

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 2095

Short Title: Abolish Parole/Repeal Prison Cap.

(Public)

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Sponsors: Representatives Decker; and Wood.

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Referred to: Judiciary III.

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June 9, 1994

A BILL TO BE ENTITLED

AN ACT TO ABOLISH PAROLE AND TO REPEAL THE PRISON POPULATION  
CAP.

The General Assembly of North Carolina enacts:

Section 1. Articles 85 and 85A of Chapter 15A of the General Statutes are repealed.

Sec. 2. G.S. 148-4.1 reads as rewritten:

**"§ 148-4.1. Release of inmates.**

(a) Whenever the Secretary of Correction determines from data compiled by the Department of Correction that it is necessary to reduce the prison population to a more manageable level, he shall direct the Parole Commission to release on parole over a reasonable period of time a number of prisoners sufficient to that purpose.

(b) Except as provided in subsection ~~(e) and (e)~~, ~~(c)~~, only inmates who are otherwise eligible for parole pursuant to Article 85 of Chapter 15A or pursuant to Article 3B of this Chapter may be released under this section.

(c) Persons eligible for parole under Article 85A of Chapter 15A shall be eligible for early parole under this section nine months prior to the discharge date otherwise applicable, and six months prior to the date of automatic 90-day parole authorized by G.S. 15A-1380.2.

~~(e1) For purposes of this section only, 'prison capacity' means the number of prisoners housed in facilities located in North Carolina and owned or operated by the State of North Carolina, as set by the Governor. In setting the prison capacity for purposes of this section, the Governor shall consider the number of beds available and shall make a finding that the number set would not jeopardize the State's ability to~~

1 perform its obligations under the law. In no event shall the number set by the Governor  
2 under this subsection exceed 24,500.

3 (d) If the number of prisoners housed in facilities located in North Carolina and  
4 owned or operated by the State of North Carolina for the Division of Prisons exceeds  
5 ninety-eight percent (98%) of prison capacity for 15 consecutive days, the Secretary of  
6 Correction shall notify the Governor and the Chairman of the Parole Commission of this  
7 fact. Upon receipt of this notification, the Parole Commission shall within 90 days  
8 release on parole a number of inmates sufficient to reduce the prison population to  
9 ninety-seven percent (97%) of prison capacity.

10 From the date of the notification until the prison population has been reduced to  
11 ninety-seven percent (97%) of prison capacity, the Secretary may not accept any  
12 inmates ordered transferred from local confinement facilities to the State prison system  
13 under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the  
14 State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local  
15 confinement facility from which the inmate was transferred.

16 (e) In addition to those persons otherwise eligible for parole, from the date of  
17 notification in subsection (d) until the prison population has been reduced to ninety-  
18 seven percent (97%) of prison capacity, any person imprisoned only for a misdemeanor  
19 also shall be eligible for parole and immediate termination upon admission,  
20 notwithstanding any other provision of law, except:

21 (1) Those persons convicted under G.S. 20-138.1 of driving while  
22 impaired or any offense involving impaired driving, and

23 (2) Those persons convicted pursuant to G.S. 130A-25 of failing to obtain  
24 the treatment required by Part 3 or Part 5 of Article 6 of Chapter 130A  
25 or of violating G.S. 130A-144(f) or G.S. 130A-145.

26 (f) In complying with the mandate of subsection (d), the Parole Commission may  
27 exercise the discretion granted to refuse parole by G.S. 15A-1371 in selecting felons to  
28 be paroled under this section so long as the prison population does not exceed prison  
29 capacity.

30 (g) In order to meet the requirements of this section, the Parole Commission shall  
31 not parole any person convicted under Article 7A of Chapter 14 of a sex offense, under  
32 G.S. 14-39, 14-41, or 14-43.3, under G.S. 90-95(h) of a drug trafficking offense, or  
33 under G.S. 14-17. The Parole Commission may continue to consider the suitability for  
34 release of such persons in accordance with the criteria set forth in Articles 85 and 85A  
35 of Chapter 15A.

36 (g1) Notwithstanding any other provision of law, whenever the Parole  
37 Commission is required to release inmates in order to meet the requirements of this  
38 section, the Parole Commission may parole nonviolent inmates who would not  
39 otherwise be eligible for parole instead of paroling violent inmates who are eligible for  
40 parole."

41 Sec. 3. G.S. 148-32.1(b) reads as rewritten:

42 "(b) In the event that the custodian of the local confinement facility certifies in  
43 writing to the clerk of the superior court in the county in which said local confinement  
44 facility is located that the local confinement facility is filled to capacity, or that the

1 facility cannot reasonably accommodate any more prisoners due to segregation  
2 requirements for particular prisoners, or that the custodian anticipates, in light of local  
3 experiences, an influx of temporary prisoners at that time, or if the local confinement  
4 facility does not meet the minimum standards published pursuant to G.S. 153A-221, any  
5 judge of the district court in the district court district as defined in G.S. 7A-133 where  
6 the facility is located, or any superior court judge who has jurisdiction pursuant to G.S.  
7 7A-47.1 or 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the  
8 facility is located may order that the prisoner be transferred to any other qualified local  
9 confinement facility within that district or within another such district where space is  
10 available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the  
11 prisoner is a non-violent ~~misdemeanant, which local facility shall accept the transferred~~  
12 ~~prisoner, if the prison population has exceeded the limits established in G.S. 148-4.1(d).~~  
13 misdemeanant. If no such local confinement facility is available, then any such judge  
14 may order the prisoner transferred to such camp or facility as the proper authorities of  
15 the Department of Correction shall designate, notwithstanding that the term of  
16 imprisonment of the prisoner is 180 days or less. In no event, however, shall a prisoner  
17 whose term of imprisonment is less than 30 days be assigned or ordered transferred to  
18 any such camp or facility."

19         Sec. 4. Section 1 of this act becomes effective 30 days after ratification, and  
20 applies to offenses occurring on or after that date. Prosecutions for, or sentences based  
21 on, offenses occurring before the effective date of Section 1 of this act are not affected  
22 by Section 1 of this act, and the statutes that would be applicable to those prosecutions  
23 or sentences but for the provisions of this act applicable to those prosecutions or  
24 sentences. The remainder of this act is effective upon ratification.