

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2284*
Committee Substitute Favorable 7/6/90
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Short Title: Sentencing Commission Act.

(Public)

Sponsors:

Referred to:

June 4, 1990

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A SENTENCING AND POLICY ADVISORY COMMISSION
3 AND TO ESTABLISH A UNIFORM STANDARD FOR THE DEVELOPMENT
4 OF CRIMINAL JUSTICE POLICY.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 164 of the General Statutes is amended by adding a new
7 Article to read:

8 **“ARTICLE 4.**
9 **“SENTENCING COMMISSION.**

10 **“§ 164-35. Commission established.**

11 The North Carolina Sentencing and Policy Advisory Commission is established.
12 As used in this Article, the term ‘Commission’ means the North Carolina Sentencing
13 and Policy Advisory Commission.

14 **“§ 164-36. Powers and duties.**

15 Sentences established for violations of the State's criminal laws should be based
16 on the established purposes of our criminal justice and corrections systems. The
17 Commission shall evaluate sentencing laws and policies in relationship to both the
18 stated purposes of the criminal justice and corrections systems and the availability of
19 sentencing options. The Commission shall make recommendations to the General
20 Assembly for the modification of sentencing laws and policies, and for the addition,
21 deletion, or expansion of sentencing options as necessary to achieve policy goals.

22 **“§ 164-37. Membership; chairman; meetings; quorum.**

1 The Commission shall consist of 22 members as follows:

- 2 (1) The Chief Justice of the North Carolina Supreme Court shall
3 appoint a sitting or former Justice or judge of the General Court of
4 Justice, who shall serve as Chairman of the Commission;
5 (2) The Chief Judge of the North Carolina Court of Appeals, or
6 another judge on the Court of Appeals, serving as his designee;
7 (3) The Secretary of Correction or his designee;
8 (4) The Secretary of Crime Control and Public Safety or his designee;
9 (5) The Chairman of the Parole Commission, or another parole
10 commissioner serving as his designee;
11 (6) The President of the Conference of Superior Court Judges or
12 his designee;
13 (7) The President of the District Court Judges Association or his designee;
14 (8) The President of the North Carolina Sheriff's Association or
15 his designee;
16 (9) The President of the North Carolina Association of Chiefs of Police or
17 his designee;
18 (10) One member of the public at large, who is not currently licensed to
19 practice law in North Carolina, to be appointed by the Governor;
20 (11) One member to be appointed by the Lieutenant Governor;
21 (12) One member of the House of Representatives, to be appointed by the
22 Speaker of the House;
23 (13) One member of the Senate, to be appointed by the President Pro
24 Tempore of the Senate;
25 (14) The President Pro Tempore of the Senate shall appoint the
26 representative of the North Carolina Sentencing Alternatives
27 Association that is recommended by the President of that organization;
28 (15) The Speaker of the House of Representatives shall appoint the member
29 of the business community that is recommended by the President of
30 the North Carolina Retail Merchant's Association;
31 (16) The Chief Justice of the North Carolina Supreme Court shall appoint
32 the criminal defense attorney that is recommended by the President of
33 the North Carolina State Bar;
34 (17) The President of the Conference of District Attorneys or his
35 designee;
36 (18) The Lieutenant Governor shall appoint the member of the North
37 Carolina Victim Assistance Network that is recommended by the
38 President of that organization;
39 (19) A rehabilitated former prison inmate, to be appointed by the Chairman
40 of the Commission;
41 (20) The President of the North Carolina Association of County
42 Commissioners or his designee;

1 (21) The Governor shall appoint the member of the academic community,
2 with a background in criminal justice or corrections policy, that is
3 recommended by the President of The University of North Carolina;

4 (22) The Attorney General, or a member of his staff, to be appointed by the
5 Attorney General.

6 The Commission shall have its initial meeting no later than September 1, 1990, at
7 the call of the Chairman. The Commission shall meet a minimum of four regular
8 meetings each year. The Commission may also hold special meetings at the call of the
9 Chairman, or by any four members of the Commission, upon such notice and in such
10 manner as may be fixed by the rules of the Commission. A majority of the members of
11 the Commission shall constitute a quorum.

12 **"§ 164-38. Terms of members; compensation; expenses.**

13 The Commission members shall serve for a period of two years, unless they
14 resign or are removed. Vacancies occurring before the expiration of a term shall be
15 filled in the manner provided for the members first appointed. A member of the
16 Commission may be removed only for disability, neglect of duty, incompetence, or
17 malfeasance in office. Before removal, the member is entitled to a hearing.

18 The Commission members shall receive no salary for serving. All Commission
19 members shall receive necessary subsistence and travel expenses in accordance with the
20 provisions of G.S. 120-3.1, 138-5, and 138-6 as applicable.

21 **"§ 164-39. Executive director and other staff.**

22 The Commission shall employ an Executive Director from candidates presented
23 to it by the Chairman and the Director of the Administrative Office of the Courts. The
24 Executive Director shall have appropriate training and experience to assist the
25 Commission in the performance of its duties. The Executive Director shall be
26 responsible for compiling the work of the Commission and drafting suggested
27 legislation incorporating the Commission's findings for submission to the General
28 Assembly.

29 Subject to the approval of the Chairman, the Executive Director shall employ
30 such other staff and shall contract for services as is necessary to assist the Commission
31 in the performance of its duties, and as funds permit.

32 The Commission may, with the approval of the Legislative Services
33 Commission, meet in the State Legislative Building or the Legislative Office Building,
34 or may meet in an area provided by the Director of the Administrative Office of the
35 Courts. Commission staff shall use office space provided by the Director of the
36 Administrative Office of the Courts.

37 **"§ 164-40. Correction population simulation model.**

38 The Commission shall develop a correctional population simulation model, and
39 shall have first priority to apply the model to a given fact situation, or theoretical change
40 in the sentencing laws, when requested to do so by the Chairman, the Executive
41 Director, or the Commission as a whole.

42 The Executive Director or the Chairman shall make the model available to
43 respond to inquiries by any State legislator, or by the Secretary of the Department of
44 Correction, in second priority to the work of the Commission.

1 **"§ 164-41. Classification of offenses - ranges of punishment.**

2 (a) The Commission shall classify criminal offenses into felony and
3 misdemeanor categories on the basis of their severity.

4 (b) In determining the proper category for each felony and misdemeanor, the
5 Commission shall consider, to the extent that they have relevance, the following:

6 (1) The nature and degree of harm likely to be caused by the offense,
7 including whether it involves property, irreplaceable property, a
8 person, number of persons, or a breach of the public trust;

9 (2) The deterrent effect a particular classification may have on the
10 commission of the offense by others;

11 (3) The current incidence of the offense in the State as a whole;

12 (4) The rights of the victim.

13 (c) For each classification of felonies and misdemeanors formulated pursuant to
14 subsection (b), the Commission shall assign a suggested range of punishment. The
15 Commission shall take into consideration the current range of punishment for each
16 offense.

17 **"§ 164-42. Sentencing structures.**

18 (a) The Commission shall recommend structures for use by a sentencing court in
19 determining the most appropriate sentence to be imposed in a criminal case, including:

20 (1) Imposition of an active term of imprisonment;

21 (2) Imposition of a term of probation;

22 (3) Suspension of a sentence to imprisonment and imposition of probation
23 with conditions, including the appropriate probation option or options,
24 including house arrest, regular probation, intensive probation,
25 restitution, and community service;

26 (4) Based upon the combination of offense and defendant characteristics
27 in each case, the presumptively appropriate length of a term of
28 probation, or a term of imprisonment;

29 (5) Ordering multiple sentences to terms of imprisonment to run
30 concurrently or consecutively;

31 (6) For a sentence to probation without a suspended sentence to
32 imprisonment, the maximum term of confinement to be imposed if the
33 defendant violates the conditions of probation.

34 (b) The sentencing structures shall be consistent with the goals, policies, and
35 purposes of the criminal justice and corrections systems, as set forth in Sections 2 and 3
36 of the Sentencing and Policy Advisory Commission Act of 1990. As part of its work,
37 the Commission shall offer recommendations for the incorporation of those sections
38 into the sentencing laws of North Carolina. In formulating structures, the Commission
39 also shall consider:

40 (1) The nature and characteristics of the offense;

41 (2) The severity of the offense in relation to other offenses;

42 (3) The characteristics of the defendant that mitigate or aggravate the
43 seriousness of his criminal conduct and the punishment deserved
44 therefor;

- 1 (4) The defendant's number of prior convictions;
- 2 (5) The available resources and constitutional capacity of the Department
- 3 of Correction, local confinement facilities, and community-based
- 4 sanctions;
- 5 (6) The rights of the victims;
- 6 (7) That felony offenders sentenced to an active term of imprisonment, or
- 7 whose suspended sentence to imprisonment is activated, should serve a
- 8 designated minimum percentage of their sentences before they are
- 9 eligible for parole;
- 10 (8) That misdemeanor offenders sentenced to an active term of
- 11 imprisonment, or whose suspended sentence to imprisonment is
- 12 activated, should serve a designated minimum percentage of their
- 13 sentence before they are eligible for parole.
- 14 (c) The Commission shall also consider the policy issues set forth in G.S. 164-
- 15 42.1 in developing its sentencing structures.
- 16 (d) The Commission shall include with each set of sentencing structures a
- 17 statement of its estimate of the effect of the sentencing structures on the Department of
- 18 Correction and local facilities, both in terms of fiscal impact and on inmate population.
- 19 **§ 164-42.1. Policy recommendations.**
- 20 Using the studies of the Special Committee on Prisons, the Governor's Crime
- 21 Commission, and other analyses, including testimony from representatives of the bodies
- 22 that conducted the analyses, the Commission shall:
- 23 (1) Determine the long-range needs of the criminal justice and corrections
- 24 systems and recommend policy priorities for those systems;
- 25 (2) Determine the long-range information needs of the criminal justice and
- 26 corrections systems and acquire that information as it becomes
- 27 available;
- 28 (3) Identify critical problems in the criminal justice and corrections
- 29 systems and recommend strategies to solve those problems;
- 30 (4) Assess the cost-effectiveness of the use of State and local funds in the
- 31 criminal justice and corrections systems;
- 32 (5) Recommend the goals, priorities, and standards for the allocation of
- 33 criminal justice and corrections funds;
- 34 (6) Recommend means to improve the deterrent and rehabilitative
- 35 capabilities of the criminal justice and corrections systems;
- 36 (7) Propose plans, programs, and legislation for improving the
- 37 effectiveness of the criminal justice and corrections systems;
- 38 (8) Determine the sentencing structures for parole decisions;
- 39 (9) Examine the impact of mandatory sentence lengths as opposed to the
- 40 deterrent effect of minimum mandatory terms of imprisonment;
- 41 (10) Examine good time and gain time practices;
- 42 (11) Study the value of presentence reports;
- 43 (12) Consider the rehabilitative potential of the offender and the appropriate
- 44 rehabilitative placement;

- 1 (13) Examine the impact of imprisonment on families of offenders;
2 (14) Examine the impact of imprisonment on the ability of the offender to
3 make restitution;
4 (15) Study the need for an amendment to Article XI, Section 1 of the State
5 Constitution to include restitution, restraints on liberty, work
6 programs, or other punishments to the list of punishments allowed
7 under that section;
8 (16) Study the costs and consequences of criminal behavior in North
9 Carolina and consider the value of preventing crimes by using
10 incarceration to deter both prospective criminals and convicted
11 criminals from future crimes.

12 **"§ 164-42.2. Community corrections.**

13 The Commission shall recommend a comprehensive community corrections strategy
14 and organizational structure for the State based upon the following:

- 15 (a) A review of existing community-based corrections programs in the State;
16 (b) The identification of additional types of community corrections programs,
17 including residential programs, necessary to create an effective continuum of
18 corrections sanctions in North Carolina;
19 (c) The identification of categories of offenders who would be eligible for
20 sentencing to community corrections programs and the impact that the use of a
21 comprehensive range of community-based sanctions would have on sentencing
22 practices;
23 (d) A form of State oversight and coordination to ensure that community
24 corrections programs are coordinated in order to achieve maximum impact; and
25 (e) A mechanism for State funding and local community participation in the
26 operation and implementation of community corrections programs;
27 (f) An analysis of the rate of recidivism of clients under the supervision of the
28 existing community-based corrections programs in the State, recidivism here measured
29 as the clients committing new crimes at any time subsequent to their entry into a
30 community-based corrections program.

31 **"§ 164-43. Priority of duties; reports; continuing duties.**

32 (a) The Commission shall have two primary duties, and other secondary duties
33 essential to accomplishing the primary ones. The Commission may establish
34 subcommittees or advisory committees composed of Commission members to
35 accomplish duties imposed by this Article.

36 It is the legislative intent that the Commission attach priority to accomplish the
37 following primary duties:

- 38 (1) The classification of criminal offenses as described in G.S. 164-41 and
39 the formulation of sentencing structures as described in G.S. 164-42;
40 and
41 (2) The formulation of proposals and recommendations as described in
42 G.S. 164-42.1 and G.S. 164-42.2.

1 (b) The Commission shall report its findings and recommendations to the 1991
2 General Assembly, 1991 Regular Session. The report shall describe the status of the
3 Commission's work, and shall include any completed policy recommendations.

4 (c) The recommendations for the classification and ranges of punishment for
5 felonies and misdemeanors, required by G.S. 164-41, and sentencing structures,
6 established pursuant to G.S. 164-42, shall be submitted prior to the 1991 General
7 Assembly, 1992 Regular Session.

8 (d) Once the primary duties of the Commission have been accomplished, it shall
9 have the continuing duty to monitor and review the criminal justice and corrections
10 systems in this State to ensure that sentencing remains uniform and consistent, and that
11 the goals and policies established by the State are being implemented by sentencing
12 practices, and it shall recommend methods by which this ongoing work may be
13 accomplished and by which the correctional population simulation model developed
14 pursuant to G.S. 164-40 shall continue to be used by the State.

15 (e) Upon adoption of a system for the classification of offenses formulated
16 pursuant to G.S. 164-41, the Commission or its successor shall review all proposed
17 legislation which creates a new criminal offense, changes the classification of an
18 offense, or changes the range of punishment for a particular classification, and shall
19 make recommendations to the General Assembly.

20 (f) In the case of a new criminal offense, the Commission or its successor shall
21 determine whether the proposal places the offense in the correct classification, based
22 upon the considerations and principles set out in G.S. 164-41. If the proposal does not
23 assign the offense to a classification, it shall be the duty of the Commission or its
24 successor to recommend the proper classification placement.

25 (g) In the case of proposed changes in the classification of an offense or changes
26 in the range of punishment for a classification, the Commission or its successor shall
27 determine whether such a proposed change is consistent with the considerations and
28 principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

29 (h) The Commission or its successor shall meet within 10 days after the last day
30 for filing general bills in the General Assembly for the purpose of reviewing bills as
31 described in subsections (e), (f), and (g). The Commission or its successor shall include
32 in its report on a bill an analysis based on an application of the correctional population
33 simulation model to the provisions of the bill.

34 **"§ 164-44. Statistical information; financial or other aid.**

35 (a) The Commission shall have the secondary duty of collecting, developing, and
36 maintaining statistical data relating to sentencing and corrections so that the primary
37 duties of the Commission will be formulated using data that is valid, accurate, and
38 relevant to this State. All State agencies shall provide data as it is requested by the
39 Commission and such data as is collected or developed by the Commission or its staff
40 shall be open to any state agency or member of the General Assembly.

41 (b) The Commission shall have the authority to apply for, accept, and use any
42 gifts, grants, or financial or other aid, in any form, from the federal government or any
43 agency or instrumentality thereof, or from the State or from any other source including

1 private associations, foundations, or corporations to accomplish any of the duties set out
2 in this Chapter.

3 **"§ 164-45. Administrative direction and supervision.**

4 The Commission shall be administered under the direction and supervision of the
5 Director of the Administrative Office of the Courts. The Commission shall exercise all
6 of its prescribed statutory powers independently of the head of that Office, except that
7 all management functions shall be performed under the direction and supervision of the
8 Director of the Administrative Office of the Courts. 'Management functions,' as used in
9 this section, means planning, organizing, staffing, directing, coordinating, and
10 budgeting."

11 Sec. 2. It is the constitutional responsibility of the North Carolina judicial
12 system to discover the truth, to the best of its ability, in every case before it and to
13 establish whether the accused is guilty or not guilty. In those cases where the defendant
14 is found guilty, the court shall dispense justice for the public, the victim, and the
15 defendant through the judgment imposed.

16 Sec. 3. The following purposes and policies are hereby established:

- 17 (1) Protection of the public. Incarceration should be viewed by the court
18 both as punishment and as a means of protecting the public.
19 Limitations on the freedom of the offender and the appropriate level of
20 custody should be dictated in the first instance by the nature of the
21 offense, the violent character of the offender, the proclivity of the
22 offender to engage in criminal conduct as demonstrated by his criminal
23 record, and the sound judgment of the sentencing court after taking
24 into account all of the relevant aggravating and mitigating factors
25 involved in the offenders' record of criminal conduct.
- 26 (2) Punishment of the offender. After the interests of public protection
27 have been addressed, consideration should be given to restriction of
28 the liberty of the offender in such manner and to such extent as is
29 necessary to demonstrate clearly that the offender's conduct is
30 unacceptable to society and to discourage a repetition of such conduct.
31 In determining the appropriate punishment the court should consider a
32 range of sanctions at the State or community level which may include
33 incarceration, various degrees of restrictions on the offender's liberty
34 including house arrest, various degrees of supervision, community
35 penalties, community service, restitution/reparation, or fines.
- 36 (3) Rehabilitation of the offender. Every sentencing plan should consider
37 treatment/rehabilitative needs of the offender to the extent that it
38 addresses the cause of the criminal behavior and, therefore, might
39 assist in correcting such behavior. The offender should be enrolled in
40 a program of rehabilitation over a definite minimal period of time.
41 The program of rehabilitation should involve work and recreation and
42 may involve education, psychological or psychiatric counseling,
43 treatment for alcohol or drug abuse and sexual aggression either within
44 or without the prison walls as the individual case may indicate. The

1 court may recommend remedies for alcoholism, substance abuse,
2 mental illness, education and employment deficiencies, and may order
3 community-based offenders to pay for such treatment to the extent the
4 offender is able. Public institutions should respond to the court order
5 at no cost to the indigent offender. Where treatment is not available
6 from public institutions, the State should purchase appropriate
7 treatment from the private sector.

- 8 (4) Restitution/Reparation. When appropriate, the sentencing plan should
9 provide for restitution or reparation to the victim or victims, whether
10 they be individual citizens, corporations, or society as a whole, to be
11 paid as soon as practicable. Such restitution or reparation should
12 include repayment for any property stolen or damaged, medical costs
13 and lost wages of the victims, court costs and reasonable costs to cover
14 pretrial detention, and/or restitution to the community through
15 community service. In those cases where the offender can be punished
16 and rehabilitated outside of prison without jeopardizing the security of
17 the society at large in their persons or property, it is appropriate and
18 encouraged that the offender pay his debt to society through a range of
19 punishments which are alternative to incarceration. The court should
20 order such supervision or restrictions as deemed necessary for the
21 offender to comply with the restitution orders. Failure to comply
22 should result in stricter measures.

23 (5) Work policy for offenders. It is the policy of this State that
24 offenders should work when reasonably possible, either at jobs in the
25 private sector to pay restitution and support their dependents, or at
26 community service jobs that benefit the public, or at useful work
27 while in prison or jail, or at educational or treatment endeavors as a
28 part of a rehabilitation program. Offenders should be offered the
29 opportunity to reduce the duration of their sentences by earning
30 "time" credit for work endeavors in achieving vocational or
31 educational skill levels. Prisoners who are able and do not work or
32 who refuse to participate in treatment programs should be prohibited
33 from enjoying privileges which may be provided to inmates beyond
34 those required by law.

- 35 (6) Responsibility of Department of Correction. It is the goal of the North
36 Carolina Department of Correction to provide adequate prison space to
37 insure that those sentenced to prison will remain incarcerated until
38 such time as they can be safely released, or until their active sentences
39 are completed, and to provide community based supervision for those
40 offenders selected for supervised probation and parole by the courts
41 and the Parole Commission.

42 It is the mission of the Department's Division of Prisons to provide
43 housing, clothing, food, and medical care to its inmates, to maintain a
44 safe and secure prison system, to keep accurate records, to offer job

1 training, education, counseling, work and treatment programs deemed
2 appropriate to monitor and advance the rehabilitative progress of its
3 inmates, to provide a fair and orderly progression through custody
4 levels, and to make data and recommendations regarding parole
5 available to the Parole Commission. As an inmate demonstrates that
6 he/she is no longer a threat to society, that the punishment has been
7 effective and that a program of rehabilitation is showing progress, the
8 inmate's level of custody may be commensurately reduced in an
9 orderly progression through custody levels to parole and release from
10 supervision.

11 It is the mission of the Department's Division of Adult Probation
12 and Parole to receive convicted offenders selected by the courts and
13 the Parole Commission and to protect society through a coordinated
14 program of community supervision which provides realistic
15 opportunities for probationers and parolees to develop skills necessary
16 to adjust to free society. As a probationer/parolee demonstrates that
17 the supervision has been effective and that a community treatment
18 program is showing progress, the level of supervision may be
19 commensurately reduced in an orderly progression to prepare for
20 release from supervision.

21 Sec. 4. The North Carolina Sentencing and Policy Advisory Commission, in
22 performing its duties pursuant to Chapter 164, Article 4 of the General Statutes, shall
23 make recommendations consistent with the purposes and policies stated in Sections 2
24 and 3 of this act. Sections 2 and 3 of this act are only for the purpose of providing
25 policy guidance for the development of comprehensive criminal justice and corrections
26 systems by the Commission.

27 Sec. 5. The Substance Abuse Treatment in Prisons Study, established by
28 Section 19.1 of Chapter 802 of the 1989 Session Laws, is transferred from the Special
29 Committee on Prisons to the Mental Health Study Commission. The unexpended funds
30 appropriated to the General Assembly for the 1989-90 fiscal year for the Substance
31 Abuse Treatment in Prisons Study are transferred to the Department of Human
32 Resources (Budget Code 14460 subhead 1110) to conduct the study. Of funds
33 appropriated to the General Assembly for the 1989-90 fiscal year, there is transferred
34 the sum of \$10,000 to the Department of Human Resources (Budget Code 14460
35 subhead 1110) for the Mental Health Study Commission to conduct the Substance
36 Abuse Treatment in Prisons Study for the 1990-91 fiscal year.

37 Any pending responsibilities of the Special Committee on Prisons, which
38 terminates upon submission of its final report to the 1989 General Assembly, 1990
39 Regular Session, shall be transferred to the Sentencing and Policy Advisory
40 Commission upon the ratification of this act.

41 Sec. 6. Notwithstanding any other provision of law, no State agencies,
42 committees, or commissions may duplicate the statutorily-prescribed responsibilities of
43 the Sentencing and Policy Advisory Commission unless said agency, committee, or

1 commission is acting within functions specifically assigned to it by another act of the
2 1989 Session of the General Assembly.

3 Sec. 7. There is appropriated from the General Fund to the Administrative
4 Office of the Courts the sum of \$550,000 for the 1990-91 fiscal year to implement the
5 provisions of this act.

6 Sec. 8. This act shall be known as the "Sentencing and Policy Advisory
7 Commission Act of 1990."

8 Sec. 9. This act is effective upon ratification, and shall expire July 1, 1992.