

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2284*
Committee Substitute Favorable 7/6/90
Third Edition Engrossed 7/11/90
Judiciary I Senate Committee Substitute Adopted 7/19/90

Short Title: Sentencing Commission Act.

(Public)

Sponsors:

Referred to:

June 4, 1990

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A SENTENCING AND POLICY ADVISORY COMMISSION
3 AND TO ESTABLISH A UNIFORM STANDARD FOR THE DEVELOPMENT
4 OF CRIMINAL JUSTICE POLICY.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 164 of the General Statutes is amended by adding a new
7 Article to read:

8 **“ARTICLE 4.**
9 **"SENTENCING COMMISSION.**

10 **"§ 164-35. Commission established.**

11 The North Carolina Sentencing and Policy Advisory Commission is established.
12 As used in this Article, the term ‘Commission’ means the North Carolina Sentencing
13 and Policy Advisory Commission.

14 **"§ 164-36. Powers and duties.**

15 Sentences established for violations of the State's criminal laws should be based
16 on the established purposes of our criminal justice and corrections systems. The
17 Commission shall evaluate sentencing laws and policies in relationship to both the
18 stated purposes of the criminal justice and corrections systems and the availability of
19 sentencing options. The Commission shall make recommendations to the General
20 Assembly for the modification of sentencing laws and policies, and for the addition,
21 deletion, or expansion of sentencing options as necessary to achieve policy goals.

"§ 164-37. Membership; chairman; meetings; quorum.

The Commission shall consist of 22 members as follows:

- (1) The Chief Justice of the North Carolina Supreme Court shall appoint a sitting or former Justice or judge of the General Court of Justice, who shall serve as Chairman of the Commission;
- (2) The Chief Judge of the North Carolina Court of Appeals, or another judge on the Court of Appeals, serving as his designee;
- (3) The Secretary of Correction or his designee;
- (4) The Secretary of Crime Control and Public Safety or his designee;
- (5) The Chairman of the Parole Commission, or another parole commissioner serving as his designee;
- (6) The President of the Conference of Superior Court Judges or his designee;
- (7) The President of the District Court Judges Association or his designee;
- (8) The President of the North Carolina Sheriff's Association or his designee;
- (9) The President of the North Carolina Association of Chiefs of Police or his designee;
- (10) One member of the public at large, who is not currently licensed to practice law in North Carolina, to be appointed by the Governor;
- (11) One member to be appointed by the Lieutenant Governor;
- (12) One member of the House of Representatives, to be appointed by the Speaker of the House;
- (13) One member of the Senate, to be appointed by the President Pro Tempore of the Senate;
- (14) The President Pro Tempore of the Senate shall appoint the representative of the North Carolina Sentencing Alternatives Association that is recommended by the President of that organization;
- (15) The Speaker of the House of Representatives shall appoint the member of the business community that is recommended by the President of the North Carolina Retail Merchants Association;
- (16) The Chief Justice of the North Carolina Supreme Court shall appoint the criminal defense attorney that is recommended by the President of the North Carolina Academy of Trial Lawyers;
 - (17) The President of the Conference of District Attorneys or his designee;
- (18) The Lieutenant Governor shall appoint the member of the North Carolina Victim Assistance Network that is recommended by the President of that organization;
- (19) A rehabilitated former prison inmate, to be appointed by the Chairman of the Commission;
- (20) The President of the North Carolina Association of County Commissioners or his designee;

1 (21) The Governor shall appoint the member of the academic community,
2 with a background in criminal justice or corrections policy, that is
3 recommended by the President of The University of North Carolina;

4 (22) The Attorney General, or a member of his staff, to be appointed by the
5 Attorney General.

6 The Commission shall have its initial meeting no later than September 1, 1990, at
7 the call of the Chairman. The Commission shall meet a minimum of four regular
8 meetings each year. The Commission may also hold special meetings at the call of the
9 Chairman, or by any four members of the Commission, upon such notice and in such
10 manner as may be fixed by the rules of the Commission. A majority of the members of
11 the Commission shall constitute a quorum.

12 **"§ 164-38. Terms of members; compensation; expenses.**

13 The Commission members shall serve for a period of two years, unless they
14 resign or are removed. Vacancies occurring before the expiration of a term shall be
15 filled in the manner provided for the members first appointed. A member of the
16 Commission may be removed only for disability, neglect of duty, incompetence, or
17 malfeasance in office. Before removal, the member is entitled to a hearing.

18 The Commission members shall receive no salary for serving. All Commission
19 members shall receive necessary subsistence and travel expenses in accordance with the
20 provisions of G.S. 120-3.1, 138-5, and 138-6 as applicable.

21 **"§ 164-39. Executive director and other staff.**

22 The Commission shall employ an Executive Director from candidates presented
23 to it by the Chairman and the Director of the Administrative Office of the Courts. The
24 Executive Director shall have appropriate training and experience to assist the
25 Commission in the performance of its duties. The Executive Director shall be
26 responsible for compiling the work of the Commission and drafting suggested
27 legislation incorporating the Commission's findings for submission to the General
28 Assembly.

29 Subject to the approval of the Chairman, the Executive Director shall employ
30 such other staff and shall contract for services as is necessary to assist the Commission
31 in the performance of its duties, and as funds permit.

32 The Commission may, with the approval of the Legislative Services
33 Commission, meet in the State Legislative Building or the Legislative Office Building,
34 or may meet in an area provided by the Director of the Administrative Office of the
35 Courts. Commission staff shall use office space provided by the Director of the
36 Administrative Office of the Courts.

37 **"§ 164-40. Correction population simulation model.**

38 The Commission shall develop a correctional population simulation model, and
39 shall have first priority to apply the model to a given fact situation, or theoretical change
40 in the sentencing laws, when requested to do so by the Chairman, the Executive
41 Director, or the Commission as a whole.

42 The Executive Director or the Chairman shall make the model available to
43 respond to inquiries by any State legislator, or by the Secretary of the Department of
44 Correction, in second priority to the work of the Commission.

1 **"§ 164-41. Classification of offenses - ranges of punishment.**

2 (a) The Commission shall classify criminal offenses into felony and
3 misdemeanor categories on the basis of their severity.

4 (b) In determining the proper category for each felony and misdemeanor, the
5 Commission shall consider, to the extent that they have relevance, the following:

6 (1) The nature and degree of harm likely to be caused by the offense,
7 including whether it involves property, irreplaceable property, a
8 person, number of persons, or a breach of the public trust;

9 (2) The deterrent effect a particular classification may have on the
10 commission of the offense by others;

11 (3) The current incidence of the offense in the State as a whole;

12 (4) The rights of the victim.

13 (c) For each classification of felonies and misdemeanors formulated pursuant to
14 subsection (b), the Commission shall assign a suggested range of punishment. The
15 Commission shall take into consideration the current range of punishment for each
16 offense.

17 **"§ 164-42. Sentencing structures.**

18 (a) The Commission shall recommend structures for use by a sentencing court in
19 determining the most appropriate sentence to be imposed in a criminal case, including:

20 (1) Imposition of an active term of imprisonment;

21 (2) Imposition of a term of probation;

22 (3) Suspension of a sentence to imprisonment and imposition of probation
23 with conditions, including the appropriate probation option or options,
24 including house arrest, regular probation, intensive probation,
25 restitution, and community service;

26 (4) Based upon the combination of offense and defendant characteristics
27 in each case, the presumptively appropriate length of a term of
28 probation, or a term of imprisonment;

29 (5) Ordering multiple sentences to terms of imprisonment to run
30 concurrently or consecutively;

31 (6) For a sentence to probation without a suspended sentence to
32 imprisonment, the maximum term of confinement to be imposed if the
33 defendant violates the conditions of probation.

34 (b) The sentencing structures shall be consistent with the goals, policies, and
35 purposes of the criminal justice and corrections systems, as set forth in Sections 2 and 3
36 of the Sentencing and Policy Advisory Commission Act of 1990. As part of its work,
37 the Commission shall offer recommendations for the incorporation of those sections
38 into the sentencing laws of North Carolina. In formulating structures, the Commission
39 also shall consider:

40 (1) The nature and characteristics of the offense;

41 (2) The severity of the offense in relation to other offenses;

42 (3) The characteristics of the defendant that mitigate or aggravate the
43 seriousness of his criminal conduct and the punishment deserved
44 therefor;

- 1 (4) The defendant's number of prior convictions;
2 (5) The available resources and constitutional capacity of the Department
3 of Correction, local confinement facilities, and community-based
4 sanctions;
5 (6) The rights of the victims;
6 (7) That felony offenders sentenced to an active term of imprisonment, or
7 whose suspended sentence to imprisonment is activated, should serve a
8 designated minimum percentage of their sentences before they are
9 eligible for parole; and
10 (8) That misdemeanor offenders sentenced to an active term of
11 imprisonment, or whose suspended sentence to imprisonment is
12 activated, should serve a designated minimum percentage of their
13 sentence before they are eligible for parole.
- 14 (c) The Commission shall also consider the policy issues set forth in G.S. 164-
15 42.1 in developing its sentencing structures.
- 16 (d) The Commission shall include with each set of sentencing structures a
17 statement of its estimate of the effect of the sentencing structures on the Department of
18 Correction and local facilities, both in terms of fiscal impact and on inmate population.
- 19 **§ 164-42.1. Policy recommendations.**
- 20 Using the studies of the Special Committee on Prisons, the Governor's Crime
21 Commission, and other analyses, including testimony from representatives of the bodies
22 that conducted the analyses, the Commission shall:
- 23 (1) Determine the long-range needs of the criminal justice and corrections
24 systems and recommend policy priorities for those systems;
25 (2) Determine the long-range information needs of the criminal justice and
26 corrections systems and acquire that information as it becomes
27 available;
28 (3) Identify critical problems in the criminal justice and corrections
29 systems and recommend strategies to solve those problems;
30 (4) Assess the cost-effectiveness of the use of State and local funds in the
31 criminal justice and corrections systems;
32 (5) Recommend the goals, priorities, and standards for the allocation of
33 criminal justice and corrections funds;
34 (6) Recommend means to improve the deterrent and rehabilitative
35 capabilities of the criminal justice and corrections systems;
36 (7) Propose plans, programs, and legislation for improving the
37 effectiveness of the criminal justice and corrections systems;
38 (8) Determine the sentencing structures for parole decisions;
39 (9) Examine the impact of mandatory sentence lengths as opposed to the
40 deterrent effect of minimum mandatory terms of imprisonment;
41 (10) Examine good time and gain time practices;
42 (11) Study the value of presentence reports;
43 (12) Consider the rehabilitative potential of the offender and the appropriate
44 rehabilitative placement;

1 (13) Examine the impact of imprisonment on families of offenders;

2 (14) Examine the impact of imprisonment on the ability of the offender to
3 make restitution; and

4 (15) Study the need for an amendment to Article XI, Section 1 of the State
5 Constitution to include restitution, restraints on liberty, work
6 programs, or other punishments to the list of punishments allowed
7 under that section.

8 **"§ 164-42.2. Community corrections.**

9 The Commission shall recommend a comprehensive community corrections strategy
10 and organizational structure for the State based upon the following:

11 (a) A review of existing community-based corrections programs in the State;

12 (b) The identification of additional types of community corrections programs,
13 including residential programs, necessary to create an effective continuum of
14 corrections sanctions in North Carolina;

15 (c) The identification of categories of offenders who would be eligible for
16 sentencing to community corrections programs and the impact that the use of a
17 comprehensive range of community-based sanctions would have on sentencing
18 practices;

19 (d) A form of State oversight and coordination to ensure that community
20 corrections programs are coordinated in order to achieve maximum impact; and

21 (e) A mechanism for State funding and local community participation in the
22 operation and implementation of community corrections programs;

23 (f) An analysis of the rate of recidivism of clients under the supervision of the
24 existing community-based corrections programs in the State, recidivism here measured
25 as the clients committing new crimes at any time subsequent to their entry into a
26 community-based corrections program.

27 **"§ 164-43. Priority of duties; reports; continuing duties.**

28 (a) The Commission shall have two primary duties, and other secondary duties
29 essential to accomplishing the primary ones. The Commission may establish
30 subcommittees or advisory committees composed of Commission members to
31 accomplish duties imposed by this Article.

32 It is the legislative intent that the Commission attach priority to accomplish the
33 following primary duties:

34 (1) The classification of criminal offenses as described in G.S. 164-41 and
35 the formulation of sentencing structures as described in G.S. 164-42;
36 and

37 (2) The formulation of proposals and recommendations as described in
38 G.S. 164-42.1 and G.S. 164-42.2.

39 (b) The Commission shall report its findings and recommendations to the 1991
40 General Assembly, 1991 Regular Session. The report shall describe the status of the
41 Commission's work, and shall include any completed policy recommendations.

42 (c) The recommendations for the classification and ranges of punishment for
43 felonies and misdemeanors, required by G.S. 164-41, and sentencing structures,

1 established pursuant to G.S. 164-42, shall be submitted prior to the 1991 General
2 Assembly, 1992 Regular Session.

3 (d) Once the primary duties of the Commission have been accomplished, it shall
4 have the continuing duty to monitor and review the criminal justice and corrections
5 systems in this State to ensure that sentencing remains uniform and consistent, and that
6 the goals and policies established by the State are being implemented by sentencing
7 practices, and it shall recommend methods by which this ongoing work may be
8 accomplished and by which the correctional population simulation model developed
9 pursuant to G.S. 164-40 shall continue to be used by the State.

10 (e) Upon adoption of a system for the classification of offenses formulated
11 pursuant to G.S. 164-41, the Commission or its successor shall review all proposed
12 legislation which creates a new criminal offense, changes the classification of an
13 offense, or changes the range of punishment for a particular classification, and shall
14 make recommendations to the General Assembly.

15 (f) In the case of a new criminal offense, the Commission or its successor shall
16 determine whether the proposal places the offense in the correct classification, based
17 upon the considerations and principles set out in G.S. 164-41. If the proposal does not
18 assign the offense to a classification, it shall be the duty of the Commission or its
19 successor to recommend the proper classification placement.

20 (g) In the case of proposed changes in the classification of an offense or changes
21 in the range of punishment for a classification, the Commission or its successor shall
22 determine whether such a proposed change is consistent with the considerations and
23 principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

24 (h) The Commission or its successor shall meet within 10 days after the last day
25 for filing general bills in the General Assembly for the purpose of reviewing bills as
26 described in subsections (e), (f), and (g). The Commission or its successor shall include
27 in its report on a bill an analysis based on an application of the correctional population
28 simulation model to the provisions of the bill.

29 **"§ 164-44. Statistical information; financial or other aid.**

30 (a) The Commission shall have the secondary duty of collecting, developing, and
31 maintaining statistical data relating to sentencing and corrections so that the primary
32 duties of the Commission will be formulated using data that is valid, accurate, and
33 relevant to this State. All State agencies shall provide data as it is requested by the
34 Commission. All meetings of the Commission shall be open to the public and the
35 information presented to the Commission shall be available to any State agency or
36 member of the General Assembly.

37 (b) The Commission shall have the authority to apply for, accept, and use any
38 gifts, grants, or financial or other aid, in any form, from the federal government or any
39 agency or instrumentality thereof, or from the State or from any other source including
40 private associations, foundations, or corporations to accomplish any of the duties set out
41 in this Chapter.

42 **"§ 164-45. Administrative direction and supervision.**

43 The Commission shall be administered under the direction and supervision of the
44 Director of the Administrative Office of the Courts. The Commission shall exercise all

1 of its prescribed statutory powers independently of the head of that Office, except that
2 all management functions shall be performed under the direction and supervision of the
3 Director of the Administrative Office of the Courts. 'Management functions,' as used in
4 this section, means planning, organizing, staffing, directing, coordinating, and
5 budgeting."

6 Sec. 2. It is the constitutional responsibility of the North Carolina judicial
7 system to discover the truth, to the best of its ability, in every case before it and to
8 establish whether the accused is guilty or not guilty. In those cases where the defendant
9 is found guilty, the court shall dispense justice for the public, the victim, and the
10 defendant through the judgment imposed.

11 Sec. 3. The following purposes and policies are hereby established:

- 12 (1) Protection of the public. Incarceration should be viewed by the court
13 both as punishment and as a means of protecting the public.
14 Limitations on the freedom of the offender and the appropriate level of
15 custody should be dictated in the first instance by the nature of the
16 offense, the violent character of the offender, the proclivity of the
17 offender to engage in criminal conduct as demonstrated by his criminal
18 record, and the sound judgment of the sentencing court after taking
19 into account all of the relevant aggravating and mitigating factors
20 involved in the offenders' record of criminal conduct.
- 21 (2) Punishment of the offender. After the interests of public protection
22 have been addressed, consideration should be given to restriction of
23 the liberty of the offender in such manner and to such extent as is
24 necessary to demonstrate clearly that the offender's conduct is
25 unacceptable to society and to discourage a repetition of such conduct.
26 In determining the appropriate punishment, the court should consider a
27 range of sanctions at the State or community level which may include
28 incarceration, various degrees of restrictions on the offender's liberty
29 including house arrest, various degrees of supervision, community
30 penalties, community service, restitution, reparation, or fines.
- 31 (3) Rehabilitation of the offender. Every sentencing plan should consider
32 treatment and rehabilitative needs of the offender to the extent that it
33 addresses the cause of the criminal behavior and, therefore, might
34 assist in correcting such behavior. The offender should be enrolled in
35 a program of rehabilitation over a definite minimal period of time.
36 The program of rehabilitation should involve work and recreation and
37 may involve education, psychological or psychiatric counseling,
38 treatment for alcohol or drug abuse and sexual aggression either within
39 or without the prison walls as the individual case may indicate. The
40 court may recommend remedies for alcoholism, substance abuse,
41 mental illness, education and employment deficiencies, and may order
42 community-based offenders to pay for such treatment to the extent the
43 offender is able. Public institutions should respond to the court order
44 at no cost to the indigent offender. Where treatment is not available

1 from public institutions, the State should purchase appropriate
2 treatment from the private sector.

- 3 (4) Restitution and reparation. When appropriate, the sentencing plan
4 should provide for restitution or reparation to the victim or victims,
5 whether they be individual citizens, corporations, or society as a
6 whole, to be paid as soon as practicable. Such restitution or reparation
7 should include repayment for any property stolen or damaged, medical
8 costs and lost wages of the victims, court costs and reasonable costs to
9 cover pretrial detention, and restitution to the community through
10 community service. In those cases where the offender can be punished
11 and rehabilitated outside of prison without jeopardizing the security of
12 the society at large in their persons or property, it is appropriate and
13 encouraged that the offender pay his debt to society through a range of
14 punishments which are alternative to incarceration. The court should
15 order such supervision or restrictions as deemed necessary for the
16 offender to comply with the restitution orders. Failure to comply
17 should result in stricter measures.

18 (5) Work policy for offenders. It is the policy of this State that
19 offenders should work when reasonably possible, either at jobs in the
20 private sector to pay restitution and support their dependents, or at
21 community service jobs that benefit the public, or at useful work
22 while in prison or jail, or at educational or treatment endeavors as a
23 part of a rehabilitation program. Offenders should be offered the
24 opportunity to reduce the duration of their sentences by earning
25 "time" credit for work endeavors in achieving vocational or
26 educational skill levels. Prisoners who are able and do not work or
27 who refuse to participate in treatment programs should be prohibited
28 from enjoying privileges which may be provided to inmates beyond
29 those required by law.

- 30 (6) Responsibility of Department of Correction. It is the goal of the North
31 Carolina Department of Correction to provide adequate prison space to
32 insure that those sentenced to prison will remain incarcerated until
33 such time as they can be safely released, or until their active sentences
34 are completed, and to provide community based supervision for those
35 offenders selected for supervised probation and parole by the courts
36 and the Parole Commission.

37 It is the mission of the Department's Division of Prisons to provide
38 housing, clothing, food, and medical care to its inmates, to maintain a
39 safe and secure prison system, to keep accurate records, to offer job
40 training, education, counseling, work and treatment programs deemed
41 appropriate to monitor and advance the rehabilitative progress of its
42 inmates, to provide a fair and orderly progression through custody
43 levels, and to make data and recommendations regarding parole
44 available to the Parole Commission. As an inmate demonstrates that

1 he/she is no longer a threat to society, that the punishment has been
2 effective and that a program of rehabilitation is showing progress, the
3 inmate's level of custody may be commensurately reduced in an
4 orderly progression through custody levels to parole and release from
5 supervision.

6 It is the mission of the Department's Division of Adult Probation
7 and Parole to receive convicted offenders selected by the courts and
8 the Parole Commission and to protect society through a coordinated
9 program of community supervision which provides realistic
10 opportunities for probationers and parolees to develop skills necessary
11 to adjust to free society. As a probationer or parolee demonstrates that
12 the supervision has been effective and that a community treatment
13 program is showing progress, the level of supervision may be
14 commensurately reduced in an orderly progression to prepare for
15 release from supervision.

16 Sec. 4. The North Carolina Sentencing and Policy Advisory Commission, in
17 performing its duties pursuant to Article 4 of Chapter 164 of the General Statutes, shall
18 make recommendations consistent with the purposes and policies stated in Sections 2
19 and 3 of this act. Sections 2 and 3 of this act are only for the purpose of providing
20 policy guidance for the development of comprehensive criminal justice and corrections
21 systems by the Commission.

22 Sec. 5. The Substance Abuse Treatment in Prisons Study, established by
23 Section 19.1 of Chapter 802 of the 1989 Session Laws, is transferred from the Special
24 Committee on Prisons to the Mental Health Study Commission. The unexpended funds
25 appropriated to the General Assembly for the 1989-90 fiscal year for the Substance
26 Abuse Treatment in Prisons Study are transferred to the Department of Human
27 Resources (Budget Code 14460 subhead 1110) to conduct the study. Of funds
28 appropriated to the General Assembly for the 1989-90 fiscal year, there is transferred
29 the sum of \$10,000 to the Department of Human Resources (Budget Code 14460
30 subhead 1110) for the Mental Health Study Commission to conduct the Substance
31 Abuse Treatment in Prisons Study for the 1990-91 fiscal year.

32 Any pending responsibilities of the Special Committee on Prisons, which
33 terminates upon submission of its final report to the 1989 General Assembly, 1990
34 Regular Session, shall be transferred to the Sentencing and Policy Advisory
35 Commission upon the ratification of this act.

36 Sec. 6. Notwithstanding any other provision of law, no State agencies,
37 committees, or commissions may duplicate the statutorily-prescribed responsibilities of
38 the Sentencing and Policy Advisory Commission unless said agency, committee, or
39 commission is acting within functions specifically assigned to it by another act of the
40 1989 Session of the General Assembly.

41 Sec. 7. This act shall be known as the "Sentencing and Policy Advisory
42 Commission Act of 1990."

43 Sec. 8. This act is effective upon ratification, and shall expire July 1, 1992.