

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 46\*

Short Title: Repeal Prison Cap.

(Public)

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Sponsors: Senators Hartsell, Cochrane, Carrington, Allran, Ballantine, Blackmon, Carpenter, Forrester, Kincaid, McKoy, Sawyer, Shaw, Simpson; Clark, Davis, East, Foxx, Horton, Ledbetter, Little, McDaniel, Smith, and Webster.

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Referred to: Judiciary II/Election Laws.

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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 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~~

1 State of North Carolina, as set by the Governor. In setting the prison capacity for  
2 purposes of this section, the Governor shall consider the number of beds available and  
3 shall make a finding that the number set would not jeopardize the State's ability to  
4 perform its obligations under the law. In no event shall the number set by the Governor  
5 under this subsection exceed 24,500.

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

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

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

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

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

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

33 (g) In order to meet the requirements of this section, the Parole Commission shall  
34 not parole any person convicted under Article 7A of Chapter 14 of a sex offense, under  
35 G.S. 14-39, 14-41, or 14-43.3, under G.S. 90-95(h) of a drug trafficking offense, or under  
36 G.S. 14-17. The Parole Commission may continue to consider the suitability for release  
37 of such persons in accordance with the criteria set forth in Articles 85 and 85A of Chapter  
38 15A.

39 (g1) Notwithstanding any other provision of law except for subsection (h) of this  
40 section, whenever the Post-Release Supervision and Parole Commission is required to  
41 release inmates in order to meet the requirements of this section, the Post-Release  
42 Supervision and Parole Commission may parole nonviolent inmates who would not  
43 otherwise be eligible for parole instead of paroling violent inmates who are eligible for

1 ~~parole. This subsection does not apply to sentences under Article 81B of Chapter 15A of~~  
2 ~~the General Statutes.~~

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

5 Sec. 2. G.S. 148-32.1(b) reads as rewritten:

6 "(b) In the event that the custodian of the local confinement facility certifies in  
7 writing to the clerk of the superior court in the county in which said local confinement  
8 facility is located that the local confinement facility is filled to capacity, or that the  
9 facility cannot reasonably accommodate any more prisoners due to segregation  
10 requirements for particular prisoners, or that the custodian anticipates, in light of local  
11 experiences, an influx of temporary prisoners at that time, or if the local confinement  
12 facility does not meet the minimum standards published pursuant to G.S. 153A-221, any  
13 judge of the district court in the district court district as defined in G.S. 7A-133 where the  
14 facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-  
15 47.1 or 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility  
16 is located may order that the prisoner be transferred to any other qualified local  
17 confinement facility within that district or within another such district where space is  
18 available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the  
19 prisoner is a non-violent ~~misdemeanant, which local facility shall accept the transferred~~  
20 ~~prisoner, if the prison population has exceeded the limits established in G.S. 148-4.1(d).~~  
21 misdemeanant. If no such local confinement facility is available, then any such judge  
22 may order the prisoner transferred to such camp or facility as the proper authorities of the  
23 Department of Correction shall designate, notwithstanding that the term of imprisonment  
24 of the prisoner is 90 days or less. In no event, however, shall a prisoner whose term of  
25 imprisonment is less than 30 days be assigned or ordered transferred to any such camp or  
26 facility."

27 Sec. 3. Nothing in this act shall be construed to require the State to violate the  
28 settlement agreement in the case of Small v. Martin, as modified. It is the intent of the  
29 General Assembly that the Department of Correction shall take all steps within its lawful  
30 authority necessary to comply with the settlement agreement entered into in that case, as  
31 modified.

32 Sec. 4. This act becomes effective October 1, 1995.