

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1504

Short Title: Early Release/Certain Drug Violations. (Public)

Sponsors: Senator Kinnaird.

Referred to: Judiciary I (Civil).

March 27, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW REGARDING THE SENTENCE THAT MAY BE
3 IMPOSED ON CERTAIN PERSONS CONVICTED OF A DRUG TRAFFICKING
4 OFFENSE AND TO PROVIDE FOR THE EARLY RELEASE OF CERTAIN
5 INMATES.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 90-95(h)(5) reads as rewritten:

8 "(5) Except as provided in this subdivision, a person being sentenced under
9 this subsection may not receive a suspended sentence or be placed on
10 probation. The sentencing judge may reduce the fine, or impose a
11 prison term less than the applicable minimum prison term provided by
12 this subsection, or suspend the prison term imposed and place a person
13 on probation ~~when such~~when the sentencing judge finds that the
14 person meets the criteria set out in either sub-subdivision a. or b. of
15 this subdivision and enters that finding in the record:

16 a. The person has, to the best of his knowledge, provided
17 substantial assistance in the identification, arrest, or conviction
18 of any accomplices, accessories, co-conspirators, or principals
19 if the sentencing judge enters in the record a finding that the
20 person to be sentenced has rendered such substantial
21 assistance; principals; or

22 b. The person has no prior convictions for crimes that produced or
23 threatened serious bodily harm; has no prior felony convictions
24 for the manufacture, sale, delivery, or possession of controlled
25 substances as defined in this Article; and the sentencing judge
26 finds by a preponderance of the evidence that the person: (i)
27 did not possess a firearm during the commission of the offense;
28 (ii) played a minimal role in the drug scheme that led to the
29 offense; (iii) carried out the offense at the direction of another;

1 and (iv) stood to receive substantially less pecuniary gain from
2 the offense than the person who directed the commission of the
3 offense."

4 **SECTION 2.** Chapter 15A of the General statutes is amended by adding a
5 new Article to read:

6 "Article 84B.

7 "Early Release of Certain Inmates.

8 **"§ 15A-1370A. Early release of certain inmates.**

9 (a) Any inmate serving a sentence for a violation of G.S. 90-95 who was
10 convicted for the offense prior to December 31, 2007, shall be eligible for early release
11 by the Department of Correction provided the inmate:

- 12 (1) At the time of the inmate's sentencing, satisfied all of the criteria in
13 G.S. 90-95(h)(5)b.;
14 (2) Has no violence-related infractions or attempted escapes on his or her
15 record while incarcerated;
16 (3) Has served at least one-half of his or her sentence; and
17 (4) Does not have an order of removal against him or her from the United
18 States Office of Homeland Security.

19 (b) Any inmate serving a sentence for a violation of G.S. 90-95 who has an order
20 of removal against him or her from the United States Department of Homeland Security
21 shall be eligible for early release by the Department of Correction provided the inmate:

- 22 (1) Satisfies the criteria established in subdivisions (1) through (3) of
23 subsection (a) of this section; and
24 (2) The order of removal will result in the inmate's immediate removal
25 from the United States when the inmate is released from the custody of
26 the Department of Correction.

27 (c) The Department of Correction may release an inmate under subsection (b) of
28 this section only to the United States Department of Homeland Security, and the
29 inmate's release shall be accompanied by a warrant for the inmate's retaking to be
30 executed in the event of the inmate's release from that custody other than by
31 deportation.

32 (d) The Department of Correction may release an inmate under subsection (b) of
33 this section only after it has received written assurance from the United States
34 Department of Homeland Security that:

- 35 (1) An order of deportation will be executed immediately; and
36 (2) The inmate, if granted early release under subsection (b) of this
37 section, will not be released from the custody of the United States
38 Department of Homeland Security, other than by deportation, without
39 providing the Department a reasonable opportunity to arrange for
40 execution of its warrant for the retaking of the inmate.

41 (e) In the event that an inmate released under subsection (b) of this section is not
42 deported, the Department of Correction shall execute the warrant required by subsection
43 (c) of this section, effect the inmate's return to the custody of the Department of

1 Correction, and reinstate the inmate's original sentence with credit for time served in the
2 custody of the United States Department of Homeland Security.

3 (f) In determining whether to grant early release to an inmate who meets the
4 criteria of either subsection (a) or (b) of this section, the Department of Correction may
5 consider:

6 (1) Whether the inmate's early release would unduly depreciate the
7 seriousness of the inmate's crime or promote disrespect for the law;

8 (2) Whether the inmate's continued correctional treatment, medical care,
9 or vocational or other training in the institution will substantially
10 enhance the inmate's capacity to lead a law-abiding life if the inmate is
11 released at a later date; and

12 (3) Whether there is a substantial risk that the inmate would engage in
13 further criminal conduct in the United States."

14 **SECTION 3.** This act becomes effective December 1, 2007.