

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2008-199
SENATE BILL 1955

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

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rules and regulations heretofore adopted by the Board of Paroles shall remain in full force and effect unless and until repealed or superseded by action of the Post-Release Supervision and Parole Commission.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

(d) The Commission is authorized and empowered to impose as a condition of parole or post-release supervision that restitution or reparation be made by the prisoner

in accordance with the provisions of G.S. 148-57.1. The Commission is further authorized and empowered to make restitution or reparation a condition of work release in accordance with the provisions of G.S. 148-33.2.

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

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

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

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

- (1) The Department of Correction has received a final order of removal for the inmate from United States Immigration and Customs Enforcement.
- (2) The inmate was convicted of a nonviolent criminal offense and is incarcerated for that offense. If the inmate was convicted of and is incarcerated for more than one offense, then all of the offenses of which the inmate was convicted and is incarcerated must be nonviolent criminal offenses. As used in this subdivision, the term 'nonviolent criminal offense' means a conviction for an impaired driving offense or a felony violation of any of the following:
 - a. G.S. 14-54.
 - b. G.S. 14-56.
 - c. G.S. 14-71.1.
 - d. G.S. 14-100, where the thing of value is less than one hundred thousand dollars (\$100,000).
 - e. G.S. 90-95(d)(4).
- (3) The inmate has served at least half of the minimum sentence imposed by the court or, in the case of an inmate convicted of an impaired driving offense under G.S. 20-138.1, the inmate has met all of the parole eligibility requirements under G.S. 15A-1371, notwithstanding G.S. 20-179(p)(3).
- (4) The inmate was not convicted of an impaired driving offense resulting in death or serious bodily injury, as that term is defined in G.S. 14-32.4.
- (5) The inmate agrees not to reenter the United States unlawfully.

(b) Release Is Discretionary. – The decision to release an inmate once the requirements of subsection (a) of this section are satisfied is in the sole, unappealable discretion of the Post-Release Supervision and Parole Commission.

(b1) Return of Inmates. – In the event that the United States Immigration and Customs Enforcement is unable to or does not deport the inmate, the inmate shall be returned to the custody of the Department of Correction to serve the remainder of the original sentence.

(c) Unlawful Reentry Constitutes Violation. – An inmate released pursuant to this section who returns unlawfully and willfully to the United States violates the conditions of the inmate's early release.

(d) Arrest Authority. – An inmate who violates the conditions of the inmate's early release is subject to arrest by a law enforcement officer.

(e) Effect of Violation. – Upon notification from any federal or state law enforcement agency that the inmate is in custody, and after notice and opportunity to be heard, the Post-Release Supervision and Parole Commission shall revoke the inmate's release and reimprison the inmate for a period equal to the inmate's maximum sentence

minus time already served by the inmate upon a finding that an inmate has violated the conditions of the inmate's early release.

(f) Violators Ineligible for Future Release. – Upon revocation of release under this subsection, the inmate shall not be eligible for any future release under this section or for any other release from confinement, other than post-release supervision, until the remainder of the sentence of imprisonment is served."

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

In the General Assembly read three times and ratified this the 8th day of July, 2008.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 4:34 p.m. this 8th day of August, 2008