



DANGEROUSLY OVERCROWDED AND DEADLY

State Jail Program Tied to Overcrowding

Disability Rights North Carolina
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EXECUTIVE SUMMARY

The Statewide Misdemeanant Confinement Program (SMCP) is financially rewarding some North Carolina sheriffs for operating overcrowded jails and creating well-documented safety violations and dangerous conditions for their staff and those in their custody.

The \$22 million SMCP [was created in 2012 to free up state prison beds](#) that were being used by people convicted of misdemeanors.¹ In return for housing these people in local jails, counties receive state funds to participate in the voluntary program. However, some counties have abused the program by overcrowding their jails, reaping thousands and sometimes hundreds of thousands of dollars, despite ensuing safety violations,² including deaths in overcrowded jails.

Following an extensive review of public records, Disability Rights North Carolina (DRNC) staff found that from 2018-2020, 49 counties were paid more than \$4.2 million collectively to house and transport sentenced misdemeanants during months when their facilities were at more than 100 percent capacity. The dangerous conditions found in overcrowded jails are in violation of NC regulatory rules and US [Department of Justice guidance](#) about effective, safe jail operations. Overcrowding risks the lives of staff and those housed in the jails.

At the heart of the SMCP is the [NC Sheriffs' Association](#) (NCSA), a non-profit agency that provides training and resources for local sheriffs and represents them at the NC General Assembly.³ Tasked by law to manage the SMCP program, the Sheriffs' Association assigns all SMCP transfers between jails, keeps all records relating to SMCP enrollees, and approves all reimbursements to local counties from the multi-million-dollar SMCP fund. The Sheriffs' Association is paid [\\$1 million annually](#) to administer the program.⁴

These are important issues for disabled people. Although one in five people in the US have a disability, nearly two in five people⁵ (38 percent) who are incarcerated have a disability. While unsafe conditions affect all people in jails, they can be particularly dangers for individuals with physical, cognitive, and mental health disabilities.⁶

METHODOLOGY

DRNC Attorney Luke Woollard gathered and performed extensive analysis for this report from the following public administrative, legislative and regulatory reports and data:

- Division of Health Service Regulation (DHSR) Facility Inspection Reports from 2017-2019
- DHSR Death Investigation Reports from 2017-2019
- Sheriff/Jail Administrator responses to DHSR Facility Inspection Reports 2017-2019

1 <https://www.doc.state.nc.us/jr/misdemeanors.html>

2 Not all jails that participate in the SMCP program have overcrowded jails, according to DRNC's investigation. This report is focusing only on those counties that participate in the program and have overcrowded jails.

3 <https://ncsheriffs.org/>

4 <https://www.ncleg.gov/Files/Library/agency/sheriff12556.pdf>

5 <https://bjs.ojp.gov/library/publications/disabilities-reported-prisoners-survey-prison-inmates-2016>

6 https://www.aclu.org/sites/default/files/field_document/010916-aclu-solitarydisabilityreport-single.pdf, see especially Section B.1., (14).

- Monthly jail population averages 2018-2020 as provided by the UNC School of Government
- Monthly reports from the North Carolina Sheriffs' Association to the NC General Assembly regarding SMCP population and expenditures from 2018-2020
- NC Sentencing and Policy Advisory Commission Reports on SMCP Capacity Projections (2019, 2020, 2021)

JAILS ARE UNSAFE ABOVE 80 PERCENT OF DESIGN CAPACITY

According to national corrections experts, when jails reach about 80 percent capacity, the basic processes of a jail, such as security, maintenance, sanitation, programs and recreation, begin to break down in ways that “jeopardize the safety and well-being of both inmates and staff.”⁷ This is not hard to imagine; overcrowded jails mean overworked staff who often cannot maintain the level of security necessary to keep themselves safe or perform the required supervision rounds to keep the people in the cells safe.

There is also international consensus that overcrowded detention centers are dangerous for everyone in the facility:

Overcrowded prisons around the world create difficult and widespread challenges to maintaining prisoner health and providing a safe environment. Overcrowded prisons can lead to insanitary, violent conditions that are harmful to the physical and mental well-being of prisoners (UNDOC, 2013). Staff who are working in overcrowded prisons are also at risk in a range of ways. They face greater potential violence from the prisoners, threat of infection and increased stress and mental health issues.⁸

Nevertheless, dangerous jail overcrowding is common in North Carolina, according to yearly reports published by the UNC School of Government summarizing population information that is self-reported by jails each month.⁹ These reports show facilities in 18 counties averaged more than 100 percent capacity for 2019. Thirty-five counties averaged more than 90 percent capacity. Nine counties reported they were over 100 percent capacity in all of the monthly reports they submitted in 2019.

According to the 2019 NC Sentencing and Policy Advisory Commission Report,¹⁰ 24 percent of jails were operating at above 100 percent capacity in 2019, and another 20 percent were operating at more than 90 percent capacity.

The dangers caused by overcrowding prompted changes to the NC Department of Health and Human Service’s (DHHS) jail regulations when they were updated in 2020. Advocates and DHHS agreed that stricter controls on overcrowding were needed to keep NC jails safe. While overcrowding was not allowed under the old rules, new specific language in the [updates require](#) that jail administrators “shall relocate inmates to another jail or prison to bring the number of inmates confined into compliance with

7 [U.S. Department of Justice National Institute of Corrections. Sheriffs' Guide to Effective Jail Operations \(2007\), 23.](#)

8 [MacDonald, M.](#) (2018), “Overcrowding and its impact on prison conditions and health”, [International Journal of Prisoner Health](#), Vol. 14 No. 2, pp. 65-68. <https://doi.org/10.1108/IJPH-04-2018-0014>, citing UNODC (2013), Handbook on Strategies to Reduce Overcrowding in Prisons, UNODC, available at: www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_BRI%282017%29583113 (accessed 8 March 2018).

9 <https://nccriminallaw.sog.unc.edu/2018-north-carolina-jail-occupancy-rates/>, <https://nccriminallaw.sog.unc.edu/2019-north-carolina-jail-occupancy-rates/>

10 [SMCP-Capacity-Projection-FY2019-FY2023.pdf \(nccourts.gov\)](#)

the total design capacity.”¹¹ Despite this new requirement, some NC jails continue to be overcrowded.

WHY PERSISTENT OVERCROWDING CONTINUES

DHHS regulates NC jails through its Division of Health Service Regulation (DHSR). Other facilities regulated by DHSR, such as long-term care facilities and hospitals, can be fined and required to correct safety violations – including, in some instances, immediately providing a plan to protect residents before the inspector leaves the facility. But there is no such system in place for jails. When a jail fails an inspection, there are no fines levied or immediate consequences for jail administrators. They are not required to quickly address the violations. Only when the Secretary of DHHS determines the failure jeopardizes safety, is DHHS authorized to order corrective action or close the jail.

Both of these options require a notice and appeal process that can take months while the dangerous condition is unchanged. The only real mechanism to enforce a corrective action is the threat of a jail closure. Closures are impractical “nuclear options” that are ill-suited to address jail overcrowding. If the Secretary closed every jail that failed an inspection for overcrowding, 40 facilities would have been closed from 2017-2019.

DRNC has found this regulatory system results in safety violations that are allowed to go uncorrected for months or years, while some jails repeatedly continue to fail inspections.

THE STATEWIDE MISDEMEANANT CONFINEMENT PROGRAM

The SMCP was not intended to incentivize overcrowding; it was intended to free up expensive state prison beds occupied by people serving lower-level sentences. As it currently operates, sheriffs volunteer to participate in the program and are paid \$40 per day per person from designated state funds.¹² In the Sheriffs’ Association’s most recent report to the NC General Assembly about the program, the Association reported that in fiscal year 2019-2020, all but four NC counties received SMCP funds to house SMCP enrollees.¹³

The SMCP has mechanisms that protect against overcrowding that sheriffs or the Sheriffs’ Association can employ at any time to avoid dangerous conditions. Sheriffs dictate how many beds they volunteer to the SMCP through contracts with the state and can alter or cancel these contracts at any time. If a facility accepts an SMCP enrollee, but then becomes overcrowded, the Sheriffs’ Association allows jails to move enrollees to other local facilities. By statute, both local jails and the Sheriffs’ Association can send SMCP enrollees to State facilities if local facilities become overcrowded.¹⁴

However, DRNC’s analysis of public reports reveals that program design flaws and severe lack of administrative oversight have resulted in the State paying millions of dollars a year to counties with overcrowded jails.

11 10A NCAC 14J .0301 C; available at <http://ncrules.state.nc.us/searchRules.asp?searchCriteria=nc&title=&chapter=&returnType=Rule&resultsPage=244>

12 N.C.G.S. 148-32.1, N.C.G.S. 148-10.4

13 <https://www.ncleg.gov/Files/Library/agency/sheriff12556.pdf>

14 N.C.G.S. 148-32.1 (b4), (b3)(3)

Furthermore, DRNC’s investigation reveals that the SMCP legislation does not prohibit jail overcrowding, and the Sheriffs’ Association places people and pays jails even when the extra people put the jails overcapacity. The math is simple: the more SMCP enrollees sheriffs accept in their jails, the more money the county is paid. At \$40 per enrollee per day, plus reimbursement for transportation and medical expenses, many counties have been paid tens to hundreds of thousands of dollars a year for housing SMCP enrollees in overcrowded jail facilities.¹⁵

Routine twice-yearly jail inspections conducted by DHSR from 2017-2019 reveal that NC jails failed a combined 109 inspections for being over capacity. Some of these jails were so chronically overcrowded that they were over-capacity for months on end, sometimes an entire year. DHSR inspectors repeatedly cited jails for being overcrowded during this time period, and paperwork from those inspections shows that people housed because of the program were part of the reason the jails were overcrowded and dangerous.

DRNC has not yet received full records of biannual jail inspection reports from DHHS. In the records we received, we found 14 facilities that failed a combined 20 inspections from 2017-2019 for being overcapacity on the day of inspection while also being paid to house people under the program. In 11 of those failed inspections, moving the SMCP enrollees out of the facility would have decreased the population below the capacity cap. There are likely more occurrences documented in records we have yet to receive.

TABLE 1

This table shows the total annual amount of state money the Sheriffs’ Association paid counties to transport and house enrollees during months the jails were overcrowded. Some counties were paid more than \$100,000 a year during overcrowded months.

Table 1: Total SMCP Money Paid During Overcrowded Months, 2018–2020

County	2018	County	2019	County	2020
Sampson	\$302,675.11	Sampson	\$361,642.44	Sampson	\$111,809.00
Alamance	\$199,763.47	Alamance	\$142,723.53	Randolph	\$100,867.08
Rutherford	\$154,885.11	Randolph	\$88,896.66	Surry	\$67,477.13
Wayne	\$136,771.20	Surry	\$75,878.91	Wayne	\$44,560.00
Iredell	\$125,773.57	Caldwell	\$68,387.96	Stanly	\$41,145.71
Duplin	\$105,140.38	Franklin	\$67,941.50	Iredell	\$29,609.30
Randolph	\$99,958.81	McDowell	\$63,809.08	Macon	\$28,833.90
Stanly	\$91,613.70	Davidson	\$58,940.01	Lee	\$27,818.83
Pamlico	\$90,661.14	Lee	\$57,336.68	Caldwell	\$22,522.34
Macon	\$88,295.96	Gaston	\$56,256.91	Franklin	\$22,057.19
McDowell	\$85,909.18	Iredell	\$54,063.57	Carteret	\$21,579.10
Surry	\$85,322.04	Craven	\$51,403.18	Johnston	\$20,615.44

15 <http://mediahub.unc.edu/already-overcrowded-jail-holds-inmates-authorities-gets-paid/>

Gaston	\$84,196.62	Rowan	\$27,372.52	Craven	\$20,611.62
Davidson	\$59,565.38	Stanly	\$25,160.00	McDowell	\$19,220.78
Franklin	\$56,722.58	Greene	\$23,960.00	Rowan	\$19,078.36
Caldwell	\$51,902.29	Vance	\$22,985.39	Avery	\$17,345.97
Orange	\$27,147.58	Avery	\$21,822.14	Pamlico	\$14,881.26
Jackson	\$27,040.00	Madison	\$19,559.58	Davidson	\$14,091.85
Chowan	\$20,533.72	Carteret	\$18,255.18	Catawba	\$13,475.27
Craven	\$19,210.72	Lincoln	\$17,840.00	Cleveland	\$11,916.58
Haywood	\$18,765.15	Scotland	\$17,220.00	Chowan	\$10,367.59
Johnston	\$15,969.30	Johnston	\$16,785.09	Gaston	\$8,550.69
Yancey	\$14,068.23	Orange	\$16,733.29	Yancey	\$7,080.00
Burke	\$13,646.64	Duplin	\$15,761.73	Warren	\$5,332.16
Halifax	\$12,508.85	Washington	\$14,025.88	Scotland	\$4,870.82
Carteret	\$11,038.99	Haywood	\$13,788.63	Graham	\$2,011.78
Lee	\$8,000.00	Cleveland	\$13,568.79	Yadkin	\$1,830.32
Washington	\$6,560.00	Chowan	\$8,440.00	Richmond	\$1,638.14
Cleveland	\$5,938.97	Yancey	\$6,720.00	Madison	\$1,560.00
Davie	\$5,357.01	Yadkin	\$6,240.07	Vance	\$1,259.80
Nash	\$5,288.24	Davie	\$4,604.68		
Cherokee	\$4,920.00	Burke	\$4,167.36		
Vance	\$4,211.86	Richmond	\$3,633.17		
Warren	\$3,809.71	Granville	\$3,364.50		
Lincoln	\$3,774.21	Clay	\$2,717.11		
Scotland	\$3,711.69	Warren	\$1,743.95		
Bertie	\$2,913.34	Anson	\$1,510.39		
Richmond	\$2,841.09	Graham	\$850.66		
Madison	\$2,765.25	Jones	\$229.93		
Granville	\$1,048.57				
Graham	\$668.03				

DEADLY CONSEQUENCES

Overcrowding can have deadly consequences. DRNC's review of public records found that from 2018-2019, 14 people died in overcrowded NC jails.¹⁶ DHSR investigations into four of these deaths indicated overworked staff did not conduct security checks on people as required by jail regulations, highlighting the reason experts say overcrowded jails are not safe. All 14 deaths occurred in months when the jails were overcrowded and participating in the SMCP, indicating that they were housing SMCP enrollees.

Four of these deaths were in Gaston County. From 2017-2018, Gaston County Jail failed all four of their biannual inspections for overcrowding. The first death was in March of 2018 when the jail averaged 99 percent capacity. The jail failed its next two biannual inspections due to overcrowding, the last being in February 2019. Later that month, someone died by suicide in the jail. Two others died in June and September 2019, one from suicide¹⁷ and the other from unstated causes. The jail remained overcrowded as these deaths occurred. In fact, UNC School of Government documents show jail facilities in the county were overcrowded the entire year of 2019 except for December, and every month of 2018 except March, when they were at 99 percent capacity. Gaston County continued to be overcapacity into January and February of 2020,¹⁸ falling below 100 percent capacity in March when court slow-downs due to COVID-19 began to affect jail populations.

2019 Death in Vance County

One death in Vance County particularly highlights the way overcrowding stresses every jail resource and creates the dangerous conditions that lead to avoidable deaths. On Feb. 5, 2019, Benjamin Mallard was arrested and locked up in an overcrowded jail, as documented in a DHSR investigation. Four days later, he was dead.

Based on reports sent to DHSR from Vance County, the facility averaged 101 percent capacity for the previous year, and in several months reported being over 100 percent capacity. The jail had been significantly over capacity since the beginning of 2019, reporting 106.8 percent capacity in February, the month Mr. Mallard entered the jail.

Just the month before (Jan. 2019), the jail was cited during a DHSR annual inspection for being over capacity. Of significant note, the facility had failed every DHSR inspection since at least June 2017. During each of the four failed inspections, the jail was cited for having a broken two-way communications ("comms") system. The jail's solution to this issue was always the same – station a corrections officer in front of each cell block without a two-way system until the jail could install a new one. DHSR continued to cite the jail for failure to maintain a safe comms system.

In January 2019, the month before Mr. Mallard entered the jail, 95 beds were without a proper two-way comms system, including the cell block where Mr. Mallard was housed and died.

16 Overcrowded based on monthly averages.

17 This death occurred in the Gaston County Jail Annex, which is next door to Gaston County Jail. Both facilities are staffed by the Gaston County Sheriff's Office.

18 Per monthly averages.

That month, the jail was at 113.5 percent capacity and was paid more than \$3,000 for housing SMCP enrollees.

When arrested, Mr. Mallard informed staff during medical intake that he was withdrawing from Percocet. Mr. Mallard got progressively sicker while in the jail, reporting nausea, vomiting, and diarrhea for days. On Feb. 9, 2019, Mr. Mallard collapsed in his cell. He died soon after from opioid withdrawal complications, with dehydration as a contributing factor.

As outlined in his autopsy, on the morning of his death, Mr. Mallard could not walk to get his breakfast tray. He was not able to take his medications that morning. Mr. Mallard attempted to return to his cell, but according to video from the cell block mentioned in the autopsy, Mr. Mallard could not stand on his own and was propped against a wall. According to the autopsy, his cellmate found him unresponsive soon after, and, unable to use the broken two-way comms system, had to run to the door of the cell block to alert officers.

There is no indication in any reports of Mr. Mallard's death that staff members intervened to help Mr. Mallard as he slowly died from withdrawal and dehydration over three days. No one medically intervened when he was unable to eat his breakfast or take his meds the morning of his death. Officers did not help him as he leaned against the wall trying to walk back to his cell. When his cellmate noticed something was wrong, he could not use the two-way communication to call for help. He could not flag down an officer in the cell block because there were none present. Officers only helped when Mr. Mallard's cellmate banged on the cell block door to get their attention. They were too late, and he died because of it.

All of this was documented by DHSR and the Medical Examiner's autopsy.

The February DHSR investigation of Mr. Mallard's death documented several supervision violations. Four months after his death, on June 4, 2019, the jail failed yet another biannual inspection. The two-way comms system was still broken. The jail reported being overcapacity in every month of 2019 for which they reported their census.¹⁹ In 2019, the jail was paid more than \$22,000 for housing SMCP enrollees in months they reported being over capacity.

The system failures leading to Mr. Mallard's death are hallmarks of overcrowded jails – officers too overworked to perform proper supervision rounds, too busy to notice serious problems, and the use of stop-gap policies that put lives at risk.

OVERCROWDED NC JAILS: THREE EXAMPLES

While not the original intent of the law, the unintended consequence of jail overcrowding due to the SMCP must be addressed. In addition to the deaths, a few other examples of jail overcrowding in specific counties illustrate the need for immediate reform to keep jail staff and incarcerated people safe.

Randolph County

From 2017-2019, Randolph County's jail failed every state DHSR biannual inspection because it was over capacity. Moreover, an inspection in August 2017 noted that the facility had also been over

19 Vance County did not report its census for three months in 2019: March, June, and July.

capacity for the previous two years. DHSR data shows that Randolph County was over capacity every month during 2018 and 2019.²⁰ In 2020, Randolph was over capacity until COVID-19 slowed courts to a standstill, at which point the population dipped to near-capacity (around 90-95 percent) for April, May, and June before skyrocketing back past 100 percent capacity and remaining dangerously overcrowded through the rest of the year.

Even one person over capacity in a jail creates a dangerous situation. Jail reports and failed DHSR inspections show that Randolph was highly over capacity – averaging between 130-150 percent over capacity in a given month. For three years, 240-300 people occupied a facility designed for 211.

Yet the Sheriffs' Association regularly placed SMCP enrollees in the Randolph County Detention Center. In 2018-2020, the Sheriffs' Association paid Randolph County nearly \$100,000 per calendar year, even while the county failed every inspection from 2017-2019 for overcrowding and issues symptomatic of overcrowding: supervision lapses, dirty conditions, and people sleeping on floors.

Sampson County

Sampson County provides another example, being paid the most SMCP money of all counties in 2018-2020, all while overcrowded. Between the start of 2018 and March of 2020,²¹ Sampson county reported being over capacity for 14 of 27 months, and was between 90-100 percent capacity for the remaining months. During the months they were overcapacity, the Sheriffs' Association paid Sampson County more than \$775,000 through the SMCP.

McDowell County

Further west, the Sheriffs' Association paid McDowell County nearly \$150,000 from 2018-2019 to house and transport enrollees during 17 out of the 24 months the jail was overcapacity.²² During this time, the jail failed multiple DHSR inspections for overcrowding.²³

According to inspection records, the reason the jail was overcrowded was because the sheriff was housing and being paid for both SMCP enrollees and people from other counties. According to documents from each failed inspection, if the sheriff had taken steps to move SMCP enrollees and people from other counties out of the jail, the jail would not have been over capacity. These same inspections also cited the jail for failing to properly supervise incarcerated people, putting everyone at further risk.

JAIL CHANGES EFFECTIVE SEPTEMBER 2020

In 2020, after a years-long administrative process, the DHSR jail rules were updated to require jails to move people out of their facilities when they exceed capacity. The NC General Assembly and Governor Roy Cooper approved the updates.

Despite this mandate, NC School of Government data from September 2020 through December 2020

20 In 2018, per UNC School of Government, Randolph County failed to report jail population numbers for the months of February and July.

21 When court slow-downs resulted in statewide reductions in jail populations.

22 Per averages from monthly self-reports of population.

23 10A NCAC 14J .0301

indicate 18 jails remained overcrowded, six of them for all four months. During this time, the Sheriffs' Association reported to the legislature that it paid more than \$127,000 to these overcrowded facilities to transport and house people in the program.

FINDINGS

Jail overcrowding through the SMCP is avoidable with proper policies in place. While many jails are chronically overcrowded, the state overall is not.²⁴ Reports the Sheriffs' Association provides the NC General Assembly show that since the inception of the program, there has always been sufficient jail bed capacity to accommodate the program, often with hundreds of beds to spare.²⁵ The majority of the state's jails that receive SMCP funding are not overcrowded. From 2018 to 2020, more than \$40 million was paid to counties in months they reported being under capacity. Housing SMCP enrollees in overcrowded facilities is the result of failures of policy and administration, not a lack of space.

Administered properly, the Sheriffs' Association would only assign SMCP enrollees to jails with adequate space. Unfortunately, weak regulatory consequences and the Sheriffs' Association's poor administration of the program enable counties to house people and be paid with program money even when their jails are overcrowded and dangerous.

CONCLUSION AND RECOMMENDATIONS

The law provides the Sheriffs' Association with options to ensure people housed under this program aren't sent to overcrowded jails. State laws allow the Sheriffs' Association to determine when jail facilities are filled to capacity, at which time enrollees may be transferred to State facilities. The Sheriffs' Association can also transfer enrollees between local facilities in an emergency. They could also choose to deny transfers into jails that fail inspections for being over capacity or report that they are over capacity to DHHS.

As the Sheriffs' Association failed to use these options, it is now time for the NC General Assembly to prohibit the Sheriffs' Association and local sheriffs from overcrowding their jails through the SMCP.

In addition, the NC General Assembly must provide DHHS the statutory tools it needs to meaningfully enforce jail safety requirements and stop local jails from risking the lives and well-being of all who work and live in them with unnecessary overcrowding.

Edited 8/30/2021: After the initial publication of this report, the UNC School of Government informed DRNC that their published 2018 Jail Occupancy Rates report did not accurately reflect the jail population of Polk County, due to a new facility that was built in September of 2018. The School of Government has since provided DRNC with accurate numbers for Polk County in 2018, and this report has been updated accordingly.

24 [SMCP-Capacity-Projection-FY2019-FY2023.pdf \(nccourts.gov\)](#)

25 <https://www.ncleg.gov/Documents/1#Reports%20to%20the%20NCGA%20from%20Other%20Agencies\NC%20Sheriff's%20Association>; <https://www.nccourts.gov/documents/publications/smcp-capacity-projections>