

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 4*
Committee Substitute Favorable 2/23/95

Short Title: Repeal Prison Cap.

(Public)

Sponsors:

Referred to: Re-referred to Appropriations.

January 26, 1995

A BILL TO BE ENTITLED

1
2 **AN ACT TO REPEAL THE PRISON POPULATION CAP, TO RAISE THE LIMIT ON**
3 **PRISON CAPACITY, TO AUTHORIZE THE PAROLE OF NONVIOLENT**
4 **INMATES, TO AUTHORIZE CERTAIN CONTRACTS FOR THE HOUSING OF**
5 **STATE PRISONERS IN LOCAL CONFINEMENT FACILITIES, TO ALLOW FOR**
6 **THE CONTRACTING OF PRIVATE PRISONS, TO REMOVE THE LIMIT ON**
7 **PRISONERS WHO MAY BE HOUSED IN NON-STATE OWNED FACILITIES,**
8 **TO REMOVE THE SUNSET ON CONTRACTS WITH OUT-OF-STATE PUBLIC**
9 **CORRECTIONAL FACILITIES, AND TO ALLOW THE DEPARTMENT TO USE**
10 **AVAILABLE FUNDS TO PROVIDE ADDITIONAL PRISON BEDS AND**
11 **EMPLOY NECESSARY STAFF.**

12 The General Assembly of North Carolina enacts:

13 Section 1. G.S. 148-4.1(c1) reads as rewritten:

14 "(c1) For purposes of this section only, 'prison capacity' means the number of
15 prisoners housed in facilities located in North Carolina and owned or operated by the
16 State of North Carolina, as set by the Governor. In setting the prison capacity for
17 purposes of this section, the Governor shall consider the number of beds available and
18 shall make a finding that the number set would not jeopardize the State's ability to

1 perform its obligations under the law. In no event shall the number set by the Governor
2 under this subsection exceed ~~24,500~~ 27,500."

3 Sec. 2. G.S. 148-4.1(g1) reads as rewritten:

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

11 Sec. 3. Effective January 1, 1996, G.S. 148-4.1, as rewritten by Sections 1 and
12 2 of this act, reads as rewritten:

13 "**§ 148-4.1. Release of inmates.**

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

24 (b) Except as provided in subsection ~~(e) and (e), (c),~~ only inmates who are
25 otherwise eligible for parole pursuant to Article 85 of Chapter 15A or pursuant to Article
26 3B of this Chapter may be released under this section.

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

31 ~~(e1) For purposes of this section only, 'prison capacity' means the number of~~
32 ~~prisoners housed in facilities located in North Carolina and owned or operated by the~~
33 ~~State of North Carolina, as set by the Governor. In setting the prison capacity for~~
34 ~~purposes of this section, the Governor shall consider the number of beds available and~~
35 ~~shall make a finding that the number set would not jeopardize the State's ability to~~
36 ~~perform its obligations under the law. In no event shall the number set by the Governor~~
37 ~~under this subsection exceed 27,500.~~

38 (d) ~~If the number of prisoners housed in facilities located in North Carolina and~~
39 ~~owned or operated by the State of North Carolina for the Division of Prisons exceeds~~
40 ~~ninety eight percent (98%) of prison capacity for 15 consecutive days, the Secretary of~~
41 ~~Correction shall notify the Governor and the Chairman of the Parole Commission of this~~
42 ~~fact. Upon receipt of this notification, the Parole Commission shall within 90 days release~~

1 on parole a number of inmates sufficient to reduce the prison population to ninety seven
2 percent (97%) of prison capacity.

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

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

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

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

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

23 (g) In order to meet the requirements of this section, the Parole Commission shall
24 not parole any person convicted under Article 7A of Chapter 14 of a sex offense, under
25 G.S. 14-39, 14-41, or 14-43.3, under G.S. 90-95(h) of a drug trafficking offense, or under
26 G.S. 14-17. The Parole Commission may continue to consider the suitability for release
27 of such persons in accordance with the criteria set forth in Articles 85 and 85A of Chapter
28 15A.

29 (g1) Notwithstanding any other provision of law except for subsection (h) of this
30 section, the Post-Release Supervision and Parole Commission may parole nonviolent
31 inmates who would not otherwise be eligible for parole instead of paroling violent
32 inmates who are eligible for parole. This subsection does not apply to sentences under
33 Article 81B of Chapter 15A of the General Statutes.

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

36 Sec. 4. Effective January 1, 1996, G.S. 148-32.1(b) reads as rewritten:

37 "(b) In the event that the custodian of the local confinement facility certifies in
38 writing to the clerk of the superior court in the county in which said local confinement
39 facility is located that the local confinement facility is filled to capacity, or that the
40 facility cannot reasonably accommodate any more prisoners due to segregation
41 requirements for particular prisoners, or that the custodian anticipates, in light of local
42 experiences, an influx of temporary prisoners at that time, or if the local confinement
43 facility does not meet the minimum standards published pursuant to G.S. 153A-221, any

1 judge of the district court in the district court district as defined in G.S. 7A-133 where the
2 facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-
3 47.1 or 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility
4 is located may order that the prisoner be transferred to any other qualified local
5 confinement facility within that district or within another such district where space is
6 available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the
7 prisoner is a non-violent misdemeanor, which local facility shall accept the transferred
8 prisoner, if the prison population has exceeded ~~the limits established in G.S. 148-4.1(d), a~~
9 manageable level as provided for in G.S. 148-4.1(a). If no such local confinement facility
10 is available, then any such judge may order the prisoner transferred to such camp or
11 facility as the proper authorities of the Department of Correction shall designate,
12 notwithstanding that the term of imprisonment of the prisoner is 90 days or less. In no
13 event, however, shall a prisoner whose term of imprisonment is less than 30 days be
14 assigned or ordered transferred to any such camp or facility."

15 Sec. 5. G.S. 148-37 reads as rewritten:

16 **"§ 148-37. Additional facilities authorized; contractual arrangements.**

17 (a) Subject to the provisions of G.S. 143-341, the State Department of Correction
18 may establish additional facilities for use by the Department, such facilities to be either of
19 a permanent type of construction or of a temporary or movable type as the Department
20 may find most advantageous to the particular needs, to the end that the prisoners under its
21 supervision may be so distributed throughout the State as to facilitate individualization of
22 treatment designed to prepare them for lawful living in the community where they are
23 most likely to reside after their release from prison. For this purpose, the Department
24 may purchase or lease sites and suitable lands adjacent thereto and erect necessary
25 buildings thereon, or purchase or lease existing facilities, all within the limits of
26 allotments as approved by the Department of Administration.

27 (b) The Secretary of Correction may contract with the proper official of the United
28 States or of any county or city of this State for the confinement of federal prisoners after
29 they have been sentenced, county, or city prisoners in facilities of the State prison system
30 or for the confinement of State prisoners in any county or any city facility located in
31 North Carolina, or any facility of the United States Bureau of Prisons, when to do so
32 would most economically and effectively promote the purposes served by the Department
33 of Correction. ~~Any-Except as otherwise provided, any~~ contract made under the authority
34 of this ~~section-subsection~~ shall be for a period of not more than two years, and shall be
35 renewable from time to time for a period not to exceed two years. Contracts made under
36 the authority of this subsection for the confinement of State prisoners in local or district
37 confinement facilities may be for a period of not more than 10 years and renewable from
38 time to time for a period not to exceed 10 years. Contracts for receiving federal, county
39 and city prisoners shall provide for reimbursing the State in full for all costs involved.
40 The financial provisions shall have the approval of the Department of Administration
41 before the contract is executed. Payments received under such contracts shall be
42 deposited in the State treasury for the use of the State Department of Correction. Such
43 payments are hereby appropriated to the State Department of Correction as a

1 supplementary fund to compensate for the additional care and maintenance of such
2 prisoners as are received under such contracts.

3 (c) In addition to the authority contained in subsections (a) and (b) of this section,
4 and in addition to the contracts ratified by subsection (f) of this section, the Secretary of
5 Correction may enter into contracts with any public entity or any private nonprofit or for-
6 profit firms for the confinement and care of State prisoners in any out-of-state ~~public~~
7 correctional facility when to do so would most economically and effectively promote the
8 purposes served by the Department of Correction. Contracts entered into under the
9 authority of this subsection shall be for a period not to exceed two years and shall be
10 renewable from time to time for a period not to exceed two years. ~~Subject to the provisions~~
11 ~~of subsection (e) of this section, the combined authority contained in this subsection and in~~
12 ~~subsection (f) of this section may be used to house a maximum of 1,000 prisoners at any one~~
13 ~~time, which maximum shall include those housed on March 25, 1994, under contracts ratified by~~
14 ~~subsection (f) of this section.~~ Prisoners may be sent to out-of-state correctional facilities
15 only when there are no available facilities in this State within the State prison system to
16 appropriately house those prisoners. Any contract made under the authority of this
17 subsection ~~shall expire not later than June 30, 1995, and shall be approved by the~~
18 Department of Administration before the contract is executed.

19 (d) Prisoners confined in out-of-state correctional facilities pursuant to subsection
20 (c) of this section shall remain subject to the rules adopted for the conduct of persons
21 committed to the State prison system. The rules regarding good time and gain time,
22 discipline, classification, extension of the limits of confinement, transfers, housing
23 arrangements, and eligibility for parole shall apply to inmates housed in those out-of-state
24 correctional facilities. The operators of those out-of-state correctional facilities may
25 promulgate any other rules as may be necessary for the operation of those facilities with
26 the written approval of the Secretary of Correction. Custodial officials employed by an
27 out-of-state correctional facility are agents of the Secretary of Correction and may use
28 those procedures for use of force authorized by the Secretary of Correction not
29 inconsistent with the laws of the State of situs of the facility to defend themselves, to
30 enforce the observance of discipline in compliance with correctional facility rules, to
31 secure the person of a prisoner, and to prevent escape. Prisoners confined to out-of-state
32 correctional facilities may be required to perform reasonable work assignments within
33 those facilities.

34 (e) ~~The Department of Correction shall not contract to house in non State-owned~~
35 ~~facilities within the State more than a total of 1,500 inmates at any one time, excluding~~
36 ~~any beds in private substance abuse treatment centers authorized by the General~~
37 ~~Assembly. If the number of inmates housed in non State-owned facilities pursuant to this~~
38 ~~section exceeds 500, then the maximum number of prisoners authorized to be housed out-~~
39 ~~of state pursuant to subsection (c) of this section is reduced by the amount of the excess.~~

40 (f) Any contracts entered into by the Department of Correction with public
41 contractors prior to March 25, 1994, for the out-of-state housing of inmates are ratified.
42 The Department of Correction shall take such actions not inconsistent with the terms of

1 the contracts so that without further approval by the General Assembly they are not
2 effective for the confinement or care of State prisoners after June 30, 1995.

3 (g) The Secretary of Correction may contract with private for-profit or nonprofit
4 firms for the provision and operation of confinement facilities in the State to house State
5 prisoners when to do so would most economically and effectively promote the purposes
6 served by the Department of Correction. Contracts entered under the authority of this
7 subsection shall be for a period not to exceed 10 years, shall be renewable from time to
8 time for a period not to exceed 10 years, and are subject to the approval of the Council of
9 State and the Department of Administration. Contracts made under the authority of this
10 subsection may provide the State with an option to purchase the confinement facility or
11 may provide for the purchase of the confinement facility by the State. Prisoners housed in
12 private confinement facilities pursuant to this subsection shall remain subject to the rules
13 adopted for the conduct of persons committed to the State prison system. The Secretary
14 of Correction may review and approve the design and construction of private
15 confinement facilities before housing State prisoners in these facilities. The rules
16 regarding good time, gain time, and earned credits, discipline, classification, extension of
17 the limits of confinement, transfers, housing arrangements, and eligibility for parole shall
18 apply to inmates housed in private confinement facilities pursuant to this subsection. The
19 operators of private confinement facilities may adopt any other rules as may be necessary
20 for the operation of those facilities with the written approval of the Secretary of
21 Correction. Custodial officials employed by a private confinement facility are agents of
22 the Secretary of Correction and may use those procedures for use of force authorized by
23 the Secretary of Correction to defend themselves, to enforce the observance of discipline
24 in compliance with confinement facility rules, to secure the person of a prisoner, and to
25 prevent escape.

26 (h) The Department of Correction shall make a written report no later than March
27 1 of every odd-numbered year, beginning in 1997, on the substance of all outstanding
28 contracts for the housing of State prisoners entered into under the authority of this
29 section. The report shall be submitted to the Council of State, the Department of
30 Administration, and the Joint Legislative Commission on Governmental Operations. In
31 addition to the report, the Department of Correction shall provide information on
32 contracts for the housing of State prisoners as requested by these groups."

33 Sec. 6. Section 16(c) of Chapter 24 of the Session Laws of the 1994 Extra
34 Session reads as rewritten:

35 "(c) Subsections (a) and (b) of this section are effective upon ~~ratification, but~~
36 ~~subsection (a) of this section expires on June 30, 1995.~~ ratification."

37 Sec. 7. The Department of Correction may use funds available to the
38 Department to provide for additional prison beds when the prison population has
39 exceeded population projections or when additional prison capacity is required. The
40 Department may also use funds available to employ correctional officers and other
41 necessary staff in temporary positions to staff leased confinement facilities.

42 Sec. 8. When contracting with private for-profit or nonprofit firms for the
43 housing of State prisoners, the Department of Correction shall give priority to contracts

1 with private firms in the State when to do so would most efficiently house those
2 prisoners.

3 Sec. 9. Sections 3 and 4 of this act become effective January 1, 1996. The
4 remainder of this act is effective upon ratification, but Section 7 of this act expires on
5 June 30, 1997.