

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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**SENATE BILL 1955
Judiciary I (Civil) Committee Substitute Adopted 6/10/08
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Short Title: Limited Release From Prison for Deportation.

(Public)

Sponsors:

Referred to:

May 27, 2008

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A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR THE LIMITED RELEASE OF CERTAIN PRISONERS
INTO THE CUSTODY OF IMMIGRATION OFFICIALS FOR REMOVAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 148-4.1 is amended by adding a new subsection to read:

"(i) This section does not apply to inmates released pursuant to G.S. 148-64.1."

SECTION 2. G.S. 143B-266 reads as rewritten:

"§ 143B-266. Post-Release Supervision and Parole Commission – creation, powers and duties.

(a) There is hereby created a Post-Release Supervision and Parole Commission of the Department of Correction with the authority to grant paroles, including both regular and temporary paroles, to persons held by virtue of any final order or judgment of any court of this State as provided in Chapter 148 of the General Statutes and laws of the State of North Carolina, except that persons sentenced under Article 81B of Chapter 15A of the General Statutes are not eligible for parole but may be conditionally released into the custody and control of United States Immigration and Customs Enforcement pursuant to G.S. 148-64.1. The Commission shall also have authority to revoke, terminate, and suspend paroles of such persons (including persons placed on parole on or before the effective date of the Executive Organization Act of 1973) and to assist the Governor in exercising his authority in granting reprieves, commutations, and pardons, and shall perform such other services as may be required by the Governor in exercising his powers of executive clemency. The Commission shall also have authority to revoke and terminate persons on post-release supervision, as provided in Article 84A of Chapter 15A of the General Statutes.

(b) All releasing authority previously resting in the Commissioner and Commission of Correction with the exception of authority for extension of the limits of the place of confinement of a prisoner contained in G.S. 148-4 is hereby transferred to

1 the Post-Release Supervision and Parole Commission. Specifically, such releasing
2 authority includes work release (G.S. 148-33.1), indeterminate-sentence release
3 (G.S. 148-42), and release of youthful offenders (G.S. 148-49.8), provided the
4 individual considered for work release or indeterminate-sentence release shall have been
5 recommended for release by the Secretary of Correction or his designee. No
6 recommendation for release is required for conditional release pursuant to
7 G.S. 148-64.1.

8 (c) The Commission is authorized and empowered to adopt such rules and
9 regulations, not inconsistent with the laws of this State, in accordance with which
10 prisoners eligible for parole consideration may have their cases reviewed and
11 investigated and by which such proceedings may be initiated and considered. All rules
12 and regulations heretofore adopted by the Board of Paroles shall remain in full force and
13 effect unless and until repealed or superseded by action of the Post-Release Supervision
14 and Parole Commission. All rules and regulations adopted by the Commission shall be
15 enforced by the Department of Correction.

16 (d) The Commission is authorized and empowered to impose as a condition of
17 parole or post-release supervision that restitution or reparation be made by the prisoner
18 in accordance with the provisions of G.S. 148-57.1. The Commission is further
19 authorized and empowered to make restitution or reparation a condition of work release
20 in accordance with the provisions of G.S. 148-33.2.

21 (e) The Commission may accept and review requests from persons placed on
22 probation, parole, or post-release supervision to terminate a mandatory condition of
23 satellite-based monitoring as provided by G.S. 14-208.43. The Commission may grant
24 or deny those requests in compliance with G.S. 14-208.43."

25 **SECTION 3.** Chapter 148 of the General Statutes is amended by adding a
26 new section to read:

27 **"§ 148-64.1. Early conditional release of inmates subject to a removal order;
28 revocation of release.**

29 (a) Eligibility for Early Release. – Notwithstanding any other provision of law,
30 the Post-Release Supervision and Parole Commission may conditionally release an
31 inmate into the custody and control of United States Immigration and Customs
32 Enforcement if all of the following requirements are satisfied:

33 (1) The Department of Correction has received a final order of removal for
34 the inmate from United States Immigration and Customs Enforcement.

35 (2) The inmate was convicted of a nonviolent criminal offense and is
36 incarcerated for that offense. If the inmate was convicted of and is
37 incarcerated for more than one offense, then all of the offenses of
38 which the inmate was convicted and is incarcerated must be nonviolent
39 criminal offenses. As used in this subdivision, the term 'nonviolent
40 criminal offense' means a conviction for an impaired driving offense or
41 a felony violation of any of the following:

42 a. G.S. 14-54.

43 b. G.S. 14-56.

44 c. G.S. 14-71.1.

- 1 d. G.S. 14-100, where the thing of value is less than one hundred
2 thousand dollars (\$100,000).
3 e. G.S. 90-95(d)(4).
4 (3) The inmate has served at least half of the minimum sentence imposed
5 by the court or, in the case of an inmate convicted of an impaired
6 driving offense under G.S. 20-138.1, the inmate has met all of the
7 parole eligibility requirements under G.S. 15A-1371, notwithstanding
8 G.S. 20-179(p)(3).
9 (4) The inmate was not convicted of an impaired driving offense resulting
10 in death or serious bodily injury, as that term is defined in
11 G.S. 14-32.4.
12 (5) The inmate agrees not to reenter the United States unlawfully.
13 (b) Release Is Discretionary. – The decision to release an inmate once the
14 requirements of subsection (a) of this section are satisfied is in the sole, unappealable
15 discretion of the Post-Release Supervision and Parole Commission.
16 (b1) R eturn of Inmates. – In the event that the United States Immigration and
17 Customs Enforcement is unable to or does not deport the inmate, the inmate shall be
18 returned to the custody of the Department of Correction to serve the remainder of the
19 original sentence.
20 (c) Unlawful Reentry Constitutes Violation. – An inmate released pursuant to
21 this section who returns unlawfully and willfully to the United States violates the
22 conditions of the inmate's early release.
23 (d) Arrest Authority. – An inmate who violates the conditions of the inmate's
24 early release is subject to arrest by a law enforcement officer.
25 (e) Effect of Violation. – Upon notification from any federal or state law
26 enforcement agency that the inmate is in custody, and after notice and opportunity to be
27 heard, the Post-Release Supervision and Parole Commission shall revoke the inmate's
28 release and reimprison the inmate for a period equal to the inmate's maximum sentence
29 minus time already served by the inmate upon a finding that an inmate has violated the
30 conditions of the inmate's early release.
31 (f) Violators Ineligible for Future Release. – Upon revocation of release under
32 this subsection, the inmate shall not be eligible for any future release under this section
33 or for any other release from confinement, other than post-release supervision, until the
34 remainder of the sentence of imprisonment is served."

35 **SECTION 4.** This act is effective when it becomes law.