

STATEWIDE  
MISDEMEANANT  
CONFINEMENT  
PROGRAM  
CAPACITY PROJECTION

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FY 2019-FY 2023

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# STATEWIDE MISDEMEANANT CONFINEMENT PROGRAM CAPACITY PROJECTION

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## FY 2019-FY 2023

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PROJECTIONS DEVELOPED WITH THE ASSISTANCE  
OF THE NORTH CAROLINA SHERIFFS' ASSOCIATION

SUBMITTED PURSUANT TO N.C. GEN. STAT. § 164-51 (2018)

FEBRUARY 15, 2019

THE HONORABLE CHARLIE BROWN  
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# I. INTRODUCTION

In 2011, the General Assembly created the Statewide Misdemeanant Confinement Program (SMCP) as part of the Justice Reinvestment Act (JRA).<sup>1</sup> The SMCP provides State funding to house misdemeanants serving sentences of more than 90 days and all impaired driving sentences (regardless of length),<sup>2</sup> in local jails. 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.<sup>3</sup> 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.

During the 2018 Session, the General Assembly enacted a statute which requires the North Carolina Sentencing and Policy Advisory Commission (Commission) to develop projections of available bed space in the SMCP. The statute provides the following mandate:

The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission (Commission) and with the assistance of the North Carolina Sheriffs' Association (Sheriffs' Association), shall develop projections of available bed space in the Statewide Misdemeanant Confinement Program (Program). The projections shall cover the next five fiscal years beginning with the 2018-2019 fiscal year. All State agencies, the Sheriffs' Association, and the person having administrative control of a local confinement facility as defined in G.S. 153A-217(5) shall furnish to the Commission data related to available bed space as requested to implement this section.

The Commission shall report its projections to the chairs of the Senate Appropriations Committee on Justice and Public Safety and the chairs of the House Appropriations Committee on Justice and Public Safety no later than February 15, 2019, and annually thereafter.<sup>4</sup>

The General Assembly has also asked the Commission to determine the feasibility of projecting the SMCP population based on data that are available through the Sheriffs' Association or other agencies.<sup>5</sup> Without a SMCP population projection, it is not possible to assess whether the projected capacity will meet future population needs. By comparing the projected population to the projected capacity, policymakers would be able to determine any potential shortfall in SMCP beds and any changes needed to address a shortfall. This projection looks at the number of beds that will be available; it does not address the secondary issue of whether there is adequate funding to utilize those beds.

## Report Outline

The first section of this report provides information on jails in North Carolina while the second section provides information on the SMCP. The next two sections look at trends affecting jails and jail capacity issues. The final section provides the projections of the SMCP capacity. These projections estimate the

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

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

<sup>3</sup> G.S. 148-32.1(b4).

<sup>4</sup> G.S. 164-51.

<sup>5</sup> S.L. 2018-5, s.18B.3.(b).

total capacity of the SMCP for each fiscal year within the five-year period. For these projections, capacity is defined as the total number of available beds to house misdemeanants in the SMCP.

The information contained in this report primarily comes from meetings with stakeholders, existing agency reports and data, site visits conducted across the state, and North Carolina statutes and administrative code. Relevant stakeholders included the North Carolina Sheriff's Association (NCSA), the Construction Section in the Division of Health Service Regulation of the Department of Health and Human Services (DHHS), and the three primary architectural firms in North Carolina specializing in jails; each provided information (where applicable) on jail operations and design and SMCP participation. Additional data was provided by the NCSA and the Construction Section of DHHS.

This publication would not have been possible without the overwhelming consideration and attention given to this project by the various stakeholders consulted, for which the Commission and its staff offer their thanks. In particular, the Commission would like to thank the North Carolina Sheriffs' Association for its partnership.

## Site Visits

Commission staff conducted site visits to select jurisdictions across the state and met with jail administrators and staff. The goals for the site visits were twofold: first, to gather data for the current capacity of the SMCP and, second, to better understand the construction and design, operation, and administration of jails. Commission staff visited a total of twelve facilities, including seven county facilities, two county annexes, and three regional facilities. The seven county jails and jail annexes visited were located in Burke, Durham, McDowell, Orange, Richmond, Rowan, and Wayne counties.<sup>6</sup> The three regional facilities visited were Bertie-Martin Regional Jail, Burke-Catawba District Confinement Facility, and Albemarle District Jail. In choosing the sites for this report, Commission staff aimed for maximum variety, while recognizing that it would not be possible to visit enough sites to obtain a representative sample of North Carolina jails. The following considerations informed the selection of these facilities: region of the state (East, West, Piedmont), population density (urban, rural, or suburban),<sup>7</sup> size, capacity, age of the facility, participation in the SMCP, and whether the facility was a regional model. Commission staff developed a standardized set of questions to ask during the site visits. From these visits, Commission staff gained information on many different facets of jail administration, including how jails manage their population and why they may or may not participate in the SMCP. Where relevant, information obtained from the interviews with jail administrators and staff is referenced throughout this report.

## II. BACKGROUND: NORTH CAROLINA JAILS

Jails in North Carolina are funded and operated at the county level. The Construction Section of DHHS inspects facilities and promulgates rules regarding jail operations and construction (e.g., minimum square footage for an inmate in a cell). There are 113 jails and facility annexes in 94 counties, three of which are regional facilities (i.e., shared among multiple counties). The three regional facilities are

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<sup>6</sup> The southeastern counties in North Carolina were largely excluded from consideration due to the severe hurricanes and flooding in 2018.

<sup>7</sup> Urban, rural, and suburban were based on designations by the North Carolina Rural Center. See <https://www.ncruralcenter.org/about-us/> for more information.

Albemarle District Jail (located in Pasquotank county and houses inmates from Pasquotank, Perquimans, and Camden counties), Bertie-Martin Regional Jail (located in Bertie county and houses inmates from Bertie and Martin counties), and Burke-Catawba District Confinement Facility (located in Burke county and houses inmates from Burke and Catawba counties). The only counties without a jail that also do not participate in regional facilities are Gates, Mitchell, and Tyrrell counties.

## Inmates Housed in Jails

Jails house different types of inmates. Jails can house males, females, and juveniles at one time, with restrictions relating to separating these populations. For instance, juveniles under the age of sixteen who have been transferred to the adult system must be housed where they cannot “converse with, see, or be seen by the adult inmates.”<sup>8</sup> Just as juveniles must be separated from the general inmate population, female inmates must be kept separate from male inmates.<sup>9</sup>

Overall, the jail population consists of pretrial and sentenced inmates. Pretrial inmates are those awaiting a court hearing for a final adjudication or disposition of their criminal charges. Their charges may result in a conviction of either a felony or misdemeanor offense. Ultimately, the type of conviction and sentence will determine whether a period of confinement is required, and where that period of confinement will be served (i.e., prison or jail). Sentenced inmates (those who are convicted of criminal charges) may be ordered to a period of confinement. If the misdemeanor sentence is 90 days or less, inmates must serve the sentence in their local jail.<sup>10</sup> Every jail may have some of these inmates in their population. Jails must also hold inmates awaiting transfer to the state prison system. These are individuals who have been recently convicted of a felony offense and sentenced to active punishment, revoked from a felony probation sentence, revoked from post-release supervision, or have specific medical/mental health needs that cannot be met by the jail facility (i.e., safekeepers).<sup>11</sup>

### Inmates Housed in Jails

Mandatorily Housed	Optionally Housed
Pretrial	SMCP
Misdemeanants sentenced to 90 days or less	Federal
Inmates waiting for prison transport	Other counties' inmates

Local jails can choose to house additional populations if they have space; these include SMCP inmates (see Section III for more detail), federal inmates,<sup>12</sup> and inmates from other North Carolina county jails.<sup>13</sup> As mentioned above, if the misdemeanor sentence is more than 90 days or for an impaired driving offense, the individual must serve that sentence through the SMCP.<sup>14</sup> The reimbursement rate for SMCP

<sup>8</sup> 10A N.C. Admin. Code (hereinafter N.C.A.C.) 14J.0304 (2016).

<sup>9</sup> G.S. 153A-228; 10A N.C.A.C. 14J.0302.

<sup>10</sup> G.S. 15A-1352(a).

<sup>11</sup> G.S. 148-29.

<sup>12</sup> G.S. 162-34.

<sup>13</sup> G.S. 148-32.1(b); G.S. 162-39(a).

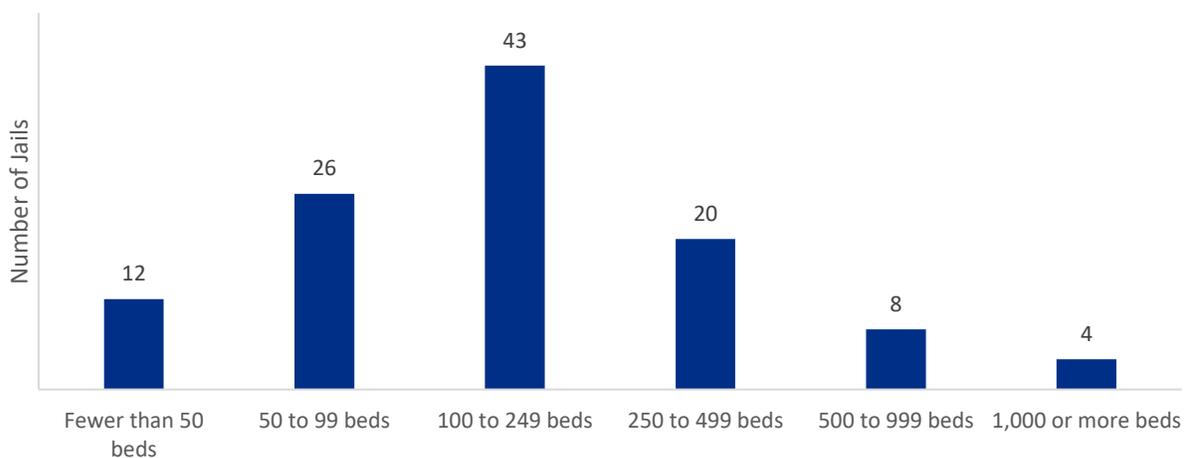
<sup>14</sup> G.S. 148-32.1(b2).

inmates is set by the NCSA and is currently \$40 per day; out-of-jail medical costs are paid separately by the NCSA when incurred.<sup>15</sup> For pre-sentence federal inmates, the housing rate paid to local facilities varies based on each facility’s Intergovernmental Agreement with the US Marshals Service. The per diem amount agreed upon is based on the facility’s actual and allowable costs of operating.<sup>16</sup> A county may also house inmates for another county; per diem rates vary based on the amount the two counties agree upon.<sup>17</sup>

## Capacity and Average Daily Population

Each jail in North Carolina operates independently; local jurisdictions make individual determinations regarding facility design to meet the needs of the populations housed within their facilities. For context regarding the size and capacity of each jail in the state (significant factors contributing to whether or not a county is able to participate in the SMCP), data from DHHS were examined on facility design capacity and average daily population. As the regulatory body approving design capacity for jails, DHHS proposes defining total design capacity as “the maximum number of inmates that can be housed in the confinement units of the jail based on the standards” DHHS has set in the rules.<sup>18</sup> More simply, the Bureau of Justice Statistics’ definition of design capacity is the number of inmates architects intended for the facility.<sup>19</sup> Figure 1 shows the distribution of the size of facilities in North Carolina. The majority (72 percent) of facilities in the state are built to house less than 250 offenders; almost 40 percent of the state’s jails were designed for 100 to 249 beds.

**Figure 1**  
**North Carolina Jails: Facility Design Capacity**



SOURCE: DHHS Construction Section, *Inmates Confined at Last Inspection*, 2018.

Design capacity informs whether a jail is considered overcrowded, though it is not a perfect measure of a facility’s true ability to house offenders. Staffing levels and other necessary resources may also factor

<sup>15</sup> G.S. 148-32.1(b1).

<sup>16</sup> United States Marshals Service, “USM-243: Cost Sheet for Detention Services,” <https://www.usmarshals.gov/prisoner/243instr.htm>.

<sup>17</sup> G.S. 162-39(c).

<sup>18</sup> DHHS, Proposed Rule Change for 10A NCAC 14J .0101, [https://www2.ncdhhs.gov/dhsr/rules/2018/0110\\_14J\\_0101.pdf](https://www2.ncdhhs.gov/dhsr/rules/2018/0110_14J_0101.pdf).

<sup>19</sup> Bureau of Justice Statistics, “Terms & Definitions: Local Jail Inmates And Jail Facilities,” <https://www.bjs.gov/index.cfm?ty=tdtp&tid=12>.

into capacity. Additionally, jails usually use a desired vacancy rate to allow for some flexibility in inmate management related to housing.<sup>20</sup>

The DHHS Construction Section inspects all jails biannually. During these inspections, in addition to noting noncompliance issues (e.g., fire safety, medical care of inmates), inspectors record the number and type (e.g., male, female, federal, SMCP) of inmates housed in the facility at the time of inspection. These data are included in the DHHS Construction Section report *Inmates Confined at Last Inspection*. Using the data from these reports, each facility’s population at the last inspection was compared to the facility’s design capacity. Table 1 shows the majority of facilities (56 percent) were occupied at less than 90 percent capacity. Nine facilities were occupied at less than 50 percent capacity, including four vacant facilities – Edgecombe Annex, Mecklenburg Jail North Annex, Polk County Detention Center, and Wake County Detention Center Annex. Fifty jails (44 percent) were operating at or above their design capacity. It is important to note that the population used for the calculations in Table 1 was captured at one point in time (i.e., the date of inspection, which varies by facility).

**Table 1**  
**Percentage of Occupied Design Capacity at Time of Inspection**

<b>Jail Occupancy</b>	<b>Number of Jails</b>	<b>Percentage of Jails</b>
Less than 90% capacity	63	56%
At capacity (90-100%)	23	20%
Above capacity (>100%)	27	24%

SOURCE: DHHS Construction Section, *Inmates Confined at Last Inspection*, 2018.

Operating at, close to, or over design capacity may have implications for inmate and correctional officer safety. The National Institute of Corrections’ *Sheriff’s Guide to Effective Jail Operations* notes that while crowding of a jail is typically considered when the jail population is consistently exceeding design capacity, the “symptoms of crowding may be apparent much earlier – once the jail reaches approximately 80 percent of rated capacity.”<sup>21</sup>

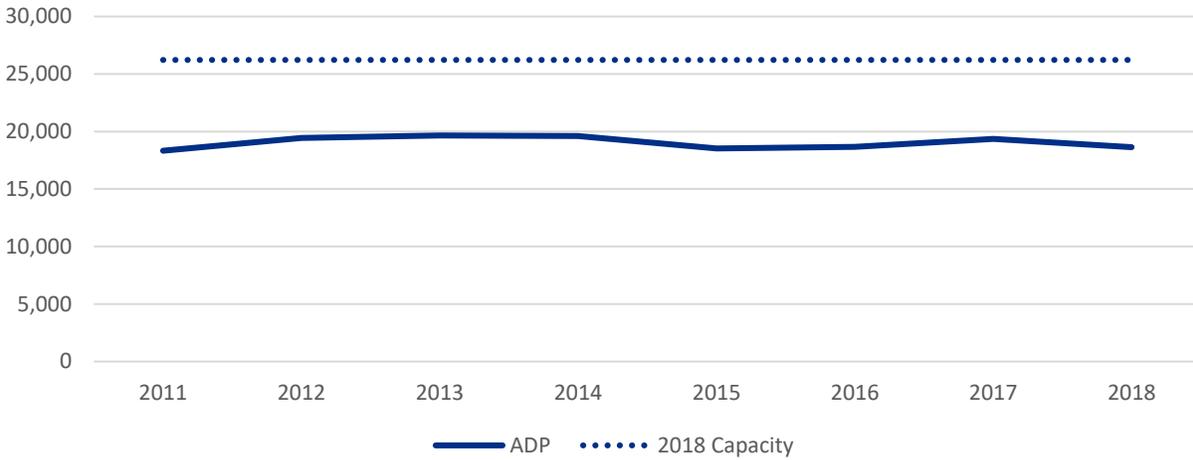
In addition to undergoing inspections and complying with regulatory requirements, jails must submit monthly reports to the DHHS Construction Section on the average daily population (ADP) of the facility. Figure 2 provides context for the overall jail system, comparing the statewide ADP to the 2018 capacity level. The overall ADP for each facility was calculated by adding the monthly ADP figures and dividing the sum by the number of months for which data was reported (i.e., if a county only reported ten months of data, the sum was divided by ten). To get the statewide total, all the facility ADP figures were summed together. Overall, the ADP for the state was 18,328 in 2011 and increased to 18,650 in 2018.<sup>22</sup> Then, all facilities’ design capacities were summed to get the statewide capacity. The 2018 statewide capacity was 26,221, which is reflective of all available capacity in 2018. While overall ADP is 71 percent of statewide capacity, it is worth noting that available capacity varies by county and facility as jails are not part of a centralized system.

<sup>20</sup> National Institute of Corrections, *Jail Capacity Planning Guide: A Systems Approach*, November 2009, p. xii.

<sup>21</sup> National Institute of Corrections, *Sheriff’s Guide to Effective Jail Operations*, January 2007, p. 23. Rated capacity is defined in the same way as design capacity.

<sup>22</sup> Average Daily Population is underrepresented because Jones, Mecklenburg, and Orange counties did not report any data for 2018 as of November 26, 2018.

**Figure 2**  
**Total Jail Capacity and Reported Average Daily Population**  
**CY 2011 – 2018**



Note: Average Daily Population only calculated based on reported months through November 26, 2018. Jones, Mecklenburg, and Orange counties' ADP are not included in 2018 due to unreported data.  
 SOURCE: DHHS Construction Section, *Inmates Confined at Last Inspection, 2018 and Local Confinement Report, 2011 – October 2018*

### Jail Construction Timeline

As populations grow and ADP meets or exceeds capacity on a consistent basis, it may become necessary to build a new jail or addition. This process takes time. Understanding why, when, and how a jurisdiction opts to construct a new facility or expand an existing facility is important because knowing the timeframe from identifying the need for construction or expansion to completion of the project is key to informing the number of jurisdictions that may build new or additional capacity during the projection period (see Section V, SMCP Capacity Projections). The process for planning and constructing a new jail facility was discussed with jail staff, the DHHS Construction Section, and, primarily, architectural firms. Local approval and funding for a new jail often takes an extended amount of time; even if a new jail facility was requested prior to overcrowding issues, new facilities may not be built until crowding already poses an extreme problem. After a county decides to move ahead with a new jail or addition, the county enters into a contract with an architectural firm for the design. The design process takes into account individual needs, wants, and budget constraints of the county. After approval of the design, construction on the planned facility or expansion can begin. According to the architects spoken with, once funding is approved, the planning and construction for a jail takes approximately three to five years.

## III. BACKGROUND: STATEWIDE MISDEMEANANT CONFINEMENT PROGRAM

Prior to the creation of the SMCP, misdemeanants sentenced to an active sentence were divided between the local jail and the state prison based on their sentence length. Misdemeanants with a

sentence of 90 days or less served their sentence in the local jail while misdemeanants with a sentence of more than 90 days served their sentence in the state prison system.<sup>23</sup> As a result, the counties paid the cost of housing the misdemeanants in the local jails while the State paid the cost of housing those in the state prison system.

As noted above, in 2011, the General Assembly created the SMCP as part of the JRA.<sup>24</sup> The SMCP was designed to move more misdemeanants to the local jails while providing State financial assistance for housing them. Under the SMCP, the Division of Adult Correction and Juvenile Justice of the Department of Public Safety (DACJJ) enters into voluntary agreements with counties to provide housing in their jails for certain misdemeanants serving periods of confinement.<sup>25</sup> Every county is required to send eligible misdemeanants to the SMCP but becoming a receiving county is voluntary. The county and the sheriff determine whether they will participate in the Program and, if so, how many beds they will provide. The DACJJ also contracts with the NCSA to manage the program and to identify space in a participating county when an eligible misdemeanant is sentenced to the SMCP.<sup>26</sup> If the NCSA determines that the local jails available for housing misdemeanants under the SMCP are filled to capacity, additional misdemeanants may be transferred to a state prison.<sup>27</sup>

The SMCP was originally designed to reduce the number of misdemeanants housed in the state prison system. Misdemeanants who received an active sentence of between 91 and 180 days, excluding sentences for impaired driving offenses under G.S. 20-138.1, were sentenced to the SMCP, while misdemeanants who received a sentence greater than 180 days remained in the state prison system.<sup>28</sup> However, in 2014 the General Assembly amended the statutes so that all misdemeanants would serve their sentences in local jails through the SMCP.<sup>29</sup> Beginning October 1, 2014, misdemeanants who received a sentence greater than 90 days served their sentences in the SMCP and, effective January 1, 2015, so did persons sentenced for impaired driving offenses regardless of their sentence length.

Under the SMCP, the State helps pay the cost of housing these misdemeanants. Originally, the General Assembly established the Statewide Misdemeanant Confinement Fund to cover Program costs including care, supervision, transportation, medical, and any other related costs, as well as the cost of managing the system.<sup>30</sup> Initially, two court costs imposed on criminal convictions supported the fund.<sup>31</sup> In 2015, the Court of Appeals held that one of these imposed costs was in fact punishment for committing a crime and, therefore, a fine which must go to school boards as required under Article IX, Section (7a) of the North Carolina Constitution.<sup>32</sup> Starting with FY 2016, the General Assembly funded the SMCP with a direct appropriation.<sup>33</sup>

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<sup>23</sup> G.S. 15A-1352(a).

<sup>24</sup> S.L. 2011-192, s. 7.

<sup>25</sup> G.S. 148-32.1(b2).

<sup>26</sup> G.S. 148-32.1(b1).

<sup>27</sup> G.S. 148-32.1(b4).

<sup>28</sup> G.S. 148-32.1(b1) and (b2).

<sup>29</sup> S.L. 2014-100, s 16C.1.

<sup>30</sup> G.S. 148-10.4.

<sup>31</sup> G.S. 7A-304(a)(2b) and (4b) (2013).

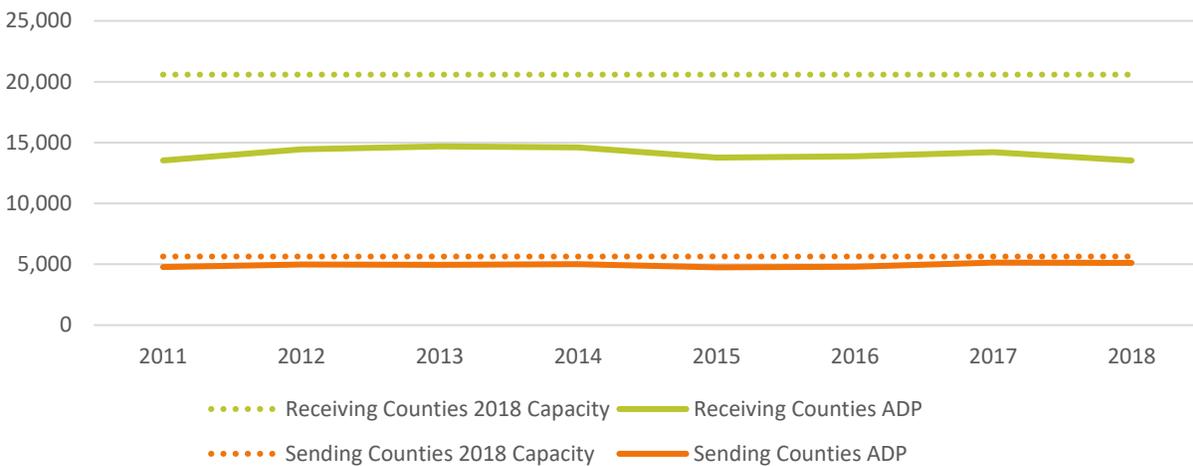
<sup>32</sup> *Richmond Cty. Bd. of Educ. v. Cowell*, 243 N.C. App. 116, 123, 776 S.E.2d 244, 249 (2015), *aff'g* 225 N.C. App. 583, 739 S.E.2d 566 (2013), *rev'd* \_\_\_ N.C. App. \_\_\_, \_\_\_, 803 S.E.2d 27, 32, (2017) (admonishing the state to pay back the funds owed to Richmond County, but recognizing that “[i]f the other branches of government still ignore [their decision], the remedy lies not with the courts, but at the ballot box”), *appeal dismissed and review denied*, 370 N.C. 574, 809 S.E.2d 872 (2018).

<sup>33</sup> S.L. 2015-241, Budget Support Document (The Joint Conference Committee Report on the Base, Expansion, and Capital Budgets), p. I-5, North Carolina General Assembly (September 14, 2015).

## SMCP Capacity

Capacity in the Statewide Misdemeanant Confinement Program relies on additional capacity jails have and will volunteer. As mentioned previously, available jail capacity varies around the state. Figure 3 shows the 2018 capacity and yearly ADP by SMCP participation (see Appendix for a map of receiving and sending counties as of June 30, 2018). Because the SMCP is a voluntary program that relies on counties having excess beds, it is understandable that receiving counties tend to be facilities with more additional capacity.

**Figure 3**  
**Jail Capacity and Average Daily Population by SMCP Participation**  
**CY 2011 – 2018**

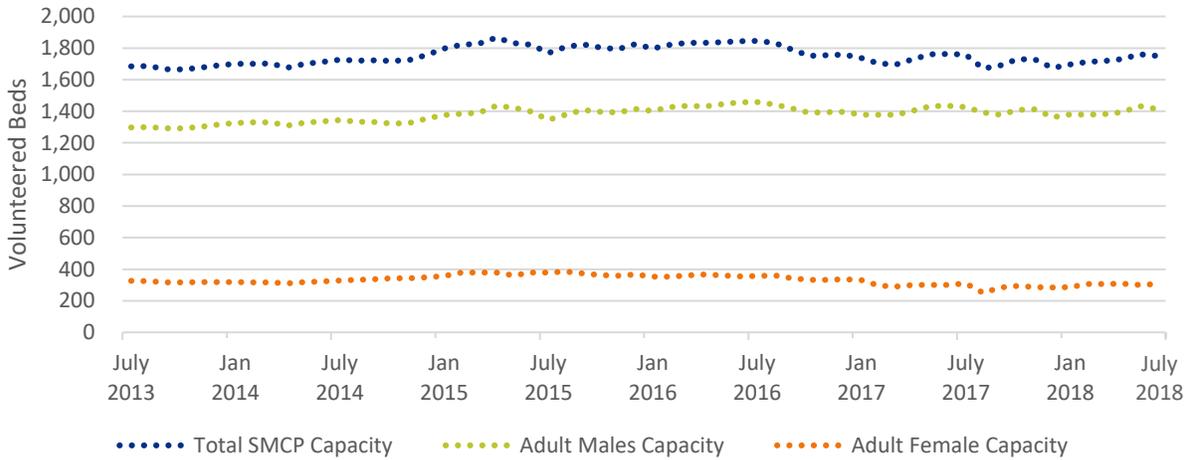


Note: ADP calculated based on reported months through November 26, 2018. Jones, Mecklenburg, and Orange counties' ADP are not included in 2018 due to unreported data.

SOURCE: DHHS Construction Section, *Inmates Confined at Last Inspection, 2018* and *Local Confinement Report, 2011 – October 2018*

As part of its administration of the program, the NCSA reports monthly on SMCP capacity and population. Staff analyzed these reports to examine trends in participating counties, beds, and population. Figure 4 shows the total SMCP capacity, Adult Male capacity, and Adult Female capacity for the last five fiscal years (FY 2014 – FY 2018). The Adult Male capacity comprises most of the total (80 percent) and the total SMCP capacity mirrors the male capacity trend. The SMCP capacity has been relatively stable in the past five years. It should be noted, however, that the male capacity decreased 6 percent (104 male beds) between June 30, 2018 and December 31, 2018.

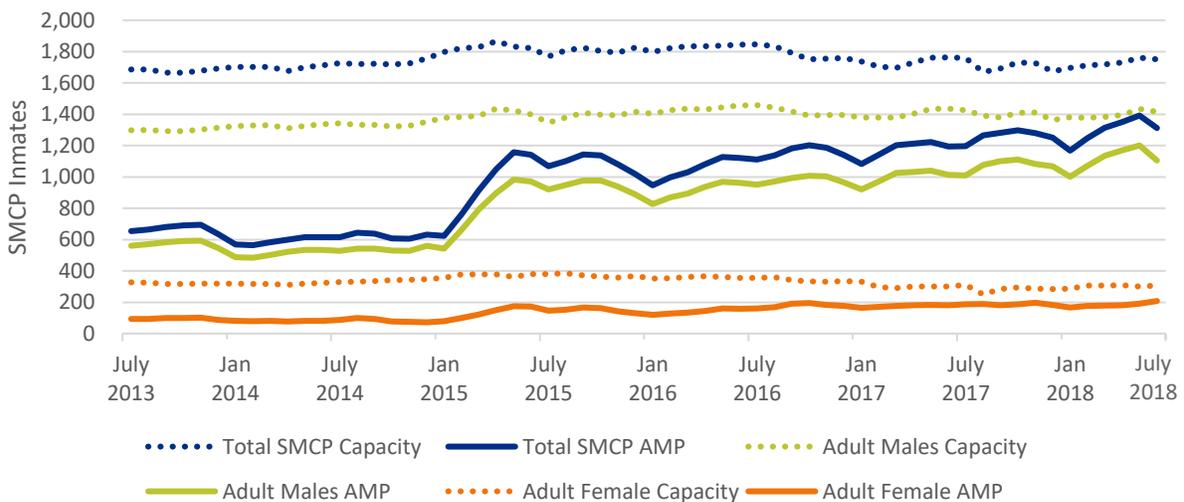
**Figure 4**  
**SMCP Capacity for Reported Months**  
**FY 2014 – FY 2018**



SOURCE: NC Sheriffs' Association Monthly Reports, July 2013 – June 2018.

While capacity has remained stable, the SMCP average monthly population (AMP) has changed as population segments have grown. The populations are compared to capacity in Figure 5. The most notable increase in population occurred in FY 2015 (due to legislative changes that expanded the eligible population for the program); however, both male and female inmate populations have increased. In the last six months of 2018, the average monthly population decreased 3 percent (or 34 inmates). Since the inception of the program, the capacity has always been greater than the SMCP inmate population.

**Figure 5**  
**SMCP Capacity and Average Monthly Population**  
**FY 2014 – FY 2018**



SOURCE: NC Sheriffs' Association Monthly Reports, July 2013 – June 2018.

Overall capacity demonstrates stability over time; however, it does not reflect the changes in individual counties' numbers of volunteered beds. Inmate Space Allocation change sheets, which receiving counties submit to the NCSA to change the number of beds they are volunteering for SMCP use, were examined to better understand bed fluctuations at the county level.<sup>34</sup> Figure 6 shows the net monthly change for county bed commitments, which have varied over time. Positive numbers indicate an increase in bed commitments, while negative numbers represent a decrease in bed commitments. Counties decrease and increase their bed allocations as local situations necessitate. For example, a county may have an influx of pretrial offenders and may need bed space to house that county population rather than SMCP offenders. Since June 2018, net changes have been mostly negative. From July to November, capacity decreased an average of 20 beds per month, ranging from a decrease of 82 beds to an increase of 121 beds.

**Figure 6**  
**Monthly Net Change in Receiving County SMCP Bed Commitments**  
**FY 2014 – FY 2018**



SOURCE: NC Sheriffs' Association, SMCP Inmate Space Allocation forms, July 2012 – June 2018

## IV. TRENDS AFFECTING JAILS

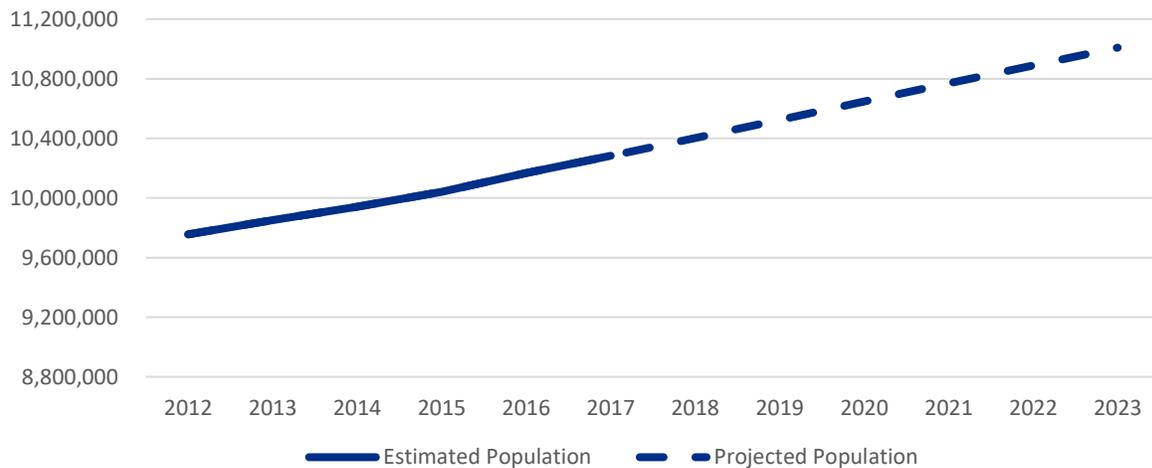
It is important to consider external factors (e.g., demographics, criminal justice indicators) to understand what might contribute to availability (or lack thereof) of bed space within a jail. This section examines North Carolina data on total population, crime rates, relevant conviction trends, and length of stay to provide context for jail capacity, both at the statewide level and within the SMCP.

<sup>34</sup> The monthly change in beds allocated to the SMCP was calculated for each participating county by subtracting the previous month's allocation from the next month's allocation (i.e., the beds committed for January were subtracted from the number of beds committed for February). Each county's positive or negative change was then added together to get the net monthly change.

## North Carolina Population

As population grows, the number of people available to commit crimes increases, making population growth a significant factor in relation to jail population and capacity. Within overall population growth, it is also important to understand which sub-groups are growing or contracting, and the relationship those specific groups may have with crime (and, relatedly, the jail population). As shown in Figure 7, the population in North Carolina has been growing and is expected to continue to grow. From 2012 to 2017, the population increased roughly 5 percent, and is expected to increase an additional 7 percent by 2023, with an overall growth rate of 1 percent annually. The fastest growing subset of North Carolina’s population is the age 65 and older group – a group that has expanded over 20 percent over the last six years and is expected to grow another 22 percent by 2023. The older population is not typically considered a “crime-producing” age category, and therefore, would not be expected to affect the number of crimes committed (and, indirectly, jail population).

**Figure 7**  
**NC Total Estimated and Projected Population**  
**CY 2012 – 2023**



SOURCE: Office of the State Demographer, NC Office of State Budget and Management, Population Projections, Vintage 2018 (Preliminary)

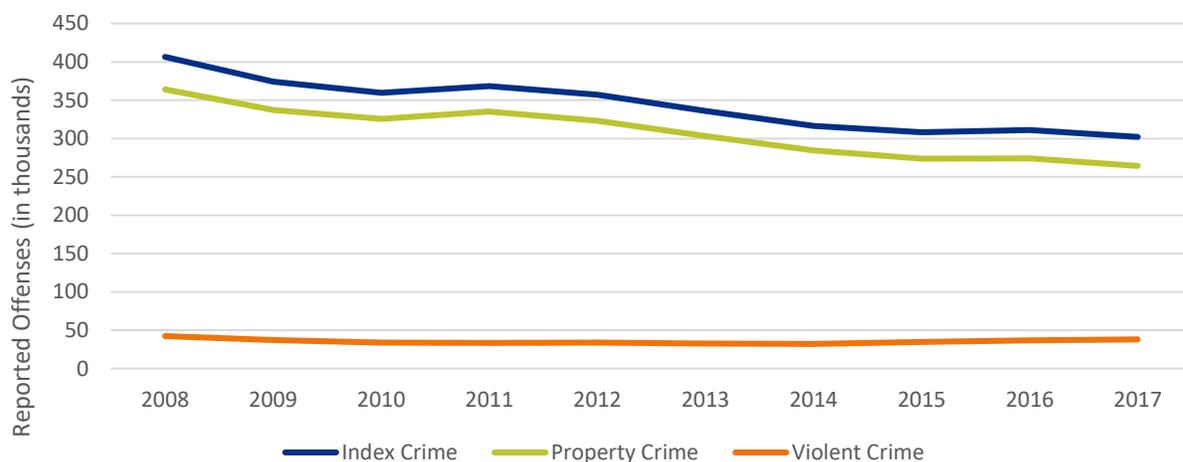
There are two specific age groups that research has consistently shown to be related to crime rates – younger males (ages 16-24; the most crime-producing age group), and juveniles (ages 10-15; the group that will advance into the crime-producing age group). In North Carolina, both groups have shown steady growth, but at a declining rate since 2012. In the context of North Carolina’s population and demographics, indicators suggest the current trends are not likely to have a major effect on crime, and thus, jail bed space availability.

## Select Crime Rates

Figure 8 shows select offenses committed in North Carolina that factor into jail population and jail capacity. As mentioned previously, jails house inmates that have been arrested and are being held pretrial. The volume of statewide arrests and committed offenses is essential for understanding how the pretrial population housed within jails might be trending (e.g., a large increase in the number of total

arrests may translate into more jail beds occupied with inmates housed pretrial). Consistent with national trends, crime in North Carolina has generally been declining. From 2013 to 2017, Index crime offenses<sup>35</sup> decreased 10 percent and property crimes decreased 13 percent. While violent crimes experienced an uptick from 2015 to 2017, over the past ten years, violent crimes have decreased more than 10 percent. In addition to overall declines in incidences of Index, violent, and property crimes since 2008, there has been a decline in Index, property, and violent crime rates (calculated by the number of offenses per 100,000 population, based on North Carolina population data from the Office of State Budget and Management) during that same time. Over the past ten years, the Index crime rate decreased 33 percent, the property crime rate decreased 27 percent, and the violent crime rate decreased 30 percent.

**Figure 8**  
**Select Reported Offenses Committed in North Carolina**  
**CY 2008 – 2017**



SOURCE: *Crime In North Carolina - 2017 Annual Summary Report of 2017 Uniform Crime Reporting Data*, NC State Bureau of Investigation, December 2018

These statistics on crime incidences and crime rates are important context for jail capacity – the downward trends, if they continue, indicate that there may not be a huge influx of pretrial inmates requiring space in local facilities.

### Misdemeanor Convictions

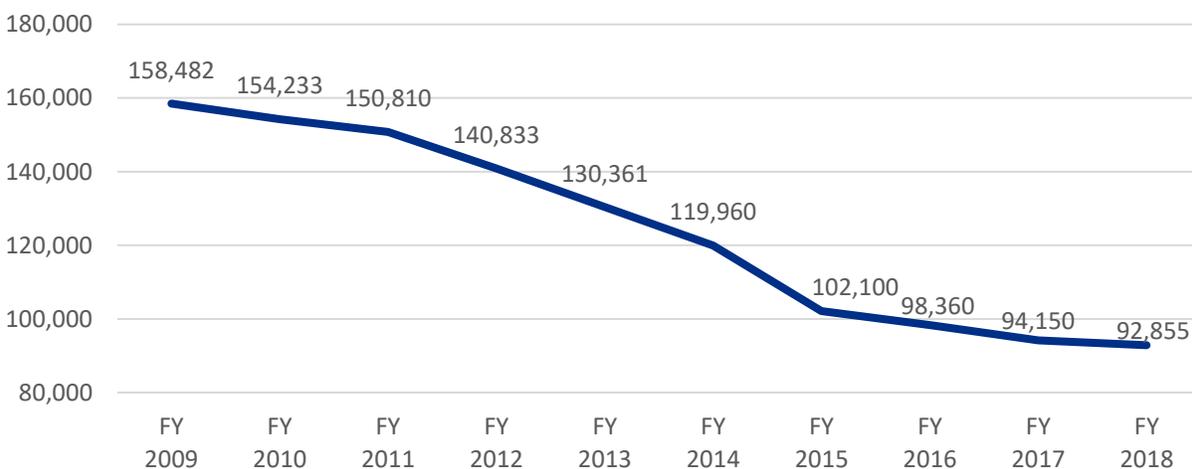
Also relevant to populations housed within jails is the volume of misdemeanor convictions imposed, the overall trend for misdemeanor convictions, and sentences imposed for misdemeanor convictions. As noted previously, jails in North Carolina house all convicted misdemeanants with sentences of 90 days or less. If the volume of misdemeanor convictions with sentences of 90 days or less were to substantially increase, jails would need more beds locally to house these inmates. Conversely, if there are significant decreases in misdemeanor convictions, this would relieve the need for local facilities to house convicted misdemeanants (allowing more capacity for other types of inmates).

<sup>35</sup> Index crimes include murder, rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft. Arson is also an Index offense but is typically excluded from Index crime totals.

Figure 9 shows the number of misdemeanor convictions imposed in North Carolina from FY 2009 through FY 2018. Misdemeanor convictions decreased over 40 percent during this timeframe and decreased 1 percent during the last year. Also noteworthy within overall misdemeanor convictions is the volume that are sentenced to 90 days or less (i.e., the responsibility of the local jails). From FY 2009 to FY 2018, between 89 percent and 90 percent of all misdemeanants who received an active punishment had a sentence imposed of 90 days or less.

If trends continue in a similar direction with regards to misdemeanor convictions and sentences imposed, this may indicate that there would not be an increase in the need for available beds within jails to house convicted misdemeanants with sentences of 90 days or less.

**Figure 9**  
**Misdemeanor Convictions**  
**FY 2009 – FY 2018**



Note: The decrease in misdemeanor convictions from FY 2014 to FY 2015 can be attributed to the 2013 reclassification of several misdemeanor offenses to lower classes or infractions.

SOURCE: NC Sentencing and Policy Advisory Commission, *Statistical Report Data*, FY 2009 – FY 2018

### Length of Stay Trends

The volume of entries coming into jail is a significant factor when considering available capacity, as is duration of stay for those in jail. Volume, discussed earlier in the context of arrests and convictions, affects how many individuals are entering jails for a variety of reasons. Duration affects the length of time individual populations might remain in jail. The longer the duration, the greater the potential for a “stacking effect” to occur, with entries outpacing exits due to long stays.

As mentioned previously, a substantial portion of local jail populations are those inmates being held pretrial. In order to determine a rough estimate for length of stay for the pretrial population and existing trends, Commission data on pretrial credit were examined. This examination revealed that offenders sentenced between FY 2009 and FY 2018 for misdemeanor convictions with active punishment imposed received an average credit for time served between 20 and 23 days. For felony convictions with active punishment imposed between FY 2009 and FY 2018, the average credit for time served received was between 5 and 6 months. The average credit awarded for pretrial time served did not fluctuate from

year to year for either felonies or misdemeanors. These figures provide a rough estimate of the average duration a pretrial inmate might be held in a local facility pending adjudication. However, these figures, while informative, do not include all groups that are being held pretrial – for example, offenders who are ultimately sentenced to non-active punishment (but were held in jail awaiting trial) are not included and individuals whose charges did not result in a conviction for a variety of reasons are also not included.

## V. FACTORS AFFECTING JAIL CAPACITY

Given that available capacity for the SMCP is directly related to available capacity within individual jails, understanding what factors may affect space within facilities is essential. In addition to external factors that may have a direct or indirect influence on jail population and capacity (*see above*), there are several internal factors that directly impact population and bed availability. This section examines physical space considerations, jail backlog, local priorities, financial considerations, and examples of policy and/or rule changes – all of which may affect a jail’s available capacity and ability to volunteer beds to the SMCP.

### Physical Space

As discussed earlier, certain populations housed within jails have special requirements related to physical space either required by law or by administrative code (*see Inmates Housed in Jails*). For example, the female population must be housed separately from the male population. Providing individual housing units for female inmates can be particularly challenging, especially given that in the past jails largely housed male inmates exclusively. Additionally, juveniles must have sight and sound separation (either structurally or through policies and procedures) from the adult population. While females and juveniles typically represent a small portion of the overall population within a jail – these housing and separation requirements can affect available space generally. The more females and juveniles a jail must house, the less flexibility administrators have when it comes to physical space. It was reported across multiple jurisdictions during site visit interviews that the number of female inmates has been steadily increasing. This increase may result in jails having to reconfigure housing pods, wings, and/or dedicated pods to accommodate a changing internal population with greater numbers of females. A decrease in flexibility due to physical space constraints caused by a changing population could result in the inability to volunteer beds for the SMCP.

Jails also need flexible housing to manage inmates beyond gender and age considerations. Some inmates may need to be kept separate from others, whether it be from all other inmates (e.g., protective custody, suicide risk) or from certain other inmates (e.g., gang members). When a facility does not have the flexibility in capacity it needs to manage all these populations, there is the potential for increased tension, violence, and availability of contraband, which reduces the safety of inmates and staff.<sup>36</sup>

### Jail Backlog

One population housed within local jails that can affect jail capacity and bed availability are those awaiting transfer to the state prison system— individuals who have been recently convicted of a felony

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<sup>36</sup> National Institute of Corrections, *Sheriff’s Guide to Effective Jail Operations*, January 2007, p. 23.

offense and sentenced to active punishment, revoked from a felony probation sentence, or have specific medical/mental health needs that cannot be met by the jail facility (i.e., safekeepers).

The Department of Public Safety is responsible for transporting individuals from local jails to the state prison system. Delays caused for various reasons (e.g., weather events, limited prison bed availability, etc.) can result in jail backlog; DPS must reimburse local jails for the cost of housing inmates awaiting transfer at a rate of \$40/day.<sup>37</sup> Jail backlog may limit the number of beds available for jails to hold other inmates – as backlog can be unpredictable and is outside the control of local jail facilities.

Fortunately, jail backlog has not been an issue for jails for a majority of the past ten years. From 2012 to 2017, there was almost no jail backlog. In 2018, due to a number of severe weather events, and staffing/capacity issues in the state prison system, backlog began to accumulate in September. During the month of January 2019, there was an average statewide backlog of 508 inmates.

Whether the backlog will continue is unknown at this stage and depends almost entirely on the state prison system. However, if backlog continues and/or increases, this would affect jail population as well as available capacity within jails. During site visits, one jail was experiencing backlog and reported it had a direct effect on their number of beds committed to the SMCP.

## Policy and Rule Changes

Policy and rule changes at the state or local level have the potential to affect bed space availability for jails, either positively or negatively. For example, local changes to bail policies and/or the implementation of a pretrial risk assessment could result in reductions in the pretrial population. A reduction in the pretrial population would free up bed space for other inmates and increase flexibility for jail administrators in how they can use unoccupied beds. Conversely, if the bond schedule amounts increased, a county could experience an increase in the pretrial population.

Rule changes, such as amendments to requirements regarding physical space, can also affect bed capacity and availability. For example, a rule change requiring jails to have both indoor and outdoor recreational space would necessitate counties planning to build new facilities to reconfigure their design layouts to conform to the new rules. Using what is often very limited square footage for a new purpose (in this case, recreational space), may shift plans for bed space to another purpose, thereby reducing capacity.

## Local Priorities

Resource availability is a reality jails face, as competing local priorities may dictate whether or not a jail can be expanded or a new jail can be constructed, even if there is a demonstrated need due to crowding. Building a jail takes significant time, planning, and funding (see above, Jail Planning). Funding is subject to the approval of county commissions, which must consider the needs of the entire jurisdiction.

Many jails reported issues of crowding or overcrowding during site visits; data from DHHS also indicate that roughly 24 percent of jails are operating above 100 percent of design capacity, with another 20 percent operating at design capacity (90-100 percent of capacity). These statistics demonstrate there

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<sup>37</sup> G.S. 148-29.

may be significant need across the state for more jails to be constructed to handle the current jail population; as of January 2019, there are currently 9 construction projects either planned or underway that increase existing capacity. Funding availability may likely not be the only reason new projects are not being planned, but it is a significant factor for localities.

Other jurisdictional needs may take priority at certain times over the needs of the jails – whether those needs include additional resources or actual construction of facilities. Because resources are strongly related to capacity (both for reasons of physical space and staffing), they may also be closely aligned with overall capacity and available capacity to participate in the SMCP.

### Financial Considerations

As counties experience population growth and/or increased crime, they may dedicate more space to housing their individual county population and reduce available space for housing other inmates. Conversely, when localities experience decreased need for their local population or build new jail facilities, they may have excess capacity. As noted above, jails with spare capacity have the option to house inmates beyond their local jurisdiction for reimbursement. Those include SMCP inmates, federal inmates,<sup>38</sup> and inmates from other North Carolina county jails.<sup>39</sup> The reimbursement rates for each group of inmates varies. Jails may understandably take into account what groups are most financially advantageous to house when determining which populations they wish to house, with reimbursement rates a considerable factor in making those decisions.

Most of the jail capacity factors detailed above, while directly affecting bed availability, capacity, and the flexibility of jails to determine the best use of bed space, are outside of the control of jails. The incoming population and its distribution by age and gender affects how jails must house inmates according to legal requirements, but may be entirely unpredictable over time. Length of stay is driven in large part by court processes. Local priorities can change dramatically from year to year, with jail capacity and construction projects competing with the many important and varied interests and needs within a jurisdiction. All of these considerations, taken together, make it a difficult task to determine how beds may be used in the future and what capacity is or might be available for competing purposes.

## V. SMCP CAPACITY PROJECTIONS

This section takes into account planned jail projects, 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 many 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.

### Planned Jail Projects

As mentioned above, jails are regulated and inspected by the Construction Section of DHHS. Based on information provided by the DHHS Construction Section and conversations with the three primary jail

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<sup>38</sup> G.S. 162-34.

<sup>39</sup> G.S. 148-32.1(b); G.S. 162-39(a).

architectural firms in North Carolina, staff determined which counties are either in the process of building new facilities or planning to build or expand existing facilities.<sup>40</sup> These projects inform the future jail capacity in the state.

Knowing future jail capacity is critical to determining which counties may opt to volunteer new or additional SMCP beds. Since it takes years to design, build, and open a jail, it is possible to know construction plans prior to a facility’s opening and well in advance of the time a facility might begin to house inmates. Currently, there are nine planned jail projects across the state. Table 3 provides the number of beds to be constructed for each jail and the expected completion dates. Johnston County remains in a study phase with final bed numbers still to be determined. Catawba, Stokes, and Iredell counties are all expansions of the current jails; the other counties are planning for new facilities.

It should be noted that jail construction takes 3 to 5 years, making it possible that new projects could be planned and constructed by FY 2023. This analysis only accounts for those projects known at the time of publication of this report.

**Table 3  
Planned Jail Projects by County  
FY 2019 - 2023**

County	Total Number of New Beds	Expected Completion Date	Fiscal Year for Expected Completion	Number of New Jails	Total Number of New Beds
Catawba	320	January 2019	2019	3	704
Stokes	88	February 2019			
Iredell	296	June 2019			
Burke	248	August 2019	2020	2	427
Granville	179	June 2020			
Randolph	181	March 2021	2021	1	181
Orange	144	October 2021	2022	2	544
Surry	400	December 2021			
Johnston	400	January 2023	2023	1	400
<b>STATEWIDE TOTAL (BY 2023)</b>					<b>2,256</b>

Note: Johnston County has estimated 400 beds for the new facility; however, the number is not yet finalized. SOURCE: Emails and telephone conversations with DHHS Construction Section, Hemphill-Randel Associates, Moseley Architects, NC Sheriffs’ Association, O’Brien Atkins Associates, and Orange County Sheriff’s Office, November 2018 – January 2019

### Potential Commitment to SMCP from Planned Jail Projects

The new jail capacity being constructed represents the maximum potential number of beds that might be available for SMCP use; however, the number of beds volunteered depends on each jail’s needs for

<sup>40</sup> Burke, Catawba, Granville, Iredell, Johnston, Orange, Randolph, Stokes, and Surry counties.

its county inmate population. Each of the nine known counties with jail projects were contacted about SMCP participation and potential new bed commitments. Understandably, the later the expected completion date, the less certainty there is regarding participation and beds. Table 4 shows the current estimate of whether a county will participate and an estimate of beds to be volunteered for the SMCP.

**Table 4  
Tentative SMCP Participation and New SMCP Beds**

<b>County</b>	<b>Current Status in SMCP</b>	<b>Will Receive Future SMCP Inmates?</b>	<b>Potential New SMCP Beds</b>
<b>Catawba</b>	Sending	No	0
<b>Stokes</b>	Receiving	No	Undecided
<b>Iredell</b>	Receiving	Undecided	Undecided
<b>Burke</b>	Sending	Undecided	Undecided
<b>Granville</b>	Sending	Yes	59
<b>Randolph</b>	Sending	No	0
<b>Orange</b>	Receiving	Yes	Undecided
<b>Surry</b>	Receiving	Yes	15+
<b>Johnston</b>	Sending	Undecided	Undecided

SOURCE: Emails and telephone conversations with Sheriffs' Offices in Burke County, Catawba County, Granville County, Iredell County, Johnston County, NC Sheriffs' Association, Orange County, Randolph County, and Stokes County, January 2019

### Annual Change in SMCP Beds

In addition to new construction and the expansion of future capacity statewide, net change in beds already committed to the SMCP from receiving counties must be considered. Annual net gain or loss of beds was examined for FY 2014 – FY 2018 (see Table 5).

**Table 5  
Annual Changes in Overall Bed Commitments to SMCP  
FY 2014 – FY 2018**

<b>Fiscal Year</b>	<b>Net Annual Change</b>
2014	54
2015	108
2016	23
2017	(81)
2018	(13)

Source: NC Sheriffs' Association, SMCP Inmate Space Allocation forms, July 2012 – June 2018

Table 5 shows FY 2014 through FY 2016 had annual increases in SMCP bed commitments, while FY 2017 and FY 2018 both had annual decreases in bed commitments. As previously mentioned, in the first half of FY 2019, there has been a decrease of 104 beds committed to the SMCP. This potential downward

trend in recent years will continue to be monitored as the Commission produces annual capacity projections. Based on the potential trend in annual net changes, a moving average was used to estimate fluctuation in beds through FY 2023 from receiving counties (see Assumptions and Five-Year Capacity Projections).<sup>41</sup>

## Assumptions

This section details the assumptions used to develop the SMCP bed capacity projections for FY 2019 through FY 2023. The assumptions were determined using data from the past five fiscal years (FY 2014 through FY 2018) and assume there will be no significant changes in demographics, crime rates, or criminal justice laws and policies in North Carolina.

- *Criminal justice trends:* The projections assume no significant changes to criminal justice system trends.
- *State and local practices and administrative rules:* The projections assume no change in state and local practices or in administrative rule affecting capacity. The projections assume no change in judicial or prosecutorial behavior relating to convictions and sentencing, including practices relating to pretrial release.
- *Legislative changes:* Misdemeanants sentenced under the Structured Sentencing Act and offenders sentenced for impaired driving are mandated to serve any active sentence imposed in jail rather than prison. The projections assume that nearly all of these offenders will serve their sentences in local jails, although a small number may serve their sentences in prison due to medical or other reasons as part of the SMCP. The projections assume no changes to the population currently serving sentences through the SMCP.
- *Population distribution:* The projections assume the population distribution of jail inmates (e.g., percentage of pretrial inmates) remains constant throughout the projection period.
- *Planned jail projects:* Jail design and construction takes approximately three to five years. The nine projects discussed are the only projects known and are assumed to be the only ones affecting statewide capacity during the projection period. The projections also assume planned jail projects will be finished by their expected completion dates.
- *Receiving counties:* The projections assume receiving counties (as of June 30, 2018) will remain receiving counties throughout the projection period.
- *Sending counties:* The projections assume sending only counties (as of June 30, 2018) that are not building jails during the projection period will remain sending only counties.
- *Counties building jails:* Receiving and sending counties building jails were asked about SMCP participation. Their responses regarding potential new volunteered beds are reflected in the relevant years of the projection.<sup>42</sup> Given the number of responses specifying “undecided,” two scenarios were developed for the projection.
  - *Scenario 1:* If a sending county building a facility was undecided about SMCP participation as a receiving county, it was assumed zero beds would be volunteered. Receiving counties building facilities unsure about increased beds volunteered were assumed to volunteer no new beds.

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<sup>41</sup> A simple moving average calculating successive values adds the newest value and drops the oldest value before taking the average. For FY 2020, the net change was calculated by dropping FY 2016, and picking up FY 2019’s projection prior to calculating the new average. This continues for each successive year for a one-year moving average.

<sup>42</sup> Surry County reported increasing by 15 or more beds. For the projections, 15 new beds are used.

- *Scenario 2:* If a current receiving county was undecided about its future bed commitment, it was assumed the number of beds volunteered over the projection period would match the percentage of their overall capacity currently committed to the SMCP.<sup>43</sup>
- *Net change in SMCP capacity:* The current three-year average net annual change is a loss of 24 beds. The projections assume the three-year average net change will continue to be negative.

## Five-Year Capacity Projection

The projection scenarios detailed below provide the total number of beds (new and existing) over the five-year projection period. It is important to note, however, that neither scenario contemplates how capacity might be used (e.g., to house male and female capacity). Historically, the population and capacity breakdown have been 80 percent male and 20 percent female.

### Scenario 1

Scenario 1 assumes counties that are undecided on SMCP participation and/or bed commitment will contribute no new SMCP beds over the projection period. Table 6 shows the population projections for FY 2019 through FY 2023 for Scenario 1. The SMCP capacity is projected to decrease from 1,646 currently to 1,572 in June 2023 – a decrease of 5 percent.

**Table 6**  
**Scenario 1: SMCP Capacity Projections**  
**FY 2019 – FY 2023**

	Current	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Net Change in SMCP Capacity	N/A	(24)	(39)	(25)	(29)	(31)
Number of newly built SMCP beds	N/A	0	59	0	15	0
<i>Subtotal</i>	N/A	(24)	20	(25)	(14)	(31)
<b>SMCP Capacity Total</b>	<b>1,646</b>	<b>1,622</b>	<b>1,642</b>	<b>1,617</b>	<b>1,603</b>	<b>1,572</b>

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

### Scenario 2

Scenario 2 assumes counties that are undecided but are already receiving counties for the SMCP (Stokes, Iredell, and Orange counties) volunteer the same percentage of beds as their average commitment to the SMCP (based on a three-year average). This percentage was then applied to the number of new beds each county plans to construct (see Table 7).

<sup>43</sup> For example, Orange County currently volunteers 19 percent of its design capacity as SMCP beds. It is assumed Orange County will volunteer 19 percent of newly constructed beds to the SMCP.

**Table 7**  
**Estimated New SMCP Beds for Undecided Receiving Counties**

<b>County</b>	<b>SMCP Beds Volunteered as a Percentage of Design Capacity</b>	<b>Number of New SMCP Beds Volunteered for Scenario 2</b>
Stokes	3%	3
Iredell	4%	12
Orange	19%	27

SOURCE: DHHS Construction Section, *Inmates Confined at Last Inspection*, 2018 and NC Sheriffs' Association, SMCP Inmate Space Allocation forms, July 2015 – June 2018 (data analyzed by the NC Sentencing and Policy Advisory Commission)

Table 8 shows the population projections for FY 2019 through FY 2023 for Scenario 2. The SMCP capacity is projected to decrease from 1,646 currently to 1,614 in June 2023 – a decrease of 2 percent.

**Table 8**  
**Scenario 2: SMCP Capacity Projections**  
**FY 2019 – FY 2023**

	<b>Current</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
Net Change in SMCP Capacity	N/A	(24)	(39)	(25)	(29)	(31)
Number of newly built SMCP beds	N/A	15	59	0	42	0
<i>Subtotal</i>	N/A	(9)	20	(25)	13	(31)
<b>SMCP Capacity</b>	<b>1,646</b>	<b>1,637</b>	<b>1,657</b>	<b>1,632</b>	<b>1,645</b>	<b>1,614</b>

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

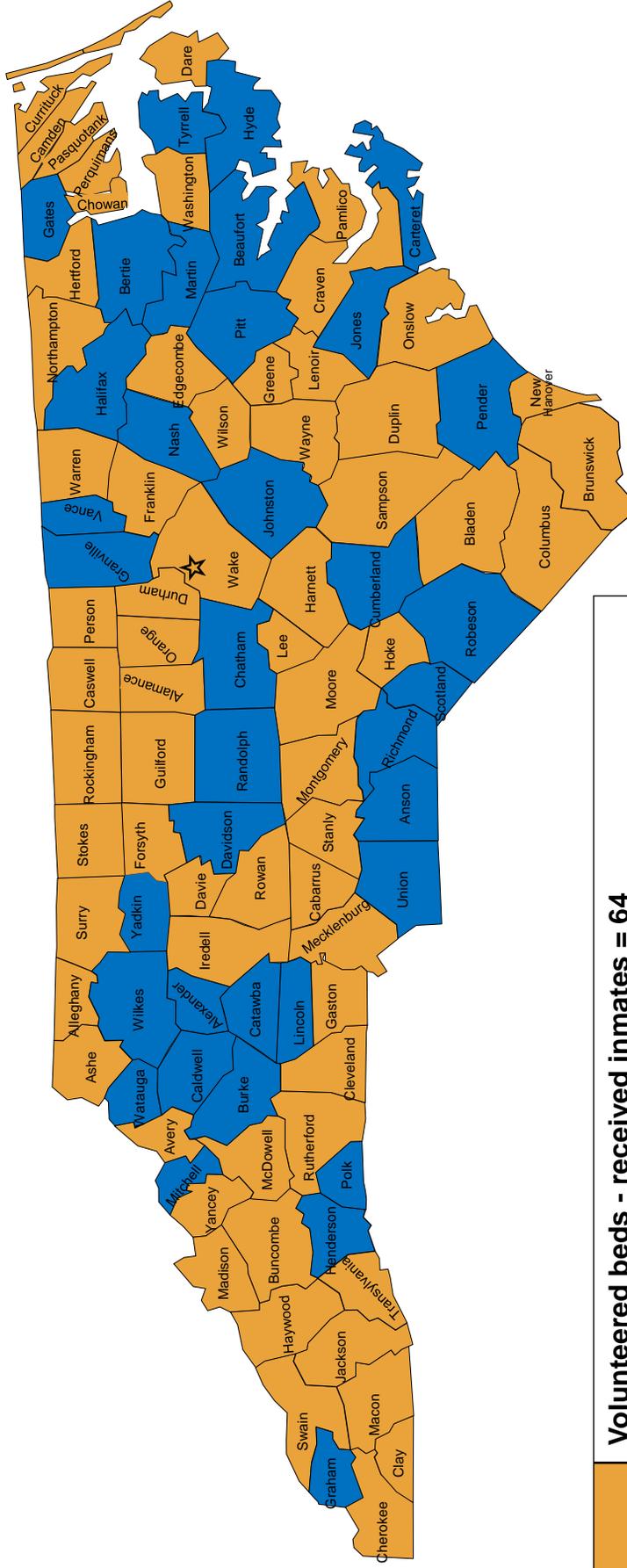
Both scenarios indicate a decline in the SMCP capacity over the five-year projection period. It should be noted the projected capacity could be altered by a number of factors, including local issues and jail backlog, which affect the number of beds counties are able to commit to the program. Because counties are able to change the number of beds volunteered at any point, this creates uncertainty for future planning.

One factor that is not addressed in this capacity projection is funding. The SMCP pays local jails to house offenders; capacity is, in part, based on the program having adequate funding to pay for the use of the beds. If there are not enough funds, capacity would be reduced and additional sentenced misdemeanants may be transferred to a state prison – potentially placing an additional burden on the prison system.

The relationship between state and local facilities highlights the importance of accurately understanding both capacity and population for the SMCP. It is not known whether the capacity will be sufficient for the needs of the SMCP. As noted previously, the capacity projection is one component to consider for planning for the SMCP; another critical factor is the projected population for the same time period. Taken together, the projected population in context with capacity would inform policymakers whether the committed and expected beds would be sufficient to meet the needs of the program while also allowing for more accurate resource planning.

**APPENDIX**  
**MAP OF COUNTIES THAT HAVE VOLUNTEERED BEDS TO THE SMCP**

# Counties that have Volunteered Beds to the Statewide Misdemeanant Confinement Program (SMCP)



	<b>Volunteered beds - received inmates = 64</b>
	<b>Not volunteered beds = 36</b>

Last Updated: 6/30/2018