

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 27\*

Judiciary II/Election Laws Committee Substitute Adopted 2/7/95

Short Title: Repeal Prison Cap.

(Public)

Sponsors:

Referred to:

January 26, 1995

A BILL TO BE ENTITLED  
AN ACT TO REPEAL THE PRISON POPULATION CAP.

The General Assembly of North Carolina enacts:

Section 1. G.S. 148-4.1(c1) reads as rewritten:

"(c1) 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 perform its obligations under the law. In no event shall the number set by the Governor under this subsection exceed ~~24,500~~ 29,775."

Sec. 2. Effective September 1, 1996, 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~~, level or to meet the State's obligations under law, he shall direct the Parole Commission to release on parole over a reasonable period of time a number of prisoners sufficient to that purpose. From the time the Secretary directs the Parole Commission to begin releasing prisoners on parole until the prison population has been

1 reduced to a more manageable level, the Secretary may not accept any inmates ordered  
2 transferred from local confinement facilities to the State prison system under G.S. 148-  
3 32.1(b). Further, the Secretary may return any inmate housed in the State prison system  
4 under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from  
5 which the inmate was transferred.

6 (b) Except as provided in subsection (e) and (e), (c), only inmates who are  
7 otherwise eligible for parole pursuant to Article 85 of Chapter 15A or pursuant to Article  
8 3B of this Chapter may be released under this section.

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

13 (e1) For purposes of this section only, 'prison capacity' means the number of  
14 prisoners housed in facilities located in North Carolina and owned or operated by the  
15 State of North Carolina, as set by the Governor. In setting the prison capacity for  
16 purposes of this section, the Governor shall consider the number of beds available and  
17 shall make a finding that the number set would not jeopardize the State's ability to  
18 perform its obligations under the law. In no event shall the number set by the Governor  
19 under this subsection exceed 29,775.

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

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

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

- 38 (1) Those persons convicted under G.S. 20-138.1 of driving while impaired  
39 or any offense involving impaired driving, and
- 40 (2) Those persons convicted pursuant to G.S. 130A-25 of failing to obtain  
41 the treatment required by Part 3 or Part 5 of Article 6 of Chapter 130A  
42 or of violating G.S. 130A-144(f) or G.S. 130A-145.

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

5       ~~(g) In order to meet the requirements of this section, the Parole Commission shall~~  
6 ~~not parole any person convicted under Article 7A of Chapter 14 of a sex offense, under~~  
7 ~~G.S. 14-39, 14-41, or 14-43.3, under G.S. 90-95(h) of a drug trafficking offense, or under~~  
8 ~~G.S. 14-17. The Parole Commission may continue to consider the suitability for release~~  
9 ~~of such persons in accordance with the criteria set forth in Articles 85 and 85A of Chapter~~  
10 ~~15A.~~

11       ~~(g1) Notwithstanding any other provision of law except for subsection (h) of this~~  
12 ~~section, whenever the Post-Release Supervision and Parole Commission is required to~~  
13 ~~release inmates in order to meet the requirements of this section, the Post-Release~~  
14 ~~Supervision and Parole Commission may parole nonviolent inmates who would not~~  
15 ~~otherwise be eligible for parole instead of paroling violent inmates who are eligible for~~  
16 ~~parole. This subsection does not apply to sentences under Article 81B of Chapter 15A of~~  
17 ~~the General Statutes.~~

18       (h) A person sentenced under Article 81B of Chapter 15A of the General Statutes  
19 shall not be released pursuant to this section."

20       Sec. 3. Effective September 1, 1996, G.S. 148-32.1(b) reads as rewritten:

21       "(b) In the event that the custodian of the local confinement facility certifies in  
22 writing to the clerk of the superior court in the county in which said local confinement  
23 facility is located that the local confinement facility is filled to capacity, or that the  
24 facility cannot reasonably accommodate any more prisoners due to segregation  
25 requirements for particular prisoners, or that the custodian anticipates, in light of local  
26 experiences, an influx of temporary prisoners at that time, or if the local confinement  
27 facility does not meet the minimum standards published pursuant to G.S. 153A-221, any  
28 judge of the district court in the district court district as defined in G.S. 7A-133 where the  
29 facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-  
30 47.1 or 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility  
31 is located may order that the prisoner be transferred to any other qualified local  
32 confinement facility within that district or within another such district where space is  
33 available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the  
34 prisoner is a non-violent misdemeanor, which local facility shall accept the transferred  
35 prisoner, if the prison population has exceeded ~~the limits established in G.S. 148-4.1(d).~~ a  
36 manageable level as provided for in G.S. 148-4.1(a). If no such local confinement  
37 facility is available, then any such judge may order the prisoner transferred to such camp  
38 or facility as the proper authorities of the Department of Correction shall designate,  
39 notwithstanding that the term of imprisonment of the prisoner is 90 days or less. In no  
40 event, however, shall a prisoner whose term of imprisonment is less than 30 days be  
41 assigned or ordered transferred to any such camp or facility."

42       Sec. 4. Sections 2 and 3 of this act become effective September 1, 1996. The  
43 remainder of this act is effective upon ratification.