

GENERAL ASSEMBLY OF NORTH CAROLINA
EXTRA SESSION 1994

CHAPTER 15
HOUSE BILL 200

AN ACT TO PROVIDE THAT THE GOVERNOR SHALL SET THE PRISON POPULATION CAP AND TO PROVIDE THAT IN PAROLING INMATES UNDER THE PRISON POPULATION CAP THE PAROLE COMMISSION MAY RELEASE NONVIOLENT INMATES WHO WOULD NOT OTHERWISE BE ELIGIBLE FOR RELEASE.

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.

(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.

(d) If the number of prisoners housed in facilities located in North Carolina and owned or operated by the State of North Carolina for the Division of Prisons exceeds ninety-eight percent (98%) of 21,400-prison capacity for 15 consecutive days, the Secretary of Correction shall notify the Governor and the Chairman of the Parole Commission of this fact. Upon receipt of this notification, the Parole Commission shall within 90 days release on parole a number of inmates sufficient to reduce the prison population to ninety-seven percent (97%) of 21,400-prison capacity.

From the date of the notification until the prison population has been reduced to ninety-seven percent (97%) of 21,400-prison capacity, the Secretary may not accept

any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred.

(e) In addition to those persons otherwise eligible for parole, from the date of notification in subsection (d) until the prison population has been reduced to ninety-seven percent (97%) of ~~21,400, prison capacity,~~ any person imprisoned only for a misdemeanor also shall be eligible for parole and immediate termination upon admission, notwithstanding any other provision of law, except:

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

(f) In complying with the mandate of subsection (d), the Parole Commission may exercise the discretion granted to refuse parole by G.S. 15A-1371 in selecting felons to be paroled under this section so long as the prison population does not exceed ~~21,400-~~ prison capacity.

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

Sec. 2. Sections 7 through 9 of Chapter 91 of the 1993 Session Laws are repealed.

Sec. 3. G.S. 148-4.1 is amended by adding a new subsection to read:

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

Sec. 4. Effective January 1, 1995, G.S. 148-4.1(g1) reads as rewritten:

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

Sec. 5. This act is effective upon ratification, but Sections 3 and 4 expire on July 1, 1996.

In the General Assembly read three times and ratified this the 15th day of March, 1994.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives