

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 27\*

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

House Committee Substitute Favorable 3/9/95

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, TO RAISE THE LIMIT ON PRISON CAPACITY, TO AUTHORIZE THE PAROLE OF NONVIOLENT INMATES, TO AUTHORIZE CERTAIN CONTRACTS FOR THE HOUSING OF STATE PRISONERS IN LOCAL CONFINEMENT FACILITIES, TO ALLOW FOR THE CONTRACTING OF PRIVATE PRISONS, TO REMOVE THE LIMIT ON PRISONERS WHO MAY BE HOUSED IN NON-STATE OWNED FACILITIES, TO REMOVE THE SUNSET ON CONTRACTS WITH OUT-OF-STATE PUBLIC CORRECTIONAL FACILITIES, AND TO ALLOW THE DEPARTMENT TO USE AVAILABLE FUNDS TO PROVIDE ADDITIONAL PRISON BEDS AND EMPLOY NECESSARY STAFF.

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

1 perform its obligations under the law. In no event shall the number set by the Governor  
2 under this subsection exceed ~~24,500~~ 27,500."

3 Sec. 2. G.S. 148-4.1(g1) reads as rewritten:

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

11 Sec. 3. Effective January 1, 1996, G.S. 148-4.1, as rewritten by Sections 1 and  
12 2 of this act, reads as rewritten:

13 **"§ 148-4.1. Release of inmates.**

14 (a) Whenever the Secretary of Correction determines from data compiled by the  
15 Department of Correction that it is necessary to reduce the prison population to a more  
16 manageable ~~level,~~ level or to meet the State's obligations under law, he shall direct the  
17 Parole Commission to release on parole over a reasonable period of time a number of  
18 prisoners sufficient to that purpose. From the time the Secretary directs the Parole  
19 Commission until the prison population has been reduced to a more manageable level, the  
20 Secretary may not accept any inmates ordered transferred from local confinement  
21 facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may  
22 return any inmate housed in the State prison system under an order entered pursuant to  
23 G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred.

24 (b) Except as provided in subsection ~~(e) and (e), (c),~~ only inmates who are  
25 otherwise eligible for parole pursuant to Article 85 of Chapter 15A or pursuant to Article  
26 3B of this Chapter may be released under this section.

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

31 ~~(e1) For purposes of this section only, 'prison capacity' means the number of~~  
32 ~~prisoners housed in facilities located in North Carolina and owned or operated by the~~  
33 ~~State of North Carolina, as set by the Governor. In setting the prison capacity for~~  
34 ~~purposes of this section, the Governor shall consider the number of beds available and~~  
35 ~~shall make a finding that the number set would not jeopardize the State's ability to~~  
36 ~~perform its obligations under the law. In no event shall the number set by the Governor~~  
37 ~~under this subsection exceed 27,500.~~

38 (d) ~~If the number of prisoners housed in facilities located in North Carolina and~~  
39 ~~owned or operated by the State of North Carolina for the Division of Prisons exceeds~~  
40 ~~ninety eight percent (98%) of prison capacity for 15 consecutive days, the Secretary of~~  
41 ~~Correction shall notify the Governor and the Chairman of the Parole Commission of this~~  
42 ~~fact. Upon receipt of this notification, the Parole Commission shall within 90 days release~~

1 on parole a number of inmates sufficient to reduce the prison population to ninety seven  
2 percent (97%) of prison capacity.

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

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

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

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

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

23 (g) In order to meet the requirements of this section, the Parole Commission shall  
24 not parole any person convicted under Article 7A of Chapter 14 of a sex offense, under  
25 G.S. 14-39, 14-41, or 14-43.3, under G.S. 90-95(h) of a drug trafficking offense, or under  
26 G.S. 14-17. The Parole Commission may continue to consider the suitability for release  
27 of such persons in accordance with the criteria set forth in Articles 85 and 85A of Chapter  
28 15A.

29 (g1) Notwithstanding any other provision of law except for subsection (h) of this  
30 section, the Post-Release Supervision and Parole Commission may parole nonviolent  
31 inmates who would not otherwise be eligible for parole instead of paroling violent  
32 inmates who are eligible for parole. This subsection does not apply to sentences under  
33 Article 81B of Chapter 15A of the General Statutes.

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

36 Sec. 4. Effective January 1, 1996, G.S. 148-32.1(b) reads as rewritten:

37 "(b) In the event that the custodian of the local confinement facility certifies in  
38 writing to the clerk of the superior court in the county in which said local confinement  
39 facility is located that the local confinement facility is filled to capacity, or that the  
40 facility cannot reasonably accommodate any more prisoners due to segregation  
41 requirements for particular prisoners, or that the custodian anticipates, in light of local  
42 experiences, an influx of temporary prisoners at that time, or if the local confinement  
43 facility does not meet the minimum standards published pursuant to G.S. 153A-221, any

1 judge of the district court in the district court district as defined in G.S. 7A-133 where the  
2 facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-  
3 47.1 or 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility  
4 is located may order that the prisoner be transferred to any other qualified local  
5 confinement facility within that district or within another such district where space is  
6 available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the  
7 prisoner is a non-violent misdemeanor, which local facility shall accept the transferred  
8 prisoner, if the prison population has exceeded ~~the limits established in G.S. 148-4.1(d), a~~  
9 manageable level as provided for in G.S. 148-4.1(a). If no such local confinement facility  
10 is available, then any such judge may order the prisoner transferred to such camp or  
11 facility as the proper authorities of the Department of Correction shall designate,  
12 notwithstanding that the term of imprisonment of the prisoner is 90 days or less. In no  
13 event, however, shall a prisoner whose term of imprisonment is less than 30 days be  
14 assigned or ordered transferred to any such camp or facility."

15 Sec. 5. G.S. 148-37 reads as rewritten:

16 "**§ 148-37. Additional facilities authorized; contractual arrangements.**

17 (a) Subject to the provisions of G.S. 143-341, the State Department of Correction  
18 may establish additional facilities for use by the Department, such facilities to be either of  
19 a permanent type of construction or of a temporary or movable type as the Department  
20 may find most advantageous to the particular needs, to the end that the prisoners under its  
21 supervision may be so distributed throughout the State as to facilitate individualization of  
22 treatment designed to prepare them for lawful living in the community where they are  
23 most likely to reside after their release from prison. For this purpose, the Department  
24 may purchase or lease sites and suitable lands adjacent thereto and erect necessary  
25 buildings thereon, or purchase or lease existing facilities, all within the limits of  
26 allotments as approved by the Department of Administration.

27 (b) The Secretary of Correction may contract with the proper official of the United  
28 States or of any county or city of this State for the confinement of federal prisoners after  
29 they have been sentenced, county, or city prisoners in facilities of the State prison system  
30 or for the confinement of State prisoners in any county or any city facility located in  
31 North Carolina, or any facility of the United States Bureau of Prisons, when to do so  
32 would most economically and effectively promote the purposes served by the Department  
33 of Correction. ~~Any-Except as otherwise provided, any~~ contract made under the authority  
34 of this ~~section-subsection~~ shall be for a period of not more than two years, and shall be  
35 renewable from time to time for a period not to exceed two years. Contracts made under  
36 the authority of this subsection for the confinement of State prisoners in local or district  
37 confinement facilities may be for a period of not more than 10 years and renewable from  
38 time to time for a period not to exceed 10 years. Contracts for receiving federal, county  
39 and city prisoners shall provide for reimbursing the State in full for all costs involved.  
40 The financial provisions shall have the approval of the Department of Administration  
41 before the contract is executed. Payments received under such contracts shall be  
42 deposited in the State treasury for the use of the State Department of Correction. Such  
43 payments are hereby appropriated to the State Department of Correction as a

1 supplementary fund to compensate for the additional care and maintenance of such  
2 prisoners as are received under such contracts.

3 (c) In addition to the authority contained in subsections (a) and (b) of this section,  
4 and in addition to the contracts ratified by subsection (f) of this section, the Secretary of  
5 Correction may enter into contracts with any public entity or any private nonprofit or for-  
6 profit firms for the confinement and care of State prisoners in any out-of-state public  
7 correctional facility when to do so would most economically and effectively promote the  
8 purposes served by the Department of Correction. Contracts entered into under the  
9 authority of this subsection shall be for a period not to exceed two years and shall be  
10 renewable from time to time for a period not to exceed two years. ~~Subject to the provisions~~  
11 ~~of subsection (e) of this section, the combined authority contained in this subsection and in~~  
12 ~~subsection (f) of this section may be used to house a maximum of 1,000 prisoners at any one~~  
13 ~~time, which maximum shall include those housed on March 25, 1994, under contracts ratified by~~  
14 ~~subsection (f) of this section.~~ Prisoners may be sent to out-of-state correctional facilities  
15 only when there are no available facilities in this State within the State prison system to  
16 appropriately house those prisoners. Any contract made under the authority of this  
17 subsection ~~shall expire not later than June 30, 1995, and shall be approved by the~~  
18 Department of Administration before the contract is executed.

19 (d) Prisoners confined in out-of-state correctional facilities pursuant to subsection  
20 (c) of this section shall remain subject to the rules adopted for the conduct of persons  
21 committed to the State prison system. The rules regarding good time and gain time,  
22 discipline, classification, extension of the limits of confinement, transfers, housing  
23 arrangements, and eligibility for parole shall apply to inmates housed in those out-of-state  
24 correctional facilities. The operators of those out-of-state correctional facilities may  
25 promulgate any other rules as may be necessary for the operation of those facilities with  
26 the written approval of the Secretary of Correction. Custodial officials employed by an  
27 out-of-state correctional facility are agents of the Secretary of Correction and may use  
28 those procedures for use of force authorized by the Secretary of Correction not  
29 inconsistent with the laws of the State of situs of the facility to defend themselves, to  
30 enforce the observance of discipline in compliance with correctional facility rules, to  
31 secure the person of a prisoner, and to prevent escape. Prisoners confined to out-of-state  
32 correctional facilities may be required to perform reasonable work assignments within  
33 those facilities. Private firms under subsection (c) of this section shall employ inmate  
34 disciplinary and grievance policies of the North Carolina Department of Correction.

35 (e) ~~The Department of Correction shall not contract to house in non State-owned~~  
36 ~~facilities within the State more than a total of 1,500 inmates at any one time, excluding~~  
37 ~~any beds in private substance abuse treatment centers authorized by the General~~  
38 ~~Assembly. If the number of inmates housed in non State-owned facilities pursuant to this~~  
39 ~~section exceeds 500, then the maximum number of prisoners authorized to be housed out-~~  
40 ~~of-state pursuant to subsection (e) of this section is reduced by the amount of the excess.~~

41 (f) Any contracts entered into by the Department of Correction with public  
42 contractors prior to March 25, 1994, for the out-of-state housing of inmates are ratified.  
43 The Department of Correction shall take such actions not inconsistent with the terms of

1 the contracts so that without further approval by the General Assembly they are not  
2 effective for the confinement or care of State prisoners after June 30, 1995.

3 (g) The Secretary of Correction may contract with private for-profit or nonprofit  
4 firms for the provision and operation of confinement facilities in the State to house State  
5 prisoners when to do so would most economically and effectively promote the purposes  
6 served by the Department of Correction. Contracts entered under the authority of this  
7 subsection shall be for a period not to exceed 10 years, shall be renewable from time to  
8 time for a period not to exceed 10 years, and are subject to the approval of the Council of  
9 State and the Department of Administration. Contracts made under the authority of this  
10 subsection may provide the State with an option to purchase the confinement facility or  
11 may provide for the purchase of the confinement facility by the State. Prisoners housed in  
12 private confinement facilities pursuant to this subsection shall remain subject to the rules  
13 adopted for the conduct of persons committed to the State prison system. The Secretary  
14 of Correction may review and approve the design and construction of private  
15 confinement facilities before housing State prisoners in these facilities. The rules  
16 regarding good time, gain time, and earned credits, discipline, classification, extension of  
17 the limits of confinement, transfers, housing arrangements, and eligibility for parole shall  
18 apply to inmates housed in private confinement facilities pursuant to this subsection. The  
19 operators of private confinement facilities may adopt any other rules as may be necessary  
20 for the operation of those facilities with the written approval of the Secretary of  
21 Correction. Custodial officials employed by a private confinement facility are agents of  
22 the Secretary of Correction and may use those procedures for use of force authorized by  
23 the Secretary of Correction to defend themselves, to enforce the observance of discipline  
24 in compliance with confinement facility rules, to secure the person of a prisoner, and to  
25 prevent escape. Private firms under this subsection shall employ inmate disciplinary and  
26 grievance policies of the North Carolina Department of Correction.

27 (h) Private confinement facilities under this section shall be designed, built, and  
28 operated in accordance with American Correctional Association Standards, applicable  
29 State laws, court orders, fire safety codes, and local regulations. Additionally all  
30 contracts for private correctional facilities in the State shall require that the facility  
31 achieve accreditation by the American Correctional Association within 24 months of  
32 accepting the first inmate. Accreditation shall be maintained throughout the course of the  
33 contract.

34 (i) The Department of Correction shall make a written report no later than March  
35 1 of every odd-numbered year, beginning in 1997, on the substance of all outstanding  
36 contracts for the housing of State prisoners entered into under the authority of this  
37 section. The report shall be submitted to the Council of State, the Department of  
38 Administration, and the Joint Legislative Commission on Governmental Operations. In  
39 addition to the report, the Department of Correction shall provide information on  
40 contracts for the housing of State prisoners as requested by these groups."

41 Sec. 6. Section 16(c) of Chapter 24 of the Session Laws of the 1994 Extra  
42 Session reads as rewritten:

1       "(c) Subsections (a) and (b) of this section are effective upon ratification, but  
2 ~~subsection (a) of this section expires on June 30, 1995.~~ ratification."

3       Sec. 7. The Department of Correction may use funds available to the  
4 Department to provide for additional prison beds when the prison population has  
5 exceeded population projections or when additional prison capacity is required. The  
6 Department may also use funds available to employ correctional officers and other  
7 necessary staff in temporary positions to staff leased confinement facilities.

8       Sec. 8. When contracting with private for-profit or nonprofit firms for the  
9 housing of State prisoners, the Department of Correction shall give priority to contracts  
10 with private firms in the State when to do so would most efficiently house those  
11 prisoners.

12       All contracts for the provision of private correctional facilities shall contain  
13 fifteen million dollars (\$15,000,000) of occurrence-based liability insurance.  
14 Additionally, all contracts shall hold the State harmless and provide reimbursement for  
15 all liability arising out of actions caused by operations and employees of the private  
16 correctional facility.

17       Sec. 9. Sections 3 and 4 of this act become effective January 1, 1996. The  
18 remainder of this act is effective upon ratification, but Section 7 of this act expires on  
19 June 30, 1997.