

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 40

Short Title: Protect Citizens From Violence.

(Public)

Sponsors: Representatives G. Miller; and Redwine.

Referred to: Judiciary II.

January 30, 1995

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE CITIZENS OF NORTH CAROLINA FROM PEOPLE WHO COMMIT ACTS OF VIOLENCE.

The General Assembly of North Carolina enacts:

Section 1. (a) Subchapter VII of Chapter 14 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 27A.

"SEXUAL OFFENDER REGISTRATION PROGRAM.

"§ 14-208.5. Purpose.

The General Assembly recognizes that sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is of paramount governmental interest. Further, the General Assembly recognizes that local law enforcement officers' efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the agency's jurisdiction. Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Release of information about sex offenders to law enforcement agencies, and under limited circumstances to authorized requesters, will further the governmental

1 interests of public safety so long as the information released is rationally related to the
2 furtherance of those goals.

3 Therefore, it is the purpose of this Article to assist local law enforcement agencies'
4 efforts to protect their communities by requiring sex offenders to register with local law
5 enforcement agencies and to require the exchange of relevant information about sex
6 offenders among law enforcement agencies and to authorize the release of necessary and
7 relevant information about sex offenders to authorized requesters as provided in this
8 Article.

9 **"§ 14-208.6. Definitions.**

10 The following definitions apply in this Article:

- 11 (1) 'Division' means the Division of Criminal statistics of the Department of
12 Justice.
- 13 (2) 'Penal institution' means a detention facility operated under the
14 jurisdiction of the Division of Prisons of the Department of Correction,
15 or a county jail.
- 16 (3) 'Released' means discharged, paroled, or placed on probation.
- 17 (4) 'Reportable conviction' means:
- 18 a. A conviction of a violation of G.S 14-27.2 (first degree rape), 14-
19 27.3 (second degree rape), 14-27.4 (first degree sexual offense),
20 14-27.5 (second degree sexual offense), 14-27.6 (attempted rape
21 or sexual offense), 14-27.7 (intercourse and sexual offense with
22 certain victims), 14-178 (incest between near relatives), 14-179
23 (incest between uncle and niece, nephew and aunt), 14-190.6
24 (employing or permitting minor to assist in offenses against
25 public morality and decency), 14-190.16 (first degree sexual
26 exploitation of a minor), 14-190.17 (second degree sexual
27 exploitation of a minor), 14-190.17A (third degree sexual
28 exploitation of a minor), 14-190.18 (promoting prostitution of a
29 minor), 14-190.19 (participating in prostitution of a minor), or
30 14-202.1 (taking indecent liberties with children).
- 31 b. The second conviction for a violation of G.S. 14-190.9 (indecent
32 exposure).
- 33 c. A conviction in another state of an offense, which if committed
34 in this State, would have been a sex offense as defined by the
35 sections of the General Statutes set forth in paragraphs a. and b.
36 of this subdivision.
- 37 (5) 'Sheriff' means the sheriff of a county in this State.

38 **"§ 14-208.7. Registration.**

39 (a) A person who has a reportable conviction shall register with the sheriff of the
40 county where the person resides or intends to reside for more than 10 days. If the person
41 moves to North Carolina from outside this State, the person shall register within 10 days
42 of establishing residence in this State. If the person is a current resident of North
43 Carolina, the person shall register:

- 1 (1) Within 10 days of release from a penal institution or arrival in a county
2 to live outside a penal institution; or
3 (2) Immediately upon conviction for a reportable offense where an active
4 term of imprisonment was not imposed.
- 5 (b) The Division shall provide each sheriff with forms for registering persons as
6 required by this Article. The registration form shall require:
- 7 (1) The person's full name, each alias, date of birth, sex, race, height,
8 weight, eye color, hair color, social security number, drivers license
9 number, and home address;
10 (2) The type of offense for which the person was convicted, the date of
11 conviction, and the sentence imposed;
12 (3) A current photograph; and
13 (4) Any other information required by the Division, including fingerprints
14 or other corroborative information.
- 15 (c) Not later than the third day after a person registers, the sheriff with whom the
16 person registered shall send the registration information to the Division in a manner
17 determined by the Division. The sheriff shall retain the original registration form and
18 other information collected.

19 **"§ 14-208.8. Prerelease notification.**

- 20 (a) At least 10 days, but not earlier than 30 days, before a person who will be
21 subject to registration under this Article is due to be released from a penal institution, an
22 official of the penal institution shall:
- 23 (1) Inform the person of the person's duty to register under this Article and
24 require the person to sign a written statement that the person was so
25 informed or, if the person refuses to sign the statement, certify that the
26 person was so informed;
27 (2) Obtain the registration information required under G.S. 14-208.7(b)(1)
28 and (2), as well as the address where the person expects to reside upon
29 the person's release; and
30 (3) Send the Division and the sheriff of the county in which the person
31 expects to reside the information collected in accordance with
32 subdivision (2) of this subsection.

- 33 (b) If a person who is subject to registration under this Article receives probation,
34 suspended sentence, or only a fine, the court pronouncing sentence shall conduct the
35 prerelease notification specified in subsection (a) of this section on the day of sentencing.

36 **"§ 14-208.9. Change of address.**

- 37 (a) If a person required to register changes address, the person shall provide
38 written notice immediately after the change to the sheriff of the county with whom the
39 person had last registered. Not later than the third day after receipt of the notice, the
40 sheriff shall forward this information to the Division. If the person moves to another
41 county in this State, the Division shall inform the sheriff of the new county of the
42 person's residence.

1 (b) Each person required to register pursuant to this statute shall on each
2 anniversary of the person's initial registration date during the period in which the person
3 is required to register, return to the sheriff's department in the county in which he resides,
4 an address verification form prepared and mailed to them by the sheriffs department.
5 This form shall be signed and returned to the sheriff's department within 10 days of its
6 receipt by the person required to register under this statute.

7 **"§ 14-208.10. Failure to register.**

8 A person required by this Article to register who fails to register shall be guilty of a
9 Class I felony for a first offense of violation of this Article, and a Class H felony for a
10 subsequent conviction of a violation of this Article. Proof of the conviction requiring
11 registration and absence of a record of registration shall be prima facie evidence of a
12 violation of this section.

13 **"§ 14-208.11. File With Police Information Network.**

14 The Division shall include the registration information in the Police Information
15 Network as set forth in G.S. 114-10.1.

16 **"§ 14-208.12. Community notification.**

17 After registration of an individual required to do so pursuant to the provisions of this
18 statute, the sheriff of the county where the registration occurs shall notify the community
19 of the registrants presence in accordance with orders issued pursuant to G.S. 15A-
20 1334(f)."

21 (b) G.S. 114-10 reads as rewritten:

22 **"§ 114-10. Division of Criminal Statistics.**

23 The Attorney General shall set up in the Department of Justice a division to be
24 designated as the Division of Criminal Statistics. There shall be assigned to this Division
25 by the Attorney General duties as follows:

26 (1) To collect and correlate information in criminal law administration,
27 including crimes committed, arrests made, dispositions on preliminary
28 hearings, prosecutions, convictions, acquittals, punishment, appeals,
29 together with the age, race, and sex of the offender, and such other
30 information concerning crime and criminals as may appear significant
31 or helpful. To correlate such information with the operations of agencies
32 and institutions charged with the supervision of offenders on probation,
33 in penal and correctional institutions, on parole and pardon, so as to
34 show the volume, variety and tendencies of crime and criminals and the
35 workings of successive links in the machinery set up for the
36 administration of the criminal law in connection with the arrests, trial,
37 punishment, probation, prison parole and pardon of all criminals in
38 North Carolina.

39 (2) To collect, correlate, and maintain access to information that will assist
40 in the performance of duties required in the administration of criminal
41 justice throughout the State. This information may include, but is not
42 limited to, motor vehicle registration, drivers' licenses, wanted and
43 missing persons, stolen property, warrants, stolen vehicles, firearms

1 registration, sexual offender registration as provided under Article 27A
2 of Chapter 14, drugs, drug users and parole and probation histories. In
3 performing this function, the Division may arrange to use information
4 available in other agencies and units of State, local and federal
5 government, but shall provide security measures to insure that such
6 information shall be made available only to those whose duties, relating
7 to the administration of justice, require such information.

8 (3) To make scientific study, analysis and comparison from the information
9 so collected and correlated with similar information gathered by federal
10 agencies, and to provide the Governor and the General Assembly with
11 the information so collected biennially, or more often if required by the
12 Governor.

13 (4) To perform all the duties heretofore imposed by law upon the Attorney
14 General with respect to criminal statistics.

15 (5) To perform such other duties as may be from time to time prescribed by
16 the Attorney General."

17 (c) G.S. 15A-1343 reads as rewritten:

18 **"§ 15A-1343. Conditions of probation.**

19 (a) In General. – The court may impose conditions of probation reasonably
20 necessary to insure that the defendant will lead a law-abiding life or to assist him to do
21 so.

22 (b) Regular Conditions. – As regular conditions of probation, a defendant must:

23 (1) Commit no criminal offense in any jurisdiction.

24 (2) Remain within the jurisdiction of the court unless granted written
25 permission to leave by the court or his probation officer.

26 (3) Report as directed by the court or his probation officer to the officer at
27 reasonable times and places and in a reasonable manner, permit the
28 officer to visit him at reasonable times, answer all reasonable inquiries
29 by the officer and obtain prior approval from the officer for, and notify
30 the officer of, any change in address or employment.

31 (4) Satisfy child support and other family obligations as required by the
32 court. If the court requires the payment of child support, the amount of
33 the payments shall be determined as provided in G.S. 50-13.4(c).

34 (5) Possess no firearm, explosive device or other deadly weapon listed in
35 G.S. 14-269 without the written permission of the court.

36 (6) Pay a supervision fee as specified in subsection (c1).

37 (7) Remain gainfully and suitably employed or faithfully pursue a course of
38 study or of vocational training that will equip him for suitable
39 employment. A defendant pursuing a course of study or of vocational
40 training shall abide by all of the rules of the institution providing the
41 education or training, and the probation officer shall forward a copy of
42 the probation judgment to that institution and request to be notified of
43 any violations of institutional rules by the defendant.

- 1 (8) Notify the probation officer if he fails to obtain or retain satisfactory
2 employment.
- 3 (9) Pay the costs of court, any fine ordered by the court, and make
4 restitution or reparation as provided in subsection (d).
- 5 (10) Pay the State of North Carolina for the costs of appointed counsel,
6 public defender, or appellate defender to represent him in the case(s) for
7 which he was placed on probation.
- 8 (11) At a time to be designated by his probation officer, visit with his
9 probation officer a facility maintained by the Division of Prisons.

10 In addition to these regular conditions of probation, a defendant required to serve an
11 active term of imprisonment as a condition of special probation pursuant to G.S. 15A-
12 1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey
13 the rules and regulations of the Department of Correction governing the conduct of
14 inmates while imprisoned and report to a probation officer in the State of North Carolina
15 within 72 hours of his discharge from the active term of imprisonment.

16 Regular conditions of probation apply to each defendant placed on supervised
17 probation unless the presiding judge specifically exempts the defendant from one or more
18 of the conditions in open court and in the judgment of the court. It is not necessary for
19 the presiding judge to state each regular condition of probation in open court, but the
20 conditions must be set forth in the judgment of the court.

21 Defendants placed on unsupervised probation are subject to the provisions of this
22 subsection, except that defendants placed on unsupervised probation are not subject to the
23 regular conditions contained in subdivisions (2), (3), (6), (8), and (11).

24 (b1) Special Conditions. – In addition to the regular conditions of probation
25 specified in subsection (b), the court may, as a condition of probation, require that during
26 the probation the defendant comply with one or more of the following special conditions:

- 27 (1) Undergo available medical or psychiatric treatment and remain in a
28 specified institution if required for that purpose.
- 29 (2) Attend or reside in a facility providing rehabilitation, counseling,
30 treatment, social skills, or employment training, instruction, recreation,
31 or residence for persons on probation.
- 32 (2a) Submit to a period of imprisonment in a facility for youthful offenders
33 for a minimum of 90 days or a maximum of 120 days under special
34 probation, reference G.S. 15A-1351(a) or G.S. 15A-1344(e), and abide
35 by all rules and regulations as provided in conjunction with the
36 Intensive Motivational Program of Alternative Correctional Treatment
37 (IMPACT), which provides an atmosphere for learning personal
38 confidence, personal responsibility, self-respect, and respect for
39 attitudes and value systems.
- 40 (3) Submit to imprisonment required for special probation under G.S. 15A-
41 1351(a) or G.S. 15A-1344(e).

- 1 (3a) Remain in one or more specified places for a specified period or periods
2 each day, and wear a device that permits the defendant's compliance
3 with the condition to be monitored electronically.
- 4 (3b) Submit to supervision by officers assigned to the Intensive Probation
5 Program established pursuant to G.S. 143B-262(c), and abide by the
6 rules adopted for that Program.
- 7 (4) Surrender his driver's license to the clerk of superior court, and not
8 operate a motor vehicle for a period specified by the court.
- 9 (5) Compensate the Department of Environment, Health, and Natural
10 Resources or the North Carolina Wildlife Resources Commission, as the
11 case may be, for the replacement costs of any marine and estuarine
12 resources or any wildlife resources which were taken, injured, removed,
13 harmfully altered, damaged or destroyed as a result of a criminal offense
14 of which the defendant was convicted. If any investigation is required
15 by officers or agents of the Department of Environment, Health, and
16 Natural Resources or the Wildlife Resources Commission in
17 determining the extent of the destruction of resources involved, the
18 court may include compensation of the agency for investigative costs as
19 a condition of probation. This subdivision does not apply in any case
20 governed by G.S. 143-215.3(a)(7).
- 21 (6) Perform community or reparation service and pay any fee required by
22 law or ordered by the court for participation in the community or
23 reparation service program.
- 24 (7) Submit at reasonable times to warrantless searches by a probation
25 officer of his person and of his vehicle and premises while he is present,
26 for purposes specified by the court and reasonably related to his
27 probation supervision, but the probationer may not be required to
28 submit to any other search that would otherwise be unlawful. Whenever
29 the warrantless search consists of testing for the presence of illegal
30 drugs, the probationer may also be required to reimburse the
31 Department of Correction for the actual cost of drug screening and drug
32 testing, if the results are positive.
- 33 (8) Not use, possess, or control any illegal drug or controlled substance
34 unless it has been prescribed for him by a licensed physician and is in
35 the original container with the prescription number affixed on it; not
36 knowingly associate with any known or previously convicted users,
37 possessors or sellers of any such illegal drugs or controlled substances;
38 and not knowingly be present at or frequent any place where such illegal
39 drugs or controlled substances are sold, kept, or used.
- 40 (8a) Purchase the least expensive annual statewide license or combination of
41 licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-
42 270.5, 113-271, 113-272, and 113-272.2 that would be required to
43 engage lawfully in the specific activity or activities in which the

1 defendant was engaged and which constitute the basis of the offense or
2 offenses of which he was convicted.

3 (9) If the offense is one in which there is evidence of physical, mental or
4 sexual abuse of a minor, the court should encourage the minor and the
5 minor's parents or custodians to participate in rehabilitative treatment
6 and may order the defendant to pay the cost of such treatment.

7 (9a) If the defendant is required to register in accordance with Article 27A of
8 Chapter 14 of the General Statutes, the court may require a posting of a
9 sign by the defendant at his residence warning others that the defendant
10 has been determined to be a sex offender.

11 (10) Satisfy any other conditions determined by the court to be reasonably
12 related to his rehabilitation.

13 (c) Statement of Conditions. – A defendant released on supervised probation must
14 be given a written statement explicitly setting forth the conditions on which he is being
15 released. If any modification of the terms of that probation is subsequently made, he
16 must be given a written statement setting forth the modifications.

17 (c1) Supervision Fee. – Any person placed on supervised probation pursuant to
18 subsection (a) shall pay a supervision fee of twenty dollars (\$20.00) per month, unless
19 exempted by the court. The court may exempt a person from paying the fee only for
20 good cause and upon written motion of the person placed on supervised probation. No
21 person shall be required to pay more than one supervision fee per month. The court may
22 require that the fee be paid in advance or in a lump sum or sums, and a probation officer
23 may require payment by such methods if he is authorized by subsection (g) to determine
24 the payment schedule. Supervision fees must be paid to the clerk of court for the county
25 in which the judgment was entered or the deferred prosecution agreement was filed. Fees
26 collected under this subsection shall be transmitted to the State for deposit into the State's
27 General Fund.

28 (d) Restitution as a Condition of Probation. – As a condition of probation, a
29 defendant may be required to make restitution or reparation to an aggrieved party or
30 parties who shall be named by the court for the damage or loss caused by the defendant
31 arising out of the offense or offenses committed by the defendant. When restitution or
32 reparation is a condition imposed, the court shall take into consideration the resources of
33 the defendant, including all real and personal property owned by the defendant and the
34 income derived from such property, his ability to earn, his obligation to support
35 dependents, and such other matters as shall pertain to his ability to make restitution or
36 reparation, but the court is not required to make findings of fact or conclusions of law on
37 these matters when the sentence is imposed. The amount must be limited to that
38 supported by the record, and the court may order partial restitution or reparation when it
39 appears that the damage or loss caused by the offense or offenses is greater than that
40 which the defendant is able to pay. An order providing for restitution or reparation shall
41 in no way abridge the right of any aggrieved party to bring a civil action against the
42 defendant for money damages arising out of the offense or offenses committed by the
43 defendant, but any amount paid by the defendant under the terms of an order as provided

1 herein shall be credited against any judgment rendered against the defendant in such civil
2 action. As used herein, 'restitution' shall mean (i) compensation for damage or loss as
3 could ordinarily be recovered by an aggrieved party in a civil action, and (ii)
4 reimbursement to the State for the total amount of a judgment authorized by G.S. 7A-
5 455(b). As used herein, 'reparation' shall include but not be limited to the performing of
6 community services, volunteer work, or doing such other acts or things as shall aid the
7 defendant in his rehabilitation. As used herein 'aggrieved party' includes individuals,
8 firms, corporations, associations, other organizations, and government agencies, whether
9 federal, State or local, including the Crime Victims Compensation Fund established by
10 G.S. 15B-23. Provided, that no government agency shall benefit by way of restitution
11 except for particular damage or loss to it over and above its normal operating costs and
12 except that the State may receive restitution for the total amount of a judgment authorized
13 by G.S. 7A-455(b). A government agency may benefit by way of reparation even though
14 the agency was not a party to the crime provided that when reparation is ordered,
15 community service work shall be rendered only after approval has been granted by the
16 owner or person in charge of the property or premises where the work will be done.
17 Provided further, that no third party shall benefit by way of restitution or reparation as a
18 result of the liability of that third party to pay indemnity to an aggrieved party for the
19 damage or loss caused by the defendant, but the liability of a third party to pay indemnity
20 to an aggrieved party or any payment of indemnity actually made by a third party to an
21 aggrieved party does not prohibit or limit in any way the power of the court to require the
22 defendant to make complete and full restitution or reparation to the aggrieved party for
23 the total amount of the damage or loss caused by the defendant. Restitution or reparation
24 measures are ancillary remedies to promote rehabilitation of criminal offenders, to
25 provide for compensation to victims of crime, and to reimburse the Crime Victims
26 Compensation Fund established by G.S. 15B-23, and shall not be construed to be a fine
27 or other punishment as provided for in the Constitution and laws of this State.

28 (e) Costs of Court and Appointed Counsel. – Unless the court finds there are
29 extenuating circumstances, any person placed upon supervised or unsupervised probation
30 under the terms set forth by the court shall, as a condition of probation, be required to pay
31 all court costs and costs for appointed counsel or public defender in the case in which he
32 was convicted. The court shall determine the amount due and the method of payment.

33 (f) Repealed by Session Laws 1983, ch. 561, s. 5.

34 (g) Probation Officer May Determine Payment Schedules. – If a person placed on
35 supervised probation is required as a condition of that probation to pay any moneys to the
36 clerk of superior court, the court may delegate to a probation officer the responsibility to
37 determine the payment schedule. The court may also authorize the probation officer to
38 transfer the person to unsupervised probation after all the moneys are paid to the clerk. If
39 the probation officer transfers a person to unsupervised probation, he must notify the
40 clerk of that action."

41 (d) G.S. 15A-1334 is amended by adding a new subsection to read:

42 "(f) The Court shall in all cases where a defendant is convicted of an offense which
43 requires registration pursuant to the provisions of G.S. 14-208.5 make findings of fact to

1 determine the degree of risk of re-offense by the defendant upon release from custody.

2 Relevant factors to be considered shall include, but not be limited to:

- 3 (1) Conditions of release that minimize risk of re-offense, including, but not
4 limited to, whether the offender is under supervision of probation or
5 parole; receiving counseling, therapy, or treatment; or residing in a
6 home situation that provides guidance and supervision;
7 (2) Physical conditions that minimize risk of re-offense, including, but not
8 limited to, advanced age or debilitating illness;
9 (3) Criminal history factors indicative of high risk of re-offense, including:
10 a. Whether the offender's conduct was found to be characterized by
11 repetitive and compulsive behavior;
12 b. Whether the offender served the maximum term; and
13 c. Whether the offender committed the sex offense against a child;
14 (4) Other criminal history factors to be considered in determining risk,
15 including:
16 a. The relationship between the offender and the victim;
17 b. Whether the offense involved the use of a weapon, violence, or
18 infliction of serious bodily injury; and
19 c. The number, date, and nature of prior offenses;
20 (5) Whether psychological or psychiatric profiles indicate a risk of
21 recidivism;
22 (6) The offender's response to treatment;
23 (7) Recent behavior, including behavior while confined or while under
24 supervision in the community as well as behavior in the community
25 following service of sentence; and
26 (8) Recent threats against persons or expressions of intent to commit
27 additional crimes.

28 The court shall classify the risk of re-offense as either low, moderate, or high. If the
29 risk of re-offense is low, no reporting action other than compliance with the registration
30 provisions of G.S. 14-208.5 shall be ordered. If the risk of re-offense is moderate, the
31 court shall order that upon the defendant's release from custody the sheriff of the county
32 where the offender has registered pursuant to the provisions of G.S. 14-208.5 shall notify
33 organizations in the county including schools and religious and youth organizations in
34 accordance with guidelines to be established by the Administrative Office of the Courts.
35 If the risk of re-offense is high, then the court shall order that upon the defendant's release
36 from custody the sheriff of the county where the offender has registered pursuant to the
37 provisions of G.S. 14-208.5 shall notify the public in accordance with guidelines to be
38 established by the Administrative Office of the Courts.

39 The Administrative Office of the Courts guidelines established pursuant to this
40 section shall provide for the manner in which records of notification provided pursuant to
41 this section shall be maintained and disclosed."

42 Sec. 2. (a) G.S. 148-4.1(c1) reads as rewritten:

1 "(c1) For purposes of this section only, 'prison capacity' means the number of
2 prisoners housed in facilities located in North Carolina and owned or operated by the
3 State of North Carolina, as set by the Governor. In setting the prison capacity for
4 purposes of this section, the Governor shall consider the number of beds available and
5 shall make a finding that the number set would not jeopardize the State's ability to
6 perform its obligations under the law. In no event shall the number set by the Governor
7 under this subsection exceed ~~24,500~~ 29,775."

8 (b) Effective September 1, 1996, G.S. 148-4.1 reads as rewritten:

9 "**§ 148-4.1. Release of inmates.**

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

20 (b) Except as provided in subsection ~~(e) and (e)~~, ~~(c)~~, only inmates who are
21 otherwise eligible for parole pursuant to Article 85 of Chapter 15A or pursuant to Article
22 3B of this Chapter may be released under this section.

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

27 ~~(c1) For purposes of this section only, 'prison capacity' means the number of~~
28 ~~prisoners housed in facilities located in North Carolina and owned or operated by the~~
29 ~~State of North Carolina, as set by the Governor. In setting the prison capacity for~~
30 ~~purposes of this section, the Governor shall consider the number of beds available and~~
31 ~~shall make a finding that the number set would not jeopardize the State's ability to~~
32 ~~perform its obligations under the law. In no event shall the number set by the Governor~~
33 ~~under this subsection exceed 29,775.~~

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

41 ~~From the date of the notification until the prison population has been reduced to~~
42 ~~ninety seven percent (97%) of prison capacity, the Secretary may not accept any inmates~~
43 ~~ordered transferred from local confinement facilities to the State prison system under~~

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

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

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

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

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

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

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

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

33 ~~(c) Effective September 1, 1996, G.S. 148-32.1(b) reads as rewritten:~~

34 ~~"(b) In the event that the custodian of the local confinement facility certifies in~~
35 ~~writing to the clerk of the superior court in the county in which said local confinement~~
36 ~~facility is located that the local confinement facility is filled to capacity, or that the~~
37 ~~facility cannot reasonably accommodate any more prisoners due to segregation~~
38 ~~requirements for particular prisoners, or that the custodian anticipates, in light of local~~
39 ~~experiences, an influx of temporary prisoners at that time, or if the local confinement~~
40 ~~facility does not meet the minimum standards published pursuant to G.S. 153A-221, any~~
41 ~~judge of the district court in the district court district as defined in G.S. 7A-133 where the~~
42 ~~facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-~~
43 ~~47.1 or 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility~~

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

12 Sec. 3. (a) G.S. 115C-391 reads as rewritten:

13 **"§ 115C-391. Corporal punishment, suspension, or expulsion of pupils.**

14 (a) Local boards of education shall adopt policies not inconsistent with the
15 provisions of the Constitutions of the United States and North Carolina, governing the
16 conduct of students and establishing procedures to be followed by school officials in
17 suspending or expelling any student, or in disciplining any student if the offensive
18 behavior could result in suspension, expulsion, or the administration of corporal
19 punishment. The policies that shall be adopted for the administration of corporal
20 punishment shall include at a minimum the following conditions:

- 21 (1) Corporal punishment shall not be administered in a classroom with
22 other children present;
- 23 (2) The student body shall be informed beforehand what general types of
24 misconduct could result in corporal punishment;
- 25 (3) Only a teacher, substitute teacher, principal, or assistant principal may
26 administer corporal punishment and may do so only in the presence of a
27 principal, assistant principal, teacher, substitute teacher, teacher
28 assistant, or student teacher, who shall be informed beforehand and in
29 the student's presence of the reason for the punishment; and
- 30 (4) An appropriate school official shall provide the child's parent or
31 guardian with notification that corporal punishment has been
32 administered, and upon request, the official who administered the
33 corporal punishment shall provide the child's parent or guardian a
34 written explanation of the reasons and the name of the second school
35 official who was present.

36 The board shall publish all the policies mandated by this subsection and make them
37 available to each student and his parent or guardian at the beginning of each school year.
38 Notwithstanding any policy adopted pursuant to this section, school personnel may use
39 reasonable force, including corporal punishment, to control behavior or to remove a
40 person from the scene in those situations when necessary:

- 41 (1) To quell a disturbance threatening injury to others;
- 42 (2) To obtain possession of weapons or other dangerous objects on the
43 person, or within the control, of a student;

1 (3) For self-defense; or

2 (4) For the protection of persons or property.

3 (b) The principal of a school, or his delegate, shall have authority to suspend for a
4 period of 10 days or less any student who willfully violates policies of conduct
5 established by the local board of education: Provided, that a student suspended pursuant
6 to this subsection shall be provided an opportunity to take any quarterly, semester or
7 grading period examinations missed during the suspension period.

8 (c) The principal of a school, with the prior approval of the superintendent, shall
9 have the authority to suspend for periods of times in excess of 10 school days but not
10 exceeding the time remaining in the school year, any pupil who willfully violates the
11 policies of conduct established by the local board of education. The pupil or his parents
12 may appeal the decision of the principal to the local board of education.

13 (d) A local board of education may, upon recommendation of the principal and
14 superintendent, expel any student 14 years of age or older (i) who has been convicted of a
15 ~~felony and~~ felony, (ii) who has been adjudicated delinquent for committing an offense that
16 would be a felony if committed by an adult, or (iii) whose continued presence in school
17 constitutes a clear threat to the safety and health of other students or employees.
18 Notwithstanding the provisions of G.S. 115C-112, a local board of education has no duty
19 to continue to provide a child with special needs, expelled pursuant to this subsection,
20 with any special education or related services during the period of expulsion.

21 (d1) A local board of education shall suspend for 365 calendar days any student
22 who brings a firearm onto school property.

23 (e) A decision of a local board under subsection (c) or (d) is final and, except as
24 provided in this subsection, is subject to judicial review in accordance with Article 4 of
25 Chapter 150B of the General Statutes. A person seeking judicial review shall file a
26 petition in the superior court of the county where the local board made its decision.

27 (f) Local boards of education shall, no later than December 1, 1993, reevaluate
28 and update their policies related to school safety so they reflect changes authorized by the
29 1993 General Assembly. In particular, boards shall ensure they have clear policies
30 governing the conduct of students, which state the consequences of violent or assaultive
31 behavior, possessions of weapons, and criminal acts committed on school property or at
32 school-sponsored functions. The State Board shall develop guidelines to assist local
33 boards in this process."

34 (b) This section becomes effective August 1, 1995.

35 Sec. 4. Section 1 of this act is effective upon ratification, except that
36 registration referred to under subsection (a) of Section 1 of this act becomes effective
37 July 1, 1996. Section 1 applies to all persons convicted before, on, or after ratification.
38 Subsections (b) and (c) of Section 2 of this act become effective September 1, 1996. The
39 remainder of this section is effective upon ratification. Section 3 of this act becomes
40 effective August 1, 1995. The remainder of this act is effective upon ratification.