GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 1
SENATE BILL 40

AN ACT TO AMEND AND EXTEND THE PRISON POPULATION STABILIZATION ACT, TO AMEND AND EXPAND COMMUNITY SERVICE PAROLE, TO LIMIT THE TRANSFER OF COUNTY PRISONERS TO THE STATE PRISON SYSTEM, AND TO AUTHORIZE PAROLE AND TERMINATION OF SUPERVISION OF MISDEMEANANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 148-4.1 reads as rewritten:

"**§ 148-4.1. Release of inmates.**

(a) Whenever the Secretary of Correction determines from data compiled by the Department of Correction that it is necessary to reduce the prison population to a more manageable level, he shall direct the Parole Commission to release on parole over a reasonable period of time a number of prisoners sufficient to that purpose.

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

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

(d) If the number of prisoners serving a sentence in the State prison system or otherwise housed in the State prison system exceeds ~~ninety-seven percent (97%)~~ ninety-eight percent (98%) of l8,000 for 15 consecutive days, the Secretary of Correction shall notify the Governor and the Chairman of the Parole Commission of this fact. Upon receipt of this notification, the Parole Commission shall within ~~60 days~~ 90 days release on parole a number of inmates sufficient to reduce the number of prisoners serving a sentence in the State prison system or otherwise housed in the State prison system to ~~ninety-six percent (96%)~~ ninety-seven percent (97%) of l8,000.

From the date of the notification until the number of prisoners serving a sentence in the State prison system or otherwise housed in the State prison system has been reduced to ~~ninety-six percent (96%)~~ ninety-seven percent (97%) of 18,000, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred.

(e) In addition to those persons otherwise eligible for parole, from the date of notification in subsection (d) until the number of prisoners serving a sentence in the State prison system or otherwise housed in the State prison system has been reduced to ~~ninety-six percent (96%)~~ ninety-seven percent (97%) of 18,000, any person imprisoned only for a misdemeanor also shall be eligible for parole ~~notwithstanding any other provision of law, except those persons convicted of a misdemeanor for which assault is one of the elements necessary to establish the offense of which the person was convicted.~~ and immediate termination of supervision upon admission, notwithstanding any other provision of law, except those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving.

(f) In complying with the mandate of subsection (d), the Parole Commission may exercise the discretion granted to refuse parole by G.S. 15A-1371 in selecting felons to be paroled under this section so long as the prison population does not exceed 18,000.

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

Sec. 2. Section 6 of Chapter 7 of the 1987 Session Laws reads as rewritten:

"Sec. 6. Sections 1, 2, and 3 of this act shall expire ~~July 1, 1989,~~ July 1, 1991, unless reenacted by the General Assembly. The Joint Legislative Commission on Governmental Operations, or other Committee designated by the Speaker of the House of Representatives and the Lieutenant Governor, shall monitor the implementation of this act. The Secretary of Correction and the Chairman of the Parole Commission shall make a written report to the Governor, the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the Special Committee on Prisons at least one month prior to the ~~1989~~ 1991 Session of the General Assembly."

Sec. 3. G.S. 15A-1371(h) reads as rewritten:

"(h) Community Service Parole. – Notwithstanding the provisions of any other subsection herein, certain prisoners specified herein shall be eligible for community service parole, in the discretion of the Parole Commission.

Community service parole is early parole for the purpose of participation in a program of community service under the supervision of a probation/parole officer. A parolee who is paroled under this subsection must perform as a condition of parole 32 hours of community service for every month of his remaining active sentence, until at least his minimum sentence (if he was sentenced prior to July 1, 1981), or one-half of his sentence imposed under G.S. 15A-1340.4 has been completed by such community service, at which time parole may be terminated.

The probation/parole officer and the community service coordinator shall develop a program of community service for the parolee. The parolee must as a condition of parole complete at least 32 hours of community service per 30-day period. The community service coordinator shall report any willful failure to perform community service work to the probation/parole officer. Parole may be revoked for any parolee who

willfully fails to perform community service work as directed by a community service coordinator. The provisions of G.S. 15A-1376 shall apply to this violation of a condition of parole.

Community service parole eligibility shall be available to a prisoner:

(1) Who is serving ~~his first~~ an active sentence the term of which exceeds ~~one year~~ six months; and

(2) Who, in the opinion of the Parole Commission, is unlikely to engage in further criminal conduct; and

(3) Who agrees to complete service of his sentence as herein specified; and

(4) Who has served one-half of his minimum sentence (if he was sentenced prior to July 1, 1981), or one-fourth of a sentence imposed under G.S. 15A-1340.4.

No prisoner convicted under Article 7A of Chapter 14 of a sex offense, under G.S. 14-39, 14-41, or 14-43.3, or under G.S. 90-95(h) of a drug trafficking offense shall be eligible for community service parole.

~~For purposes of subdivision (1), a person is considered to be serving his first active sentence the term of which exceeds one year if he~~

~~a. Was convicted or sentenced in the same session of court of multiple offenses arising from the same transaction or series of transactions or his probationary sentence was revoked in the same such session of court,~~

~~b. Is serving an active sentence of at least one year for one of the multiple offenses described in sub-subdivision a., and~~

~~c. Had not received an active sentence of a[t] least one year prior to being sentenced for the multiple offenses described in sub-subdivision a.~~

In computing the service requirements of subdivision (4) of this subsection, credit shall be given for good time and gain time credit earned pursuant to G.S. 148-13. Nothing herein is intended to create or shall be construed to create a right or entitlement to community service parole in any prisoner."

Sec. 4. G.S. 15A-1371 is amended by adding a new subsection to read:

"(j) The Parole Commission may terminate a prisoner's community service parole before the expiration of the term of imprisonment where doing so will not endanger the public, unduly depreciate the seriousness of the crime, or promote disrespect for the law."

Sec. 5. G.S. 15A-1380.2(h) reads as rewritten:

"(h) Community Service Parole. – Notwithstanding the provisions of any other subsection herein, certain prisoners specified herein shall be eligible for community service parole, in the discretion of the Parole Commission.

Community service parole is early parole for the purpose of participation in a program of community service under the supervision of a probation/parole officer. A parolee who is paroled under this subsection must perform as a condition of parole 32 hours of community service for every month of his remaining active sentence, until at

least his minimum sentence (if he was sentenced prior to July 1, 1981), or one-half of his sentence imposed under G.S. 15A-1340.4 has been completed by such community service, at which time parole may be terminated.

The probation/parole officer and the community service coordinator shall develop a program of community service for the parolee. The parolee must as a condition of parole complete at least 32 hours of community service per 30-day period. The community service coordinator shall report any willful failure to perform community service work to the probation/parole officer. Parole may be revoked for any parolee who willfully fails to perform community service work as directed by a community service coordinator. The provisions of G.S. 15A-1376 shall apply to this violation of a condition of parole.

Community service parole eligibility shall be available to a prisoner:

(1) Who is serving ~~his first~~ an active sentence the term of which exceeds ~~one year~~ six months; and

(2) Who, in the opinion of the Parole Commission, is unlikely to engage in further criminal conduct; and

(3) Who agrees to complete service of his sentence as herein specified; and

(4) Who has served one-half of his minimum sentence (if he was sentenced prior to July 1, 1981), or one-fourth of a sentence imposed under G.S. 15A-1340.4.

No prisoner convicted under Article 7A of Chapter 14 of a sex offense, under G.S. 14-39, 14-41, or 14-43.3, or under G.S. 90-95(h) of a drug trafficking offense shall be eligible for community service parole.

~~For purposes of subdivision (1), a person is considered to be serving his first active sentence the term of which exceeds one year if he~~

~~a. Was convicted or sentenced in the same session of court of multiple offenses arising from the same transaction or series of transactions or his probationary sentence was revoked in the same such session of court,~~

~~b. Is serving an active sentence of at least one year for one of the multiple offenses described in sub-subdivision a., and~~

~~c. Had not received an active sentence of a[t] least one year prior to being sentenced for the multiple offenses described in sub-subdivision a.~~

In computing the service requirements of subdivision (4) of this subsection, credit shall be given for good time and gain time credit earned pursuant to G.S. 148-13. Nothing herein is intended to create or shall be construed to create a right or entitlement to community service parole in any prisoner."

Sec. 6. G.S. 15A-1380.2 is amended by adding a new subsection to read:

"(j) The Parole Commission may terminate a prisoner's community service parole before the expiration of the term of imprisonment where doing so will not endanger the public, unduly depreciate the seriousness of the crime, or promote disrespect for the law."

Sec. 7. G.S. 162-39 reads as rewritten:

"**§ 162-39. Transfer of prisoners when necessary for safety and security; application of section to municipalities.**

Whenever necessary for the safety of a prisoner held in any county jail or to avoid a breach of the peace in any county or whenever prisoners are arrested in such numbers that county jail facilities are insufficient and inadequate for the housing of such prisoners, the resident judge of the superior court or any judge holding superior court in the district or any district court judge may order the prisoner transferred to a fit and secure jail in some other county, or to a unit of the State prison system designated by the Secretary of Correction or his authorized representative, where the prisoner shall be held for such length of time as the judge may direct. The sheriff of the county from which the prisoner is removed shall be responsible for conveying the prisoner to the jail or prison unit where he is to be held, and for returning him to the common jail of the county from which he was transferred. The return shall be made at the expiration of the time designated in the court order directing the transfer unless the judge, by appropriate order, shall direct otherwise. The sheriff or keeper of the jail of the county designated in the court order, or the officer in charge of the prison unit designated by the Secretary of Correction, shall receive and release custody of the prisoner in accordance with the terms of the court order. If a prisoner is transferred to a unit of the State prison system, the county from which the prisoner is transferred shall pay the Department of Correction for maintaining the prisoner for the time designated by the court at the per day, per inmate rate at which the Department of Correction pays a local jail for maintaining a prisoner, provided, however, that a county is not required to reimburse the State for maintaining a prisoner who was a resident of another state or county at the time he committed the crime for which he is imprisoned. If the prisoner is transferred to a jail in some other county, the county from which the prisoner is transferred shall pay to the county receiving the prisoner in its jail the actual cost of maintaining the prisoner for the time designated by the court. Counties are hereby authorized to enter into contractual agreements with other counties to provide jail facilities to which prisoners may be transferred as deemed necessary under this section.

Whenever prisoners are arrested in such numbers that county jail facilities are insufficient and inadequate for the safekeeping of such prisoners, the resident judge of the superior court or any superior or district court judge holding court in the district may order the prisoners transferred to a unit of the State Department of Correction designated by the Secretary of Correction or his authorized representative, where the prisoners may be held for such length of time as the judge may direct, such detention to be in cell separate from that used for imprisonment of persons already convicted of crimes. The sheriff of the county from which the prisoners are removed shall be responsible for conveying the prisoners to the prison unit or units where they are to be held, and for returning them to the common jail of the county from which they were transferred. However, if due to the number of prisoners to be conveyed the sheriff is unable to provide adequate transportation, he may request the assistance of the Department of Correction, and the Department of Correction is hereby authorized and directed to cooperate with the sheriff and provide whatever assistance is available, both

in vehicles and manpower, to accomplish the conveying of the prisoners to and from the county to the designated prison unit or units. The officer in charge of the prison unit designated by the Secretary of Correction or his authorized representative shall receive and release the custody of the prisoners in accordance with the terms of the court order. The county from which the prisoners are transferred shall pay to the Department of Correction the actual cost of transporting the prisoners and the cost of maintaining the prisoners at the per day, per inmate rate at which the Department of Correction pays a local jail for maintaining a prisoner, provided, however, that a county is not required to reimburse the State for transporting or maintaining a prisoner who was a resident of another state or county at the time he was arrested. However, if the county commissioners shall certify to the Governor that the county is unable to pay the bill submitted by the State Department of Correction to the county for the services rendered, either in whole or in part, the Governor may recommend to the Council of State that the State of North Carolina assume and pay, in whole or in part, the obligation of the county to the Department of Correction, and upon approval of the Council of State the amount so approved shall be paid from Contingency and Emergency Fund to the Department of Correction.

When, due to an emergency, it is not feasible to obtain from a judge of the superior or district court a prior order of transfer, the sheriff of the county and the Department of Correction may exercise the authority hereinafter conferred; provided, however, that the sheriff shall, as soon as possible after the emergency, obtain an order from the judge authorizing the prisoners to be held in the designated place of confinement for such period as the judge may direct. All provisions of this section shall be applicable to municipalities whenever prisoners are arrested in such numbers that the municipal jail facilities and the county jail facilities are insufficient and inadequate for the safekeeping of the prisoners. The chief of police is hereby authorized to exercise the authority herein conferred upon the sheriff, and the municipality shall be liable for the cost of transporting and maintaining the prisoners to the same extent as a county would be unless action is taken by the Governor and Council of State as herein provided for counties which are unable to pay such costs.

The number of county prisoners incarcerated in the State prison system pursuant to safekeeping orders from the various counties may not exceed 200 at any given time unless authorized by the Secretary of Correction. The Secretary may refuse to accept any safekeeper and may return any safekeeper transferred under a safekeeping order when this capacity limit is reached."

Sec. 8. G.S. 15A-1372(d) reads as rewritten:

"(d) Parole and Terminate. – The Parole Commission is authorized simultaneously to parole and terminate supervision of a prisoner when such prisoner has less than 180 days remaining on his maximum sentence, and when the Commission finds that such action will not be incompatible with the public interest. When the Parole Commission finds that such action will not be incompatible with the public interest, the Commission is also authorized simultaneously to parole and terminate supervision of a prisoner when such prisoner is imprisoned only for a misdemeanor, except those persons convicted

under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving."

Sec. 9. This act is effective upon ratification, but Section 1 of this act shall expire July 1, 1991, unless reenacted by the General Assembly.

In the General Assembly read three times and ratified this the 1st day of February, 1989.