

SMCP CAPACITY PROJECTIONS: FISCAL YEAR 2022 TO FISCAL YEAR 2026

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 (NCSA) 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 NCSA 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 the Jail Population

The COVID-19 pandemic, beginning in March 2020, has affected the overall jail population, as well as the SMCP population. Some factors contributing to changes in population include:

- Disrupted operations in local courthouses due to COVID-19 outbreaks;
- Reduced operations at local courthouses as a safeguard against COVID-19 exposure; and
- A Department of Public Safety (DPS) moratorium on accepting prisoners from county jails creating a backlog of inmates awaiting transfer.

These factors have affected convictions and jail populations – all of which impact the SMCP capacity projections. The pandemic continues to affect the court and correctional systems in FY 2022; it is not known how long these effects will continue.

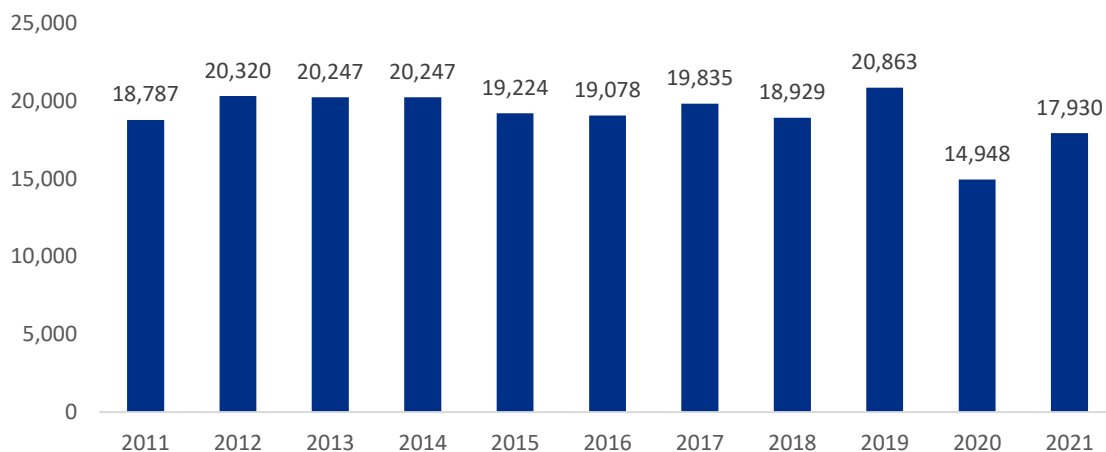
¹ N.C. Session Law (hereinafter S.L.) 2011-192, s. 7.

² N.C. Gen. Stat. (hereinafter G.S.) 148-32.1(b2) (2021).

³ G.S. 148-32.1(b4).

Figure 1 provides context for the overall jail system, showing the statewide average daily population (ADP) in the month of July. The highest reported ADP was in July 2019 (20,863), while July 2020 and July 2021 were the lowest reported ADP figures (due in large part to the pandemic). However, from July 2020 to July 2021, there was a 20% increase in the ADP. According to the capacity information reported to DHHS by local jails, the total statewide capacity was 27,445 in July 2021.

Figure 1
Total Jail Average Daily Population (ADP)
July 2011 – July 2021



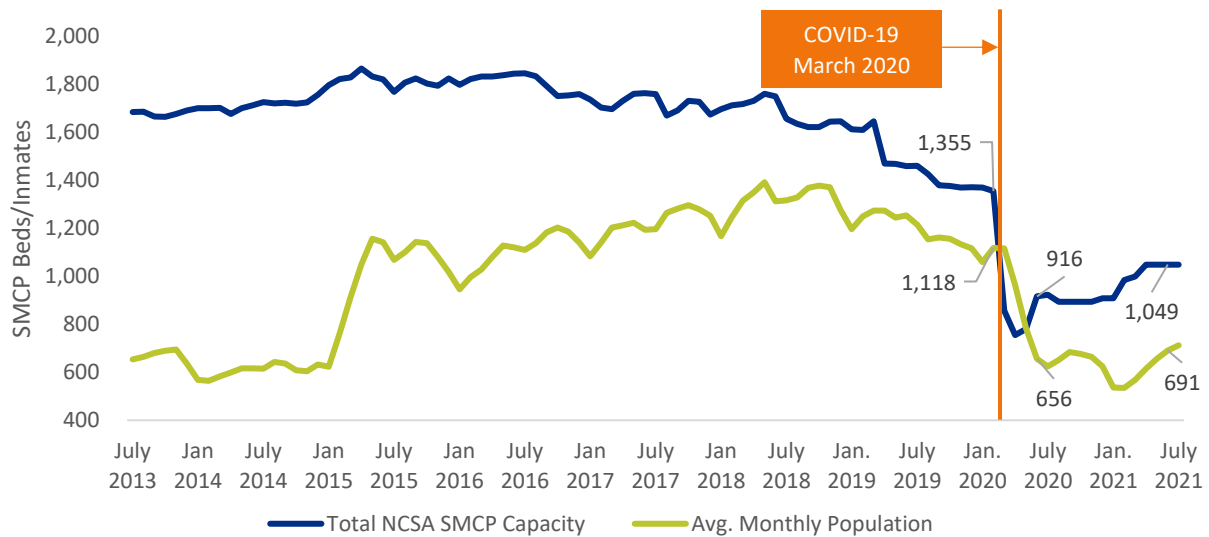
NOTE: The Guilford High Point Detention Center ADP is not included in the July 2021 ADP due to unreported data.
SOURCE: DHHS Construction Section, *Local Confinement Report*, 2011 – 2021; analysis conducted by NC Sentencing and Policy Advisory Commission.

Historical SMCP Capacity and Average Monthly Population

Historical SMCP capacity data are a key component for producing the five-year SMCP capacity projections. The average monthly population also provides additional context for the 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. In the month prior to the pandemic, February 2020, the average monthly population was 1,118. The June 2021 SMCP average monthly population (691 inmates) increased from last year (5%) and increased again in the subsequent month (July 2021) to 713 inmates.

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). In February 2020, the pre-pandemic SMCP capacity was 1,355. Beginning in March 2020, with the onset of the pandemic, the SMCP experienced unprecedented decreases in capacity. At the lowest point in April 2020, capacity was 755 beds or 44% of pre-COVID historic average capacity (1,721 beds). At the end of FY 2021, SMCP capacity rebounded to 1,049 beds, a 15% increase from FY 2019. By the end of July 2021, capacity remained the same at 1,049 beds. Without the effects from the pandemic (i.e., changes in SMCP participation), the NCSA estimates that the SMCP capacity would have been 1,368 at the end of FY 2021, which is similar to the reported 1,355 capacity for FY 2020. If COVID had not affected the SMCP, the estimated capacity for FY 2021 would have been a 6% decrease from the end of FY 2019 and a 25% decline from the end of FY 2015.

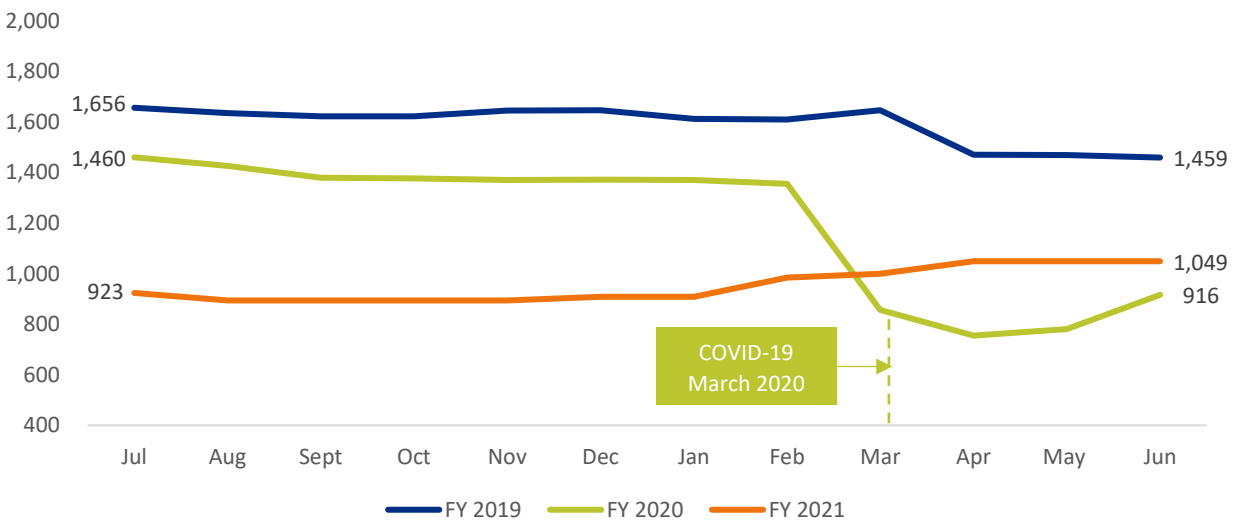
Figure 2
SMCP Capacity and Population Trends: July 2013 - July 2021



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

Figure 3 provides an additional examination of the effects of the COVID-19 pandemic on SMCP capacity. FY 2019 capacity was substantially higher compared to FY 2020 and FY 2021. However, FY 2021 capacity increased over the course of the year.

Figure 3
SMCP Capacity by Fiscal Year (2019-2021)

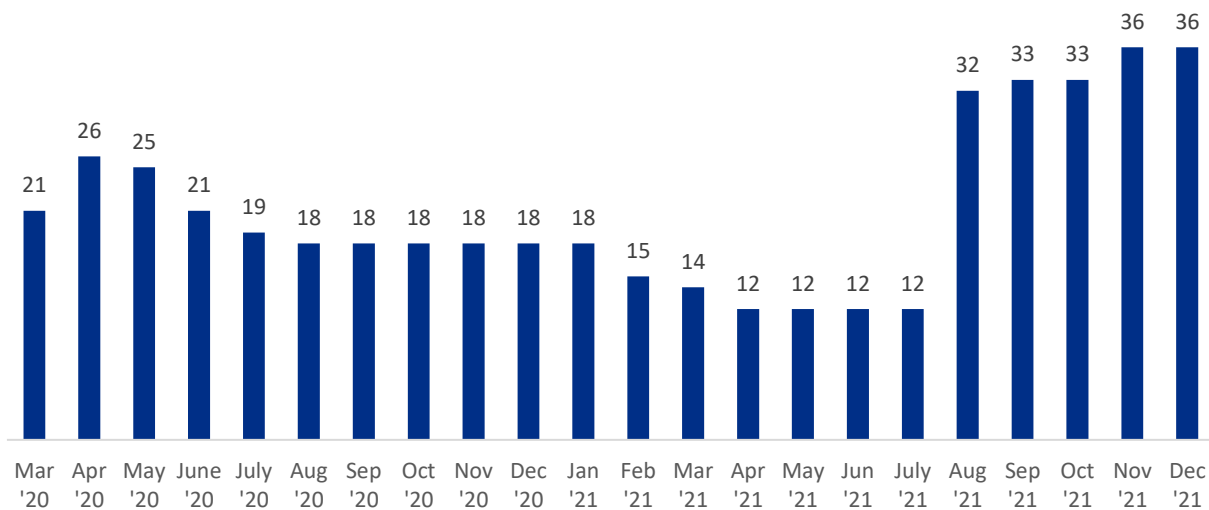


SOURCE: NC Sentencing and Policy Advisory Commission; NC Sheriffs' Association

Beginning in March 2020 and over the course of the pandemic, some counties have changed their participation in the SMCP to only receiving inmates from within their own county (referred to as "temporary moratorium counties"), and consequently, impacted SMCP capacity (see Figure 4). Overall,

the number of counties on a temporary moratorium fluctuated with participation changes coinciding with prominent events during the pandemic (e.g., onset of the pandemic, vaccine availability, emergence of variants, etc.). Notably, there was a 167% increase in the number of temporary moratorium counties in one month (from July to August 2021). The increase continued from August 2021, as jails also reported increased staffing issues.

Figure 4
Total Number of Temporary Moratorium Counties
March 2020 – December 2021



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

Methodology and Assumptions

This section details the assumptions used to develop the SMCP bed capacity projections for FY 2022 through FY 2026. The COVID-19 pandemic has impacted how counties allocate beds to the SMCP, resulting in some counties suspending receipt of inmates from outside their counties. Given the unexpected impact of the COVID-19 pandemic on the SMCP starting in FY 2020 and continuing into FY 2022, this section discusses the short-term assumptions for two different scenarios. Both scenarios account for the impact of the COVID-19 pandemic in different ways. Additionally, long-term assumptions are also presented which apply more broadly.

Scenario 1 Methodology and Short-Term Assumptions

The scenario 1 short-term assumptions were developed using the monthly status reports from the NCSA and supplemental information received from the NCSA. Due to the uncertainty of the pandemic and to account for the variety of ways each county has tailored its SMCP participation, scenario 1 includes the broadest definition of capacity for the SMCP. Under this scenario, any potential deficits in capacity due to the pandemic are offset by sending counties providing temporary capacity for their own SMCP population. Under this scenario, capacity includes sending only counties providing temporary capacity for their own SMCP population, temporary moratorium counties participating in a limited capacity, and

receiving counties with full participation. A description of short-term assumptions tailored to the different county statuses is provided below.

- *Sending only counties.* Due to the COVID-19 pandemic, some sending only counties are housing their own SMCP inmates due to limited availability of beds at receiving counties. The projection assumes that these counties will continue to provide capacity at their current levels (i.e., to house in-county SMCP inmates).⁴
- *Temporary moratorium counties:* These counties have limited SMCP participation by only receiving inmates from within their own county. However, given that their capacity fluctuates based on need, the projection assumes these counties provide capacity at full participation/allocation levels.
- *Receiving counties:* The projections assume receiving counties will experience no disruptions to participation and/or bed allocation and will provide beds at their current levels.

Scenario 2 Methodology and Short-Term Assumptions

Scenario 2 uses a more conservative definition of capacity, accounting for beds that have been taken offline by receiving counties and those currently in use by traditionally sending-only counties. Scenario 2 projects offline beds will be recovered over the projection period, as pandemic conditions improve.

Data from allocation forms submitted to the NCSA⁵ were used to inform scenario 2 assumptions, as well as data on the December 2021 SMCP inmate population.⁶ Due to changes in the NCSA's monthly status report starting in June 2021, these alternative sources provided needed detail on capacity by the different county statuses (i.e., receiving county, temporary moratorium).

A comparison of SMCP capacity for December 2020 and December 2021 is provided in Table 1. Compared to last year, total capacity (i.e., the total with receiving and temporary moratorium counties included) decreased 2%. The capacity excluding temporary moratorium counties decreased 17%. Importantly, there were twice as many temporary moratorium counties in December 2021 relative to December 2020 (36 and 18 respectively). For scenario 2, capacity refers to all beds allocated by receiving counties (i.e., not in a moratorium status), and the beds occupied by inmates in temporary moratorium counties. As shown in Table 1, the scenario 2 capacity is reflected in the "capacity with temporary moratorium occupied beds only" category at 1,007 beds.

⁴ As pandemic conditions improve, it is assumed that the sending only counties will no longer provide temporary SMCP capacity and will send their inmates to receiving counties. Current capacity being provided by sending counties is unknown; it is possible capacity could decrease in the future as these beds are no longer needed, however they cannot be factored into the projection.

⁵ The allocation forms received provide the overall capacity for receiving counties; however, counties may not submit updated forms and/or may informally change their capacity via phone calls or emails. Given this, the capacity information used from allocation forms may not be the most up to date. However, when looking at historical trends, allocation forms track closely with the published monthly status reports from the NCSA.

⁶ The NCSA provided the total number of SMCP inmates by county for December 2021. This information was used to assess the number of occupied beds for temporary moratorium counties for December 2021 (see Table 1).

Table 1
SMCP Capacity Breakdown
December 2020 and December 2021

Capacity Breakdown	Dec 2020	Dec 2021	% Change
Receiving and Temp. Moratorium Total Capacity	1,368	1,344	-2%
Capacity without Temp. Moratorium	909	757	-17%
Capacity with Temp. Moratorium Occupied Beds Only	1,087	1,007	-7%
Counties with a Temporary Moratorium			
Total Capacity	459	587	28%
Beds Occupied	178	250	40%
Beds Remaining	281	337	20%
Number of Counties	18	36	100%

NOTE: The NCSA monthly status report for December 2020 provided the capacity breakdown; however, for December 2021, this information relied on the allocation form information and the SMCP inmate population (reflected in the temporary moratorium beds occupied).

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

Listed below are the scenario 2 short-term assumptions by county status.

- *Sending only counties.* Sending only counties will send their inmates to receiving counties.
- *Temporary moratorium counties:* Temporary moratorium counties will resume full participation in the program (i.e., receive inmates from other counties and offer capacity to the program at pre-COVID levels).
 - *Rate of return:* For temporary moratorium counties, a rate of return to full capacity was calculated based on the examination of county participation over the course of the pandemic.
- *Receiving counties:* The projection assumes that these counties will operate with the same level of participation as before COVID-19.

Long-Term Assumptions

As the COVID-19 related effects are considered in the short-term assumptions for scenarios 1 and 2, the long-term assumptions do not address the COVID-19 pandemic. The long-term assumptions were determined using data from the past five fiscal years (FY 2017 through FY 2021) and apply across both scenarios.

- *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).⁷ 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 (JJDP) requires that within 3 years (by December 21, 2021), juveniles awaiting trial as adults not be held in any jail for

⁷ There are many discrete reform efforts across the state focused on pretrial release practices. If implemented statewide, they may affect future projections.

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, 2021 was 425. 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.⁸ 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.
- *Receiving counties:* The projections assume receiving counties (as of June 30, 2021) will remain receiving counties throughout the projection period.
- *Sending counties:* The projections assume sending only counties (as of June 30, 2021) that are not building jails during the projection period will remain sending only counties.
- *SMCP capacity average growth rate:* The current three-year average growth rate (FY 2019 – FY 2021), excluding Mecklenburg County,⁹ is -2%.

SMCP Capacity Projections

The projections include planned jail projects (listed as newly built SMCP beds),¹⁰ 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 various adaptations across counties, 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.

⁸ Counties building new jail facilities or expanding a jail facility during the projection period include Catawba (320 beds, completed FY 2021), Cleveland (460 beds, FY 2022 estimated completion), Davidson (350 beds, FY 2024 estimated completion), Johnston (469 beds, FY 2022 estimated completion), Nash (63 beds, FY 2024 estimated completion), Orange (144 beds, FY 2022 estimated completion), Pender (250 beds, FY 2025 estimated completion), Randolph (211 beds, FY 2023 estimated completion), Surry (299 beds, FY 2023 estimated completion), and Wayne (220 beds, FY 2024 estimated completion).

⁹ 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 2021.

¹⁰ Three counties provided SMCP capacity updates for their jail projects with estimated completion dates spanning FY 2022 to FY 2024. For FY 2022, Catawba committed 10 SMCP beds and began participating on January 3, 2022. For FY 2023, Surry estimates 25 SMCP beds (20 male beds, 5 female beds) will be committed. For FY 2024, Wayne, an already receiving county, plans on providing an additional 40 female SMCP beds (they currently provide 40 male SMCP beds).

Scenario 1

Table 2 shows the capacity projections for FY 2022 through FY 2026 for scenario 1 (which reflects the broadest definition of capacity for the Program). SMCP capacity is projected to decrease from 1,456 currently to 1,414 in June 2026 – a reduction of 42 beds, or -3%.

Table 2
SMCP Capacity Projections: Scenario 1
FY 2022 – FY 2026

	Current	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Total Bed Change	N/A	0	-29	-29	-29	-29
Newly Built SMCP Beds	N/A	10	25	40	0	0
<i>Subtotal</i>	<i>N/A</i>	<i>10</i>	<i>-4</i>	<i>11</i>	<i>-29</i>	<i>-29</i>
Total Capacity	1,456	1,466	1,462	1,472	1,443	1,414
	Percent Change		-3%	Bed Change		-42

NOTE: Current capacity is the SMCP capacity as of December 31, 2021. Due to rounding to the nearest whole number, totals may be off by 1.

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

Scenario 2

Table 3 shows the capacity projections for FY 2022 through FY 2026 for scenario 2 (using the more conservative definition of capacity). The SMCP capacity is projected to increase from 1,007 to 1,337 in June 2026 – an increase of 330 beds, or 33%.

Table 3
SMCP Capacity Projections: Scenario 2
FY 2022 – FY 2026

	Current	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Receiving Bed Change	N/A	0	-20	-20	-21	-20
Temp. Moratorium Bed Change	N/A	40	148	148	0	0
Newly Built SMCP Beds	N/A	10	25	40	0	0
<i>Subtotal</i>	<i>N/A</i>	<i>50</i>	<i>153</i>	<i>168</i>	<i>-21</i>	<i>-20</i>
Total Capacity	1,007	1,057	1,210	1,378	1,357	1,337
	Percent Change		33%	Bed Change		330

NOTE: Current capacity is the SMCP capacity as of December 31, 2021. Due to rounding to the nearest whole number, totals may be off by 1.

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

The first scenario indicates a decline in SMCP capacity over time in FY 2024 through FY 2026, based on the historical pre-pandemic decline in capacity beginning in FY 2016 to FY 2017 (-5%) and from FY 2018 to FY 2019 (-6%). However, capacity may increase if a number of jail projects that are expected to be completed between FY 2022 and FY 2025 switch from sending only to a receiving county status.

The second scenario indicates an increase in SMCP capacity through FY 2024, 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.¹¹ 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.

¹¹ 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.