

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 40

Short Title: Prison Stabilization.

(Public)

Sponsors: Senators Parnell and Johnson of Cabarrus.

Referred to: Judiciary I.

January 23, 1989

A BILL TO BE ENTITLED

AN ACT TO AMEND AND EXTEND THE PRISON POPULATION STABILIZATION ACT, TO AMEND AND EXPAND COMMUNITY SERVICE PAROLE, TO LIMIT THE TRANSFER OF COUNTY PRISONERS TO THE STATE PRISON SYSTEM, AND TO AUTHORIZE PAROLE AND TERMINATION OF SUPERVISION OF MISDEMEANANTS.

The General Assembly of North Carolina enacts:

Section 1. 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 (c) and (e), 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.

(d) If the number of prisoners serving a sentence in the State prison system or otherwise housed in the State prison system exceeds ~~ninety-seven percent (97%)~~ ninety-eight percent (98%) of 18,000 for 15 consecutive days, the Secretary of Correction shall notify the Governor and the Chairman of the Parole Commission of this fact. Upon

1 receipt of this notification, the Parole Commission shall within ~~60 days~~ 90 days release
2 on parole a number of inmates sufficient to reduce the number of prisoners serving a
3 sentence in the State prison system or otherwise housed in the State prison system to
4 ~~ninety-six percent (96%)~~ ninety-seven percent (97%) of 18,000.

5 From the date of the notification until the number of prisoners serving a sentence in
6 the State prison system or otherwise housed in the State prison system has been reduced
7 to ~~ninety-six percent (96%)~~ ninety-seven percent (97%) of 18,000, the Secretary may not
8 accept any inmates ordered transferred from local confinement facilities to the State
9 prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate
10 housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to
11 the local confinement facility from which the inmate was transferred.

12 Notwithstanding any other provision of law, if the inmate population reaches 18,000,
13 no prisoner may be admitted to the State prison system without prior authorization of
14 the Secretary of Correction or his designee.

15 (e) In addition to those persons otherwise eligible for parole, from the date of
16 notification in subsection (d) until the number of prisoners serving a sentence in the
17 State prison system or otherwise housed in the State prison system has been reduced to
18 ~~ninety-six percent (96%)~~ ninety-seven percent (97%) of 18,000, any person imprisoned
19 only for a misdemeanor also shall be eligible for parole ~~notwithstanding any other~~
20 ~~provision of law, except those persons convicted of a misdemeanor for which assault is one of~~
21 ~~the elements necessary to establish the offense of which the person was convicted.~~ and
22 immediate termination of supervision upon admission, notwithstanding any other
23 provision of law, except those persons convicted under G.S. 20-138.1 of driving while
24 impaired or any offense involving impaired driving.

25 (f) In complying with the mandate of subsection (d), the Parole Commission may
26 exercise the discretion granted to refuse parole by G.S. 15A-1371 in selecting felons to
27 be paroled under this section so long as the prison population does not exceed 18,000.

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

34 Sec. 2. Section 6 of Chapter 7 of the 1987 Session Laws reads as rewritten:

35 "Sec. 6. Sections 1, 2, and 3 of this act shall expire ~~July 1, 1989,~~ July 1, 1991, unless
36 reenacted by the General Assembly. The Joint Legislative Commission on
37 Governmental Operations, or other Committee designated by the Speaker of the House
38 of Representatives and the Lieutenant Governor, shall monitor the implementation of
39 this act. The Secretary of Correction and the Chairman of the Parole Commission shall
40 make a written report to the Governor, the Joint Legislative Commission on
41 Governmental Operations, the Fiscal Research Division, and the Special Committee on
42 Prisons at least one month prior to the ~~1989-1991~~ 1991 Session of the General Assembly."

43 Sec. 3. G.S. 15A-1371(h) reads as rewritten:

1 "(h) Community Service Parole. – Notwithstanding the provisions of any other
2 subsection herein, certain prisoners specified herein shall be eligible for community
3 service parole, in the discretion of the Parole Commission.

4 Community service parole is early parole for the purpose of participation in a
5 program of community service under the supervision of a probation/parole officer. A
6 parolee who is paroled under this subsection must perform as a condition of parole 32
7 hours of community service for every month of his remaining active sentence, until at
8 least his minimum sentence (if he was sentenced prior to July 1, 1981), or one-half of
9 his sentence imposed under G.S. 15A-1340.4 has been completed by such community
10 service, at which time parole may be terminated.

11 The probation/parole officer and the community service coordinator shall develop a
12 program of community service for the parolee. The parolee must as a condition of
13 parole complete at least 32 hours of community service per 30-day period. The
14 community service coordinator shall report any willful failure to perform community
15 service work to the probation/parole officer. Parole may be revoked for any parolee who
16 willfully fails to perform community service work as directed by a community service
17 coordinator. The provisions of G.S. 15A-1376 shall apply to this violation of a condition
18 of parole.

19 Community service parole eligibility shall be available to a prisoner:

- 20 (1) Who is serving ~~his first~~an active sentence the term of which exceeds
21 one year; and
- 22 (2) Who, in the opinion of the Parole Commission, is unlikely to engage in
23 further criminal conduct; and
- 24 (3) Who agrees to complete service of his sentence as herein specified;
25 and
- 26 (4) Who has served one-half of his minimum sentence (if he was
27 sentenced prior to July 1, 1981), or one-fourth of a sentence imposed
28 under G.S. 15A-1340.4.

29 No prisoner convicted under Article 7A of Chapter 14 of a sex offense, under G.S.
30 14-39, 14-41, or 14-43.3 of a kidnapping or abduction offense, or under G.S. 90-95(h)
31 of a drug trafficking offense shall be eligible for community service parole.

32 ~~For purposes of subdivision (1), a person is considered to be serving his first active~~
33 ~~sentence the term of which exceeds one year if he~~

- 34 a. ~~Was convicted or sentenced in the same session of court of multiple~~
35 ~~offenses arising from the same transaction or series of transactions or~~
36 ~~his probationary sentence was revoked in the same such session of~~
37 ~~court,~~
- 38 b. ~~Is serving an active sentence of at least one year for one of the multiple~~
39 ~~offenses described in sub-subdivision a., and~~
- 40 e. ~~Had not received an active sentence of a[t] least one year prior to being~~
41 ~~sentenced for the multiple offenses described in sub-subdivision a.~~

42 In computing the service requirements of subdivision (4) of this subsection, credit
43 shall be given for good time and gain time credit earned pursuant to G.S. 148-13.

1 Nothing herein is intended to create or shall be construed to create a right or entitlement
2 to community service parole in any prisoner.”

3 Sec. 4. G.S. 15A-1371 is amended by adding a new subsection to read:

4 “(j) The Parole Commission may terminate a prisoner’s community service parole
5 before the expiration of the term of imprisonment where doing so will not endanger the
6 public, unduly depreciate the seriousness of the crime, or promote disrespect for the
7 law.”

8 Sec. 5. G.S. 15A-1380.2(h) reads as rewritten:

9 “(h) Community Service Parole. – Notwithstanding the provisions of any other
10 subsection herein, certain prisoners specified herein shall be eligible for community
11 service parole, in the discretion of the Parole Commission.

12 Community service parole is early parole for the purpose of participation in a
13 program of community service under the supervision of a probation/parole officer. A
14 parolee who is paroled under this subsection must perform as a condition of parole 32
15 hours of community service for every month of his remaining active sentence, until at
16 least his minimum sentence (if he was sentenced prior to July 1, 1981), or one-half of
17 his sentence imposed under G.S. 15A-1340.4 has been completed by such community
18 service, at which time parole may be terminated.

19 The probation/parole officer and the community service coordinator shall develop a
20 program of community service for the parolee. The parolee must as a condition of
21 parole complete at least 32 hours of community service per 30-day period. The
22 community service coordinator shall report any willful failure to perform community
23 service work to the probation/parole officer. Parole may be revoked for any parolee who
24 willfully fails to perform community service work as directed by a community service
25 coordinator. The provisions of G.S. 15A-1376 shall apply to this violation of a condition
26 of parole.

27 Community service parole eligibility shall be available to a prisoner:

- 28 (1) Who is serving ~~his first~~ an active sentence the term of which exceeds
29 one year; and
- 30 (2) Who, in the opinion of the Parole Commission, is unlikely to engage
31 in further criminal conduct; and
- 32 (3) Who agrees to complete service of his sentence as herein specified;
33 and
- 34 (4) Who has served one-half of his minimum sentence (if he was
35 sentenced prior to July 1, 1981), or one-fourth of a sentence imposed
36 under G.S. 15A-1340.4.

37 No prisoner convicted under Article 7A of Chapter 14 of a sex offense, under G.S.
38 14-39, 14-41, or 14-43.3 of a kidnapping or abduction offense, or under G.S. 90-95(h)
39 of a drug trafficking offense shall be eligible for community service parole.

40 ~~For purposes of subdivision (1), a person is considered to be serving his first active~~
41 ~~sentence the term of which exceeds one year if he~~

- 42 a. ~~Was convicted or sentenced in the same session of court of multiple~~
43 ~~offenses arising from the same transaction or series of transactions or~~

- 1 ~~his probationary sentence was revoked in the same such session of~~
2 ~~court,~~
3 ~~b. Is serving an active sentence of at least one year for one of the multiple~~
4 ~~offenses described in sub-subdivision a., and~~
5 ~~e. Had not received an active sentence of a[t] least one year prior to being~~
6 ~~sentenced for the multiple offenses described in sub-subdivision a.~~

7 In computing the service requirements of subdivision (4) of this subsection, credit
8 shall be given for good time and gain time credit earned pursuant to G.S. 148-13.
9 Nothing herein is intended to create or shall be construed to create a right or entitlement
10 to community service parole in any prisoner."

11 Sec. 6. G.S. 15A-1380.2 is amended by adding a new subsection to read:

12 "(j) The Parole Commission may terminate a prisoner's community service parole
13 before the expiration of the term of imprisonment where doing so will not endanger the
14 public, unduly depreciate the seriousness of the crime, or promote disrespect for the
15 law."

16 Sec. 7. G.S. 162-39 reads as rewritten:

17 "**§ 162-39. Transfer of prisoners when necessary for safety and security;**
18 **application of section to municipalities.**

19 Whenever necessary for the safety of a prisoner held in any county jail or to avoid a
20 breach of the peace in any county or whenever prisoners are arrested in such numbers
21 that county jail facilities are insufficient and inadequate for the housing of such
22 prisoners, the resident judge of the superior court or any judge holding superior court in
23 the district or any district court judge may order the prisoner transferred to a fit and
24 secure jail in some other county, or to a unit of the State prison system designated by the
25 Secretary of Correction or his authorized representative, where the prisoner shall be
26 held for such length of time as the judge may direct. The sheriff of the county from
27 which the prisoner is removed shall be responsible for conveying the prisoner to the jail
28 or prison unit where he is to be held, and for returning him to the common jail of the
29 county from which he was transferred. The return shall be made at the expiration of the
30 time designated in the court order directing the transfer unless the judge, by appropriate
31 order, shall direct otherwise. The sheriff or keeper of the jail of the county designated in
32 the court order, or the officer in charge of the prison unit designated by the Secretary of
33 Correction, shall receive and release custody of the prisoner in accordance with the
34 terms of the court order. If a prisoner is transferred to a unit of the State prison system,
35 the county from which the prisoner is transferred shall pay the Department of
36 Correction for maintaining the prisoner for the time designated by the court at the per
37 day, per inmate rate at which the Department of Correction pays a local jail for
38 maintaining a prisoner, provided, however, that a county is not required to reimburse the
39 State for maintaining a prisoner who was a resident of another state or county at the
40 time he committed the crime for which he is imprisoned. If the prisoner is transferred to
41 a jail in some other county, the county from which the prisoner is transferred shall pay
42 to the county receiving the prisoner in its jail the actual cost of maintaining the prisoner
43 for the time designated by the court. Counties are hereby authorized to enter into

1 contractual agreements with other counties to provide jail facilities to which prisoners
2 may be transferred as deemed necessary under this section.

3 Whenever prisoners are arrested in such numbers that county jail facilities are
4 insufficient and inadequate for the safekeeping of such prisoners, the resident judge of
5 the superior court or any superior or district court judge holding court in the district may
6 order the prisoners transferred to a unit of the State Department of Correction
7 designated by the Secretary of Correction or his authorized representative, where the
8 prisoners may be held for such length of time as the judge may direct, such detention to
9 be in cell separate from that used for imprisonment of persons already convicted of
10 crimes. The sheriff of the county from which the prisoners are removed shall be
11 responsible for conveying the prisoners to the prison unit or units where they are to be
12 held, and for returning them to the common jail of the county from which they were
13 transferred. However, if due to the number of prisoners to be conveyed the sheriff is
14 unable to provide adequate transportation, he may request the assistance of the
15 Department of Correction, and the Department of Correction is hereby authorized and
16 directed to cooperate with the sheriff and provide whatever assistance is available, both
17 in vehicles and manpower, to accomplish the conveying of the prisoners to and from the
18 county to the designated prison unit or units. The officer in charge of the prison unit
19 designated by the Secretary of Correction or his authorized representative shall receive
20 and release the custody of the prisoners in accordance with the terms of the court order.
21 The county from which the prisoners are transferred shall pay to the Department of
22 Correction the actual cost of transporting the prisoners and the cost of maintaining the
23 prisoners at the per day, per inmate rate at which the Department of Correction pays a
24 local jail for maintaining a prisoner, provided, however, that a county is not required to
25 reimburse the State for transporting or maintaining a prisoner who was a resident of
26 another state or county at the time he was arrested. However, if the county
27 commissioners shall certify to the Governor that the county is unable to pay the bill
28 submitted by the State Department of Correction to the county for the services rendered,
29 either in whole or in part, the Governor may recommend to the Council of State that the
30 State of North Carolina assume and pay, in whole or in part, the obligation of the county
31 to the Department of Correction, and upon approval of the Council of State the amount
32 so approved shall be paid from Contingency and Emergency Fund to the Department of
33 Correction.

34 When, due to an emergency, it is not feasible to obtain from a judge of the superior
35 or district court a prior order of transfer, the sheriff of the county and the Department of
36 Correction may exercise the authority hereinafter conferred; provided, however, that the
37 sheriff shall, as soon as possible after the emergency, obtain an order from the judge
38 authorizing the prisoners to be held in the designated place of confinement for such
39 period as the judge may direct. All provisions of this section shall be applicable to
40 municipalities whenever prisoners are arrested in such numbers that the municipal jail
41 facilities and the county jail facilities are insufficient and inadequate for the safekeeping
42 of the prisoners. The chief of police is hereby authorized to exercise the authority herein
43 conferred upon the sheriff, and the municipality shall be liable for the cost of
44 transporting and maintaining the prisoners to the same extent as a county would be

1 unless action is taken by the Governor and Council of State as herein provided for
2 counties which are unable to pay such costs.

3 The number of county prisoners incarcerated in the State prison system pursuant to
4 safekeeping orders from the various counties may not exceed 100 at any given time
5 unless authorized by the Secretary of Correction or his designee. The Secretary may
6 refuse to accept any safekeeper and may return any safekeeper transferred under a
7 safekeeping order when this capacity limit is reached."

8 Sec. 8. G.S. 15A-1372(d) reads as rewritten:

9 "(d) Parole and Terminate. – The Parole Commission is authorized simultaneously to
10 parole and terminate supervision of a prisoner when such prisoner has less than 180
11 days remaining on his maximum sentence, and when the Commission finds that such
12 action will not be incompatible with the public interest. When the Parole Commission
13 finds that such action will not be incompatible with the public interest, the Commission
14 is also authorized simultaneously to parole and terminate supervision of a prisoner when
15 such prisoner is imprisoned only for a misdemeanor, except those persons convicted
16 under G.S. 20-138.1 of driving while impaired or any offense involving impaired
17 driving."

18 Sec. 9. This act is effective upon ratification, but Section 1 of this act shall
19 expire July 1, 1991, unless reenacted by the General Assembly.