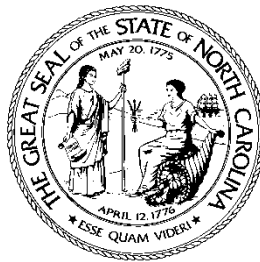


North Carolina
Sentencing and Policy Advisory Commission

**Justice Reinvestment Act
Implementation Evaluation Report**



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

Submitted pursuant to N.C. Gen. Stat. § 164-50 (2012)

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I. INTRODUCTION

In 2011, the North Carolina General Assembly directed the Sentencing and Policy Advisory Commission and the Division of Adult Correction (DAC) of the Department of Public Safety (DPS) to jointly conduct ongoing evaluations regarding the implementation of the Justice Reinvestment Act (JRA).¹ This report constitutes the second report in compliance with the directive. While the first implementation evaluation report addressed the early stages of implementation (preparation efforts agencies made in anticipation of the changes under the new law), this report addresses a new phase of implementation. Agencies developed policies and procedures for the changes under the JRA in late 2011; in 2012, some policies and procedures needed to be refined to account for real-life scenarios faced in implementation. Some aspects of the JRA were initially delayed and have since been implemented. This report includes background on Justice Reinvestment in North Carolina, a summary of the major provisions in the legislation, details on implementation efforts and progress to date, and early effects of the JRA.

The source of the information in this report primarily comes from updates on implementation progress provided by agencies at meetings of the Justice Reinvestment Implementation Report Subcommittee (*see below*); from conferences trainings and other settings; and from agency and organizational reports submitted to the Legislature.

Justice Reinvestment Implementation Report Subcommittee

In response to the mandate to conduct ongoing evaluations of the implementation of the JRA, the Commission established the Justice Reinvestment Implementation Report Subcommittee. The purpose of the Subcommittee is to gather information, review data where available, and report to the Commission any recommendations regarding the implementation of the JRA. The Subcommittee met three times after the submission date of the first report (April 15, 2012): September 7, 2012, February 15 and April 5, 2013. At the April 5 meeting, the Subcommittee reviewed and accepted the final report.

Limitations of the Current Report

The current report captures the implementation of JRA from the effective date of the Act and throughout the 2012 calendar year. As intended in the legislation, many of the provisions had not yet applied to cases in the first half of 2012; others were delayed by the effort of the courts and corrections to develop large-scale policy changes and offer training to their respective staff. As a result, few cases were processed through the system under the JRA in the first half of the calendar year, with the second half of the year, as expected, witnessing a continuing increase.

In addition to the limited numbers, it will take time for the cases processed under the new law to become representative of the change as a whole and encompass the later-date provisions and the more slowly moving serious cases in the system. Further, the first wave of cases under any new sentencing scheme is not necessarily representative of the practices that will occur in the future,

¹ North Carolina Session Law (S.L.) 2011-192, Section 8.

after the field has learned and used the new tools and options available, and has become more comfortable with the provisions under the new law.

To fully understand the impact of the JRA and emerging sentencing and correctional practices, the collection of empirical data is critical. Data will allow for the examination of the use of new tools and approaches available under the JRA, and also for analysis of the impact of those tools on long-term outcome measures such as the prison population and recidivism.

Data Provided for the Current Report

The majority of the information reported will focus on the latter half of CY 2012 (July through December 2012) for the reasons described above. The DPS was most affected by the changes under the JRA. Consequently, the management information system used by DPS – the Offender Population Unified System, or OPUS – is the primary source for data for this report. Much of the information was obtained from Research and Planning’s Automated System Query (ASQ) and Justice Reinvestment Data Dashboard, which are based on OPUS data. Information about the Statewide Misdemeanant Confinement System was obtained from the North Carolina Sheriffs’ Association. As data become available in the Administrative Office of the Courts’ automated databases, it will be included in future reports.

II. BACKGROUND – JUSTICE REINVESTMENT IN NORTH CAROLINA

In 2009, North Carolina’s executive, legislative, and judicial leadership requested technical assistance from the Council of State Governments (CSG) Justice Center to study North Carolina’s criminal justice system. The bi-partisan request was made in response to the state’s increasing prison population and with the hope the CSG would determine ways North Carolina could curb expenditures for building prisons as well as ways to reinvest in strategies to reduce corrections spending overall.²

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

² Due to a confluence of factors, the prison population in North Carolina has declined since 2009. Legislative changes made to the felony punishment chart in 2009, as well as changes to earned time credits made in 2011, contributed to the decline. North Carolina has also experienced changes in demographic trends (including a decrease in the rate of growth in the state’s population, particularly for males ages 16-24), and decreases in crime trends overall. (For a full report on North Carolina’s prison population, *see* NC Sentencing and Policy Advisory Commission, *Prison Population Projections FY 2013-FY 2022*). This phenomenon is not unique to North Carolina; at least half of states in the U.S. reported a decline in prison populations in 2011 (*see* U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2011*).

designed to increase public safety while curbing spending on corrections by reinvesting in community treatment.³

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

Major Provisions of the Justice Reinvestment Act

The JRA makes changes to North Carolina's court system, corrections system (encompassing prisons and probation), and to post-release supervision. The Act also creates a statewide confinement program for misdemeanants, refocuses community resources, creates a new habitual breaking and entering felony offense, and modifies the punishment for habitual felons. A summary of the major provisions of the Act is provided below, by system.⁴

Changes to the Court System

The JRA expands the existing drug diversion program⁵ to make it mandatory. All first-time offenders convicted of a misdemeanor or Class I felony possession of drugs or paraphernalia offenses are placed in the program.

An habitual breaking and entering status offense is created; offenders who commit their second felony breaking and entering offense are sentenced in Class E according to the felony punishment chart.⁶

The existing habitual felon law is modified under the JRA; habitual felons are sentenced four classes higher than the class of the current offense, but no higher than Class C.⁷

The JRA redefines Community and Intermediate punishments.⁸ Community punishment is defined as any sentence other than an Active punishment, drug treatment court, or special probation (split sentence). Intermediate punishment is defined as supervised probation. It may include any other condition of probation. Drug treatment court and special probation (split sentence) are limited to Intermediate punishment sentences. The court has the discretion to impose supervised probation with no additional conditions as an Intermediate punishment.

³ For the full report from the Council of State Governments, see Council of State Governments Justice Center, *Justice Reinvestment in North Carolina, Analysis and Policy Framework to Reduce Spending on Corrections and Reinvest in Strategies to Increase Public Safety*, April 2011.

⁴ Additional information on the JRA is available in multiple places. See NC Sentencing and Policy Advisory Commission, *Justice Reinvestment Implementation Evaluation Report*, April 2012; *The North Carolina Justice Reinvestment Act* by James Markham, UNC SOG, published December 7, 2012; and <http://www.sog.unc.edu/node/2044>.

⁵ N.C. Gen. Stat. (G.S.) 90-96.

⁶ G.S. 14-7.31.

⁷ G.S. 14-7.6.

⁸ G.S. 15A-1340.11(2), (6).

The JRA creates short periods of confinement (“quick dips”) in jail as a new condition of probation.⁹ The court is authorized to impose up to six days per month in jail. This condition can be imposed as part of a Community or Intermediate punishment.

Advanced Supervised Release (ASR) is created under the JRA for certain offenders receiving active sentences.¹⁰ ASR allows judges to decide at sentencing whether eligible offenders will be ordered to this prison program which, if completed, leads to their release at a reduced minimum sentence.

Changes to Probation

The JRA codifies the use of risk and needs assessments as a strategy in managing offenders and allocating resources in the community and directs the DAC to perform an assessment on all offenders.¹¹ Supervision and other resources are targeted based on offenders’ levels of risk and need.

The Act expands delegated authority for probation officers. They are authorized to impose most of the current conditions of probation and to respond to violations by imposing quick dips by signed waiver without a court hearing.¹²

Under the JRA, prison time imposed for technical violations of probation is limited. The penalty for a first or second technical violation of probation is set at 90 days imprisonment for a felon and up to 90 days for a misdemeanor.¹³

Changes to Prisons

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

Changes to Post-Release Supervision

Post-Release Supervision (PRS) under the JRA is expanded to include all felons with a period of nine months of supervision required for Class F through I felons and five years of supervision required for Class F through I felons convicted of a sex offense. The revocation period for these offenders is nine months. Twelve months of PRS is required for Class B1 through E felons; the revocation period is twelve months.¹⁴

Similar to probation, prison time imposed for technical violations on PRS is limited. The penalty for a first, second, or third technical violation is set at 90 days of imprisonment. Upon the fourth technical violation, the Post-Release Supervision and Parole (PRSP) Commission may revoke PRS and impose the rest of the prison sentence.¹⁵

⁹ G.S. 15A-1343 (a1)(3).

¹⁰ G.S. 15A-1340.18.

¹¹ G.S. 15A-1343.2(b1).

¹² G.S. 15A-1343.2(e) to (f).

¹³ G.S. 15A-1344(d2).

¹⁴ G.S. 15A-1368.1 to -1368.2.

¹⁵ G.S. 15A-1368.3(c).

Resources

The Criminal Justice Partnership Program (CJPP) is repealed under the Act and the Treatment for Effective Community Supervision (TECS) Program is created.¹⁶ The DAC is authorized to enter into contractual agreements with eligible entities for the operation of community-based corrections programs. TECS focuses on certain offenders: (1) offenders convicted of a felony; (2) offenders participating in the felony drug diversion program; and (3) offenders who are identified by the DAC to have a high likelihood of re-offending and who have a moderate to high need for substance abuse treatment. Programs eligible for funding include substance abuse treatment programs and cognitive-behavioral programming and other evidence-based programming.

Under the JRA, the Statewide Misdemeanant Confinement Program (SMCP) is created.¹⁷ Most misdemeanants will be housed in local jails, instead of state prisons. The North Carolina Sheriffs’ Association operates the SMCP which is funded by the Statewide Misdemeanant Confinement (SMC) Fund. Misdemeanants who receive a sentence between 91 and 180 days of confinement are placed under the Program. The SMCP finds space to house those misdemeanants in participating local jails. If the participating local jails are full, the DAC houses the offenders. (The SMCP does not apply to offenders convicted of impaired driving offenses.)

Effective Dates

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

Table 1: JRA Effective Dates by Provision

Date	Application	Provision
July 1, 2011	N/A	<ul style="list-style-type: none"> • TECS Program • SMC Fund
December 1, 2011	Probation violations occurring on or after:	<ul style="list-style-type: none"> • CRV
	Offenses committed on or after:	<ul style="list-style-type: none"> • Habitual B & E • Habitual Felon • Redefine C and I conditions • Expand delegated authority • Expand PRS
January 1, 2012	Pleas or guilty findings on or after:	<ul style="list-style-type: none"> • Drug diversion • ASR
	Sentences imposed on or after:	<ul style="list-style-type: none"> • SMC Program
July 16, 2012*	PRS violations occurring on or after:	<ul style="list-style-type: none"> • PRS period tolled during re-imprisonment
	CRVs imposed on or after:	<ul style="list-style-type: none"> • CRVs less than 90 days authorized for misdemeanants
December 1, 2012*	Offenses committed on or after:	<ul style="list-style-type: none"> • Drug trafficking maximum sentences increased

*These effective dates were added in the Justice Reinvestment Clarifications legislation (S.L. 2012-188).

¹⁶ G.S. 143B-1150 to -1160.

¹⁷ G.S. 148-32.1(e).

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

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

Related Legislation

The Legislature passed the JRA in June 2011 and made clarifying changes in September 2011 before the Act went into effect. S.L. 2011-412 clarified probation officers’ delegated authority for Community and Intermediate punishments. Confinement periods imposed through delegated authority must run concurrently and may total no more than six days per month for offenders on probation for multiple judgments. The legislation also clarified how time spent in confinement awaiting a hearing for a probation violation is credited towards CRV confinement periods, and specified that CRV periods must run concurrently for offenders on probation for multiple offenses.

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

III. ADMINISTRATIVE OFFICE OF THE COURTS

Training

Initial training on the JRA focused on covering the basics of the new law. Training at this stage of implementation has generally been incorporated into annual training courses and conferences. District and Superior Court judges participated in JRA training sessions at their fall conferences in October 2012. Sessions were approximately four hours at each conference. Magistrates received one hour of JRA training at their fall conference in October 2012. Clerks of Superior Court received JRA training in September and October 2012. District Attorneys were trained on the JRA on August 24, 2012. Public defenders received one hour of JRA training at the 2012 Public Defender Attorney and Investigator Conference in May 2012. Many of these trainings were conducted in conjunction with DPS and the UNC School of Government (SOG).

Policy and Programmatic Changes

AOC made changes to forms in order to reflect the amendments to the JRA passed by the Legislature in 2012. S.L. 2012-188 clarified that the court can order CRVs for less than 90 days for misdemeanants. AOC indicated the relevant court form would be revised in the fall of 2012 to reflect this clarification.¹⁸ S.L. 2012-188 also clarified conditions of probation for Community and Intermediate punishments relating to the assessment of a community service fee effective July 16, 2012. AOC instructed clerks to assess the fee for any order entered on or after July 17, 2012 and indicated the relevant court forms would be revised in the fall of 2012. New forms reflecting the above changes were issued in December 2012.

Data Collection and Management

As noted in the previous report, AOC had no timeline or projected timeline for collecting JRA-related data in its automated data systems. The JRA elements that necessitate changes to AOC's statewide automated case processing system (the Automated Criminal Infraction System or ACIS) include conditions of Community and Intermediate punishments, G.S. 90-96(a) conditional discharge, changes to the habitual felon law, ASR, quick dips, CRVs, and SMCP. Changes to the habitual felon law and the creation of the new Habitual Breaking and Entering status offense were incorporated into ACIS through AOC's annual update of offense codes. In November 2012, AOC modified ACIS in the following ways:

- Added an ASR indicator;
- Added CRV indication (number of days will not be captured); and
- Added a SMCP indicator.

No automated data reflecting the information above for cases with offense dates occurring on or after December 1, 2011 and prior to the ACIS changes made in November 2012 will be available.

¹⁸ See Memorandum, *Justice Reinvestment Clarifications – S.L. 2012-188*, issued by AOC Legal and Legislative Services Division, July 18, 2012.

AOC plans to gradually replace ACIS with a new case processing system, the Criminal Case Information System (CCIS). Planned changes for CCIS related to the JRA include:

- Judge's findings for habitual felons and offenders convicted of habitual breaking and entering;
- Deletion of repealed Intermediate punishment sanctions (Intensive Supervision, Day Reporting Center, waiver of community service and related fees);
- Collection of information for Community and Intermediate punishments (Special Probation, Electronic House Arrest, Community Service);
- Conditional discharge disposition;
- SMCP and custody location;
- ASR term;
- CRV indicator; and
- Quick dip information (location, date to be served, duration).

According to AOC, the agency plans to pilot the changes to CCIS in one county in November 2013 and, depending on the experience of the pilot county, expand to additional counties. The statewide rollout will continue into 2014. No automated data reflecting the information listed above will be available for any cases with offense dates on or after December 1, 2011, and prior to its inclusion in CCIS. Without adequate data, it will be difficult to determine the impact of the JRA on the court system and difficult to assess how sentencing practices change as a result of the JRA. On an annual basis, the Sentencing Commission requests court data related to felony and misdemeanor convictions and sentences imposed; these data will include any JRA-related information captured in AOC's automated data systems, as it becomes available. For this report, DPS data were utilized to provide information on the changes under the JRA.

The previous report also noted that North Carolina does not have a single statewide automated data system for jails. General data on jail capacity are not available, nor are data available on the utilization of JRA tools that affect jail capacity (*e.g.*, quick dips, CRVs). Multiple record-keeping systems could lead to mistakes in tracking and crediting jail time. AOC indicated it was going to perform an internal review of its policies and procedures related to the tracking and crediting of jail time; to date, no internal review has been conducted.

Resources

Because the JRA mandated the G.S. 90-96 drug diversion program for eligible offenders, it was initially thought the volume of requests to determine eligibility would increase substantially and AOC staff would not be able to process requests efficiently. AOC reported it has one staff person dedicated to checking whether an offender has had a prior conditional discharge expunged and two backup staff available as needed. Currently, the AOC's goal is to provide an answer to the court regarding eligibility within two to five business days of receiving a request; in practice, a response is usually sent the same day. AOC is working toward notifying the court within two hours of receiving a request. According to AOC, the agency is comfortable with the number of staff available to process requests.

IV. DEPARTMENT OF PUBLIC SAFETY

The majority of the provisions of the JRA substantially impacted the DPS for both community corrections and prisons. As such, information in this section is divided into four parts:

- (A) Department-wide training;
- (B) Department-wide data collection and management;
- (C) Probation – policy and programmatic changes and resources; and
- (D) Prisons – policy and programmatic changes and resources.

A. Training

In August 2012, DPS provided training for prison staff on evidence-based practices. Additional training was provided for the Section of Prisons (SOP) on motivational interviewing in October 2012. DPS participated in JRA training for District and Superior Court Judges at their fall conferences, also held in October 2012. In the fourth quarter of CY 2012, DPS provided training on prison case management and motivational interviewing in roughly 20 training events across the state.

In February 2013, DPS summarized their upcoming training: Carey Group Coaching Trainings are scheduled with a focus on integrating evidence-based practices into day-to-day practices. In March, DPS participated in a recorded training module with the SOG for the Office of Indigent Defense Services. The module focused on the risk and needs assessment process and use of JRA tools. Starting in February and continuing through April, DPS will have a second round of JRA training for probation officers. From May to August 2013, DPS reports tentative plans to hold additional Cognitive-Based Intervention (CBI) training for prison staff. As noted in previous sections, DPS also participated in many training sessions for other criminal justice agencies.

Additionally, DPS developed a model for local JRA stakeholder meetings. These cross-agency stakeholder meetings will include clerks, judges, and jail and probation personnel with a focus on collaboration in implementing the JRA. These meetings are scheduled to take place in spring 2013.

B. Data Collection and Management

The information management system used by DAC is OPUS. In 2011 and 2012, DPS's Management Information Systems (MIS) Section worked to incorporate modifications into the OPUS system to capture JRA data elements. Those data elements include conditions of Community and Intermediate punishments, habitual felon law changes, ASR, risk and needs assessment scoring, quick dips and delegated authority, CRV, and PRS. MIS has continued to refine OPUS to ensure the accounting of information related to the JRA is accurate.

In addition to its internal record-keeping and data management, the DPS Office of Research and Planning also worked to develop a JRA dashboard. The JRA dashboard tracks certain information related to prison entries, prison exits, and month-end populations for prisons, probation, TECS, quick dips, and delegated authority. The dashboard includes information for

both felons and misdemeanants. DPS reported the JRA dashboard will be made available to the public in the future.

Based on DPS data, there were 56 entries to prison and 8 entries to probation from July to December 2012 for offenders convicted and sentenced for habitual breaking and entering, which is a Class E felony. During that same time period, there were 398 entries to prison for offenders convicted and sentenced as habitual felons (as their most serious offense). The majority of these offenders were sentenced as Class C felons (75%). Under the new law, 13% were sentenced as Class D felons and 11% were sentenced as Class E felons. Based on the statute, it is possible that an offender convicted as a Class E habitual felon could receive a non-active sentence, depending on prior record level. However, there were no Class E habitual felon entries to probation during this time frame. Overall, habitual felons accounted for 14% of the prison population on December 31, 2012. Other JRA data are discussed in the following sections.

C. Probation – Section of Community Corrections

Policy and Programmatic Changes

As noted in the previous report, DPS developed policies related to the risk and needs assessment, TECS, quick dip confinements, and CRVs. As implementation progressed in calendar year 2012, some of those policies were modified or refined. The success of many of the developed policies related to community corrections depends a great deal on the success of various intervention tools designed to address offender behavior, supervision practices, the quality of available programs to treat supervised offenders, and resources.

Risk/Needs Assessment

As noted in the previous report, the Section of Community Corrections (SOCC) was in the process of refining and validating its existing risk and needs assessment during 2011 and 2012. Following the submission of the previous report, the risk assessment instrument (the Offender Traits Inventory or OTI) and select needs measures were validated by the UNC School of Social Work.¹⁹ The new version of the risk instrument (the Offender Traits Inventory-Revised or OTI-R) measures the likelihood of rearrest for up to three years in the community. According to the validation study, the OTI-R has increased ability to predict recidivism compared to the OTI.

The OTI-R includes offender information about criminal activity, substance abuse, employment history, unstable residence, absconding, and age at first entry to supervision or prison. SOCC uses only the information found in its automated data system (OPUS) to populate the OTI-R. There are two models of the OTI-R, one for males and one for females, designed to capture the variables specific to each gender that are most predictive of future rearrest (*see* Table 2 for a list of variables included in the revised models). Offenders are assigned risk scores based on the results of the OTI-R. There are five levels of risk categories: extreme, high, moderate, low, and

¹⁹ For the full validation report, see *Factor Structure, Reliability, and Validity of the Revised Offender Traits Inventory and Selected Needs Measures on the Risk and Needs Assessment*. Authored by Gary S. Cuddeback and Michael C. Lambert of the UNC School of Social Work. Submitted to the NC Department of Public Safety, Office of Research and Planning July 1, 2012.

minimal. Of the assessed probation population on December 31, 2012, 10.2% were categorized as being extreme risk, 18.8% as high risk, 34.0% as moderate risk, 28.9% as low risk, and 8.1% as minimal risk.

Table 2: Offender Traits Inventory-Revised (OTI-R) Variables by Model

Both Models	Male Model Only	Female Model Only
Number of offense categories	Property offenses	Number of assaults
Total number of crimes	Substance use composite	Number of forgeries
Prior record points	DWI offenses	Number of uncategorized crimes
Drug addiction	Prior absconding events	
Trouble at work/school		
Age at first DAC entry		
Number of address changes		
Prior prison entries		
Number of convictions with co-defendants		

SOURCE: Cuddeback, Gary S. and Lambert, Michael C. *Factor Structure, Reliability, and Validity of the Revised Offender Traits Inventory and Selected Needs Measures on the Risk and Needs Assessment*. UNC School of Social Work, July 1, 2012.

The needs portion of the assessment includes an Offender Self-Report and Officer Interview and Impressions, designed to measure offender needs and motivation and incorporate professional judgment. Both aspects of the needs assessment are scored by the probation officer. The needs assessment addresses six criminogenic factors including dysfunctional family, criminal peers, anti-social personality, anti-social values, substance abuse, and self-control. The validation study examined specific needs measures for reliability and made recommendations to DPS for dropping certain questions on the Offender Self Report and the Officer Interview and Impressions. The revised needs assessment divides offenders into five needs levels: extreme, high, moderate, low, and minimal. Of the December 31, 2012 assessed probation population, 20.3% were categorized as having extreme needs, 14.9% as having high needs, 37.8% as having moderate needs, 21.8% as having low needs, and 5.2% as having minimal needs.

Once an offender’s risk and needs levels are assessed, they are combined into a Supervision Level (from Levels I to V, with Level I the highest), which sets the minimum contact requirement for probation officers (*see* Table 3). Assessment for all probationers is administered in the first 60 days, while the probationers are under the highest supervision level. By policy, sex offenders, court-identified domestic violence offenders, DWI Levels 1, 2, or 3 and validated gang members must be supervised at a minimum at Level III.

Table 3: Minimum Contact Requirements for Probation Officers by Supervision Level

Supervision Level	Level I	Level II	Level III	Level IV	Level V
Minimum Contact Standards	<ul style="list-style-type: none"> • 1 home contact • 1 offender management contact per month 	<ul style="list-style-type: none"> • 1 home contact every 60 days • 1 offender management contact per month 	<ul style="list-style-type: none"> • 1 home contact every 60 days • 1 offender management contact per month 	<ul style="list-style-type: none"> • Remote report every 30 days • Face-to-face contact every 90 days 	<ul style="list-style-type: none"> • Remote report monthly

SOURCE: Justice Reinvestment Training, *Community Corrections Supervision Level Determination Process*, 2012.

The revised OTI-R was implemented in the field in the spring of 2012. Probation officers received training on the changes to delegated authority and the new supervision level cutoffs brought with the OTI revisions, and at a later point received training on the supervision level determination process and available options for officers based on supervision levels.

Table 4 shows the distribution of probationers by risk, need, and supervision level. As categorized according to the DAC's risk instrument, the majority of the current probation population is moderate or low risk (34.0% and 28.9% respectively), with the lowest numbers for the two groups on either end of the risk continuum. For needs level, however, the majority of probationers are assessed as having moderate needs (37.8%), low needs (21.8%), or extreme needs (20.3%).

As also shown in Table 4, the DAC determines an offender's supervision level based on the intersection of the offender's level of risk and level of need. Overall, 8.1% of offenders were assessed in Supervision Level I, 29.3% were in Level II, 28.4% were in Level III, 28.8% were in Level IV, and 5.4% were in Level V.²⁰

²⁰ The Supervision Level distribution for Table 4 is based on the DAC's RNA process. Additional risk assessments are completed for sex offenders and DWI offenders that may result in supervision at a higher level than indicated by the RNA.

**Table 4: Supervision Level Distribution Based on Risk and Needs Assessments
Assessed Probation Population on December 31, 2012**

NEED LEVEL	RISK LEVEL					TOTAL
	Extreme (R1) 66-100	High (R2) 50-65	Moderate (R3) 26-49	Low (R4) 11-25	Minimal (R5) 0-10	
Extreme (N1)	LI 1,916 2.2%	3,511 4.1%	7,236 8.4%	LIII 4,184 4.8%	685 0.8%	17,532 20.3%
High (N2)	1,568 1.8%	2,764 3.2%	4,817 5.6%	3,132 3.6%	596 0.7%	12,877 14.9%
Moderate (N3)	LII 3,114 3.6%	5,856 6.8%	11,119 12.9%	LIV 9,877 11.4%	2,743 3.2%	32,709 37.8%
Low (N4)	1,975 2.3%	3,620 4.2%	5,286 6.1%	6,038 7.0%	LV 1,942 2.2%	18,861 21.8%
Minimal (N5)	240 0.3%	526 0.6%	957 1.1%	1,748 2.0%	1,008 1.2%	4,479 5.2%
TOTAL	8,813 10.2%	16,277 18.8%	29,415 34.0%	24,979 28.9%	6,974 8.1%	86,458

Note: The assessed probation population includes offenders who were available for assessment and in the population at least 60 days prior to population date. Percentages may not add to totals due to rounding.
SOURCE: Department of Public Safety

Probation officers have flexibility with the risk and needs assessment and supervision levels. They can increase contacts above the minimum requirements for the assessed supervision level. DAC has implemented a case review process that includes reviews with a supervisor before changes to supervision levels are made. At a minimum, probationers are re-assessed annually and/or following certain life events or significant changes in offender behavior, which could increase or decrease risk and needs levels.

Supervision levels also affect the exercise of delegated authority. The JRA allows probation officers to exercise delegated authority with offenders when they are not complying with one or more of the conditions of probation and with certain offenders when they are determined to be “high risk” without first determining that the offender has failed to comply with one or more conditions of probation. SOCC considers Supervision Levels I and II to be high risk. SOCC has also targeted certain delegated authorities (*i.e.*, quick dips) for offenders in the highest supervision levels in response to certain types of non-compliance.

The risk and needs assessment is a building block in tailoring supervision and services to keep the public safe while rehabilitating the offender. That implies not only an accurate assessment, but available and accessible resources to provide appropriate levels of supervision and sanction matching offender risk, and provide evidence-based programs and services to match concomitant needs. The Risk-Needs Responsivity model, adopted by the DAC, creates a cycle of periodic assessments for the adequacy of supervision and efficacy of treatment, to be adjusted as needed.

Risk and needs of the offender population are dynamic and changing; as a result, community programming and interventions designed to modify offender behavior will necessitate the continual review of the tool. The validation study notes, “The development of risk assessments such as the OTI-R should be viewed as an iterative (*i.e.* recurring) process. That is, as newer data become available the predictive validity of the OTI-R should be re-examined.”²¹ The DPS reports it already is considering ways to improve the next version of the OTI-R, including the addition of out-of-state criminal history information.

Treatment for Effective Community Supervision

The TECS program went into effect on July 1, 2011 but was delayed to allow DPS adequate time to develop requirements for participation. The switch from the long-standing CJPP to a new statewide system of community programming took time to develop.²² DPS issued an RFP seeking potential vendors for TECS funding on March 8, 2012. This RFP was subsequently canceled on May 7, 2012. While this cancellation delayed the onset of the TECS program further, it allowed DPS time to make revisions to the initial RFP, based on feedback from the vendor community and other stakeholders (*see* Table 5 for a comparison of the original and revised RFPs).

Table 5: Requirements Contained within Original and Revised Requests for Proposals

Original RFP	Revised RFP
Vendors will serve 90% of the targeted population with CBI and 10% with Substance Abuse treatment.	Vendors will serve 80% of the targeted population with CBI and 20% with Substance Abuse treatment.
CBI vendors must formally train staff in their curriculum by the time of proposal submission.	CBI vendors have 60 days from award notification to formally train staff in their submitted curriculum.
All CBI vendor staff required to have Associate’s Degrees.	Associate’s Degrees required for CBI lead facilitators only.
Substance Abuse treatment vendors must provide intensive outpatient treatment.	Substance Abuse treatment vendors unable to provide intensive outpatient treatment service will be given one year to become compliant with requirements in RFP.
Physical facility must be secured at time of bid submission.	Vendors have up to 60 days from award notification to hire staff and secure a physical facility.
Services begin July 1, 2012.	Services begin October 3, 2012

Note: This table includes only a selection of the RFP original requirements and revisions.

SOURCE: Department of Public Safety Purchasing and Logistics TECS RFP issued February 8, 2012 compared to TECS RFP issued June 6, 2012.

The revised RFP was issued on June 6, 2012, with a closing date of June 29, 2012. The RFP indicated that services were to begin on October 3, 2012. DPS began awarding contracts for qualifying vendors in August 2012. As of February 15, 2013, DPS reported 33 vendors have been awarded contracts in 75 counties. In the remaining 25 counties without TECS programs, DPS reported it continues to approach potential vendors for services to serve those counties.

²¹ See Cuddeback, Gary. S. and Lambert, Michael C. *Factor Structure, Reliability, and Validity of the Revised Offender Traits Inventory and Selected Needs Measures on the Risk and Needs Assessment*. UNC School of Social Work. July 1, 2012, pg. 5.

²² The Criminal Justice Partnership Program officially ended on June 30, 2012.

The TECS program is designed to target high-risk and/or high need offenders (supervised at Level I or Level II and who have a substance abuse flag). Services include CBI, CBI booster sessions, substance abuse treatment, and referral to community-based services and resources. DPS tracks all community program data in its Program Information Management System (PIMS). On December 31, 2012, the TECS population included 1,001 offenders on probation, 27 offenders on PRS, and 27 offenders in G.S. 90-96 mandatory drug diversion programs.

The goals of the TECS program are to reduce recidivism and to reduce the rate of probation and PRS revocations from the rates in FY 2010.²³ Due to the delay in the implementation of TECS, limited information is available on the types of programs that have been funded and their effectiveness. Evaluation of the programs funded under TECS will be needed to determine if they are meeting the stated goals. The Sentencing Commission was mandated under the JRA to report to the Legislature and the Governor each even-numbered year the recidivism rates for offenders on probation, parole, and PRS participating in TECS programming. The first report is due April 30, 2014.²⁴ However, offenders will have been served by TECS programming for roughly one year by that time. Due to the short time period of TECS program operation, assessment of program impact on recidivism will not be possible in 2014 (*i.e.*, the timing will not allow for an offender follow-up period to examine outcome measures). As more information about the types of programs becomes available, and as more offenders are served by TECS programs, analysis of the impact of the programs on recidivism rates will be possible.

The JRA required, as part of TECS, the DPS SOCC to publish a recidivism reduction plan which would articulate a goal of reducing revocations among people on probation and PRS by 20% from the rate in FY 2010; identify the number of people on probation and PRS in each county that are in the priority population and have a likely need for substance abuse and/or mental health treatment, employment, education, and/or housing; identify the program models that research has shown to be effective at reducing recidivism for the target population and rank those programs based on their cost-effectiveness; and propose a plan to fund the provision of the most cost-effective programs and services across the State.²⁵ DPS reported the draft recidivism reduction plan will be ready by July 2013 and will include the following components:

- Evidence-based practices plan
- Program initiatives
- Supervision strategies and techniques
- Changes in case review process
- Changes in overall hiring process

It is not known how or if the recidivism reduction plan will affect programs currently funded under TECS, which have been awarded two-year contracts.

The JRA also established, as part of the TECS, the State Community Corrections Advisory Board.²⁶ The purpose of the Board is to review the criteria for monitoring and evaluating community-based corrections; recommend community-based corrections program priorities; review the minimum program standards, policies, and rules for community-based corrections

²³ G.S. 143B-1153.

²⁴ G.S. 143B-1159.

²⁵ G.S. 143B-1155 (b).

²⁶ G.S. 143B-1157 to -1158.

programs; and review the evaluation of programs funded under TECS. To date, 14 of the 19 appointments to the Board have been made.

Quick Dip Confinement

DPS delayed the implementation of quick dips until July 1, 2012. The purpose of the delay was to allow DPS adequate time to develop policies regarding the use of quick dips and to train probation officers on their use. DPS developed a policy regarding the utilization of quick dip confinements issued June 29, 2012, and effective July 2, 2012. That policy indicated eligible offenders for quick dip confinements included those supervised in Supervision Levels I and II only. In October 2012, DPS modified the original quick dip policy to allow quick dip confinements to be imposed for Levels I, II, and III supervisees.²⁷ This policy became effective October 9, 2012.

From July to December 2012, 49 quick dips were ordered for a total of 48 individuals. Overall, 19 quick dips were ordered for 2-day periods and 30 were ordered for 3-day periods. The majority of quick dips ordered were for offenders supervised in Supervision Levels II and III (16 and 25 respectively), with quick dips ordered for only five Level I offenders. The remainder were for offenders whose Supervision Level had not yet been established.

Quick dips are designed to be an immediate response to offender non-compliance. The effectiveness of the short periods of confinement in altering offender behavior cannot be determined at this point as the tool has only been available to probation officers since July 2012. Initial data on quick dips reveals utilization has been nominal when compared to the eligible population; however, usage is increasing.

Confinement in Response to Violation

CRV offenders who would have served their active sentences in prison (*i.e.*, felons and misdemeanants with sentences of more than 180 days) serve their periods of confinement in prison. They are processed at any of the eight diagnostic centers across state; they are primarily housed in minimum custody units at Fountain, Odom, Dan River, Tyrrell, Western Youth, Neuse, and Greene. DPS is examining the future use of other units in the North Carolina Correctional Institute for Women and Central Prison to house CRV offenders with specific medical and mental health needs, or those with pending felony charges.

During the confinement period, CRV offenders undergo a condensed diagnostic intake. DAC attempts to improve offender behavior during confinement; however, DPS reported that very limited programming is available for CRV offenders. Some of the programming available includes brief intervention tools, substance abuse education, job readiness workshops and sessions, interactive, self-directed journaling, and GED registration.

Misdemeanants with sentences of 180 days or less serve CRV periods in local confinement facilities, where programming is generally not available (*see* Section VI, Statewide

²⁷ Markham, James M. *The North Carolina Justice Reinvestment Act.*, pg. 56, footnote 62. UNC SOG, December 7, 2012.

Misdemeanant Confinement Program). Concern has been expressed about the lack of programming for the misdemeanor CRV offenders confined in local facilities. Felon and certain misdemeanor CRV offenders will have access to limited programming while serving periods of confinement in prison; although many of them may be confined for short periods of time, some similar programming could be developed for those serving CRV periods in jails.

CRVs were designed as an option to address offender non-compliance. The SOCC removes the offender from the community and attempts to address the offender's behavior. The short periods of confinement limit program options for this subgroup of offenders. Whether the periods of confinements are successful in modifying offender behavior will depend upon programming available to offenders during confinement, whether available programming meets the needs of the offenders, and whether confining an offender for 90 days is sufficient in eliciting a change in behavior (absent any programming at all). The effectiveness of confinement periods on offender behavior will be examined once more cases are processed under the JRA and more offenders are subject to CRVs.

Probation data from July to December 2012 indicate a total of 3,248 CRV dispositions ordered for probationers – 1,142 for felons and 2,106 for misdemeanants.²⁸ The imposition of CRVs impacts probation, prison, and jail resources. Probation data provide information on the overall utilization of CRVs, where prison data and jail data provide information on the impact of CRVs on the confinement population. Felons who receive a CRV are housed in the state prison system, while misdemeanants are housed in either the state prison system or in local jail facilities depending on their sentence length.²⁹ However, because there is no statewide automated jail data system, information on the impact of CRVs on the jail populations is unknown.³⁰

Of the 3,248 CRV dispositions, the majority (97% or n=3,157) were for offenders with a single CRV disposition. Of those with more than one CRV, 30% have subsequently been revoked for a technical violation after serving two prior CRVs, due to the commission of a new crime, or for absconding probation supervision.

For this same time frame, there were 863 felony entries and 192 misdemeanor entries to prison for probation CRV periods, with an average of 144 felony and 32 misdemeanor entries per month. There were 21 felony entries and 21 misdemeanor entries to prison for revocation after serving two prior CRVs.

On December 31, 2012, there were 271 felons and 61 misdemeanants in prison for probation CRV periods, accounting for about 1% of the total prison population. There were 17 felons and 3 misdemeanants in prison for revocation after serving two prior CRVs. It is important to remember that the misdemeanor CRV entries to prison are only representative of misdemeanants with sentence lengths of 181 days or greater. Misdemeanants with sentence lengths of 180 days

²⁸ The CRV data provided by DPS are based on distinct disposition dates (not cases) per supervision period.

²⁹ Under current law, a defendant who is convicted of a misdemeanor offense and sentenced under Structured Sentencing with a sentence imposed of up to 180 days is required to serve the period of confinement in a local confinement facility – those with sentences of more than 90 days and up to 180 days serve their confinement in a local confinement facility through the Statewide Misdemeanant Confinement Program.

³⁰ Data are available from the NC Sheriff's Association for the Statewide Misdemeanant Confinement Program; however, these data represent only a small portion of the state's jail population.

or less serve their sentences in local jails (*see* Section VI, Statewide Misdemeanant Confinement Program).

The General Assembly required the DAC to study the feasibility of creating a technical violation center to house probationers ordered to serve 90-day periods of confinement and submit a report to the Legislature January 1, 2013.³¹ DAC reviewed programs in other states and the dynamics of the CRV population in its custody and concluded that revocation centers are not feasible at the current time. The SOCC will continue to monitor the utilization of the CRV process and may recommend policy changes in the future.³²

The inclusion of the CRV population in prisons and jails may impact supervision and security practices, custody decisions, and the usage of prison and jail capacity. Discussion continues within the DAC (*see* above) and among practitioners regarding the potential for housing CRV offenders (those confined in prisons and those confined in jails) in separate facilities.

According to the DPS, the current CRV process for offenders who go to prison works well for youth males and females because these offenders stay at the same facility as the diagnostic intake. However, adult males are housed at various facilities. These offenders cannot be assigned jobs or participate in regular prison programming due to the short duration of confinement; this limits programming availability and effectiveness. Currently, DPS is exploring the possibility of designating a single facility for adult males with CRVs where they would stay after diagnostic intake.

Resources

The increasing population supervised in the community may require more officers to manage increased caseloads. Currently, the caseload goal for probation officers mandated by the Legislature under the JRA is 60 probationers to 1 officer.³³ In 2012, DPS projected the SOCC would be supervising 123,000 offenders by the end of 2012 and 140,000 by 2015, requiring additional officer resources. As of December 31, 2012, the community corrections population was 104,803. Noted throughout this section, the success of the JRA depends a great deal on community programs and interventions having the desired effect on offenders in the community. Even more basic to successful community supervision is having a sufficient number of probation officers. In addition to managing probationers, officers are also needed to supervise offenders released from prison to PRS. The JRA expanded PRS to include all felons, including those convicted of lower-level felonies (Classes F through I) who had not previously been supervised. This population of offenders is expected to have an impact on resource needs for supervision and community programming.

The General Assembly provided in the 2012 Session that the Secretary of Public Safety is authorized to reclassify existing vacant positions within the Department to create new probation parole officer, parole case analyst, and judicial service coordinator positions in order to meet the

³¹ S.L. 2012-142, Section 14.3.

³² *See* Department of Public Safety, Division of Adult Correction, Community Corrections, *Technical Revocation Center Study*, January 1, 2013.

³³ G.S. 15A-1343.2(c).

increasing caseloads resulting from the implementation of the JRA.³⁴ As of February 15, 2013, DPS reported 50 positions have been transferred from the SOP to the SOCC. Of the 50 transferred positions, 31 have been filled and 19 remain in various stages of the hiring process. The SOCC has a total of 1,504 probation officer positions.

Additionally, DAC is reclassifying Surveillance Officer positions to Probation Compliance Officer positions to monitor low-risk offenders and absconders. The purpose of the reclassification is to assist in balancing offender caseloads among probation officer resources.

D. Prisons – Section of Prisons

Policy and Programmatic Changes

In 2011 and early 2012, SOP was in the process of developing policies and programs for ASR inmates and had been administering a modified risk and needs assessment on inmates. SOP has since released a formal ASR policy. The success of the ASR policy and programming depends a great deal on resources and the effectiveness of available programs in reducing offender risk.

Risk/Needs Assessment

SOP administers the OTI to the inmate population; however, no decisions are made based on the results of the OTI. SOP began administering the OTI-R to ASR inmates in January 2012. DPS reported the SOP plans to eventually administer the same risk and needs assessment used in the SOCC to all inmates. The success of any risk and needs assessment will depend on the programming available in prisons to address offender risk and meet offender needs. The availability of prison programming varies by facility.

Advanced Supervised Release

After the passage of the JRA, the SOP developed a new approach to categorizing prison offerings in the following three categories:

- 1) Programs (structured interventions that address a criminogenic need);
- 2) Services (information and resources to address offenders' needs and barriers); and
- 3) Activities (planned events that provide positive interaction among inmates, staff and/or the community).

As noted above, SOP administers the OTI-R to ASR inmates, which determines Service Priority Level. For ASR inmates, Service Priority Level guides the development of the ASR plan. SOP did not develop new prison programs to serve the ASR population; rather, it re-organized existing programs. An ASR plan may contain any of the three categories of prison offerings. Non-ASR inmates who participate in prison offerings earn time towards a reduction of their maximum sentence imposed by the court. The success of ASR programming will depend on the effectiveness of the programs in reducing risk. As more offenders are sentenced to ASR, more information about the characteristics of the ASR population and ASR programs will become available to determine the impact of the program.

³⁴ S.L 2012-142, Section 14.2A(a).

SOP issued an ASR policy on September 19, 2012, outlining procedures for participation in the program. Generally, ASR inmates, in order to justify early release, must participate in certain risk-reduction programs and maintain a defined level of positive behavior.³⁵ Inmates who fail to adhere to the terms of the ASR program will be removed from the program and will serve their court-imposed non-ASR term. Risk-reduction programs are defined as Programs, Services, or Activities (*see* above). In developing an ASR plan, prison case managers must take certain factors into account:

- 1) Sentence length;
- 2) Custody level; and
- 3) Service Priority Level (*see* Table 6).

Table 6: Component Options for Advanced Supervised Release Plans

Service Priority Level	Level I (High Priority)	Level II (High Priority)	Level III (Moderate Priority)	Level IV (Minimal Priority)	Level V (Minimal Priority)
Components of ASR Plan	Programs Services Activities	Programs Services Activities	Programs* Services Activities	Services Activities	Services Activities

*Level III may include Programs, but will primarily consist of Services and Activities.

SOURCE: DPS-DAC, Prisons, Policies and Procedures, Chapter C.2600, September 19, 2012

Participation is voluntary – an inmate can decline to participate and resign, opting to serve out his or her non-ASR term imposed by the court. Other factors may disqualify an inmate from the ASR program including:

- 1) Refusal to participate in the risk-reduction incentives;
- 2) Incurring certain types of infractions; and
- 3) Incurring any combination of three or more infractions in a single month of incarceration.

Disqualified inmates are allowed to appeal the decision to the Prisons Section Chief. If an inmate is disqualified, he or she will serve the court-imposed non-ASR term.

From July to December 2012, 60 offenders (an average of 10 per month) entered prison with a sentence that included ASR. The prison population on December 31, 2012, included 86 inmates with ASR sentences.

Resources

The success of the ASR policy depends on program availability and the effectiveness of programs at reducing offender risk. SOP did not design new programs for ASR inmates, it re-organized existing programs. Re-organization may allow for the better allocation of prison resources and targeting of offender participation in existing programs; however, it is unclear how and whether existing programs are effective at reducing offender risk. Also unclear is whether adequate resources are available for the ASR program.

³⁵ See NC Department of Public Safety, Division of Adult Correction, Section of Prisons, Policies and Procedures, Chapter C, Section 2600. Issued September 19, 2012.

Prison programming varies by facility and is subject to resource availability, although inmates can be moved to a facility to participate in programs as needed. The risk assessment instrument administered in prisons may accurately identify offender risk and the types of programs (*e.g.*, substance abuse treatment, CBI, etc.) that might benefit offenders during confinement, but the availability of programs is a critical part of addressing offender risk.

V. POST-RELEASE SUPERVISION AND PAROLE COMMISSION

Policy and Programmatic Changes

Similar to probation, prison time imposed for technical violations on PRS is limited. The penalty for a first, second, or third technical violation is set at 90 days of imprisonment. Under the JRA, it was unclear if the period of PRS was tolled during the 90-day period of confinement for PRS violations. In 2012, S.L. 2012-188 clarified that supervisees on PRS who receive a 90-day period of confinement as a result of a violation will have their period of PRS tolled until they are re-released for supervision. Upon the fourth technical violation, the PRSP Commission may revoke PRS and impose the rest of the prison sentence. The PRSP Commission is authorized to revoke supervision and activate the entire sentence if the supervisee commits a new crime or absconds, or if the supervisee was originally convicted of a sex offense and subsequently violates a condition of supervision. The PRSP Commission has not developed any formal policies for handling new violation or revocation procedures established under the JRA. The PRSP Commission reported handling cases on an individual basis.

Resources

The changes made to PRS under the JRA increase the workload of the PRSP Commission. The PRSP Commission sets the conditions of PRS for those offenders eligible for supervision and has the authority to revoke PRS for offenders who violate the conditions placed upon them at the time of release. The PRSP Commission reported an increase in presented cases, releases, violation reviews, and revocations from 2011 to 2012. However, because PRS follows release from prison, and offenders must first serve active sentences, much of the effect of the expansion of PRS to include all felons has not been realized at this point. Offenders sentenced in Classes H and I will be the first wave of “new” cases released on PRS, due to their shorter sentence lengths. Future data will allow for examination of how the behavior of lower-level felons (Classes F-I) on PRS differs from the behavior of the more serious felons (Classes B1-E) who have always been subject to PRS. The lower-level felons are expected to have a substantial effect on resource needs for supervision, community programming, and prison bed space (confinements for violations of PRS conditions).

In the 2012 Session, the General Assembly authorized the Secretary of Public Safety to reclassify existing vacant positions within the Department to create new probation parole officer, parole case analyst, and judicial service coordinator positions in order to meet the increasing caseloads resulting from the implementation of the JRA.³⁶ To date, no positions have been

³⁶ S.L. 2012-142, Section 14.2A(a).

reclassified to create new parole case analyst positions. It is unclear at this point if the amount of resources available are adequate, given the full effect of the JRA on PRS has not been realized.

In that same Session, the General Assembly converted the half-time PRSP Commissioners to full-time members of the Commission effective August 1, 2012. Effective February 1, 2013, the PRSP Commission expanded to include a fourth, full-time Commissioner. The new Commissioner was appointed by the Governor on February 20, 2013.

In response to the increasing caseload, the PRSP Commission also implemented the use of video technology for revocation hearings. This change has eliminated the need for probation officers to travel to Central Prison for revocation hearings, potentially freeing up resources for other purposes.

Based on DPS data, the number of felons placed on PRS increased from 1,464 in the first half of CY 2012 to 1,968 in the last half of CY 2012 – an increase of 34%. This increase is primarily a result of the expansion of PRS to Class F-I felons. In the first half of CY 2012, nearly all (97%) of the offenders placed on PRS were Class B1-E felons. From July to December 2012, 75% of offenders were placed on PRS after serving a sentence for a Class B1-E felony and 25% after serving a sentence for a Class F-I felony. The PRS population of 3,701 on December 31, 2012 included 561 Class F-I felons.

Very few offenders have been released onto PRS under the JRA to date. So far this group of offenders includes only those in the lowest offense classes (primarily Class H and Class I). With the limited PRS population under JRA, there were no 90-day confinement prison entries resulting from technical violations for offenders on PRS from July to December 2012. There were only 8 prison entries for offenders whose PRS was revoked as a result of statutory absconding.

VI. STATEWIDE MISDEMEANANT CONFINEMENT PROGRAM

Certain misdemeanants (those sentenced to 91 to 180 days of confinement) will be housed in county jails as part of the SMCP. The North Carolina Sheriffs' Association (NCSA) runs the SMCP. The program is funded by the SMC Fund; the revenue for this fund comes through a dedicated fee the Legislature established under the JRA.³⁷ The SMCP has been fully operational since it went into effect on January 1, 2012.³⁸

Training

The NCSA developed a training curriculum for the JRA and the SMCP in 2011, which was offered across the state during December 2011 and January 2012. The course included instruction and training materials for all aspects of the JRA that would have a direct impact on

³⁷ G.S. 7A-304(a)(2b), (4b).

³⁸ See North Carolina Sheriffs' Association *Statewide Misdemeanant Confinement Program Annual Report*, January 1-December 31, 2012.

the population of the local jail or other duties performed by sheriffs, their deputies and staff (*e.g.*, quick dips, CRVs). The NCSA reported that this first round of training reached 98 sheriff's offices. The NCSA also opened these training sessions to Clerks of Courts, District Attorney Offices, AOC staff, and county finance staff.

In September 2012, the NCSA conducted its annual training session on the SMCP. Counties that planned to participate in the program as "receiving" counties were required to send at least one representative to the training. The NCSA also encouraged "sending" counties to send representatives as well. The September training included updated information on the SMCP. The NCSA reported that representatives from 69 counties attended the September training classes. Materials from the training classes were made available to counties that did not participate in the training. Again, the NCSA made the classes available to other agencies including DPS, DAC, and Clerks of Court.

Policy and Programmatic Changes

Upon the passage of the Act, the NCSA engaged in a survey of jails in all 100 counties to determine jail bed capacity. The NCSA also inquired which jails would be willing to volunteer bed space for the SMCP. As noted in the previous report, the 51 counties had signed housing agreements with the NCSA, for a total of 1,341 spaces in county jails assigned to the program. As of February 15, 2013, the NCSA reported 50 counties had signed housing agreements for a total bed space capacity of 1,604.

The JRA does not require counties to receive inmates as part of the program, participation is entirely voluntary. All counties, however, participate as sending counties. If a receiving county experiences a period of high volume and cannot handle additional inmates sentenced to the SMCP, the county may put its participation on hold without withdrawing from the program completely. Available space within county jails volunteered to the program can be filled by inmates across the state; however, the program generally tries to house inmates in their own or neighboring jurisdictions.

The SMCP modified their reimbursement schedule based on feedback from sheriffs. Previously, the NCSA reimbursed counties at the end of each offender's sentence. In August 2012, the NCSA changed the schedule to reimburse counties for incurred expenses on a monthly basis. Transportation costs continue to be reimbursed on a monthly schedule. The NCSA set the reimbursement rate for receiving counties at \$40 per day; funds are distributed by the NCSA out of the SMCP fund. The reimbursement rate (\$40/day) is the same rate DAC pays jails to house offenders awaiting placement in state prisons.

To manage medical costs associated with the SMCP, the NCSA incorporated the NCSA's Inmate Medical Costs Management Plan into the program. The NCSA reported contracting with a medical billing service provider to review medical bills for inaccuracies and to negotiate reduced rates for the services provided to inmates at medical facilities with the goal of reducing out-of-jail medical expenses for SMCP inmates. Counties bill medical bills directly to the SMCP for payment.

CRV offenders who would have served their active sentences in local jails under the SMCP will serve any CRV periods in local jails under the SMCP as well (*see* Section IV, Department of Public Safety, Subsection C). The NCSA reported receiving 30 CRV inmates in 2012 with an average sentence length of 76 days. Expenses for supervising, housing, and transporting CRV inmates are reimbursed from the SMC Fund. The projection of the number of CRV inmates that will be confined in local jails as part of the SMCP is unknown, as there are not yet enough available data on the utilization of this response to probation violations.

Programming (*e.g.*, substance abuse treatment, CBI programming) for offenders housed pursuant to the SMCP is not available as part of the Program; generally, programming is not required in local jails.

Data Collection and Management

The NCSA created a data system as part of the SMCP in order to capture information related to offenders sentenced to the custody of the program. The NCSA tracks information related to daily population, capacity, monthly average, whether inmates are serving a CRV, gender, age, average sentence length, total length of sentence, location, release dates, and jail-to-jail transportation routes and travel time.

North Carolina lacks a statewide, automated data system for jails. General information regarding jail capacity and the utilization of jails for pre- and post-trial purposes is not systematically available. While the information on offenders sentenced to the SMCP (including CRV offenders) is available and useful in examining the SMCP, data on non-SMCP offenders confined in jails (including pre-trial offenders, misdemeanants with sentences less than 90 days, misdemeanor CRVs not sentenced to the SMCP) are an important component in understanding the effects of the JRA on local confinement facilities.

Resources

The SMCP is funded through the SMC Fund. In CY 2012, the NCSA reported a revenue collection of roughly \$23 million. From December 2011 through December 2012, the Fund dispersed about \$9.7 million. In 2012, the General Assembly transferred \$5 million from the Fund to the Department of Public Safety for the TECS program.³⁹ The impact of this transfer on the Fund's ability to meet expenses is unknown at this point.

As a result of the statutory change regarding the confinement location for misdemeanants and the establishment of the SMCP, the number of misdemeanants in the state prison system has decreased. On December 31, 2012, there were 320 misdemeanants (excluding DWIs) in prison compared to 1,166 one year previously. The percentage of misdemeanants in prison has dropped from 3% to 1%. Correspondingly, the number of misdemeanor prison entries and releases has decreased substantially. For example, misdemeanor prison entries have decreased 83% comparing July to December entries for 2011 (2,982 entries) and 2012 (492 entries). The NCSA

³⁹ *See* Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets for FY 2012-13 as enacted in S.L. 2012-142, Modify 2011 Appropriations Act (HB 950).

annual report on the SMCP indicates an average daily population of 722 inmates in the SMCP for CY 2012, with 3,156 entries over the course of the year.⁴⁰

The impact of quick-dips and CRVs on jail capacity and the SMCP is unclear at this point. These subgroups may have an impact on local confinement facilities' availability of bed space and county participation in the program. As noted above, North Carolina lacks a statewide automated data system for jails. The development of such a system would assist in analyzing and projecting the impact of CRVs and quick dips on not only jail capacity, but also the impact of the JRA on jails and the SMCP as a whole.

VII. CONCLUSIONS

The Justice Reinvestment Act was planned to go into effect almost immediately but had a staggered schedule for the phase-in of its far-reaching provisions. (*See* Justice Reinvestment Act Implementation Timeline.) In addition to the varied effective dates, implementation in the field was also piecemeal due to the time it took for agencies to prepare and execute the changes required under the new law. With any substantial legislative change, especially one that spans the entire criminal justice system statewide, implementation depends on planning, training, realignment of policies and resources, and experience – factors that take time. As time progresses and the field becomes more comfortable with the options and facets of the JRA, sentencing and correctional practices will adjust. Future reports will reflect those practices as they begin to emerge.

One of the most noticeable (and welcome) early effects of the JRA to date is its impact on North Carolina's prison population. Due to a confluence of factors, the prison population in North Carolina has been continually declining since 2009. Legislative changes made to the felony punishment chart in 2009, as well as changes to earned time credits made in 2011 by the DPS, contributed to the decline. North Carolina has also experienced changes in demographic trends (including a decrease in the rate of growth in the state's population, particularly for males ages 16-24), and decreases in crime overall.

The prison population has further declined since the passage of the JRA. The decline in the first half of FY 2012 (from July to December 2011) can be attributed to changes to earned time credits for prisoners that went into effect in June 2011; the decline in the second half of FY 2012 can be attributed to changes in prison entries as a result of JRA. While the long-term intent of JRA is to reduce the prison population by changing offender behavior, this initial decline is a result of two legal provisions: shifting most misdemeanants from prison to local jails through the establishment of the Statewide Misdemeanant Confinement Program, and the limitations placed on revocations of probation and post-release supervision.

An ambitious goal of the new legislation is to increase public safety, primarily through a behavioral change in offenders induced by quick reaction to technical violations (*e.g.*, quick dips

⁴⁰ *See* North Carolina Sheriffs' Association *Statewide Misdemeanant Confinement Program Annual Report January 1-December 31, 2012*.

and CRVs) and by various rehabilitative steps through targeted services and programming (*e.g.*, drug diversion program, redefinition of Community and Intermediate punishments, and/or ASR). A key component in matching offenders to the appropriate supervision and services (both in the community and in confinement) is the use of the DAC's revised risk and needs assessment, designed to determine effective levels of supervision and identify offender needs for program participation. The assessment tool, however, is just one step in managing and ultimately changing behavior. Offender success will depend a great deal on the correctional officers, interventions, and evidence-based programming available on probation and in prison to reduce offenders' risk and address their needs.

At this point, the broader effects of the JRA on offender behavior (through targeted community, prison, and re-entry programming) cannot be determined. The next phase of implementation evaluation will include the full implementation of additional provisions (and possibly further legislative changes) to the criminal justice system and the appropriation and reallocation of resources, both expected to impact the overall effects of the JRA.

To fully measure the impact of the JRA and emerging sentencing and correctional practices, the collection of empirical data is critical. Data will allow for both the examination of the use of new tools available under the JRA, and the analysis of the impact of those tools on outcome measures such as prison utilization and recidivism. Agencies should plan to further expand their data collection and automation efforts to fully capture the new facets of case processing under the JRA, not only for their on-line management information needs, but for further evaluation and analysis. The development of a statewide automated data system for jails is another critical component in measuring the impact of the JRA. Without both agency data and statewide jail data, the examination of the full impact of the JRA on the criminal justice system in North Carolina will be incomplete.

Finally, as noted throughout the report, the full effects of the JRA have not yet been realized. This is partly due to the effective dates of the Act, the time it took for agencies to implement the major changes under the new law, and the fact that it will take time for cases to process through the system under the JRA. As more cases process through the system and become representative of the sentencing and correctional practices under the JRA, examination of the impact of the JRA on the criminal justice system, correctional capacity and recidivism will be possible. The Sentencing Commission's Justice Reinvestment Implementation Report Subcommittee will continue to meet and monitor the progress of the implementation, review data where available, submit future annual reports, interim findings, and recommendations for clarifications or revisions to the JRA as needed to specifically address issues noted in this report.

JUSTICE REINVESTMENT ACT IMPLEMENTATION TIMELINE

