

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

5 ~~(e1) For purposes of this section only, 'prison capacity' means the number of~~
6 ~~prisoners housed in facilities located in North Carolina and owned or operated by the~~
7 ~~State of North Carolina, as set by the Governor. In setting the prison capacity for~~
8 ~~purposes of this section, the Governor shall consider the number of beds available and~~
9 ~~shall make a finding that the number set would not jeopardize the State's ability to~~
10 ~~perform its obligations under the law. In no event shall the number set by the Governor~~
11 ~~under this subsection exceed 24,500.~~

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

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

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

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

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

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

39 (g) ~~In order to meet the requirements of this section, the Parole Commission shall~~
40 ~~not parole any person convicted under Article 7A of Chapter 14 of a sex offense, under~~
41 ~~G.S. 14-39, 14-41, or 14-43.3, under G.S. 90-95(h) of a drug trafficking offense, or under~~
42 ~~G.S. 14-17. The Parole Commission may continue to consider the suitability for release~~

1 of such persons in accordance with the criteria set forth in Articles 85 and 85A of Chapter
2 15A.

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

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

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

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

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

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