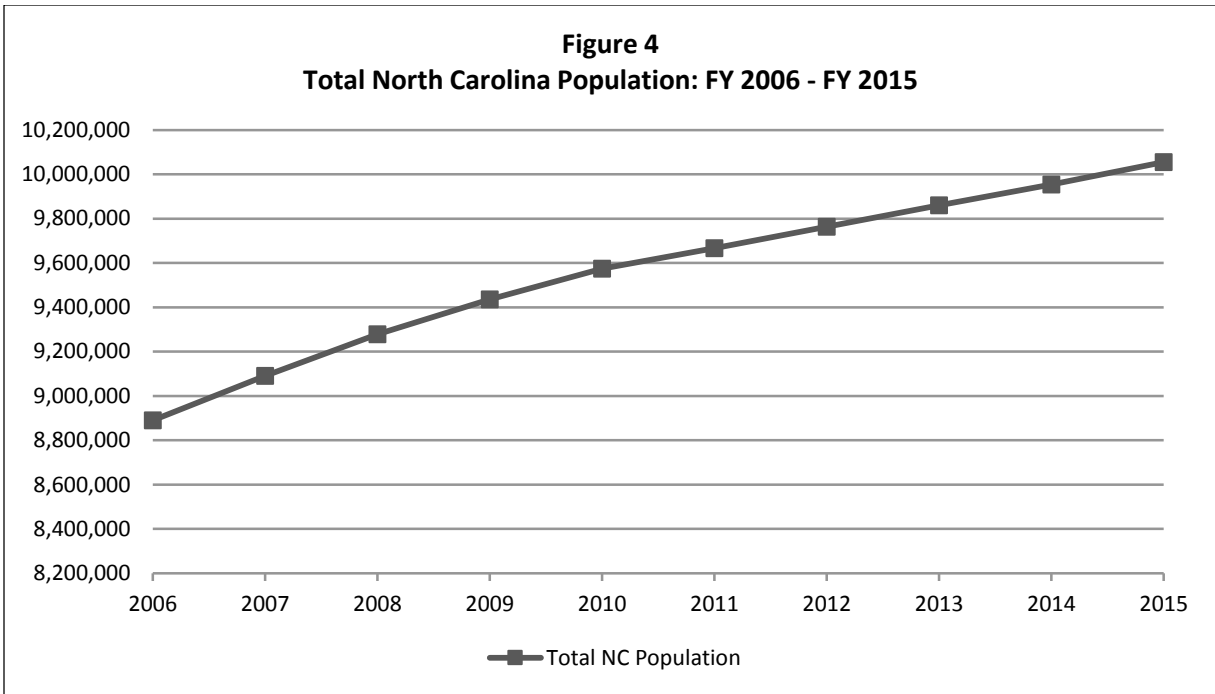
With the addition of PRS for Class F-I felons, total exits from PRS have increased in terms of volume (7,542 exits in CY 2014 compared to 10,521 exits in CY 2015), as has the percentage of exits resulting from revocation. In CY 2015, 24% of exits from PRS were for revocation compared to 19% in CY 2011 – an increase of 26% – with Class F-I felons accounting for 77% of revocation exits last year.

V. EFFECT OF JUSTICE REINVESTMENT ON THE COMMUNITY CORRECTIONS AND PRISON POPULATIONS

As North Carolina exits the early phases of implementation and enters its fifth year under Justice Reinvestment, it is an important time to examine the impact of the JRA in a number of ways, one of which is its effect on the offender population. Changes (particularly declines) in the offender populations are important for considering the effect of the JRA on both the number of offenders supervised in the community and housed in state prisons, and the resulting effect on correctional savings and reinvestment. External factors can also affect the offender population; specifically, overall population and crime trends. North Carolina population and crime rate trends are discussed below, followed by an examination of the effect of the JRA on the community corrections and prison populations. The section concludes with a broad overview of savings and reinvestment under the JRA.

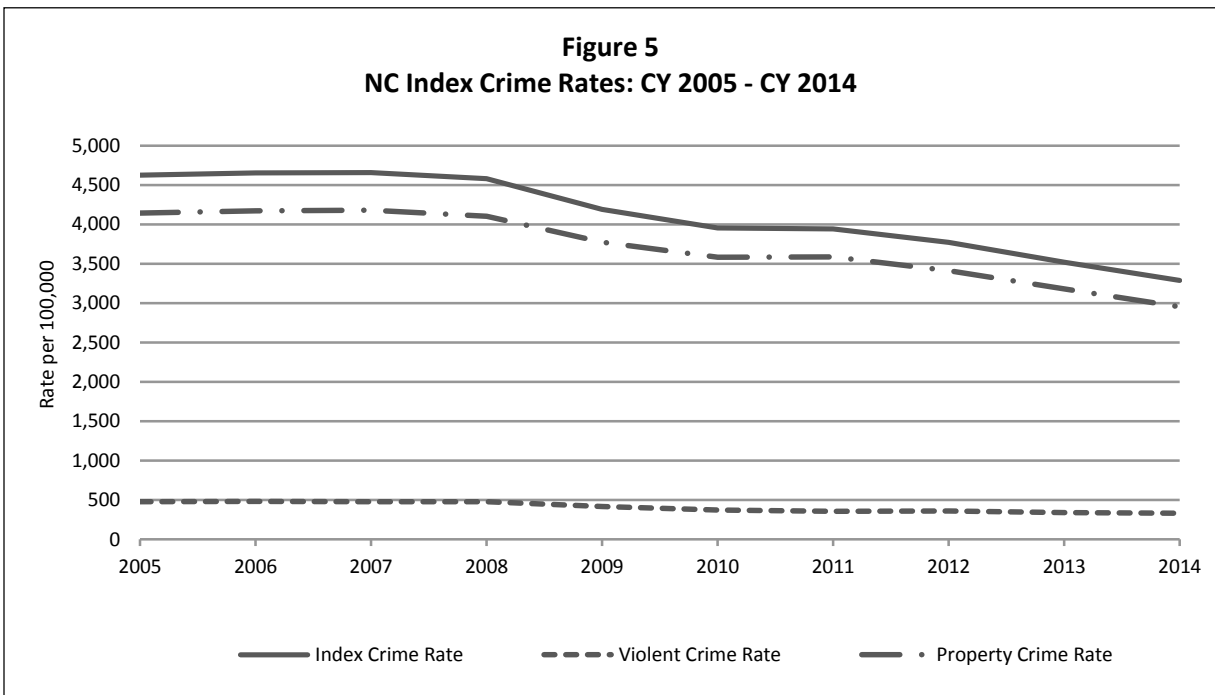
North Carolina Population and Crime: Ten Year Trends

Figure 4 provides trend data on the total population in North Carolina for the past ten fiscal years. The population in North Carolina has been steadily increasing from FY 2006 through FY 2015, on average about 1% each year. The total population in the state has increased almost 7% since FY 2006. Figure 5 shows index crime rates in North Carolina from CY 2005 through CY 2014. Despite the consistent and steady population growth in the state (discussed above), index crime, violent crime, and property crime rates have all declined over the past ten years. The index crime rate decreased about 30%; the violent crime rate decreased 28%; and the property crime rate decreased 30%. These dramatic decreases in crime rates have contributed in part to the declines in the population of offenders supervised in the community as well as those incarcerated in state prisons.



Note: The 2015 population is a projected population figure and not the actual population.

SOURCE: NC Office of State Budget and Management

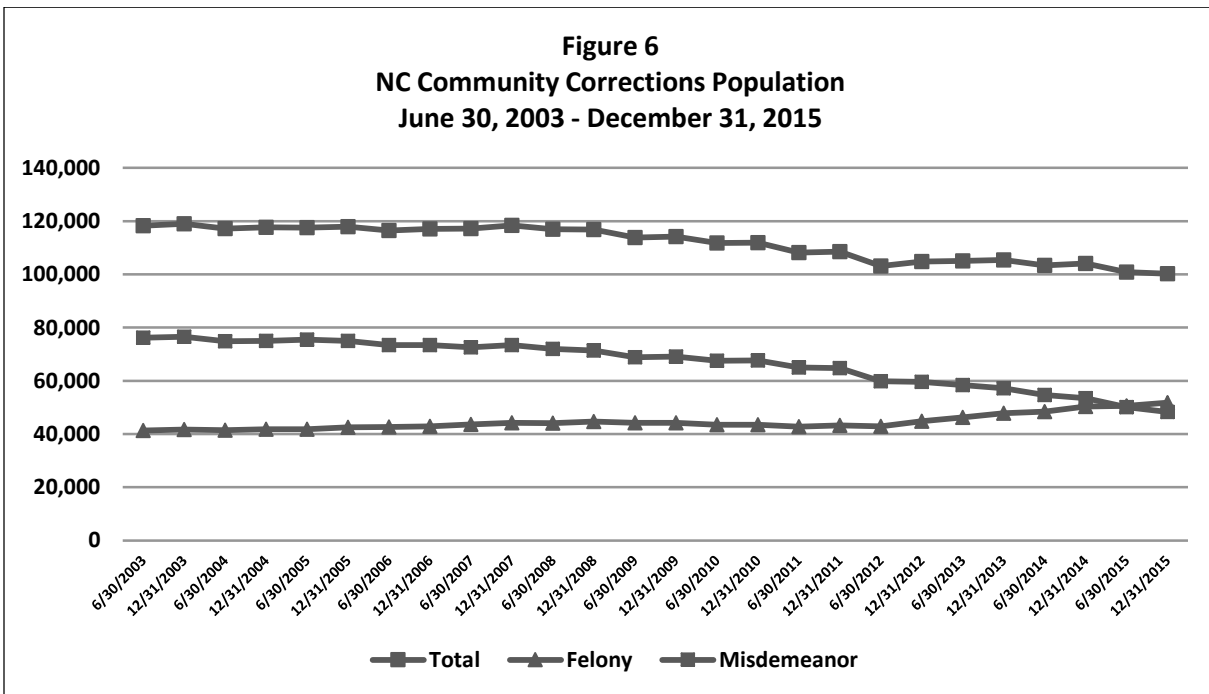


SOURCE: NC Department of Public Safety, State Bureau of Investigation, *Crime in North Carolina*

Effect of Justice Reinvestment on the Community Corrections and Prison Populations

The community corrections and prison populations have been affected by changes that went into effect with the JRA beginning December 2011. As noted above, they have also been affected by external factors, such as the decline in the crime rates over the past ten years. Figure 6 and Figure 7 provide trend data on the community corrections population and the prison population, respectively, in order to examine the effect of the JRA on these populations.

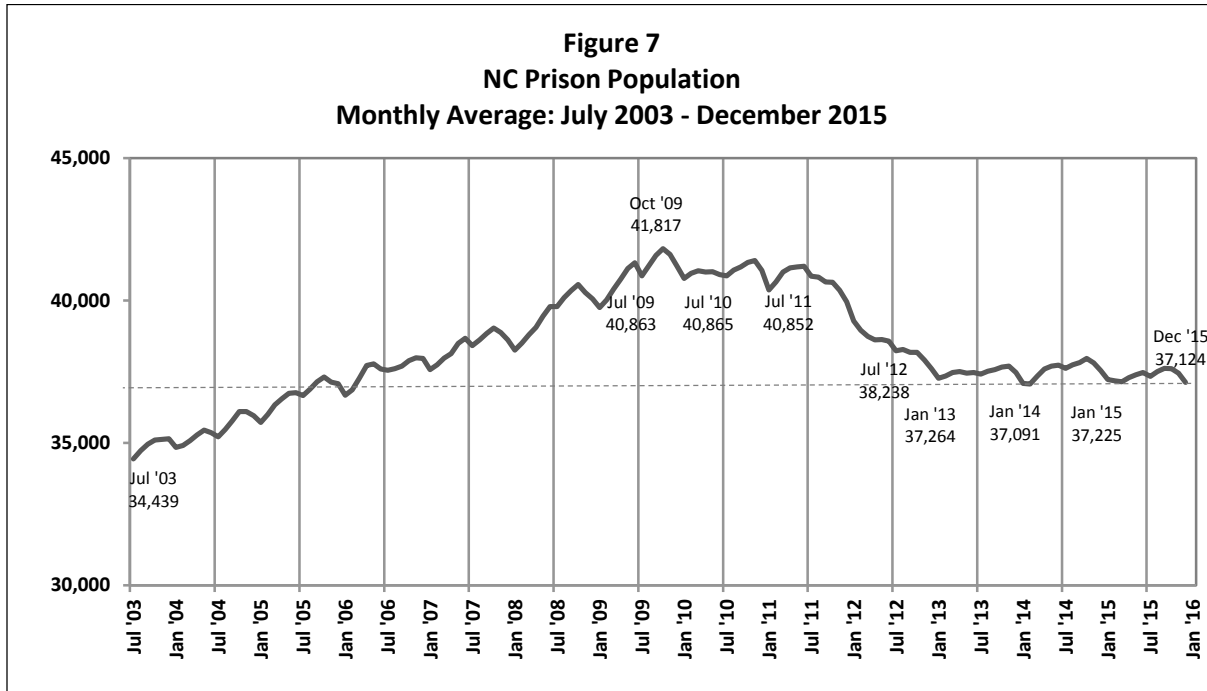
As shown in Figure 6, the overall community corrections population declined 8% from December 2011 to December 2015 (from 108,520 to 100,290), with the declines in the misdemeanor community corrections population as a major contributor. From December 2011 to December 2015, the felony community corrections population increased 20% (from 43,278 to 51,783). This increase resulted primarily from the addition of PRS for Class F-I felons. Over this same time period, the misdemeanor community corrections population decreased 26% (from 64,762 to 48,244). This decrease is likely related to a continued decrease in misdemeanor convictions in North Carolina. However, the termination of probation for some misdemeanants who have served a CRV may have had an effect on this population as well. Over the past year (CY 2014 to CY 2015), the community corrections population decreased 4%, encompassing a 3% increase in the felony community corrections population and a 10% decrease in the misdemeanor community corrections population.



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

Figure 7 shows the prison population in North Carolina from July 2003 through December 2015. The average prison population has declined from 39,954 in December 2011 to 37,124 in December 2015, a decrease of 2,830 or 7%. These declines can be attributed to changes in prison entries as a result of the JRA (i.e., the establishment of the SMCP to house misdemeanants and the limits to revocations of probation for technical violations), as well as subsequent legislative changes (i.e., the expansion of the

SMCP mandated in the 2014 Session). The prison population has remained around FY 2006 levels since January 2013.



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

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

Changes in the community corrections population and the prison population will continue to be monitored, especially the increasing impact of the PRS population on both community corrections (in terms of caseloads) and prison population (in terms of revocations).

Effect of Population Changes on Correctional Savings and Reinvestment

One of the key promises of the Justice Reinvestment Initiative is that by using data-driven approaches to manage correction populations, it is possible to reduce spending on corrections while maintaining or increasing public safety. The intent of Justice Reinvestment is for those savings to be reinvested back into the community in a variety of ways in order to realize even greater savings through changing offender behavior.

The changes in populations noted above are important for considering the effect of the JRA on correctional savings for a number of reasons. Managing a reduced population in the community decreases caseloads, allowing for more effective supervision – possibly improving offender outcomes over time. Savings can potentially be affected both by the reduced population under supervision and the improved outcomes. Managing a reduced population in prison provides similar opportunities for savings, amplified when the demand for prison beds decreases to the point where the state is able to close a prison. Overall, declining populations reduce demand for facilities and staff, as well as increase the potential to achieve better outcomes (and, therefore, savings) through a more efficient and effective use of existing resources.

Savings under the JRA

There are two ways savings can be realized under the JRA: averted costs and tangible savings. Averted costs include those costs North Carolina *might* have incurred, had the state not gone forward with the JRA (e.g., planned capital costs for a prison that ultimately did not need to be constructed). Tangible savings occur as a result of legislative changes and changes to policies and practices (e.g., savings realized from prison closures due to a declining prison population). The savings described below are only those *tangible savings* realized under the JRA; overall savings under the JRA would likely be higher if averted costs were considered.⁶⁷ The section below broadly describes categories of tangible savings related to DPS – the main agency implementing and affected by the JRA. It is possible other government agencies or branches (e.g., courts) might have experienced increased efficiencies under the JRA (e.g., the use of delegated authority to handle probation violations reducing time spent in court) that could also be considered savings.

Since 2011, the JRA has resulted in tangible savings to the state in a number of ways: the closure of state prisons, the conversion of several state prisons, and the elimination of unneeded positions. The most substantial portion of the overall savings has come from the closing of eleven prisons statewide. DPS has been able to close those prisons due to the decline in population, as discussed above. The declines, and the resulting savings, can primarily be attributed to the JRA shifting of misdemeanants out of state prisons and limiting certain types of entries to prison (i.e., technical revocations of probation and PRS).

It may take additional time for some JRA policies and practices to result in tangible savings. It is possible that future savings will be realized through changes in offender behavior, resulting in reduced recidivism rates and the continued decline of the community corrections and prison populations. The key to future savings will be in the success of JRA policies, programs, and practices in affecting future offending. That success depends on several factors – the fidelity of the implementation of those policies and practices; reinvestment in effective and evidence-based programs; and external factors such as changes in the state’s population and changes in criminal justice trends.

Reinvestment under the JRA

To date, North Carolina has seen commitment from the General Assembly to the legislation and reinvestment. There are two ways reinvestment under JRA can occur: through up-front investment and through reinvestment of tangible savings. Up-front investments are those investments made in anticipation of future savings and are made prior to any accrual of savings. Conversely, reinvestment occurs after tangible savings have been realized. It should be noted, there is no requirement in the JRA in North Carolina that any savings generated through the legislative changes or policies and practices be reinvested. The Legislature is not required to consider either averted costs or tangible savings when considering how to fund agencies or JRA programs or practices. Therefore, no direct link can be made between the savings and the reinvestment discussed in this section.

Reinvestment in this section is defined by those funds appropriated by the General Assembly to DPS; it does not include appropriations to other agencies that might also be affected by JRA. It does not include an examination of grant funding that might have been available to DPS as a participating state in the

⁶⁷ For a full analysis of both averted costs and tangible savings under the JRA in North Carolina by DPS, see *Justice Reinvestment Performance Measures*, Department of Public Safety, Division of Adult Correction and Juvenile Justice, Rehabilitative Programs and Services [publication forthcoming, Spring 2016].

national Justice Reinvestment Initiative. Reinvestment could also occur at the local level by counties or municipalities for local confinement facilities or community programming; that level and type of reinvestment is also not discussed.

The General Assembly has reinvested in DPS under the JRA in a number of ways: appropriating funds for 175 new probation and parole officers, committing funds for opening two CRV centers, expanding the PRSP Commission and its staff, and investing in additional funds for substance abuse treatment for high risk offenders. Many of these appropriations were made to support the evidence-based initiatives of DPS (e.g., CRV centers, additional PPOs) or to manage increased workload (e.g., the expansion of the PRSP Commission and staff).

Since the enactment of the JRA, the Legislature has also demonstrated support of other evidence-based practices and programs extending beyond the original scope of the JRA (e.g., mental health treatment units in prisons) and appropriated funding for the Department for those evidence-based initiatives. While not directly attributable to the original JRA legislation, it is worth noting as a demonstration of the General Assembly's commitment to the evidence-based initiatives of DPS.

Beyond DPS, North Carolina made an up-front investment in order for the JRA to be implemented. Because the legislation shifted misdemeanants from state prisons to local jail facilities through the SMCP, the General Assembly recognized localities needed funds to cover their costs associated with moving these offenders into jails. Additionally, funding was needed for an administrative arm (in this case, the NCSA) to manage the SMCP. Originally, the JRA established two dedicated fees that would fund the SMC Fund to cover the costs of housing inmates at the local level and for the administration of the SMCP. As noted previously in the report, the funding mechanism for the SMCP shifted in FY 2015/16 to a direct appropriation.

In summary, the effect of the JRA on populations under supervision and in prison, and on correctional savings and reinvestment will continue to be monitored. It is clear that, to date, North Carolina has been able to realize substantial tangible savings due to the effects of a declining prison population which resulted in the closing of a number of prisons. The state has also seen reinvestment from the Legislature to assist in furthering the evidence-based goals of the JRA. The major changes in the prison population and majority of savings under the JRA may have already been achieved at this point due to the immediate effect of certain provisions of the legislation (shifting misdemeanants out of state prisons, limiting revocations of probation, etc.). The effect of the JRA on long-term outcomes (i.e., recidivism) will be the next measure to evaluate in terms of population reductions and savings.

VI. CONCLUSIONS

Broadly, the enactment of the JRA marked a shift in North Carolina's approach in correctional practices from one of control to one with a more rehabilitative focus. The fifth year of implementation of the JRA can be defined by the expansion of JRA policies and practices and the advent of a number of new initiatives, many to enhance the goals and provisions contained in the original legislation. At this stage, it is important to consider what has been achieved under the JRA with the new focus, as well as consider what implementation challenges remain. To date, the JRA has had minimal impact on sentencing practices, has had substantial impact on correctional practices, has led to the development of new initiatives to enhance or expand the use of evidence-based practices, and has allowed the state to both

save on correctional resources and make reinvestments to further the JRA goals. Some implementation challenges remain, including the processing of and substance abuse treatment for DWI offenders in the SMCP and the availability of treatment through the TECS program for offenders under supervision.

The JRA did not include major modifications to sentencing but, after several years, it is possible to examine its effect on practices. The most frequently used provision, from a sentencing perspective, is the habitual felon status offense. While the existence of the habitual felon status offense predates the JRA, the proportional sentencing established by the JRA has led to an increase in habitual felon convictions and entries to prison. Since December 2011, habitual felon entries to prison have increased 29%. Conversely, the habitual breaking and entering status offense created by the JRA has not been as widely used. While entries to prison for habitual breaking and entering status offenders have increased 23% since CY 2014, the statewide figures on convictions for habitual breaking and entering have remained small each year. Similarly, the ASR sentencing option also shows consistently low usage, with a small number of offenders sentenced to the program each year. While it is clear how frequently the field uses certain JRA sentencing options, it is not clear at this stage the effect on criminal justice outcomes. The next measure, beyond utilization of the available options, will be their effect on recidivism – more specifically, examining whether and to what extent the habitual status offenses have an effect on behavior and if ASR has achieved recidivism reduction through its targeted programming.

Correctional practices have substantially changed under the JRA and continue to evolve as legislative and policy changes are made to improve and refine tools. DPS's validated RNA continues to accurately identify those offenders most likely to reoffend and place them into the higher, more restrictive supervision levels. With the implementation of its caseload model based on risk levels, and the addition of new probation officers, Community Corrections has made strides in achieving its goal of implementing supervision strategies based on evidence-based practices, particularly with regard to caseload ratios. In the managing of offenders under supervision, data from CY 2015 reveal that the use of delegated authority is increasing, which is consistent with DPS's 2014 goal of using appropriate and available tools to respond to noncompliance. The use of CRVs to respond to technical violations of probation decreased from CY 2014 to CY 2015, partially as a result of legislative changes eliminating the use of CRVs for SSA misdemeanants, but also as a result of practices related to the staffing of cases for offenders on supervised probation. DPS's approach of using graduated sanctions through delegated authority to respond to offender noncompliance, and the adoption of the "Swift and Certain" sanctions model, call for less restrictive options being utilized prior to a CRV being imposed. While supervision strategies have been implemented, established, and have been met with success regarding their use, it will still take some time to measure their effect on offender behavior (i.e., recidivism rates).

As noted previously, the majority of provisions in the JRA primarily affected offenders under community supervision. However, as DPS has seen success in the implementation of evidence-based policies and practices related to Community Corrections, it has shifted focus to expanding those types of practices in prisons. In 2015, DPS reported recent efforts within SOP to change the culture from one of control, to a more evidence-based, behavior modification approach. These efforts involved examining existing practices and programs to better target programs for inmates, training to prepare for offering EBP in the prison setting, and exploring the repurposing of facilities to meet the needs of certain inmate groups. DPS also boosted reentry efforts for offenders preparing to exit prison through collaborative efforts with Community Corrections and other agencies in order to remove some barriers offenders face upon release. Improving the transition from prison to community will hopefully lead to better success for offenders.

CY 2015 also marked a time of change and expansion of some JRA tools and programs including TECS, the SMCP, and CRV Centers. TECS was expanded and restructured to encompass a wider range of services in order to further meet the needs of the offender population under supervision. As noted throughout the report, the SMCP was expanded in 2015 to include all misdemeanants with sentences greater than 90 days, as well as those convicted of impaired driving offenses. This expansion represents the shift of the last group of misdemeanants out of the state prison system, bringing North Carolina in line with most other states that house all misdemeanants in jails. DPS completed its CRV Center pilot in 2015, and identified enhancements that would improve the model (e.g., additional programming, changes to eligibility requirements, etc.). The CRV is a primary feature of the JRA; initial successes in the CRV Centers coupled with further enhancements may lead to better outcomes for offenders. In keeping with JRA enhancements, DPS also launched several new initiatives to support the JRA. Initiatives included the PSI pilot, expansion of its administrative response pilot, expansion of the mental health pilot, and the launch of several veteran treatment courts. All of these initiatives were designed to better target resources for certain offenders and/or inform decisions regarding treatment and services for offenders.

Though not specified in the legislation, the intent of Justice Reinvestment is to reduce correctional spending and reinvest savings in strategies to increase public safety. More specifically, through reducing the prison population, the state could invest savings in effective and targeted community supervision intended to reduce recidivism. The JRA has resulted in tangible correctional savings to the state primarily due to the shifting of misdemeanants out of state prisons and the limit of certain types of entries to prison (i.e., technical revocations of probation and PRS), coupled with declines in criminal justice trends. As a result, the state has been able to close some state prisons, convert other state prisons, and eliminate unneeded positions. The most substantial portion of the overall savings has come from the closing of prisons. It may take additional time for some JRA policies and practices to result in additional savings. The key to future savings will be in the success of JRA policies, programs, and practices in affecting future offending. That success depends on several factors – the fidelity of the implementation of those policies and practices; additional reinvestment in effective and evidence-based programs; and external factors such as changes in the state’s population and changes in criminal justice trends. Expectations for recidivism reduction and future savings should be weighed realistically considering the complex set of factors contributing to offenders’ criminal behavior compared to the resources and time available to elicit change.

While intended by Justice Reinvestment, it should be noted, there is no requirement in the JRA in North Carolina that any savings generated through the legislative changes or policies and practices be reinvested. That caveat notwithstanding, the North Carolina General Assembly has reinvested in DPS under the JRA in a number of ways: appropriating funds for 175 new probation and parole officers, committing funds for opening two CRV centers, expanding the PRSP Commission and its staff, and investing in additional funds for substance abuse treatment for high risk offenders. Since the enactment of the JRA, the Legislature has also demonstrated support of other evidence-based practices and programs extending beyond the original scope of the JRA (e.g., mental health treatment units in prisons) by appropriating funding to the Department for those initiatives.

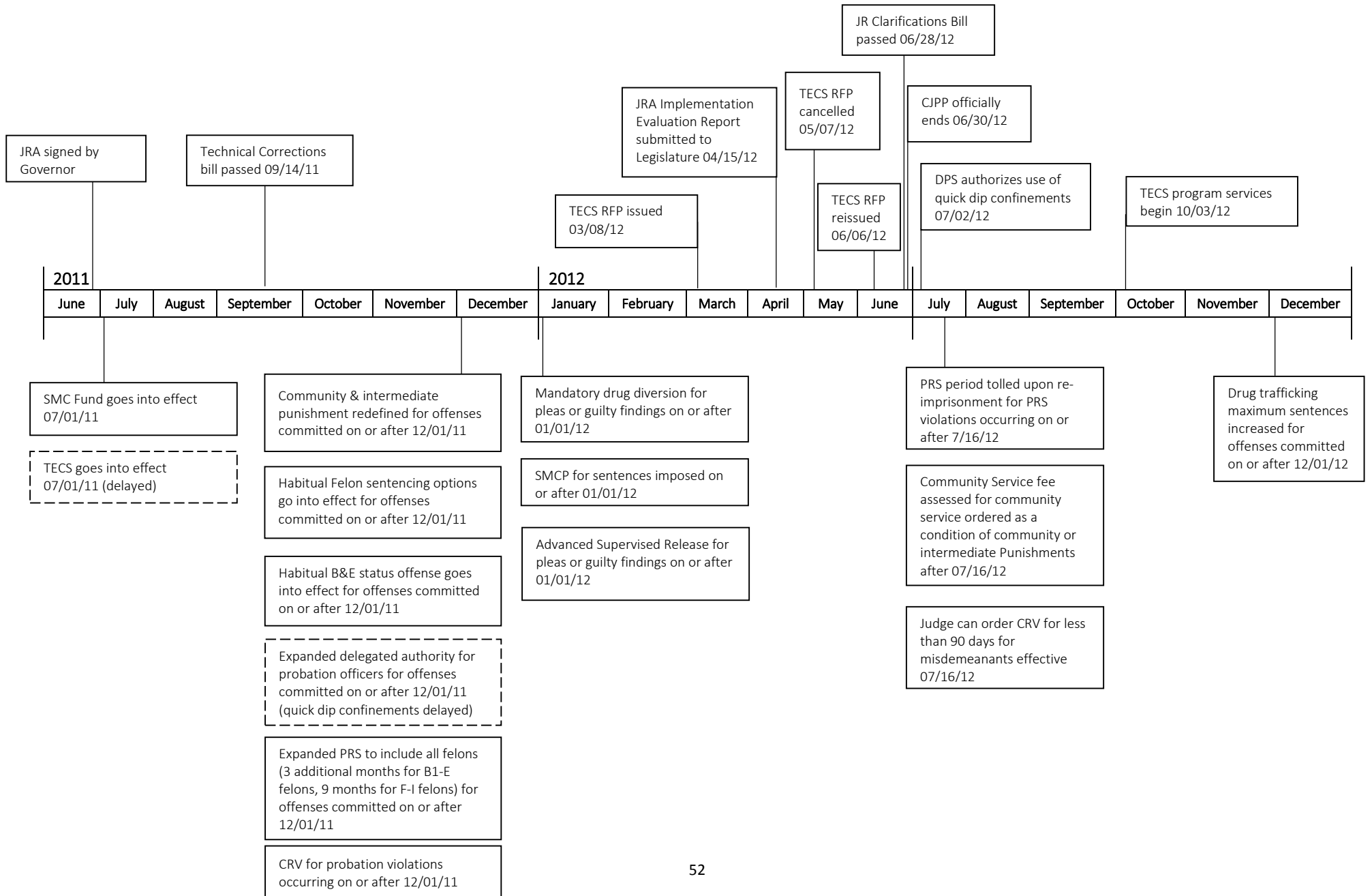
Notwithstanding the successes under JRA outlined above, implementation challenges remain. Some of those include the decline in the number of offenders enrolled in TECS programs, treatment options available for the DWI population housed in local jails, and sentencing credit policies for certain DWI offenders. Questions remain regarding the level of funding appropriated to TECS compared to the number of offenders in need of programming. TECS is the primary community component of the JRA

designed to address offenders' risk and need through targeted programming, and therefore, a key opportunity to affect offender behavior. Reinvestment in TECS would increase program availability, with the potential to affect both recidivism and future savings. Treatment for DWI offenders is mandated by statute, but it is unclear how many DWI offenders are able to receive substance abuse treatment while confined or how many are being paroled to treatment. Concerns about substance abuse treatment for DWI offenders likely predate JRA changes; however, the shift of their confinement from state prisons to local jails has focused attention on the issue of treatment availability and accessibility for this population of offenders. Other issues regarding the processing and managing of DWI offenders and their sentence credits remain. Also of continual concern, as noted in previous reports, is the lack of complete data to understand the full impact of the changes to the criminal justice system under the JRA. The implementation of a statewide automated jail database would allow for a more comprehensive evaluation of the JRA's effect on all offenders in North Carolina, including those in local jails.

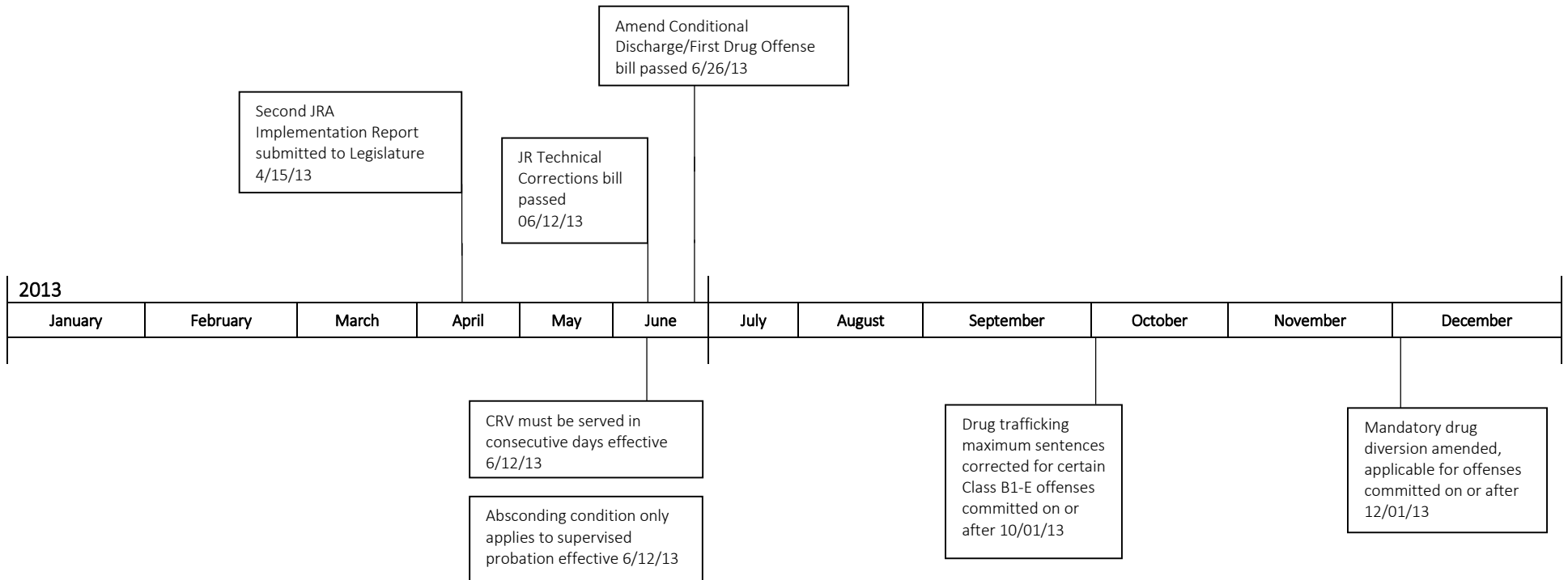
Many of the promises of the JRA have been realized at this point – reduced prison population, decreased revocations of probation, savings, and reinvestment. In addition, the increased collaboration within and across the criminal justice system is another positive result of the legislation. The key to future success will be in the ability of JRA policies, programs, and practices to affect future offending. The Sentencing Commission's Justice Reinvestment Implementation Report Subcommittee will continue to meet and monitor the progress of the implementation, review data where available, and submit future annual reports, interim findings, and recommendations for clarifications or revisions to the JRA as needed.

APPENDIX A
JUSTICE REINVESTMENT IMPLEMENTATION TIMELINE

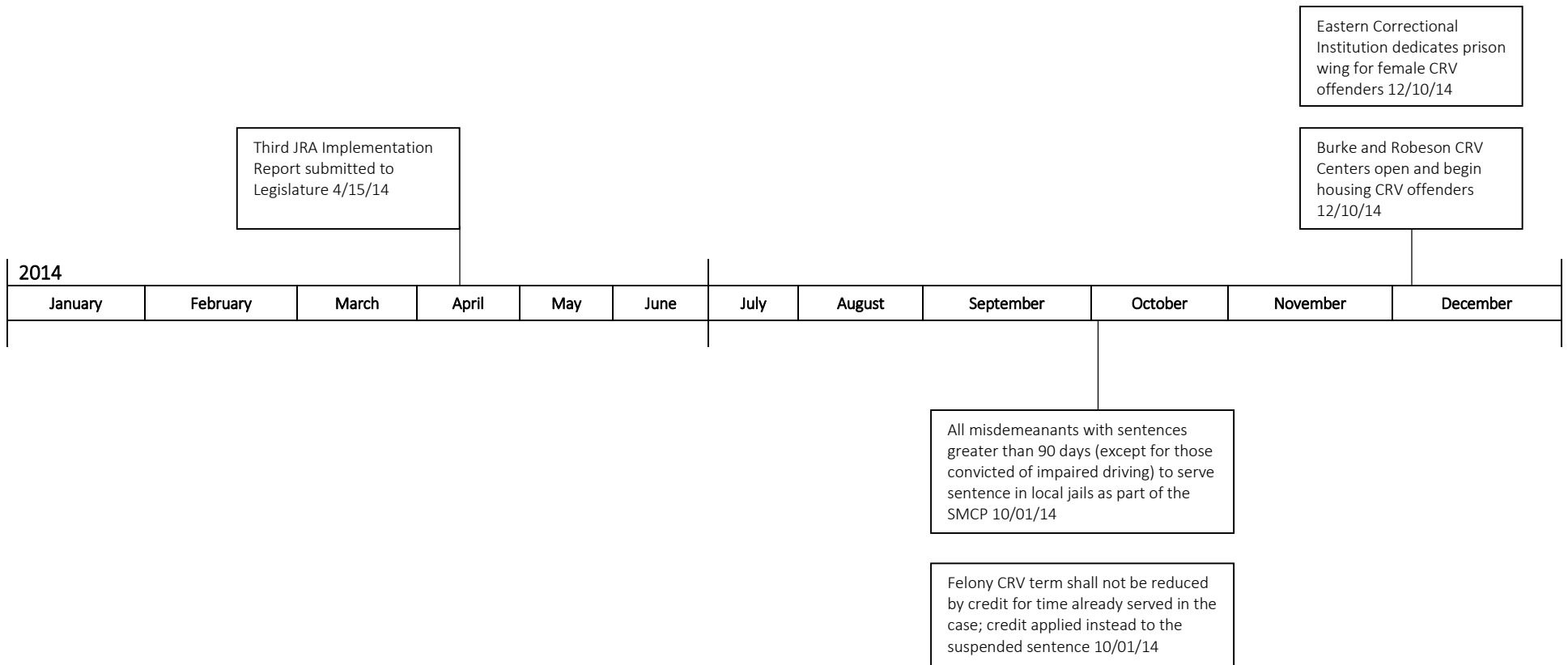
JUSTICE REINVESTMENT ACT IMPLEMENTATION TIMELINE 2011-2012



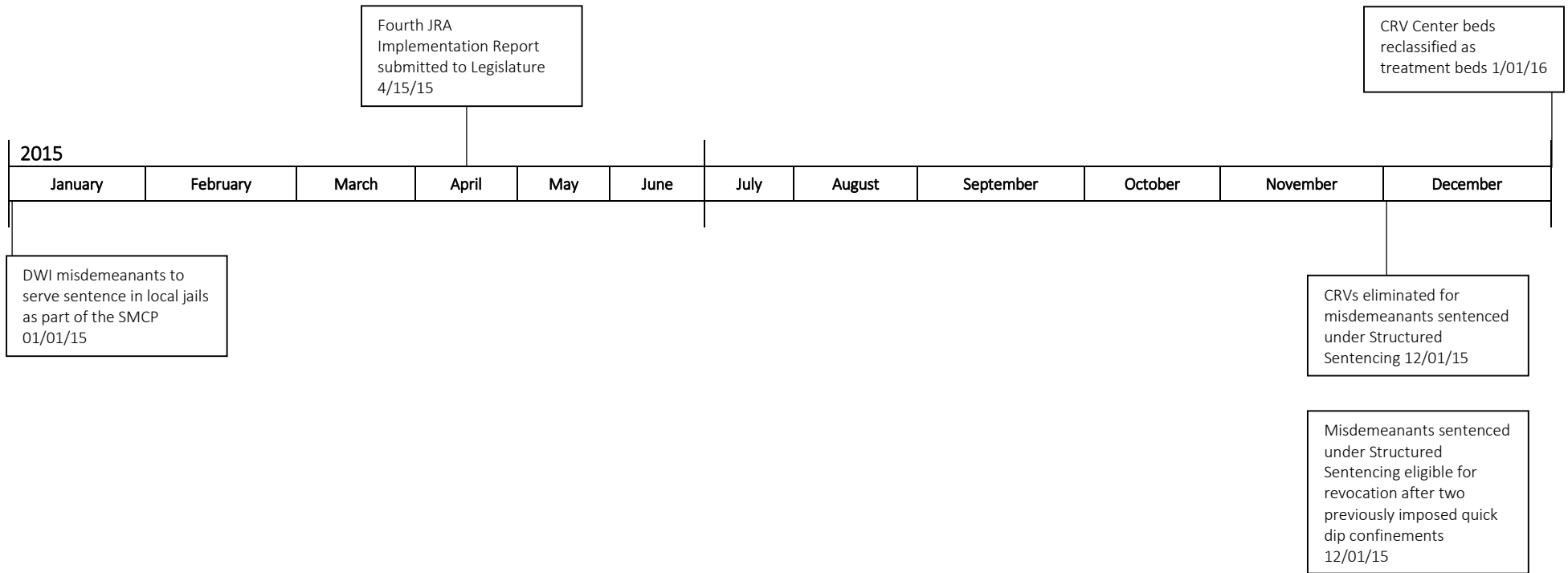
JUSTICE REINVESTMENT ACT IMPLEMENTATION TIMELINE 2013



JUSTICE REINVESTMENT ACT IMPLEMENTATION TIMELINE 2014



JUSTICE REINVESTMENT ACT IMPLEMENTATION TIMELINE 2015



APPENDIX B
LIST OF ACRONYMS

**2016 Justice Reinvestment Act Implementation Evaluation Report
Acronym List**

ASR – Advanced Supervised Release

ACDP – Alcohol and Chemical Dependency Program

ASQ – Automated System Query

CY – Calendar Year

CBI – Cognitive-Based Intervention

CRV – Confinement in Response to Violation

CSG – Council of State Governments

CJPP – Criminal Justice Partnership Program

CIT – Crisis Intervention Team

DHHS – Department of Health and Human Services

DPS – Department of Public Safety

DACJJ – Division of Adult Correction and Juvenile Justice (within the Department of Public Safety)

DMV – North Carolina Division of Motor Vehicles

DWI – Driving While Impaired

EBP – Evidence-Based Programming

FY – Fiscal Year

G.S. – General Statute

IOP – Intensive Outpatient Therapy

JRA – Justice Reinvestment Act

NCJAA – North Carolina Jail Administrators' Association

NCSA – North Carolina Sheriffs' Association

OPUS – Offender Population Unified System

OTI-R – Offender Traits Inventory- Revised

PRS – Post-Release Supervision

PRSP Commission – Post-Release Supervision and Parole Commission

PSI – Pre-Sentence Investigation

PPO – Probation and Parole Officer

RRS – Recidivism Reduction Services

RFP – Request for Proposals

RNA – Risk-Needs Assessment

SOG – UNC School of Government

SOP – Section of Prisons (within the Division of Adult Correction and Juvenile Justice)

SPMI – Serious and Persistent Mental Illness

S.L. – Session Law

SMC Fund – Statewide Misdemeanant Confinement Fund

SMCP – Statewide Misdemeanant Confinement Program

SSA – Structured Sentencing Act

TECS – Treatment for Effective Community Supervision

VA – Department of Veteran’s Affairs