

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1955

Short Title: Limited Release from Prison for Deportation. (Public)

Sponsors: Senator Rand.

Referred to: Judiciary I (Civil).

May 27, 2008

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 the Post-Release Supervision and Parole Commission. Specifically, such releasing authority includes work release (G.S. 148-33.1), indeterminate-sentence release

1 (G.S. 148-42), and release of youthful offenders (G.S. 148-49.8), provided the
2 individual considered for work release or indeterminate-sentence release shall have been
3 recommended for release by the Secretary of Correction or his designee. No
4 recommendation for release is required for conditional release pursuant to
5 G.S. 148-64.1.

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11 effect unless and until repealed or superseded by action of the Post-Release Supervision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

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

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

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

25 **"§ 148-64.1. Early conditional release of inmates subject to a removal order;**
26 **revocation of release.**

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

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

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

40 a. G.S. 14-54.

41 b. G.S. 14-56.

42 c. G.S. 14-71.1.

43 d. G.S. 14-100, where the thing of value is less than one hundred
44 thousand dollars (\$100,000).

1 e. G.S. 90-95(d)(4).

2 (3) The inmate has served at least half of the minimum sentence imposed
3 by the court or, in the case of an inmate convicted of an impaired
4 driving offense under G.S. 20-138.1, the inmate has met all of the
5 parole eligibility requirements under G.S. 15A-1371, notwithstanding
6 G.S. 20-179(p)(3).

7 (4) The inmate was not convicted of an impaired driving offense resulting
8 in death or serious bodily injury, as that term is defined in
9 G.S. 14-32.4.

10 (5) The inmate agrees not to reenter the United States unlawfully.

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

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

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

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

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

28 **SECTION 4.** This act becomes effective December 1, 2008.