

SMCP CAPACITY PROJECTIONS: FISCAL YEAR 2021 TO FISCAL YEAR 2025

Introduction

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

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

COVID-19 Pandemic and Jail Population

Certain actions taken by the courts, the Department of Public Safety, and local jails in response to the COVID-19 pandemic, beginning in March 2020, have contributed to changes to the overall jail population, as well as the SMCP population. These actions include:

- Emergency directives from the Chief Justice of the North Carolina Supreme Court that postponed certain court proceedings;
- Moratorium on accepting prisoners from county jails by the Department of Public Safety contributing to a backlog of inmates awaiting transfer; and
- Receiving counties temporarily suspending their participation in the SMCP, going to an “offline” status.

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

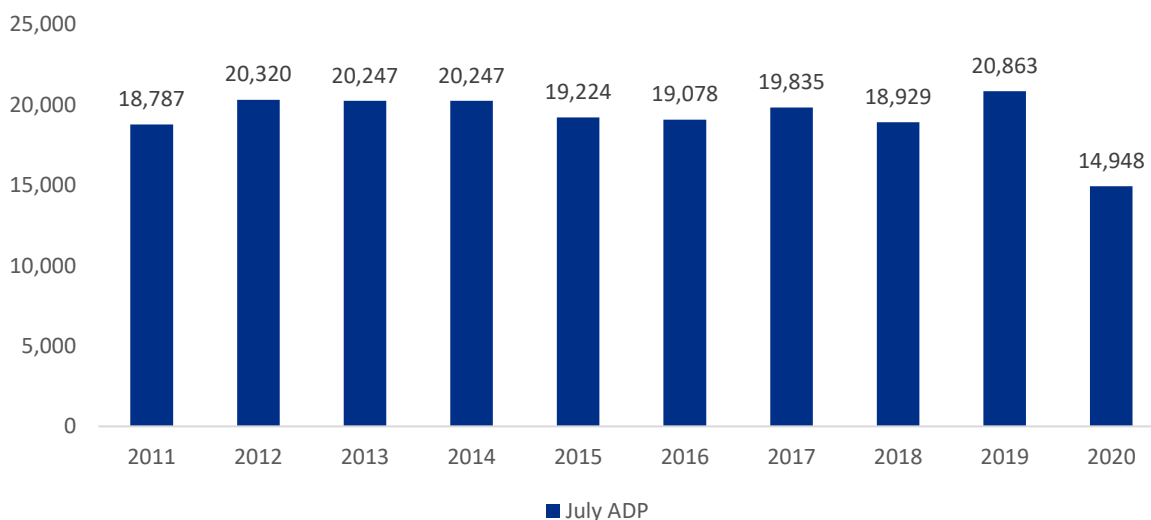
² N.C. Gen. Stat. (hereinafter G.S.) 148-32.1(b2) (2017).

³ G.S. 148-32.1(b4).

These actions have affected convictions, jail populations, and beds committed to the SMCP – all of which impact the accuracy of the SMCP capacity projections. While the pandemic affected only the last quarter of FY 2020, it continues to affect the court and correctional systems in FY 2021 and it is not known how long these effects will continue.

Figure 1 provides context for the overall jail system, showing the statewide average daily population (ADP) in the month of July. The ADP for the state was 18,787 in July 2011 and the highest reported ADP was in July 2019 (20,863). Comparing July 2019 to July 2020, there was a 28% decrease in the ADP. The July 2020 statewide capacity was 27,215, which is reflective of all available capacity in that month.

Figure 1
Total Jail Average Daily Population (ADP)
July 2011 – July 2020



NOTE: Jones, Mecklenburg, and Orange counties' ADP are not included in 2018 due to unreported data. SOURCE: DHHS Construction Section, *Local Confinement Report*, 2011 – 2020; analysis conducted by NC Sentencing and Policy Advisory Commission.

As Table 1 shows, since March 2020, a total of 27 receiving counties went to an offline status at some point, which reduced the overall capacity of the SMCP. Of these counties, 12 counties went offline for a period, roughly May 2020-January 2021, and have returned to receiving inmates at similar rates as before going offline. In February, the Sheriffs' Association surveyed all counties that were still offline. Fifty-six percent (56%) responded and indicated that they will resume participating as receiving counties at pre-COVID bed allocation levels; very few had an expected return date for participation. At the time of publishing this report, 15 counties remain in offline status due to the pandemic.

Table 1
Receiving County Status During the COVID-19 Pandemic
February 2021

County Status	# of Counties	Status Explained	Total Bed Capacity
Remain Online	40	Continue to receive SMCP inmates during the pandemic	644
Returned Online	12	Stopped receiving SMCP inmates during the pandemic, but have returned online to receive inmates	332
Total Capacity of Online Beds			976
Remain Offline	15	Remain offline and will not receive SMCP inmates as of date of this report	384
Total Capacity of All Offline and Online Beds			1,360

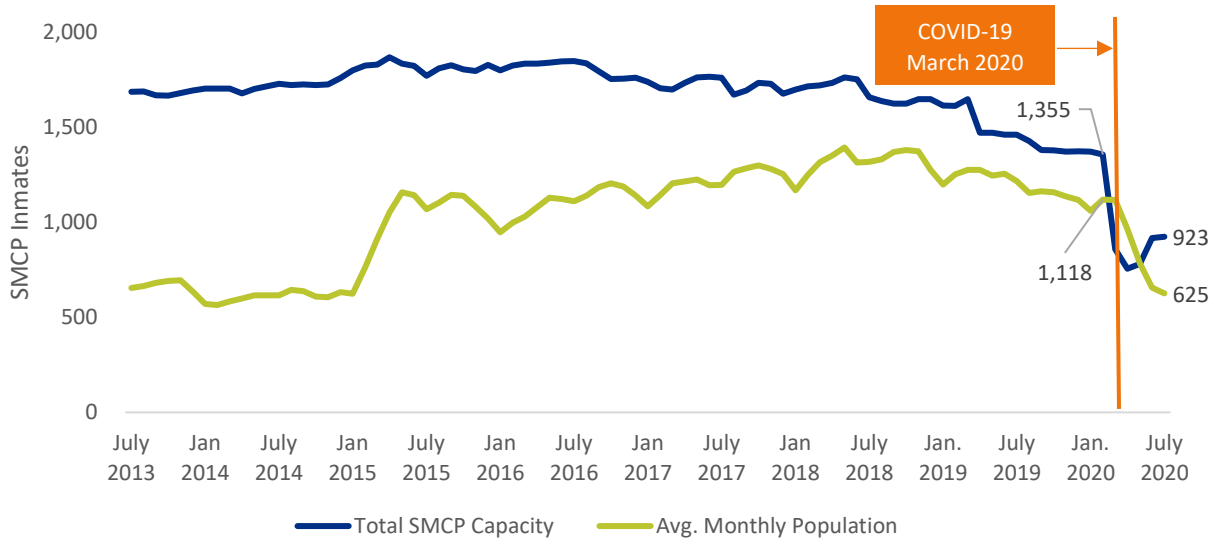
SOURCE: NC Sentencing and Policy Advisory Commission; NC Sheriffs' Association

Historical SMCP Capacity and Average Monthly Population

Historical SMCP capacity data are a key component for producing the five-year SMCP capacity projections. Figure 2 shows the total SMCP capacity and the average monthly population beginning in July 2013. The most notable increase in population occurred in FY 2015 due to legislative changes that expanded the eligible population for the program. Capacity remained relatively consistent through the first years of the program but began to decline in FY 2017 (prior to COVID-19, an average 4% decrease per year). Beginning in March 2020, with the onset of the pandemic, the Program experienced unprecedented decreases in capacity. At the lowest point in April, capacity was 755 beds or 44% of pre-COVID historic average capacity (1,721 beds).

At the end of FY 2020, SMCP capacity was 916, a 37% decrease since the end of FY 2019. The SMCP average monthly population also decreased drastically from last year (down 48%). In February 2020, the SMCP capacity was 1,355 and the average monthly population was 1,118. By the end of the fiscal year in July 2020, capacity dropped to 923 and the average monthly population to 625. Without the effects from the pandemic (i.e., if the offline counties had continued receiving SMCP inmates), the Sheriffs' Association estimates that the SMCP capacity would have been 1,355 at the end of FY 2020. This would have been an 8% decrease since the end of FY 2019 and a 26% decline since the end of FY 2015.

Figure 2
SMCP Capacity and Population Trends: July 2013 - July 2020



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

Assumptions

This section details the assumptions used to develop the SMCP bed capacity projections for FY 2021 through FY 2025. Given the unexpected impact of the COVID-19 pandemic on the SMCP during FY 2020 and into FY 2021, this section has short-term assumptions relating to recovery from the pandemic and long-term assumptions which apply more broadly.

Short-Term Assumptions

To account for changes in capacity related to the COVID-19 pandemic, the behavior of offline receiving counties (both those that returned online and those that remain offline) during this period was examined historically to develop short-term assumptions.

- *Remained online counties:* The projection assumes that these counties will operate with the same level of participation as before COVID-19.
- *Returned online counties:* The projection assumes that these counties will stay at their existing level of participation for the projection period.⁴
- *Remain offline counties:* Two scenarios were developed for the projection based on the Sheriffs' Association survey of offline counties and on historical participation and bed allocation to the SMCP:⁵

⁴ There were 12 counties that stopped receiving inmates but then returned online. Of these, 10 counties either returned to their original bed allocation or increased their bed allocation. Only 2 counties reduced their bed allocations. This resumption of a pre-pandemic operating capacity likely indicates these counties will remain at this level of participation.

⁵ Currently, 15 counties remain offline and are not receiving inmates through the SMCP. Historically, 8 of the 15 counties maintained consistent bed allocations, with either minimal or no changes year to year. The 7 remaining counties included 5 that had inconsistent bed allocations (i.e., frequent and large changes year to year) and 2 that became receiving counties recently

- *Scenario 1:* Assume that the offline counties will resume pre-COVID bed allocation levels by FY 2023.
- *Scenario 2:* Assume that the offline counties will contribute a portion of pre-COVID bed allocations by FY 2023, based on the historical consistency of offline county participation.

Long-Term Assumptions

The long-term assumptions were determined using data from the past five fiscal years (FY 2016 through FY 2020). These assumptions are applied to the counties that remain online because, despite COVID-19, these counties maintained bed allocations at virtually the same rates as before the pandemic (less than 1% change in FY growth between FY 2019 and FY 2020). As the COVID-19 related effects are considered in the short-term assumptions, the long-term assumptions do not address the COVID-19 pandemic.

- *State and local practices and administrative rules:* The projections assume no change in judicial or prosecutorial behavior relating to convictions and sentencing. They also assume no change in local practices (e.g., practices related to pretrial release).⁶ In addition, the projections assume there will be no changes to administrative rules that affect jail capacity.
- *Mandated SMCP population:* The projections assume no legislative changes to the population currently mandated to serve sentences through the SMCP.
- *JJDPA:* The reauthorized Juvenile Justice Delinquency Prevention Act (JJDPA) requires that within 3 years (by December 21, 2021), juveniles awaiting trial as adults not be held in any jail for adults. While some jails may gain bed space due to the JJDPA, the projections assume no new beds will be volunteered to the SMCP as a result of this change.
- *Inmates backlogged in county jails:* Jail backlog (i.e., inmates in county jails awaiting transfer to prison) may limit the number of beds available for jails to hold other inmates, including SMCP inmates. The jail backlog on December 31, 2020 was 657. If any SMCP beds were removed in the past three years due to jail backlog, they are accounted for in the FY growth rate in SMCP capacity used to produce the projection.
- *Jail population distribution:* The projections assume the general population distribution of all jail inmates (e.g., percentage of pretrial inmates, percentage of male inmates, etc.) remains constant throughout the projection period.
- *Planned jail projects:* Known projects at this time are assumed to be the only ones affecting statewide capacity during the projection period.⁷ Jail administrators that were contacted indicated that they have no plans at this time to add new beds to the SMCP, therefore, the projections assume no newly constructed beds will be added during the projection period.
- *Receiving counties:* The projections assume receiving counties (as of June 30, 2020) will remain receiving counties throughout the projection period.
- *Sending counties:* The projections assume sending only counties (as of June 30, 2020) that are not building jails during the projection period will remain sending only counties.

(in 2018 and 2019). Based on the NCSA survey of offline counties, few had an expected return date and anticipated participation level for coming back online.

⁶ There are many discrete reform efforts across the state focused on pretrial release practices. If implemented statewide, they may affect future projections.

⁷ Counties building new jail facilities or expanding a jail facility during the projection period include Catawba (320 beds, FY 2021 estimated completion), Johnston (469 beds, FY 2022 estimated completion), Orange (144 beds, FY 2022 estimated completion), Randolph (211 beds, FY 2022 estimated completion), Surry (299 beds, FY 2022 estimated completion), and Nash (63 beds, FY 2024).

- *SMCP capacity average growth rate:* The current three-year average growth rate (FY 2018 – FY 2020), excluding Mecklenburg County,⁸ is -5%.

SMCP Capacity Projections

The projections include planned jail projects (where relevant), information on annual changes to the SMCP capacity, and assumptions about projecting future bed capacity to determine a five-year capacity projection for the SMCP. Due to the COVID-19 pandemic, in conjunction with the already existing caveats, fluctuations, and factors that influence local jails’ determinations about SMCP participation and number of beds committed to the SMCP, two scenarios were developed for the five-year projection. The projection scenarios detailed below provide the total number of beds over the five-year projection period.

Scenario 1

Scenario 1 assumes that the offline counties will recover the full amount of beds taken offline due to the COVID-19 pandemic by FY 2023. Table 2 shows the capacity projections for FY 2021 through FY 2025 for Scenario 1. The SMCP capacity is projected to recover from 976 currently to 1,240 in June 2025 – an increase of 264 beds, or 27%.

Table 2
SMCP Capacity Projections: Scenario 1
FY 2021 – FY 2025

	Current Capacity	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Remain Online Bed Change	N/A	0	-32	-31	-29	-28
Returned Online Bed Change	N/A	0	0	0	0	0
Remain Offline Bed Change	N/A	0	128	256	0	0
Subtotal	N/A	0	96	225	-29	-28
Total Capacity	976	976	1,072	1,297	1,268	1,240

Note: Prepared by the NC Sentencing and Policy Advisory Commission with the assistance of the NC Sheriffs’ Association. Current capacity is the SMCP capacity as of February 26, 2021.

Scenario 2

Scenario 2 assumes that the offline counties will only recover a portion of beds taken offline due to the COVID-19 pandemic by FY 2023, based on the historical consistency of offline county participation. Table 3 shows the capacity projections for FY 2021 through FY 2025 for Scenario 2. The SMCP capacity is projected to recover from 976 currently to 1,106 in June 2025 – an increase of 130 beds, or 13%.

⁸ In April 2019, Mecklenburg County reduced its bed allocation to the SMCP as a receiving county from 200 beds to 0 beds. Mecklenburg County provided the most beds as a receiving county. No other single county could account for that large of a change going forward, so it was excluded from the growth rate calculation in FY 2020.

Table 3
SMCP Capacity Projections: Scenario 2
FY 2021 – FY 2025

	Current Capacity	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Remain Online Bed Change	N/A	0	-32	-31	-29	-28
Returned Online Bed Change	N/A	0	0	0	0	0
Remain Offline Bed Change	N/A	0	83	167	0	0
Subtotal	N/A	0	51	136	-29	-28
Total Capacity	976	976	1,027	1,163	1,134	1,106

Note: Prepared by the NC Sentencing and Policy Advisory Commission with the assistance of the NC Sheriffs' Association. Current capacity is the SMCP capacity as of February 26, 2021.

Both scenarios indicate an increase in SMCP capacity through FY 2023, followed by a decline in capacity in the final two years of the five-year projection period. Counties can change the number of beds volunteered at any point, which ordinarily creates some uncertainty for future planning. However, the projected capacity could be further altered by unexpected factors relating to recovering from the COVID-19 pandemic.

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

The relationship between state and local facilities in the unique context of the SMCP highlights the importance of accurately understanding both capacity and population for the program. Without a projection of the SMCP population, it is not possible to assess whether the projected capacity will meet future population needs. The Sentencing Commission has determined it would be feasible to project the SMCP population.⁹ Taken together, the projected population in context with projected capacity would inform policymakers whether the committed and expected beds will be sufficient to meet the needs of the program while also allowing for more accurate resource planning.

⁹ See <https://www.nccourts.gov/assets/documents/publications/SMCP-Population-Projection-Feasibility-Study.pdf?Xug6iQe2QYmxFvdAxLYj1HNslW9T605A> for the Sentencing Commission's report on the SMCP population projection feasibility.