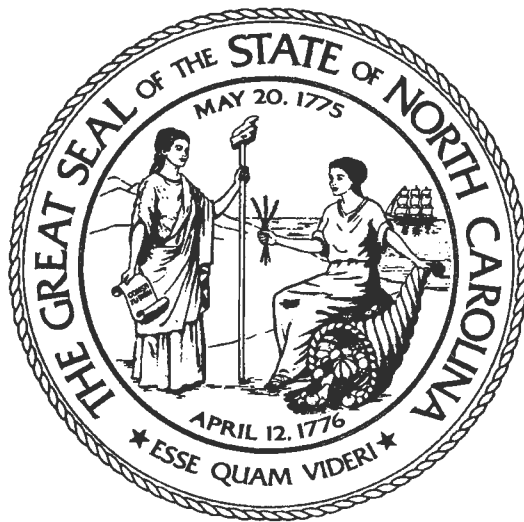


**REPORT OF THE  
SPECIAL COMMITTEE ON PRISONS**



**FINAL REPORT TO THE  
1989 GENERAL ASSEMBLY  
OF NORTH CAROLINA  
1990 SESSION**

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North Carolina General Assembly  
Special Committee On Prisons  
Legislative Office Building  
Raleigh 27611

REPRESENTATIVE ANNE C. BARNES  
CO-CHAIRMAN

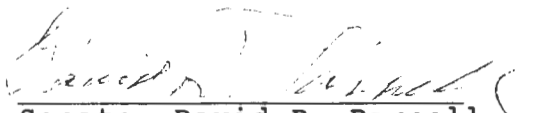
SENATOR DAVID R. PARNELL  
CO-CHAIRMAN

May 9, 1990

To the Honorable Henson P. Barnes, President Pro Tempore of the Senate, the Honorable Josephus L. Mavretic, Speaker of the House of Representatives, and Members of the 1989 General Assembly.

Transmitted herewith is the final report of the findings, conclusions, and recommendations of the Special Committee on Prisons.

The work of the Committee was authorized by the 1989 Session of the General Assembly in Resolution 8, "A Joint Resolution Reauthorizing the Special Committee on Prisons". The work of the Committee was performed in accordance with this legislation and previous charges to the Committee.

  
\_\_\_\_\_  
Senator David R. Parnell

  
\_\_\_\_\_  
Representative Anne C. Barnes





## PREFACE

The Special Committee on Prisons was established by Lieutenant Governor Jordan and Speaker Ramsey in December 1985. The letters authorizing the original Committee instructed it to 1) examine the various prison units located throughout the State and report on what should be done to upgrade the physical facilities to meet federal guidelines, if any, and, 2) review the overall corrections system to identify problems resulting from overcrowding, pending litigation, and other issues pertaining to the operation of prisons in North Carolina. The Committee was instructed to work with the Attorney General, the State Auditor, the Department of Correction and other State agencies involved in programs affecting the prison population.

The Committee submitted its first report to the 1986 Session of the General Assembly, and to every regular session thereafter, with specific recommendations for program and capital improvements. In February, 1988, the Committee was charged with developing a comprehensive approach and strategic plan which address the criminal justice and corrections systems. In March, 1989, the Special Committee on Prisons was reauthorized by Senate Joint Resolution 42. (See Appendix I)

The Committee consists of sixteen members with eight members of the Senate appointed by the President Pro Tempore and eight members of the House of Representatives appointed by the Speaker of the House. A list of the membership and staff of the Committee is shown in Appendix II. Since the Interim Report to the 1989 Session was issued, a total of ten one-day meetings have been held. The Committee has heard presentations from, among others, legislative staff, Committee consultants, the Department of Correction, and the Office of State Budget and Management. A list of persons appearing before the Committee is shown in Appendix III and written information presented to the Committee is listed in Appendix IV. Minutes of all Committee meetings are available in the Legislative Library. The Committee recommended various changes and appropriations to the 1986, 1987, 1988, and 1989 Sessions of the General Assembly. A listing and discussion of the recommendations that the Committee will present to the 1989 Session (1990 Regular Session) of the General Assembly begins on Page 11.

## BACKGROUND

From 1974 to 1984, \$101,679,054 was appropriated for new capital construction projects for the North Carolina prison system. A total of 3,604 new beds were constructed and an additional 1,280 beds were obtained through the conversion of facilities transferred from the Department of Human Resources to the Department of Correction.

During the 1980s, the Department of Correction had several major lawsuits filed against it alleging that the State operates prisons which have unconstitutional conditions of confinement. In June, 1985, the General Assembly appropriated \$12,500,000 to improve conditions at facilities located in the South Piedmont Area of the Department of Correction. In September, 1985, a consent agreement was reached with the plaintiffs in the case of **Hubert v. Ward**. The funds were expended primarily to eliminate triple-bunking in sleeping areas by constructing five 104-bed dormitories, improve ventilation, lighting, heating, and smoke detection in dormitories, construct recreational facilities, improve medical care, provide adequate clothing and bedding, establish full-time educational, vocational, and work programs for 80 percent of the inmates, and provide additional staff for supervising inmates. There are five other geographic areas in which the Department of Correction operates prison facilities, and by 1985 widespread recognition existed that a thorough review of the correctional system was needed to identify problems resulting from overcrowding, pending litigation, and aging physical facilities.

The Special Committee on Prisons was established to conduct this review and make recommendations to the General Assembly. The Department of Correction formulated a Ten-Year Plan and presented it in March, 1986 to the Committee. The plan included \$203,000,000 for construction and operation of additional beds and for implementation of more community alternatives. It was believed that before expending such large amounts of taxpayers' money on capital construction to continue to incarcerate those convicted of non-violent crimes, there was a need to plan very thoroughly for improvements in the existing correctional system and for developing additional alternatives to incarceration. The recommendations from the Committee to the 1986 Session of the General Assembly reflected this intent in the prudent balance of capital items to renovate existing units and construct new beds, where necessary, and program items to expand existing community alternative punishment options. The total amount of funding requested by the Committee for FY 1986-87 was \$22,454,014 (\$13,660,348 - Capital; \$6,293,666 - Operating; and \$2,500,000 - Reserve). The General Assembly appropriated \$22,485,648 (\$14,521,448 - Capital; \$5,464,200 - Operating; and \$2,500,000 - Reserve).

For fiscal years 1985 through 1990, over \$154 million dollars has been appropriated for capital construction costs. This figure is over \$50 million dollars more than was appropriated for capital construction costs for the entire ten year period 1974-1984. As of January 1, 1989, 31 states had their corrections agencies operating under court order, 27 states had prison population limits set by the federal courts, and 16 were operating under the supervision of a federally appointed Special Master. By 1988, although the State had avoided a federal takeover of its corrections system, it had become increasingly evident that a fragmented approach toward funding the criminal justice system was not working in North Carolina.

In March, 1988, based upon a proposal made by the Co-chairs of the Special Committee on Prisons (see Appendix V), the Committee was charged to examine the criminal justice system for long-term solutions and improvements. This would be accomplished by "examining the strengths and weaknesses of our existing goals, policies, and programs, or redefining goals and policies where needed, and on developing a more comprehensive criminal justice system." (See Appendix VI).

The consistent approach of the Committee has been to keep apprised of the lawsuits filed against the Department of Correction and to develop a plan of action to meet those requirements, while providing measures to offer punishment options appropriate to the type of offenses committed. At the same time, the Committee has recommended measures which make punishment options available to the criminal justice system that are appropriate to the type offender and offense committed. The total amount of funding recommended by the Committee to the 1987 General Assembly for FY 1987-88 was between \$50,843,144 to \$54,543,144 (\$3,047,544 - Operating; \$47,795,600 to \$51,495,600 - Capital). The General Assembly appropriated an Expansion Budget of \$9,187,626, for operating and \$21,890,690 for capital projects. The total amount of funding recommended to the 1988 Session for FY 1988-89 was \$34,193,172 (\$5,586,172 - Operating, \$28,607,000 - Capital). The General Assembly appropriated an expansion budget of \$11,714,191 for operating and \$18,905,391 for capital projects.

In December, 1988, a settlement agreement was reached between the plaintiffs in the case of *Small v. Martin*. This lawsuit against the Governor, the Secretary of Correction, and the Director of Prisons, in their official capacities, concerned facilities in the five geographic regions which were not a part of the earlier case of *Hubert v. Ward*, which involved the South Piedmont region. The allegations of violations of constitutional

rights, and the type of corrective measures sought by the plaintiffs, are parallel to the Ward case. [An implementation schedule for the corrective measures is shown in Appendix VII]. By July 1, 1994, the state must provide a minimum of 50 square feet of living space per inmate. Even with the completion of currently planned construction, the overall capacity of the system, based on the 50 square foot guideline, will still be less than 18,000. The appropriation of over \$148 million of expansion funds during the 1989 Session for capital and operating costs for fiscal years 1989 and 1990, provided the basis for the settlement of the case, and allows for the implementation of the measures on the schedule. Upon completion of currently funded construction, the State will have 17,301 beds--based on a system-wide application of the square footage requirement under **Small v. Martin**.

Following is a recap of the major corrections bills passed since January, 1989: Senate Bill 38 approved the settlement agreement in **Small v. Martin** and appropriates part of the \$75 million for each year of the 1989-91 biennium for programs and capital construction and Senate Bills 44 and 1042 appropriate the remainder. Senate Bill 40 amended the Emergency Prison Stabilization Act of 1987, which provided that North Carolina's prison system would not exceed 18,000 inmates. The bill increased the amount of prisoners allowed in the system before requiring the Parole Commission to parole offenders to insure that the system did not exceed 18,000 inmates. It also restricted certain offenders from parole eligibility. House Bill 18 amended the Satellite Jail/Work Release Unit Fund Statute, while Senate bill 1042 appropriated \$8,576,604 for this Fund for the 1989-91 biennium. This fund was subsequently frozen due to the budget deficit. In the 1990 Extra Session, House Bill 1 further expanded the prison population cap, in accordance with projections of the completion dates for prison construction. With the exception of SB 44 and SB 1042, copies of the bills mentioned above are included as Appendix VIII.

The Special Committee on Prisons has met 20 times since the Committee received its charge in March 1988 to examine the criminal justice system for long-term solutions and improvements. The Committee has been assisted by The National Institute of Sentencing Alternatives at Brandeis University and The Community Justice Resource Center in Greensboro, who were retained as consultants for this study and this final report to the 1989 Session of the General Assembly.

## COMMITTEE PROCEEDINGS

May 1, 1989

The Committee met to review Phase I of the consultant's report, "Corrections Strategic Planning: Corrections Population Analysis", presented by Mark Corrigan, Director of the National Institute for Sentencing Alternatives, Brandeis University. Corrigan outlined the following objectives of the study: (1) to analyze the prison population in a way that offers a new and clearer picture; (2) to compare the prison population with the probation population; and (3) to examine the existing range of options that are available for corrections in the context of the offender population. The Executive Summary of the consultant's report is shown at Appendix IX.

May 8, 1989

Lucien Capone, Deputy Attorney General, North Carolina Department of Justice, briefed the Committee on the status of inmate lawsuits against the Department of Correction. Mark Corrigan continued his presentation of the Phase I consultant report.

November 29, 1989

The Committee met to receive Phase II of the consultant's report, presented by Mark Corrigan. The report contained three major recommendations: (1) the development and codification of a policy statement for the purpose of corrections, which will define and prioritize the objectives of the system in relationship to punishment, public protection and treatment; (2) the development and codification of a range of sanctions which would be described comprehensively by policy descriptions, function, service delivery, criteria and procedures; (3) the development of statutory reform by establishing a Corrections Policy Commission which will be charged with reviewing the sentencing laws, the structure of probation in the State, and state-local relationships.

Hal Pell, Committee Counsel, reported on a series of briefings held with officials in the executive, legislative, and judicial branches of state government. The purpose of the briefings was to review and summarize the Phase I report and outline the recommendations contained in the Phase II report. The consultants and committee staff met with the Sheriff's Association in late July, and with the District Attorney's Association in November. The committee co-chairs and the consultant met with the Lieutenant Governor and members of the Drug Cabinet, the Chair of the North Carolina Parole Commission, the Governor's Chief of Staff and Legal Counsel,

the Secretary of Correction, the Director of Prisons, and the Attorney General and members of his staff. Briefings were also held with the Speaker of the North Carolina House of Representatives and the President Pro Tem of the senate. Senator Parnell reported efforts to schedule a personal interview and briefing with the Governor. Members of the Committee agreed to submit lists of other agencies and individuals who should be included in future briefings.

Representative Barnes presented a draft Statement of Purpose, and members of the Committee agreed to review the draft and make recommendations for revisions.

January 11, 1990

The Committee authorized the negotiation of a consultant's contract with Mr. John Kernodle to study state-local relationship issues related to the Committee's reporting needs.

Carolyn Wyland, Fiscal Research Division, presented information on programs currently available as sentencing options and treatment plans.

Buddy Humphrey, Office of State Budget and Management, presented information about grants for the construction of satellite jail/work release units. Several counties had indicated an interest in the grants.

Patrice Roesler, North Carolina Association of County Commissioners, addressed the Committee on the proposed rules for jail construction and operation which, if adopted, would become effective July 1, 1990.

Ken Parker, Department of Correction, presented information regarding recidivism rates among misdemeanants and felons and the impact of the prison cap.

January 25, 1990

Lao Rubert, Executive Director, Prison & Jail Project, Durham, presented a report entitled "Corrections Policy for the 90's". She urged Committee members to take a comprehensive approach to setting goals, to connect goals to resources, to institute a more precise sentencing structure, and to establish a policy group that would include representatives from the three branches of government.

Kay Knapp, Institute for Rational Public Policy, gave an overview of how some states are utilizing mechanisms to analyze potential effects of policy decisions. Ms. Knapp described the "Structured Sentencing Simulation Model" and how it could help meet the needs of comprehensive sentencing and corrections policy development. Glenn Newkirk, Director, Legislative Automated Systems Division, discussed the current capability of the legislature's computer system, and how the Model could be handled within the current system.

A subcommittee, chaired by Senator Marvin and Representative Craven, will review and make recommendations on a corrections policy Statement of Purpose.

Hal Pell, Committee Counsel, Lucien Capone, Deputy Attorney General, and Jim Drennan, Institute of Government, discussed legal implications of the North Carolina Constitution and punishment of offenders.

George Barnes, Division of Probation and Parole, North Carolina Department of Correction, gave a report on the status of the intensive probation program and the electronic surveillance/house arrest program.

Lattie Baker, Department of Correction, reported that the department's substance abuse programs have been implemented and are in various phases of development. A subcommittee will be appointed to study substance abuse programs in the prison system.

February 8, 1990

Buddy Humphrey, Office of State Budget and Management, gave an update on the Satellite Jail fund.

Frank Thorwald and Jim Wordsworth, representing Surfside Six Industries, presented information on quick construction of prison cells. The company has developed an alternative to traditional construction, which is said to be inexpensive, have a long life, and is adaptable to various configurations.

Hal Pell, Committee Counsel, reviewed drafts of proposed legislation to amend the State Constitution and to allow judges to order that an offender be placed on probation with conditions. Under current law, probation is voluntary, and requires the offender's consent. The Committee voted to approve the proposed bills, and will seek input from constitutional scholars before making a final recommendation.

Senator William Martin and Representative William Hurley were appointed to co-chair the Committee's Substance Abuse Subcommittee.

John Kernodle, Committee Consultant, reported that he will provide an analysis of Community Corrections Acts from various states, and how state resources are made available to local communities for handling misdemeanants.

February 22, 1990

The Committee heard from John Sanders, Institute of Government, on the proposed Constitutional amendment. The Committee made additional changes to the language of the proposed amendment, and will seek comment from interested groups.

The Committee received a report from the subcommittee on the Statement of Purpose, and after some discussion, decided to entertain additional comments at the next meeting.

Brenda Carter, Committee Counsel, presented a report on offender programs and policies and goals. Several questions were raised regarding the IMPACT program, which is targeted to committed youthful offenders.

March 8, 1990

The Committee continued its discussion of programs and policies. Joe Hamilton, Director, Division of Prisons, described the IMPACT program, and Lucien Capone, Deputy Attorney General, responded to legal issues related to alternative use of the program. IMPACT is currently an inmate program, and participants are paroled upon successful completion of the 90-day program. The Committee decided to investigate the use of the IMPACT program as an alternative to prison.

After reviewing information on electronic surveillance/house arrest, the Committee decided to consider setting up goals, objectives and criteria for the program and review the fiscal implications of expanding the program statewide.

Art Ziedman, Division of Victim and Justice Services, Department of Crime Control & Public Safety, presented information on the Community Penalties Program. He described the program as an effort to divert prison-bound misdemeanants and non-violent felons and to provide community-based punishment for them.

The Committee adopted a working draft of the Statement of Purpose, which will be disseminated to interested parties for comment and review.



March 22, 1990

Bill Thurber and Ron Kronenberger, Florida Department of Corrections, presented information on Florida prison construction and the use of inmate labor. They indicated that the use of in-house staff and inmate labor saved the state from 35% to 40% in construction costs. Approximately 95% of the equipment used in furnishing the buildings was produced by prison enterprises - desks, chairs, mattresses, etc.

Senator David Parnell and Representative Anne Barnes, Co-chairs of the Committee, presented a proposal for discussion by the Committee at its next meeting.

Reverend Scott Rogers and Reverend Sam Everett, Asheville-Buncombe Community Christian Ministry, addressed the Committee regarding Southern Appalachian Mainstream, an alternative prison exit program which provides transitional housing and treatment for inmates.

April 12, 1990

Carolyn Wyland, Fiscal Research Division, presented information and cost estimates for the Co-chairs' proposal of March 22.

Glenn Newkirk, Director, Legislative Automative Systems Division, provided a comparison of four impact assessment models used for analysis of legislative options in sentencing.

Ray DeBruhl, of Davidson & Jones Corporation, and Allen Ault, of Rosser Fabrap Co., described their design-build approach to full service prisons.

John Kernodle, Committee Consultant, presented his report on Community Corrections Programs.

April 26, 1990

Frank McGuirt, Sheriff of Union County and Chairman of the North Carolina Sheriffs' Association Executive Committee, indicated that the sheriffs of the State want to restore and strengthen public confidence in the criminal justice system. he noted a need for increased prison and jail space, and the use of alternative punishments, and the support for a "truth in sentencing" law. The Sheriffs' Association is preparing a plan for relieving prison and jail overcrowding and will share it with the Committee.

Lucien Capone, Deputy Attorney General, presented the Attorney General's statement on prison construction.

Hal Pell, Committee Counsel, presented a summary of responses received from a survey sent to Judges and District Attorneys on the issue of a proposed amendment to the State Constitution and the potential use of the IMPACT program as a sentencing option for deferred prosecution and/or probation.

Carolyn Wyland, Fiscal Research Division, presented a cost analysis of implementation of the proposal presented by the Committee Co-chairs.

The Committee voted on several recommendations to be made to the 1990 Session of the General Assembly.

May 9, 1990

The Committee received Phase III of the consultant's report, presented by Mark Corrigan. The report includes the development of a set of papers relating to key issues associated with sentencing and corrections policy reform. Corrigan described the report as working papers for state legislators, intended to identify and define key problem areas which warrant attention and debate prior to final development of legislative proposals. Copies of the report are available in the legislative library.

The Committee completed its discussion and approval of recommendations to be made to the 1990 Session of the General Assembly.

## RECOMMENDATIONS



## ASSUMPTIONS

In developing the plan for the following expansion of community-based sentencing programs and related costs, the following assumptions were made:

1. Prison admissions (new and probation revocations) and readmissions (parole revocations) of sentenced inmates will increase at a rate of 18% for FY 1990-91 and FY 1991-92 (13.9% in 1988, 19.7% in 1989, and 20% for January-March, 1990);
2. Thirty percent (30%) of new admissions and 10 percent (10%) of probation revocations to prison can be diverted to Electronic Surveillance (House Arrest) or Intensive Supervision programs;
3. Seventy-five percent (75%) of those offenders whose parole is revoked for technical violations can be diverted to Electronic Surveillance or Intensive Supervision instead of being readmitted to prison. In 1989, 966 paroles were revoked (readmitted to prison) for technical violations;
4. The statutory restriction in G.S. 143B-262(c) limiting the number of prison-bound misdemeanants on the Intensive Supervision Program to 20% is removed (see Appendix X); and,
5. A sentence to House Arrest shall be defined as "imprisonment" for purposes of mandatory imprisonment described in G.S. 20-179 (g),(h) (Safe Roads Act). (See Appendix XI).



**ELECTRONIC SURVEILLANCE PROGRAM  
(HOUSE ARREST)**

Recommendation:

Expand house arrest (electronic surveillance), by a State total of 5,000 slots, to every county in the State. Every county is to have the capacity to control at least 50 offenders by house arrest; those counties with 100 existing slots would receive an additional 50 slots. To the extent possible, the system should be centralized to allow for the transfer of slots between counties where necessary. In order to assist counties to link into the State system with locally purchased equipment to help in controlling jail overcrowding, recommend that 1,000 house arrest slots be made available to the counties.

Rationale:

This program has been used very successfully in North Carolina. It is time to maximize its potential as a safe and affordable community-based sanction for certain offenders. The State has long concentrated community-based sanctions in a very small portion of the State. The opportunity to divert an offender from prison, to restrict his liberties, to require him to pay restitution to his victims, and to avoid the unnecessary expenditure of tax dollars should not depend on where in the State that offender is sentenced. Every county should have sufficient personnel to supervise at least 50 offenders.

Present Locations and Number of Offenders Supervised:

Alamance, Buncombe, Cabarrus, Cumberland, Davidson, Durham, Forsyth, Guilford, Iredell, Mecklenburg, New Hanover, Pitt, Robeson, Wake. (One hundred offender slots in each location = 1400 slots, although on a temporary basis 35 slots have been reallocated from Iredell and Davidson to Forsyth and Wake.)

Proposed Locations and Number of Offenders Supervised:

All 100 counties to have an average of fifty offender slots (50 additional slots in the 14 locations listed above) for offenders on probation or parole and an average of ten offender slots to be supervised by local law enforcement personnel.

Total additional slots: 5,000 State + 1,000 Local

Estimated Cost for Additional Slots:

Based upon adding 2,000 slots in FY 1990-91 for State offenders on probation and parole and 1,000 offenders supervised by local officials, the cost will be approximately \$4,843,172 of which \$2,917,430 is for non-recurring equipment items.

Based upon continuing the above-noted slots and adding an additional 3,000 slots for State offenders on probation and parole, the cost for FY 1991-92 will be \$7,749,897 of which \$4,115,475 is for non-recurring equipment items.



## INTENSIVE SUPERVISION PROGRAM

### Recommendation:

Expand the Intensive Supervision Program by 3,301 offender slots and make it available in every county.

### Rationale:

This program has been used very successfully in North Carolina. It is time to maximize its potential as a safe and affordable community-based sanction for certain offenders. The State has long concentrated community-based sanctions in a very small portion of the State. The opportunity to divert an offender from prison, to restrict his liberties, to require him to pay restitution to his victims, and to avoid the unnecessary expenditure of tax dollars should not depend on where in the State that offender is sentenced. Every county should have sufficient personnel to supervise at least 16 offenders.

### Estimated Cost:

In order to implement the number of intensive supervision teams and single intensive supervision officers shown in the chart on pages 17-18, the cost for FY 1990-91 is \$7,462,663 and for FY 1991-92 is \$10,617,003.

### Present Locations and Number of Offenders Supervised:

<u>County</u>	<u>Number of Teams</u>	<u>Number of Offenders</u>
<u>Branch A</u>		
Buncombe	2	50
Henderson	1	25
Rutherford/McDowell	1	25
<u>Branch B</u>		
Burke/Caldwell	1	25
Cleveland	1	25
Catawba	1	25
<u>Branch C</u>		
Rowan	1	25
Cabarrus	1	25
Surry	1	25
Iredell	1	25
<u>Branch D</u>		
Guilford	4	100
Forsyth	4	100
Caswell/Rockingham	1	25

<u>County</u>	<u>Number of Teams</u>	<u>Number of Offenders</u>
<u>Branch E</u>		
Alamance	1	25
Davidson	1	25
Granville/Person	1	25
Chatham/Orange	1	25
Randolph	1	25
<u>Branch F</u>		
Harnett/Johnston	1	40
Sampson	1	25
Duplin	1	25
Onslow	2	50
<u>Branch G</u>		
Wake	4	100
Durham	2	50
<u>Branch H</u>		
Halifax/Northampton	1	25
Nash/Edgecombe	1	40
Wayne	1	25
Lenoir/Greene	1	25
Vance/Franklin	1	25
Wilson	1	25
<u>Branch I</u>		
Beaufort/Martin	1	25
Pitt	1	25
Craven/Carteret	1	40
<u>Branch J</u>		
New Hanover	2	50
Robeson	2	50
<u>Branch K</u>		
Cumberland	2	50
Richmond/Scotland	1	25
Moore/Lee	1	25
<u>Branch L</u>		
Mecklenburg	5	125
Gaston	2	50
Union/Stanly	1	25
<hr/>		
Total	61	1,570

Number of counties now participating = 56.

Locations and Number of Recommended New Offender Slots:

	FY 90-91			FY 91-92			
	Projected Offenders	Teams (1) (2)	Offender Slots	Projected Offenders	Teams (1) (2)	Offender Slots	
*Alamance	146		2	50	171	3	75
Alexander	23	1		16	27	1	16
Alleghany	8	1		16	9	1	16
Anson	39		1	25	45	1	25
Ashe	14	1		16	16	1	16
Avery	4	1		16	6	1	16
*Beaufort	56		1	25	65	1	25
Bertie	25	1		16	29	1	16
Bladen	26	1		16	31	1	25
Brunswick	50		1	25	59	1	25
*Buncombe	104		2	50	121	2	50
*Burke	68		1	25	79	1	25
*Cabarrus	90		2	50	105	2	50
*Caldwell	61		1	25	71	1	25
Camden	4	1		16	5	1	16
*Carteret	34		1	25	40	1	25
*Caswell	21	1		16	24	1	16
*Catawba	96		2	50	112	2	50
*Chatham	23	1		16	27	1	16
Cherokee	12	1		16	14	1	16
Chowan	17	1		16	20	1	16
Clay	3	1		16	3	1	16
*Cleveland	87		2	50	102	2	50
Columbus	47		1	25	55	1	25
*Craven	65		1	25	75	1	25
*Cumberland	205		3	75	239	3	75
Currituck	11	1		16	13	1	16
Dare	25	1		16	29	1	16
*Davidson	81		2	50	94	2	50
Davie	16	1		16	19	1	16
*Duplin	52		1	25	61	1	25
*Durham	180		3	75	210	3	75
*Edgecombe	66		1	25	78	1	25
*Forsyth	310		4	100	362	5	125
*Franklin	41		1	25	48	1	25
*Gaston	66		1	25	78	1	25
Gates	4	1		16	5	1	16
Graham	2	1		16	2	1	16
*Granville	34	1		25	39	1	25
*Greene	9	1		16	10	1	16
*Guilford	271		4	100	316	4	100
*Halifax	92		2	50	107	2	50
*Harnett	81		2	50	94	2	50
Haywood	27	1		16	31	1	25
*Henderson	62		1	25	73	1	25
Hertford	39		1	25	46	1	25
Hoke	33		1	25	38	1	25
Hyde	4	1		16	7	1	16
*Iredell	149		2	50	175	3	75
Jackson	7	1		16	8	1	16
*Johnston	82		2	50	95	2	50

	FY 90-91			FY 91-92				
	Projected Offenders	Teams** (1) (2)		Offender Slots	Projected Offenders	Teams** (1) (2)		Offender Slots
Jones	8	1		16	9	1		16
*Lee	53		1	25	61		1	25
*Lenoir	69		1	25	81		2	50
Lincoln	38		1	25	44		1	25
*McDowell	18	1		16	21	1		16
Macon	5	1		16	6	1		16
Madison	3	1		16	4	1		16
*Martin	27	1		16	31		1	25
*Mecklenburg	336		5	125	391		5	125
Mitchell	4	1		16	5	1		16
Montgomery	26	1		16	30		1	25
*Moore	57		1	25	65		1	25
*Nash	61		1	25	71		1	25
*New Hanover	173		3	75	203		3	75
*Northampton	26	1		16	30		1	25
*Onslow	97		2	50	115		2	50
*Orange	44		1	25	51		1	25
Pamlico	4	1		16	4	1		16
Pasquotank	45		1	25	52		1	25
Pender	24	1		16	28	1		16
Perquimans	13	1		16	15	1		16
*Person	29	1		16	34		1	25
*Pitt	165		3	75	193		3	75
Polk	13	1		16	15	1		16
*Randolph	63		1	25	74		1	25
*Richmond	66		1	25	78		1	25
*Robeson	133		2	50	156		2	50
*Rockingham	109		2	50	129		2	50
*Rowan	91		2	50	107		2	50
*Rutherford	47		1	25	55		1	25
*Sampson	52		1	25	61		1	25
*Scotland	54		1	25	63		1	25
*Stanly	26	1		16	30		1	25
Stokes	18	1		16	21	1		16
*Surry	69		1	25	81		2	50
Swain	5	1		16	6	1		16
Transylvania	13	1		16	15	1		16
Tyrrell	4	1		16	5	1		16
*Union	64		1	25	75		1	25
*Vance	59		1	25	70		1	25
*Wake	460		6	150	540		7	175
Warren	11	1		16	13	1		16
Washington	23	1		16	27	1		16
Watauga	11	1		16	13	1		16
*Wayne	79		1	25	93		2	50
Wilkes	73		1	25	86		2	50
*Wilson	66		1	25	77		1	25
Yadkin	34		1	25	39		1	25
Yancey	2	1		16	2	1		16
TOTAL	6,042	44	93	3,038	7,063	35	110	3,301

\*Counties that have Intensive Supervision Program

\*\* (1) = one Intensive Officer; (2) = an Intensive and Surveillance Officer

CONSTRUCT ADDITIONAL PRISON BEDS  
AND REPLACE AGING FACILITIES

Recommendations

Construct an additional 3,880 prison beds of which 3,296 beds should be completed by July 1, 1992, with 1,500 of those beds being built using rapid construction techniques and on-line within 12 months of funding. The Committee's recommendation provides for an additional 584 beds to further increase capacity in the third year.

Replace Polk Youth Institution, Triangle Correctional Institution, K and O Dormitories at Central Prison, and A and B Dormitories at the North Carolina Correctional Institution for Women.

Rationale:

The State should continue to increase the prison population cap figure as the new beds being constructed come on-line. Based on Division of Prisons' figures and the recent shift of funds to complete an additional 416 beds, the prison population cap figure and prison capacity could rise to 20,597 by June of 1991. Because our legal capacity will be 17,301 on that date, without further construction beyond that already funded, an additional 3,296 beds should be constructed by that time. The cap of 20,597 should remain in place from July, 1991 to July 1, 1992. Assuming the additional construction is completed by July 1, 1992, the State will have an actual legal capacity of 20,597 system-wide on that date: a capacity which is in conformance with the standard set forth in *Small v. Martin*: AND a capacity which reflects an increase in prison space by almost 20% in the next two years (See Appendix XI).

These recommended sites and cost estimates have been provided by the Department of Correction and the Office of State Budget and Management. These figures are based on conventional construction. Alternative cost estimates are shown on Page 21.

Cost for New Beds:

<u>Facility</u>	<u>No. Beds.</u>	<u>Cost Estimate</u>
Processing Center consisting of six 104-bed dorms, and one 28-bed single cell unit	652	24,585,834
One 144-bed single cell mental health unit	144	5,956,906
Medium Custody Dormitories		
Caswell	104	3,456,536
Randolph	208	6,239,363
Columbus	104	3,087,200
Pender	208	4,610,628
Montgomery	104	4,227,592

<u>Facility</u>	<u>No. Beds.</u>	<u>Cost Estimate</u>
Southwest Institution, single cell	480	28,724,300
Nash Institution, medium/minimum custody	228	5,687,392
Triangle at new location - minimum	200	1,905,200
Anson - new medium custody unit consisting of five 104-bed dormitories	520	16,625,417
Burke 100 minimum youth	100	2,796,816
New Eastern Youth Center	300	5,990,292
New beds at Polk Replacement:		
128-bed single cell	128	Included in estimate for Polk replacement
92 medium custody beds	92	
North Carolina Correctional Institution for Women (NCCIW)		
Two 104-bed medium dorms	208	Total cost for all these units is \$16,374,054
Single room close specialized	48	
Substance Abuse Unit	52	
SUBTOTAL NEW BEDS AND COST	3,880	\$130,267,530

Replacement Beds:

<u>Facility</u>	<u>No. Beds.</u>	<u>Cost Estimate</u>
K and O Dorms - Central Prison	144	6,381,453
A and B dorms - (NCCIW)	208	3,720,110
Polk Youth Institution	500	32,536,211*
Triangle Correctional Institution	300	9,387,477
SUBTOTAL REPLACEMENT BEDS AND COST	1,152	\$52,025,251
TOTAL NEW AND REPLACEMENT BEDS	5,032	\$182,292,781

\* Includes cost for the 128 and 92 beds at Polk shown in the previous chart for new beds.

Alternative Cost Estimates for New Beds:

In contrast to the cost estimates provided by the Office of State Budget and Management (OSBM), the Public Facilities Groups of Davidson and Jones Construction Company, Raleigh, North Carolina, has provided the following cost estimates for three of the new facilities recommended by the Special Committee on Prisons:

<u>Facility</u>	<u>Public Facilities Groups Cost Estimate</u>	<u>OSBM Cost Estimate</u>
652-bed processing center	\$19,929,000 (16 mos. completion)	\$24,585,834
520-bed medium custody unit	\$19,275,000 (15 mos. completion)	16,625,417
480-bed close custody unit	\$26,607,000 (18 mos. completion)	28,724,300





**SENTENCING AND POLICY ADVISORY COMMISSION**

Recommendation:

Recommend that a Sentencing and Policy Advisory Commission, composed of members of the three branches of government, local government officials, and public members, be established to evaluate the State's sentencing laws and criminal justice/corrections policies. Evaluation to be conducted in relationship to stated policies for the criminal justice/corrections system, availability of sentencing options, and state resources. Commission to categorize crimes, recommend sentencing guidelines, evaluate the need for further expansion of any sentencing options, and recommend methods of implementing State policies. Required to report its findings, if any, to the 1991 General Assembly and a final report with recommendations to the 1992 Regular Session of the 1991 General Assembly. (See "Sentencing Commission Act" on Page 37.)

That the staff of the Sentencing and Policy Advisory Commission consist of the following:

	<u>FY 1990-91</u>	<u>FY 1991-92</u>
Executive Director (Grade 86)	\$53,484	\$53,484
Legal Specialist (Grade 82)	44,340	44,340
Criminal Justice Support Supervisor (Grade 77)	35,256	35,256
Analyst Programmer III (Grade 74)	30,684	30,684
Administrative Assistant (70T)	25,788	25,788
Paralegal II (Grade 67)	22,644	22,644
Executive Assistant (Grade 65)	<u>20,772</u>	<u>20,772</u>
Social Security @ .0765 to \$49,200/person	\$17,494	
Social Security @ .0765 to \$51,300/person		17,655
Retirement @ .1174	27,350	27,350
Hospitalization @ \$108/mo./person	9,072	9,072
Total Salaries/Benefits	<u>\$286,884*</u>	<u>\$287,045*</u>

The estimated cost of developing the correctional population simulation model is \$200,000. The balance of the \$550,000 appropriated funds would be used for staff and administrative costs for the Commission. It is also projected that the Commission will qualify for additional funding from the federal government and private sources.

\* Salary costs in the Administrative Office of the Courts schedule may be slightly higher than those shown here.

**PER DIEM PAYMENTS FOR STATE INMATES IN COUNTY JAILS**

Recommendation:

Raise the per diem payment from \$12.50 per day to \$20.00 per day for State inmates serving sentences of more than 30 days in local facilities.

Rationale:

The per diem reimbursement to counties for State inmates serving sentences of 30 days or more was increased from \$10.00/day to \$12.50/day by the 1986 Session.

The payments made since 1987 to counties for these inmates are shown below. Prior to FY 1988-89, no payments were made for female inmates.

	<u>FY 1987-88</u>	<u>FY 1988-89</u>	<u>7//1-3/31/90</u>	<u>Projected FY 1989-90</u>
Per Diem	\$2,758,295	\$3,268,678	\$2,834,426	\$3,779,235
Medical	50,038	61,762	63,998	85,331
Total	\$2,808,333	\$3,330,440	\$2,898,424	\$3,864,566
Number of Inmate Days	220,664	261,494	226,754	302,339

Cost:

Based upon the number of projected inmate days for FY 1989-90, the cost to raise the per diem from \$12.50 to \$20.00 per day is \$2,267,543.

Background Data:

In response to a questionnaire distributed by the N.C. County Commissioners Association, counties have reported the following direct, indirect, and total costs per inmate per day for FY 1989-90 Year-to-Date.

FY 1989-90 PER DAY MAIN JAIL COSTS

	<u>Direct</u>	<u>Indirect</u>	<u>Total</u>
Alamance	\$26.35	\$ 2.55	\$28.90
Alexander	18.79	1.86	20.65
Alleghany			
Anson	19.92	6.00	25.92
Ashe	29.58	15.85	45.44
Avery			
Beaufort	13.00	2.40	15.40
Bertie/Martin	26.57	4.36	30.93
Bladen	14.37	3.88	18.25
Brunswick	19.67	3.29	22.96
Buncombe	19.72	6.20	25.92
Burke			
Cabarrus	28.00	2.00	30.00
Caldwell	18.91	3.54	22.45
Camden			
Carteret	15.02	1.32	16.34
Caswell	23.90	3.29	27.19
Catawba	23.09	9.17	32.26
Chatham			
Cherokee			
Chowan	22.10	9.62	31.72
Clay			
Cleveland	21.28	1.11	22.39
Columbus	23.43	5.00	28.43
Craven	22.70	1.44	24.14
Cumberland	22.04	2.75	24.79
Currituck	41.08	0.00	41.08
Dare	25.30	2.59	27.89
Davidson	19.79		19.79
			(No in-
			direct
			cost in-
			cluded)
Davie	52.82	2.36	55.18
Duplin	31.75	7.05	38.80
Durham	24.20	4.25	28.45
Edgecombe	9.35	2.20	11.55
Forsyth	18.75	2.86	21.61
Franklin	27.55	1.90	29.45
Gaston			
Gates			
Graham			
Granville	13.88	2.16	16.04
Greene	19.21	2.47	21.68
Guilford	45.44	1.55	46.99
Halifax	23.01	4.63	27.64

**FY 1989-90 PER DAY MAIN JAIL COSTS**

	<u>Direct</u>	<u>Indirect</u>	<u>Total</u>
Harnett	21.13	2.21	23.34
Haywood			
Henderson	24.23	5.15	29.38
Hertford			
Hoke	16.59	4.57	21.16
Hyde	38.12	1.76	39.88
Iredell	27.36	2.84	30.20
Jackson			
Johnston	32.07	11.63	43.70
Jones			
Lee	26.57	.84	27.41
Lenoir	14.25	1.22	15.47
Lincoln			
Macon			
Madison			
Martin/Bertie	26.57	4.36	30.93
McDowell			23.78 (FY 88-89)
Mecklenburg (Main jail)	21.73	1.96	23.69
Mitchell			
Montgomery	14.98	1.74	16.72
Moore	24.41	1.35	25.76
Nash	11.23	0.00	11.23
New Hanover	20.65	2.45	23.10
Northampton	24.17	2.78	26.95
Onslow	15.18	.89	16.07
Orange			
Pamlico	32.93	10.35	43.28
Pasquotank	33.00	0.00	33.00
Pender	26.66	4.03	30.69
Perquimans			
Person	37.69	5.20	42.89
Pitt	27.60	1.24	28.84
Polk	17.47	8.72	26.19
Randolph	20.00	4.00	24.00
Richmond	16.71	2.15	18.86
Robeson	5.90	2.64	8.54
Rockingham	21.54	2.74	24.28
Rowan	21.77	.96	22.73
Rutherford	21.36	4.93	26.29
Sampson	19.61	3.50	23.11
Scotland	17.64	1.79	19.43
Stanly	22.45	11.32	33.77
Stokes			
Surry	17.64	0.00	17.64
Swain			

## COURTROOM/JAIL ANNEX FACILITIES

### Recommendation:

Just as the State will need to construct additional prison cells, counties will need to construct additional jail space. Many counties are addressing this issue with plans for courtroom/jail annex facilities. This has been determined to be a cost effective way of building the types of facilities needed at the local level. Based on the Satellite Jail Fund Model, the State should provide matching grant funds to counties, on the basis of need, for these types of facilities.

The Committee recommends such a matching grant fund but leaves the amount to the discretion of the General Assembly.

### Background Information:

Since January 1, 1987, the following counties have held or plan to hold a bond referendum for courtroom and/or jail facilities:

<u>Date of</u> <u>Referendum</u>	<u>County</u>	<u>Purpose</u>	<u>Amount</u>	<u>Result</u>
09-13-88	Gaston	Courthouse & Jail	\$34,800,000	Failed
11-08-88	Northampton	Law Enforcement(Jail)	2,000,000	Passed
05-03-88	Warren	Law Enforcement(Jail)	1,550,000	Passed
03-07-89	Alleghany	Law Enforcement(Jail)	2,000,000	Passed
04-11-89	Currituck	Courthouse	5,000,000	Failed
11-07-89	Forsyth	Law Enforcement(Jail)	48,000,000	Passed
06-13-89	Stokes	Law Enforcement (Jail)	4,325,000	Failed

### Pending Elections

03-27-90	Buncombe	Pub. Bldg.(Court & Jail)	\$43,000,000	Failed
05-08-90	Lee	Pub. Bldg.(Court & Jail)	8,700,000	
06-05-90	Robeson	Law Enforcement (Jail)	10,300,000	

## SUMMIT HOUSE

### Recommendation:

Provide funds to Summit House, Inc., a private non-profit organization that provides a community-based, non-secure, residential alternative to prison for mothers and pregnant women who have been convicted of non-violent crimes. Both treatment and close supervision are provided through this program.

### Rationale:

Few residential programs are available to offenders on probation or parole, and it is believed that such programs should be included in the development of a continuum of sources for the correctional system. Female offenders are referred to the program by sentencing alternative centers, attorneys, judges, and probation officers. Women are on probation while at Summit House. Children from birth through age 7 live with their mothers while at Summit House.

Treatment includes individual and group counseling, substance abuse counseling, and 12-step programs such as Alcoholics Anonymous. In addition, utilizing local agencies and educational institutions, the program addresses issues such as parenting, health, addictions, education, family relationships, self-management, employment, and social skills.

### Cost:

The recommendation is to provide \$165,000 from the State in support of the total projected operating budget of \$301,000 for FY 1990-91.

## SOUTHERN APPALACHIA MAINSTREAM

### Recommendation:

Provide funds to Southern Appalachia Mainstream, a private non-profit organization to provide a community-based, non-secure residential treatment center as an exit alternative to prison for male felons in need of residence plans, community employment, and/or social readiness skills.

### Rationale:

Few residential programs are available to offenders on probation or parole, and it is believed that such programs should be included in the development of a continuum of services for the correctional system. The residential program would serve approximately 128 male parolees during FY 1990-91. The target populations, among others, would be those who do not have a definite, or any, home plan, those who serve their full sentences, those who have had long sentences and are in need of resocialization, and/or substance abusers.

### Cost:

The recommendation is to provide \$190,000 from the State in support of a total projected operating budget of \$237,600 for September 1, 1990 - June 30, 1991.

CONSTITUTIONAL AMENDMENT TO EXPAND PUNISHMENTS  
AND STATUTORY AMENDMENTS ON INMATE "GOOD TIME" CREDITS

Recommendations:

That Article XI, Section 1, of the State constitution be amended to include additional punishments than currently allowed; specifically, restitution, restraints on liberty, and work programs. Further, the Committee recommends that felony offenders who violate the terms of a sentence to probation, or refuse probation, be subject to the loss of "good time" credit, in the sentencing judge's discretion. Misdemeanants, who currently are eligible for deductions of time for good behavior, in the discretion of the Secretary of Correction, should be ineligible for such credit under the same circumstances. (See proposed legislation on page 51 .)

Rationale:

The constitution currently prohibits the sentencing of an offender to probation with conditions. Judges have traditionally suspended sentences to terms of imprisonment on the condition that an offender comply with the probationary conditions. Because the constitution does not allow for sentences to include conditional probation, the offender can choose not to comply with probationary terms, and accept the prison term.

The Committee received testimony that some offenders are refusing conditional probation, and exercising their "right" to serve their sentence in prison. Officials in the Department of Correction have related that some offenders are finding certain "alternative" punishments too stringent, and opt for prison, hoping to get out early because of overcrowding. A change in the constitution will set forth a policy that the listed sanctions are **punishments**, and are part of a continuum of sanctions that are available to a court. An offender should not have the "option" to choose "how he is to be punished" as a matter of policy--that is the function of the judiciary.

The Committee realized that a constitutional amendment alone would not serve as a "disincentive" to an offender purposefully violating probationary conditions, and thereby "opting" to serve his activated term of imprisonment. The Committee's recommendation to provide a sentencing judge (in the case of a felony offender) to remove any, or all, of an offender's eligibility for good time (day for day credit), would serve that purpose. An offender given a sentence which includes a suspended term of imprisonment, and probation with conditions, will not know how much, if any, good time eligibility he will be given if his suspended term is activated, or if he refuses probation.



The proposal recognizes that the conduct of an offender, whether sentenced to prison, or sentenced to punishment in the community, should be evaluated for compliance. Major infractions, or refusal to accept punitive or rehabilitative efforts--whether in an incarcerative or non-incarcerative setting--should result in the loss of time granted for good behavior. A refusal to accept probation is tantamount to a refusal of punitive or rehabilitative efforts. Felons who are unable, or refuse to comply with conditions should serve their entire sentence, without good time, if so decided by the sentencing judge.

Currently, misdemeanants receive deductions of time to be served for good behavior, in the discretion of the Secretary of Correction. The proposal would eliminate time deductions for good behavior for misdemeanants who have sentences activated or refuse probation. Misdemeanants generally have shorter sentence lengths, and would still be eligible for deductions on the basis of affirmative acts, i.e., meritorious conduct, work or study, or participation in programs.

A felony offender on probation, who does not know whether he will lose all good time, or a misdemeanant on probation, who knows he will go to prison ineligible for any time off for good behavior, are more likely to "accept" probation, and comply with its conditions. In either case, offenders will know that if they are sent to prison, they will serve a substantial portion of their sentence before they are eligible for parole. A substantial decrease in the number of probation revocations and refusals to accept probation should result.

**EXPAND ELIGIBILITY FOR INTENSIVE PROBATION PROGRAM**

Recommendation:

Expand misdemeanor eligibility for Intensive Probation Program. (See proposed legislation on Page 54.)

Rationale:

G.S. 143B-262(c) provides that 80% of each intensive probation team's caseload shall be persons who have been convicted of a felony. In order to achieve maximum benefit from the program on a statewide basis, the statute should be amended to allow more flexibility in the use of intensive probation for misdemeanants.

## DWI HOUSE ARREST

### Recommendation:

Recommend that G.S. 179(g) and (h) be amended to allow judges to use House Arrest as a condition of special probation in certain DWI cases. (See proposed legislation on Page 55.)

### Rationale:

Current provisions of the Safe Roads Act require certain persons convicted of impaired driving to serve a minimum jail sentence. G.S. 20-179(g) requires that a defendant subject to Level One punishment serve a minimum of 14 days imprisonment, and § 20-179(h) requires a defendant subject to Level Two punishment serve a minimum of 7 days imprisonment. Level One and Level Two offenders are those who have prior convictions of impaired driving, who were driving while under an impaired driving revocation or who have, as a result of impaired driving, caused serious injury to another person.

Currently, House Arrest is not "imprisonment" for purposes of the impaired driving sentencing statute. Some judges have suggested allowing House Arrest as an alternative to the minimum term of imprisonment imposed in cases where the defendant's term is suspended. To achieve maximum benefit from the use of house Arrest as an alternative to imprisonment, the present statute could be amended to require a minimum stay on house Arrest in excess of the current minimum term of imprisonment. This would make it possible to keep offenders off the road for longer periods of time, and allow the offenders to participate in public or private substance abuse programs while maintaining their jobs and remaining under close supervision.

## IMPACT PROBATION PROGRAM

### Recommendation:

That judges have the discretion to place youthful first-time offenders on special probation, with the condition that they complete a program such as the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), that instills personal responsibility, self-respect, and respect for attitudes and value systems. (See proposed legislation on Page 57.)

### Rationale:

The Department of Correction currently operates the IMPACT program (military-style boot camp) to accomplish the goal of providing an alternative to long-term imprisonment of youthful offenders. However, candidates are currently selected out of the prison population, i.e., the youthful offenders are first sent to prison. In order to give a sentencing judge the option to place a youthful first-time offender into the program, the program should be as a condition of probation.

Only youthful offenders who have been convicted of less serious offenses are eligible for the program. Pending availability of a slot in the program, a youthful offender could be placed into a community-based sanction (House Arrest, Intensive Probation). Using programs such as IMPACT as probationary programs, rather than selecting youthful offenders from the prison inmate population, avoids any "indoctrination" by other prison inmates before entry into the program. Further, the cost of keeping an eligible offender in prison until there is an available slot is, on average, over ten times the daily cost of supervision in a community-based sanction.

**SUMMARY OF RECOMMENDED APPROPRIATIONS**

<u>Operating:</u>	<u>1990-91</u>	<u>1991-92</u>
Electronic Surveillance (House Arrest)	\$4,843,172	\$7,749,897
Intensive Supervision (Probation/Parole)	7,462,663	10,617,003
Sentencing Policy Advisory Commission	550,000	
Per Diem Payments	2,267,543	2,267,543
Summit House	165,000	
Southern Appalachia Mainstream, Inc.	<u>190,000</u>	<u>                    </u>
SUBTOTAL OPERATING	\$15,478,378*	\$20,634,443*
 <u>Capital:</u>		
Construct 3,880 New Prison Beds	130,267,530**	
Construct 1,152 Replacement Prison Beds	<u>52,025,251**</u>	
SUBTOTAL CONSTRUCTION	\$182,292,781**	

\* This does not include operating costs for the proposed new and replacement prison facilities. When the entire proposed construction is completed, annual operating costs will be approximately \$45,612,052 (plus inflationary and salary increases from FY 90-91). Non-recurring equipment costs will total \$13,091,204.

\*\* These figures are based on estimates provided by the Office of State Budget and Management. Alternative costs for three facilities are shown on Page 21.

PROPOSED LEGISLATION



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1989

S/H

D

90-RG-001A  
THIS IS A DRAFT 10-MAY-90 09:26:14

Short Title: Sentencing Commission Act.

(Public)

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Sponsors:

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Referred to:

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1 A BILL TO BE ENTITLED  
2 AN ACT TO CREATE A SENTENCING AND POLICY ADVISORY COMMISSION AND  
3 TO ESTABLISH A UNIFORM STANDARD FOR THE DEVELOPMENT OF CRIMINAL  
4 JUSTICE POLICY.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. Chapter 164 of the General Statutes is  
7 amended by adding a new Article to read:  
8 "ARTICLE 4.  
9 Sentencing Commission.  
10 "§ 164-35. Commission established.  
11 The North Carolina Sentencing and Policy Advisory Commission is  
12 established. As used in this Article, the term "Commission"  
13 means the North Carolina Sentencing and Policy Advisory  
14 Commission.  
15 "§ 164-36. Powers and duties.  
16 Sentences established for violations of the State's criminal  
17 laws should be based on the established purposes of our criminal  
18 justice and corrections systems. The Commission shall evaluate  
19 sentencing laws and policies in relationship to both the stated  
20 purposes of the criminal justice and corrections systems and the  
21 availability of sentencing options. The Commission shall make



1 recommendations to the General Assembly for the modification of  
2 sentencing laws and policies, and for the addition, deletion, or  
3 expansion of sentencing options as necessary to achieve policy  
4 goals.

5 "§ 164-37. Membership; chairman; meetings; quorum.

6 The Commission shall consist of 20 members as follows:

- 7       (1) The Chief Justice of the North Carolina Supreme  
8       Court shall appoint a sitting or former Justice or  
9       judge of the General Court of Justice, who shall  
10       serve as Chairman of the Commission;
- 11       (2) The Chief Judge of the North Carolina Court of  
12       Appeals, or another judge on the Court of Appeals,  
13       -serving as his designee;
- 14       (3) The Secretary of Correction or his designee;
- 15       (4) The Chairman of the Parole Commission, or another  
16       parole commissioner serving as his designee;
- 17       (5) The President of the Conference of Superior Court  
18       Judges or his designee;
- 19       (6) The President of the District Court Judges  
20       Association or his designee;
- 21       (7) The President of the North Carolina Sheriff's  
22       Association or his designee;
- 23       (8) The President of the North Carolina Association of  
24       Chiefs of Police or his designee;
- 25       (9) One member of the public at large, who is not  
26       currently licensed to practice law in North  
27       Carolina, to be appointed by the Governor;
- 28       (10) One member of the House of Representatives, to be  
29       appointed by the Speaker of the House;
- 30       (11) One member of the Senate, to be appointed by the  
31       President Pro Tempore of the Senate;
- 32       (12) The President of the North Carolina Sentencing  
33       Alternatives Association or his designee;
- 34       (13) One representative of the business community, to be  
35       appointed by the North Carolina Retail Merchant's  
36       Association;

- 1           (14) A criminal defense attorney, who shall be the  
2           President of the North Carolina Trial Lawyers  
3           Association or his designee;  
4           (15) The President of the Conference of District  
5           Attorneys or his designee;  
6           (16) President of the North Carolina Victim Assistance  
7           Network or his designee;  
8           (17) A rehabilitated former prison inmate, to be  
9           appointed by the Chairman of the Commission;  
10          (18) The President of the North Carolina Association of  
11          County Commissioners or his designee;  
12          (19) A representative of the academic community, with  
13          background in criminal justice or corrections  
14          policy, to be appointed by the President of The  
15          University of North Carolina;  
16          (20) A member of the Attorney General's staff, to be  
17          appointed by the Attorney General.

18          The Commission shall have its initial meeting no later than  
19          September 1, 1990, at the call of the Chairman. The Commission  
20          shall meet a minimum of four regular meetings each year. The  
21          Commission may also hold special meetings at the call of the  
22          Chairman, or by any four members of the Commission, upon such  
23          notice and in such manner as may be fixed by the rules of the  
24          Commission. A majority of the members of the Commission shall  
25          constitute a quorum.

26          "§ 164-38. Terms of members; compensation; expenses.

27          The Commission members shall serve for a period of two years,  
28          unless they resign or are removed. Vacancies occurring before  
29          the expiration of a term shall be filled in the manner provided  
30          for the members first appointed. A member of the Commission may  
31          be removed only for disability, neglect of duty, incompetence, or  
32          malfeasance in office. Before removal, the member is entitled to  
33          a hearing.

34          The Commission members shall receive no salary for serving.  
35          All Commission members shall receive necessary subsistence and  
36          travel expenses in accordance with the provisions of G.S.  
37          120-3.1, 138-5, and 138-6 as applicable.

1 § 164-39. Executive director and other staff.

2 The Commission shall employ an Executive Director from  
3 candidates presented to it by the Chairman and the Director of  
4 the Administrative Office of the Courts. The Executive Director  
5 shall have appropriate training and experience to assist the  
6 Commission in the performance of its duties. The Executive  
7 Director shall be responsible for compiling the work of the  
8 Commission and drafting suggested legislation incorporating the  
9 Commission's findings for submission to the General Assembly.

10 Subject to the approval of the Chairman, the Executive Director  
11 shall employ such other staff and shall contract for services as  
12 is necessary to assist the Commission in the performance of its  
13 duties, and as funds permit.

14 The Commission may, with the approval of the Legislative  
15 Services Commission, meet in the State Legislative Building or  
16 the Legislative Office Building, or may meet in an area provided  
17 by the Director of the Administrative Office of the Courts.  
18 Commission staff shall use office space provided by the Director  
19 of the Administrative Office of the Courts.

20 § 164-40. Correctional population simulation model.

21 The Commission shall develop a correctional population  
22 simulation model, and shall have first priority to apply the  
23 model to a given fact situation, or theoretical change in the  
24 sentencing laws, when requested to do so by the Chairman, the  
25 Executive Director, or the Commission as a whole.

26 The Executive Director or the Chairman shall make the model  
27 available to respond to inquiries by any State legislator, or by  
28 the Secretary of the Department of Correction, in second priority  
29 to the work of the Commission.

30 § 164-41. Classification of offenses - Ranges of punishment.

31 (a) The Commission shall classify criminal offenses into felony  
32 and misdemeanor categories on the basis of their severity.

33 (b) In determining the proper category for each felony and  
34 misdemeanor, the Commission shall consider, to the extent that  
35 they have relevance, the following:

36 (1) The nature and degree of harm likely to be caused  
37 by the offense, including whether it involves

- 1           property, irreplaceable property, a person, number  
2           of persons, or a breach of the public trust;  
3           (2) The deterrent effect a particular classification  
4           may have on the commission of the offense by  
5           others;  
6           (3) The current incidence of the offense in the State  
7           as a whole;  
8           (4) The rights of the victim.

9           (c) For each classification of felonies and misdemeanors  
10 formulated pursuant to subsection (b), the Commission shall  
11 assign a suggested range of punishment. The Commission shall  
12 take into consideration the current range of punishment for each  
13 offense.

14 **§ 164-42. Sentencing Structures.**

15           (a) The Commission shall recommend structures for use by a  
16 sentencing court in determining the most appropriate sentence to  
17 be imposed in a criminal case, including:

- 18           (1) Imposition of an active term of imprisonment;  
19           (2) Imposition of a term of probation;  
20           (3) Suspension of a sentence to imprisonment and  
21           imposition of probation with conditions, including  
22           the appropriate probation option or options,  
23           including house arrest, regular probation,  
24           intensive probation, restitution, and community  
25           service;  
26           (4) Based upon the combination of offense and defendant  
27           characteristics in each case, the presumptively  
28           appropriate length of a term of probation, or a  
29           term of imprisonment;  
30           (5) Ordering multiple sentences to terms of  
31           imprisonment to run concurrently or consecutively;  
32           (6) For a sentence to probation without a suspended  
33           sentence to imprisonment, the maximum term of  
34           confinement to be imposed if the defendant violates  
35           the conditions of probation.

36           (b) The sentencing structures shall be consistent with the  
37 goals, policies, and purposes of the criminal justice and

1 corrections systems, as set forth in Sections 2 and 3 of the  
2 Sentencing and Policy Advisory Commission Act of 1990. As part  
3 of its work, the Commission shall offer recommendations for the  
4 incorporation of those Sections into the sentencing laws of North  
5 Carolina. In formulating structures, the Commission also shall  
6 consider:

- 7 (1) The nature and characteristics of the offense;
- 8 (2) The severity of the offense in relation to other  
9 offenses;
- 10 (3) The characteristics of the defendant that mitigate  
11 or aggravate the seriousness of his criminal  
12 conduct and the punishment deserved therefor;
- 13 (4) The defendant's number of prior convictions;
- 14 (5) The available resources and constitutional capacity  
15 of the Department of Correction, local confinement  
16 facilities, and community-based sanctions;
- 17 (6) The rights of the victims;
- 18 (7) That felony offenders sentenced to an active term  
19 of imprisonment, or whose suspended sentence to  
20 imprisonment is activated, should serve a  
21 designated minimum percentage of their sentences  
22 before they are eligible for parole;
- 23 (8) That misdemeanor offenders sentenced to an active  
24 term of imprisonment, or whose suspended sentence  
25 to imprisonment is activated, should serve a  
26 designated minimum percentage of their sentence  
27 before they are eligible for parole;

28 (c) The Commission shall also consider the policy issues set  
29 forth in G.S. 164-42.1 in developing its sentencing structures.

30 (d) The Commission shall include with each set of sentencing  
31 structures a statement of its estimate of the effect of the  
32 sentencing structures on the Department of Correction and local  
33 facilities, both in terms of fiscal impact and on inmate  
34 population.

35 § 164-42.1. Policy recommendations.

1 Using the studies of the Special Committee on Prisons, the  
2 Governor's Crime Commission, and other analyses, the Commission  
3 shall:

- 4       (1) Determine the long-range needs of the criminal  
5       justice and corrections systems and recommend  
6       policy priorities for those systems;
- 7       (2) Determine the long-range information needs of the  
8       criminal justice and corrections systems and  
9       acquire that information as it becomes available;
- 10      (3) Identify critical problems in the criminal justice  
11      and corrections systems and recommend strategies to  
12      solve those problems;
- 13      (4) Assess the cost-effectiveness of the use of state  
14      and local funds in the criminal justice and  
15      corrections systems;
- 16      (5) Recommend the goals, priorities, and standards for  
17      the allocation of criminal justice and corrections  
18      funds;
- 19      (6) Recommend means to improve the deterrent and  
20      rehabilitative capabilities of the criminal justice  
21      and corrections systems;
- 22      (7) Propose plans, programs, and legislation for  
23      improving the effectiveness of the criminal justice  
24      and corrections systems;
- 25      (8) Determine the sentencing structures for parole  
26      decisions;
- 27      (9) Examine the impact of mandatory sentence lengths as  
28      opposed to the deterrent effect of minimum  
29      mandatory terms of imprisonment;
- 30      (10) Examine good time and gain time practices;
- 31      (11) Study the value of presentence reports;
- 32      (12) Consider the rehabilitative potential of the  
33      offender and the appropriate rehabilitative  
34      placement;
- 35      (13) Examine the impact of imprisonment on families of  
36      offenders; and

1           (14) Examine the impact of imprisonment on the ability  
2           of the offender to make restitution.

3 **"§ 164-42.2. Community corrections.**

4   The Commission shall recommend a comprehensive community  
5 corrections strategy and organizational structure for the State  
6 based upon the following:

7   (a) A review of existing community-based corrections programs  
8 in the State;

9   (b) The identification of additional types of community  
10 corrections programs, including residential programs, necessary  
11 to create an effective continuum of corrections sanctions in  
12 North Carolina;

13 (c) The identification of categories of offenders who would be  
14 eligible for sentencing to community corrections programs and the  
15 impact that the use of a comprehensive range of community-based  
16 sanctions would have on sentencing practices;

17 (d) A form of State oversight and coordination to ensure that  
18 community corrections programs are coordinated in order to  
19 achieve maximum impact; and

20 (e) A mechanism for State funding and local community  
21 participation in the operation and implementation of community  
22 corrections programs.

23 **"§ 164-43. Priority of duties; reports; continuing duties.**

24 (a) The Commission shall have two primary duties, and other  
25 secondary duties essential to accomplishing the primary ones.  
26 The Commission may establish subcommittees or advisory committees  
27 composed of Commission members to accomplish duties imposed by  
28 this Article.

29 It is the legislative intent that the Commission attach  
30 priority to accomplish the following primary duties:

31           (1) The classification of criminal offenses as  
32           described in § 164-41 and the formulation of  
33           sentencing structures as described in § 164-42; and

34           (2) The formulation of proposals and recommendations as  
35           described in § 164-42.1 and 164-42.2.

36   (b) The Commission shall report its findings and  
37 recommendations to the 1991 General Assembly, 1991 Regular

1 Session. The report shall describe the status of the  
2 Commission's work, and shall include any completed policy  
3 recommendations.

4 (c) The recommendations for the classification and ranges of  
5 punishment for felonies and misdemeanors, required by § 164-41,  
6 and sentencing structures, established pursuant to § 164-42,  
7 shall be submitted prior to the 1991 General Assembly, 1992  
8 Regular Session.

9 (d) Once the primary duties of the Commission have been  
10 accomplished, it shall have the continuing duty to monitor and  
11 review the criminal justice and corrections systems in this State  
12 to insure that sentencing remains uniform and consistent, and  
13 that the goals and policies established by the State are being  
14 implemented by sentencing practices, and it shall recommend  
15 methods by which this ongoing work may be accomplished and by  
16 which the correctional population simulation model developed  
17 pursuant to G.S. 164-40 shall continue to be used by the State.

18 (e) Upon adoption of a system for the classification of  
19 offenses formulated pursuant to § 164-41, the Commission or its  
20 successor shall review all proposed legislation which creates a  
21 new criminal offense, changes the classification of an offense,  
22 or changes the range of punishment for a particular  
23 classification, and shall make recommendations to the General  
24 Assembly.

25 (f) In the case of a new criminal offense, the Commission or  
26 its successor shall determine whether the proposal places the  
27 offense in the correct classification, based upon the  
28 considerations and principles set out in § 164-41. If the  
29 proposal does not assign the offense to a classification, it  
30 shall be the duty of the Commission or its successor to recommend  
31 the proper classification placement.

32 (g) In the case of proposed changes in the classification of an  
33 offense, or changes in the range of punishment for a  
34 classification, the Commission or its successor shall determine  
35 whether such a proposed change is consistent with the  
36 considerations and principles set out in § 164-41, and shall  
37 report its findings to the General Assembly.



1 (h) The Commission or its successor shall meet within ten days  
2 after the last day for filing general bills in the General  
3 Assembly for the purpose of reviewing bills as described in  
4 subsections (e), (f), and (g). The Commission or its successor  
5 shall include in its report on a bill an analysis based on an  
6 application of the correctional population simulation model to  
7 the provisions of the bill.

8 **§ 164-44. Statistical information; financial or other aid**

9 (a) The Commission shall have the secondary duty of collecting,  
10 developing, and maintaining statistical data relating to  
11 sentencing and corrections so that the primary duties of the  
12 Commission will be formulated using data that is valid, accurate,  
13 and relevant to this State. All state agencies shall provide  
14 data as it is requested by the Commission.

15 (b) The Commission shall have the authority to apply for,  
16 accept, and use any gifts, grants, or financial or other aid, in  
17 any form, from the federal government or any agency or  
18 instrumentality thereof, or from the State or from any other  
19 source including private associations, foundations, or  
20 corporations to accomplish any of the duties set out in this  
21 Chapter.

22 **§ 164-45. Administrative direction and supervision.**

23 The Commission shall be administered under the direction and  
24 supervision of the Director of the Administrative Office of the  
25 Courts. The Commission shall exercise all of its prescribed  
26 statutory powers independently of the head of that Office, except  
27 that all management functions shall be performed under the  
28 direction and supervision of the Director of the Administrative  
29 Office of the Courts. 'Management functions,' as used in this  
30 section, means planning, organizing, staffing, directing,  
31 coordinating, and budgeting."

32 Sec. 2. It is the constitutional responsibility of the  
33 North Carolina judicial system to discover the truth, to the best  
34 of its ability, in every case before it and to establish whether  
35 the accused is guilty or not guilty. In those cases where the  
36 defendant is found guilty, the court shall dispense justice for

1 the public, the victim, and the defendant through the judgment  
2 imposed.

3           Sec. 3. The following purposes and policies are hereby  
4 established:

5       (1) **Protection of the public.**

6       Incarceration should be viewed by the court both as punishment  
7 and as a means of protecting the public. Limitations on the  
8 freedom of the offender and the appropriate level of custody  
9 should be dictated in the first instance by the nature of the  
10 offense, the violent character of the offender, the proclivity of  
11 the offender to engage in criminal conduct as demonstrated by his  
12 criminal record, and the sound judgment of the sentencing court  
13 after taking into account all of the relevant aggravating and  
14 mitigating factors involved in the offenders' record of criminal  
15 conduct.

16       (2) **Punishment of the offender.**

17       After the interests of public protection have been addressed,  
18 consideration should be given to restriction of the liberty of  
19 the offender in such manner and to such extent as is necessary to  
20 demonstrate clearly that the offender's conduct is unacceptable  
21 to society and to discourage a repetition of such conduct. In  
22 determining the appropriate punishment the court should consider  
23 a range of sanctions at the State or community level which may  
24 include incarceration, various degrees of restrictions on the  
25 offender's liberty including house arrest, various degrees of  
26 supervision, community penalties, community service,  
27 restitution/reparation, or fines.

28       (3) **Rehabilitation of the offender.**

29       Every sentencing plan should consider treatment/rehabilitative  
30 needs of the offender to the extent that it addresses the cause  
31 of the criminal behavior and, therefore, might assist in  
32 correcting such behavior. The offender should be enrolled in a  
33 program of rehabilitation over a definite minimal period of time.  
34 The program of rehabilitation should involve work and recreation  
35 and may involve education, psychological or psychiatric  
36 counseling, treatment for alcohol or drug abuse and sexual  
37 aggression either within or without the prison walls as the

1 individual case may indicate. The court may recommend remedies  
2 for alcoholism, substance abuse, mental illness, education and  
3 employment deficiencies, and may order community-based offenders  
4 to pay for such treatment to the extent the offender is able.  
5 Public institutions should respond to the court order at no cost  
6 to the indigent offender. Where treatment is not available from  
7 public institutions, the state should purchase appropriate  
8 treatment from the private sector.

9 (4) **Restitution/Reparation.**

10 When appropriate, the sentencing plan should provide for  
11 restitution or reparation to the victim or victims, whether they  
12 be individual citizens, corporations, or society as a whole, to  
13 be paid as soon as practicable. Such restitution or reparation  
14 should include repayment for any property stolen or damaged,  
15 medical costs and lost wages of the victims, court costs and  
16 reasonable costs to cover pretrial detention, and/or restitution  
17 to the community through community service. In those cases where  
18 the offender can be punished and rehabilitated outside of prison  
19 without jeopardizing the security of the society at large in  
20 their persons or property, it is appropriate and encouraged that  
21 the offender pay his debt to society through a range of  
22 punishments which are alternative to incarceration. The court  
23 should order such supervision or restrictions as deemed necessary  
24 for the offender to comply with the restitution orders. Failure  
25 to comply should result in stricter measures.

26 (5) **Work policy for offenders.**

27 It is the policy of this state that offenders should work when  
28 reasonably possible, either at jobs in the private sector to pay  
29 restitution and support their dependants, or at community service  
30 jobs that benefit the public, or at useful work while in prison  
31 or jail, or at educational or treatment endeavors as a part of a  
32 rehabilitation program. Offenders should be offered the  
33 opportunity to reduce the duration of their sentences by earning  
34 "time" credit for work endeavors in achieving vocational or  
35 educational skill levels. Prisoners who are able and do not work  
36 or who refuse to participate in treatment programs should be

1 prohibited from enjoying privileges which may be provided to  
2 inmates beyond those required by law.

3 (6) **Responsibility of Department of Correction.**

4 It is the goal of the North Carolina Department of Correction  
5 to provide adequate prison space to insure that those sentenced  
6 to prison will remain incarcerated until such time as they can be  
7 safely released, or until their active sentences are completed,  
8 and to provide community based supervision for those offenders  
9 selected for supervised probation and parole by the Courts and  
10 the Parole Commission.

11 It is the mission of the Department's Division of Prisons to  
12 provide housing, clothing, food, and medical care to its inmates,  
13 to maintain a safe and secure prison system, to keep accurate  
14 records, to offer job training, education, counseling, work and  
15 treatment programs deemed appropriate to monitor and advance the  
16 rehabilitative progress of its inmates, to provide a fair and  
17 orderly progression through custody levels, and to make data and  
18 recommendations regarding parole available to the Parole  
19 Commission. As an inmate demonstrates that he/she is no longer a  
20 threat to society, that the punishment has been effective and  
21 that a program of rehabilitation is showing progress, the  
22 inmate's level of custody may be commensurately reduced in an  
23 orderly progression through custody levels to parole and release  
24 from supervision.

25 It is the mission of the Department's Division of Adult  
26 Probation and Parole to receive convicted offenders selected by  
27 the Courts and the Parole Commission and to protect society  
28 through a coordinated program of community supervision which  
29 provides realistic opportunities for probationers and parolees to  
30 develop skills necessary to adjust to free society. As a  
31 probationer/parolee demonstrates that the supervision has been  
32 effective and that a community treatment program is showing  
33 progress, the level of supervision may be commensurately reduced  
34 in an orderly progression to prepare for release from  
35 supervision.

36 Sec. 4. The North Carolina Sentencing and Policy  
37 Advisory Commission, in performing its duties pursuant to Chapter

1 164, Article 4 of the General Statutes, shall make  
2 recommendations consistent with the purposes and policies stated  
3 in Sections 2 and 3 of this act. Sections 2 and 3 of this act  
4 are only for the purpose of providing policy guidance for the  
5 development of comprehensive criminal justice and corrections  
6 systems.

7           Sec. 5. The Substance Abuse Treatment in Prisons Study,  
8 established by Section 19.1 of Chapter 802 of the 1989 Session  
9 Laws, is transferred from the Special Committee on Prisons to the  
10 Mental Health Study Commission. The unexpended funds appropriated  
11 to the General Assembly for the 1989-90 fiscal year for the  
12 Substance Abuse Treatment in Prisons Study are transferred to the  
13 Department of Human Resources (Budget Code 14460 subhead 1110) to  
14 conduct the study. Of funds appropriated to the General Assembly  
15 for the 1989-90 fiscal year, there is transferred the sum of  
16 \$10,000 to the Department of Human Resources (Budget Code 14460  
17 subhead 1110) for the Mental Health Study Commission to conduct  
18 the Substance Abuse Treatment in Prisons Study for the 1990-91  
19 fiscal year.

20 Any pending responsibilities of the Special Committee on  
21 Prisons, which terminates upon submission of its final report to  
22 the 1989 General Assembly, 1990 Regular Session, shall be  
23 transferred to the Sentencing and Policy Advisory Commission upon  
24 the ratification of this act.

25           Sec. 6. Notwithstanding any other provision of law, no  
26 State agencies, committees, or commissions, including the  
27 Governor's Crime Commission, may duplicate the statutorily-  
28 prescribed responsibilities of the Sentencing and Policy Advisory  
29 Commission.

30           Sec. 7. There is appropriated from the General Fund to  
31 the Administrative Office of the Courts the sum of \$550,000 for  
32 the 1990-91 fiscal year to implement the provisions of this act.

33           Sec. 8. This act shall be known as the "Sentencing and  
34 Policy Advisory Commission Act of 1990."

35           Sec. 9. This act is effective upon ratification, and  
36 shall expire July 1, 1992.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S/H

D

90-RG-003

THIS IS A DRAFT 10-MAY-90 13:23:58

Short Title: Punishments.

(Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE CONSTITUTION TO EXPAND THE PUNISHMENTS FOR  
3 CONVICTION OF A CRIME AND TO AMEND STATUTES ALLOWING GOOD TIME  
4 DEDUCTIONS FROM PRISON OR JAIL SENTENCES.

5

6 The General Assembly of North Carolina enacts:

7           Section 1.   Article XI, Section 1, North Carolina  
8 Constitution reads as rewritten:

9   "Section 1. Punishments. The following punishments only shall  
10 be known to the laws of this State: death, imprisonment, fines,  
11 restitution, restraints on liberty, work programs, removal from  
12 office, and disqualification to hold and enjoy any office of  
13 honor, trust, or profit under this State."

14           Sec. 2. The amendment set out in Section 1 of this act  
15 shall be submitted to the qualified voters of the State at the  
16 general election to be held in November 1990. That election  
17 shall be conducted under the laws then governing general  
18 elections in this State.

19           Sec. 3. At the general election each qualified voter  
20 presenting himself to vote shall be provided a ballot on which  
21 shall be printed the following:

1            "[ ] FOR constitutional amendment authorizing a  
2 sentencing judge to order restitution, restraints on liberty, and  
3 work programs for criminal offenders, in addition to any other  
4 lawful sentence."

5            "[ ] AGAINST constitutional amendment authorizing a  
6 sentencing judge to order restitution, restraints on liberty, and  
7 work programs for criminal offenders, in addition to any other  
8 lawful sentence."

9        Those qualified voters favoring the amendment set forth in  
10 Section 1 of this act shall vote by making an "X" or a checkmark  
11 in the square beside the statement beginning "FOR", and those  
12 qualified voters opposed to the amendment set forth in Section 1  
13 shall vote by making an "X" or a checkmark in the square beside  
14 the statement beginning "AGAINST".

15        Notwithstanding the foregoing provisions of this section,  
16 voting machines may be used in accordance with rules prescribed  
17 by the State Board of Elections.

18            Sec 4. If a majority of votes cast thereon are in favor  
19 of the amendment set forth in Section 1 of this act, the State  
20 Board of Elections shall certify the amendment to the Secretary  
21 of State who shall enroll the amendment so certified among the  
22 permanent records of his office, and the amendment shall become  
23 effective on July 1, 1991.

24            Sec. 5. G.S. 15A-1340.7 reads as rewritten:

25        "(b) A prisoner committed to the Department of Correction or a  
26 jail to serve a sentence for a felony shall receive credit for  
27 good behavior at the rate of one day deducted from his prison or  
28 jail term for each day he spends in custody without a major  
29 infraction of prisoner conduct ~~rules~~ rules; except that  
30 prisoners who have had a suspended sentence to a term or terms of  
31 imprisonment activated due to a violation of probationary  
32 conditions or, pursuant to G.S. 15A-1341(c), elected to serve a  
33 sentence to a term of imprisonment, shall be eligible for the  
34 credit allowed under this section in the amount determined by the  
35 sentencing judge, in his discretion. Prisoner conduct rules  
36 shall be issued by the Secretary of Correction with regard to  
37 all prisoners serving prison or jail terms for felony

1 convictions. The rules shall clearly state types of forbidden  
2 conduct and a copy of the rules shall be given and explained to  
3 each convicted prisoner upon entry into prison or jail.  
4 Infractions of the rules shall be of two types, major and minor  
5 infractions. Major infractions shall be punishable by forfeiture  
6 of specific amounts of accrued good behavior time, disciplinary  
7 segregation, loss of privileges for specific periods, demotion in  
8 custody grade, extra work duties, or reprimand. Minor infractions  
9 shall be punishable by loss of privileges for specific periods,  
10 demotion in custody grade, extra work duties, or reprimand, but  
11 not by loss of accrued good behavior time or disciplinary  
12 segregation. A prisoner charged with infraction of conduct rules  
13 shall receive notice of the charge and be afforded a hearing."

14           Sec. 6. G.S. 148-13(b) reads as rewritten:

15       "(b) With respect to prisoners who are serving prison or jail  
16 terms for offenses not subject to Article 81A of Chapter 15A of  
17 the General Statutes and prisoners serving a life term for a  
18 Class C felony, the Secretary of Correction may, in his  
19 discretion, issue regulations regarding deductions of time from  
20 the terms of such prisoners for good behavior, meritorious  
21 conduct, work or study, participation in rehabilitation programs,  
22 and the ~~like~~ like; except that prisoners who have had a  
23 suspended sentence to a term or terms of imprisonment activated  
24 due to a violation of probationary conditions or, pursuant to  
25 G.S. 15A-1341(c), elected to serve a sentence to a term of  
26 imprisonment, shall not be eligible for deductions of time for  
27 good behavior, but shall be eligible for deductions of time for  
28 all other listed reasons under this paragraph."

29           Sec. 7. Sections 5 and 6 of this act shall become  
30 effective only if the Constitutional amendment described in  
31 Section 1 is approved under Sections 1 through 4 of this act, in  
32 which case Sections 5 and 6 shall become effective on July 1,  
33 1991, and apply to persons whose criminal offenses occurred on or  
34 after that date. The remainder of this act is effective upon  
35 ratification.





GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S/H

D

90-RV-103

THIS IS A DRAFT 10-MAY-90 11:41:00

Short Title: Intensive Probation Eligibility.

(Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT BOTH FELONS AND MISDEMEANANTS SHALL BE  
3 ELIGIBLE FOR INTENSIVE PROBATION.  
4 The General Assembly of North Carolina enacts:  
5           Section 1. G.S. 143B-262(c) is rewritten to read:  
6           "(c) The Department shall establish within the Division  
7 of Adult Probation and Parole a program of Intensive Probation.  
8 This program shall provide intensive supervision for probationers  
9 who require close supervision in order to remain in the community  
10 pursuant to a community penalties plan, community work plan,  
11 community restitution plan, or other plan of rehabilitation. ~~At~~  
12 ~~least eighty percent (80%) of each intensive probation team's~~  
13 ~~caseload shall be persons who have been convicted of a felony.~~  
14 The intensive probation program shall be available to both felons  
15 and misdemeanants."  
16           Sc. 2. This act is effective upon ratification.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S/H

D

90-RV-102

THIS IS A DRAFT 10-MAY-90 11:26:20

Short Title: DWI House Arrest

(Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW JUDGES TO USE HOUSE ARREST AS A CONDITION OF  
3 SPECIAL PROBATION IN CERTAIN DWI CASES.  
4 The General Assembly of North Carolina enacts:  
5           Section 1. G.S. 20-179(g) reads as rewritten:  
6           "(g) Level One Punishment. -- A defendant subject to  
7 Level One punishment may be fined up to two thousand dollars  
8 (\$2,000) and must be sentenced to a term of imprisonment that  
9 includes a minimum term of not less than 14 days and a maximum  
10 term of not more than 24 months. The term of imprisonment may be  
11 suspended only if a condition of special probation is imposed to  
12 require the defendant to serve a term of imprisonment of at least  
13 14 days or to require the defendant to be placed under house  
14 arrest for at least 30 days. If the defendant is placed on  
15 probation, the judge must, if required by subsection (m), impose  
16 the conditions relating to assessment, treatment, and education  
17 described in that subsection. The judge may impose any other  
18 lawful condition of probation. If the judge does not place on  
19 probation a defendant who is otherwise subject to the mandatory

1 assessment and treatment provisions of subsection (m), he must  
2 include in the record of the case his reasons for not doing so."

3           Sec. 2. G.S. 20-179(h) reads as rewritten:

4           "(h) Level Two Punishment. -- A defendant subject to  
5 Level Two punishment may be fined up to one thousand dollars  
6 (\$1,000) and must be sentenced to a term of imprisonment that  
7 includes a minimum term of not less than seven days and a maximum  
8 term of not more than 12 months. The term of imprisonment may be  
9 suspended only if a condition of special probation is imposed to  
10 require the defendant to serve a term of imprisonment of at least  
11 seven days or to require the defendant to be placed under house  
12 arrest for at least 15 days. If the defendant is placed on  
13 probation, the judge must, if required by subsection (m), impose  
14 the conditions relating to assessment, treatment, and education  
15 described in that subsection. The judge may impose any other  
16 lawful condition of probation. If the judge does not place on  
17 probation a defendant who is otherwise subject to the mandatory  
18 assessment and treatment provisions of subsection (m), he must  
19 include in the record of the case his reasons for not doing so."

20           Sec. 3. This act is effective October 1, 1990 and  
21 applies to convictions occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S/H

D

90-RG-002

THIS IS A DRAFT 10-MAY-90 10:13:16

Short Title: Impact Probation Program.

(Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE SENTENCING JUDGES WITH THE DISCRETION TO  
3 SUSPEND A SENTENCE TO A TERM OF IMPRISONMENT AND PLACE A  
4 YOUTHFUL OFFENDER ON PROBATION, WITH THE CONDITION THAT THE  
5 OFFENDER COMPLETE THE IMPACT PROGRAM.  
6 The General Assembly of North Carolina enacts:  
7           Section 1. G.S. 15A-1343(b1) reads as rewritten:  
8    "(b1) Special Conditions. -- In addition to the regular  
9 conditions of probation specified in subsection (b), the court  
10 may, as a condition of probation, require that during the  
11 probation the defendant comply with one or more of the following  
12 special conditions:  
13           (1) Undergo available medical or psychiatric treatment  
14           and remain in a specified institution if required  
15           for that purpose.  
16           (2) Attend or reside in a facility providing  
17           rehabilitation, instruction, recreation, or  
18           residence for persons on probation.  
19           (2a) Attend or reside in a facility for youthful  
20           offenders, such as provided in conjunction with the  
21           Intensive Motivational Program of Alternative  
22           Correctional Treatment (IMPACT), that provides an  
23           atmosphere for learning personal confidence,  
24           personal responsibility, self-respect, and respect  
25           for attitudes and value systems.

1 or fish listed in G.S. 113-270.2, 113-270.3,  
2 113-270.5, 113-271, 113-272, and 113- 272.2 that  
3 would be required to engage lawfully in the  
4 specific activity or activities in which the  
5 defendant was engaged and which constitute the  
6 basis of the offense or offenses of which he was  
7 convicted.

8 (9) If the offense is one in which there is evidence of  
9 physical, mental or sexual abuse of a minor, the  
10 court should encourage the minor and the minor's  
11 parents or custodians to participate in  
12 rehabilitative treatment and may order the  
13 defendant to pay the cost of such treatment.

14 (10) Satisfy any other conditions determined by the  
15 court to be reasonably related to his  
16 rehabilitation."

17 Sec. 2. The Department of Correction shall use  
18 residential programs with the goal of providing alternatives to  
19 long-term imprisonment of youthful first offenders, such as the  
20 Intensive Motivational Program of Alternative Correctional  
21 Treatment (IMPACT), for offenders placed on probation under  
22 section 1 of this act.

23 Sec. 3. This act shall become effective January 1,  
24 1991.





CODE NO. <<90CORR-H001>>

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Requested by:

-----PRIVATE ALCOHOL AND DRUG ABUSE DETENTION CENTER

1           Sec. @. The Department of Correction shall develop a  
2 proposal for a pilot program at a State-funded, privately-  
3 operated detention center for alcohol and drug abusers, with an  
4 emphasis on the self-help recovery model. The plan should  
5 provide for the private construction, operation, and maintenance  
6 of a facility or facilities not to exceed a total of 500 beds,  
7 and should include considerations of size, level of custody,  
8 construction and operation costs, and the possible use of  
9 existing buildings. The Department shall submit this proposal to  
10 the Joint Legislative Commission on Governmental Operations by  
11 January 1, 1991.

<< >>

CODE NO. <<90GOV-H001>>

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\_\_\_\_\_

Requested by:

-----SATELLITE JAIL FUNDING

1           Sec. @. The funds appropriated to the Office of Budget  
2 and Management for the 1990-91 fiscal year for the County  
3 Satellite Jail/Work Release Units may be applied to applications  
4 made but not funded during the 1989-90 fiscal year.

<< >>

CODE NO. <<90CCPS-H001>>

-----  
This provision must be accompanied by an expansion budget  
appropriation of \$165,000.  
-----

Requested by:

-----CONTINUE SUMMIT HOUSE FUNDING

1           Sec. @. Section 113 of Chapter 752 of the 1989 Session  
2 Laws reads as rewritten:  
3           "Sec. 113. Of the funds appropriated to the Department  
4 of Crime Control and Public Safety for the ~~1989-90~~ 1990-91 fiscal  
5 year, ~~\$75,000~~ \$165,000 shall be used to support a pilot program  
6 at Summit House, a community-based residential alternative to  
7 incarceration for mothers and pregnant women convicted of  
8 nonviolent crimes. Summit House shall provide a quarterly report  
9 to the Joint Legislative Commission on Governmental Operations on  
10 the expenditure of State appropriations and on the effectiveness  
11 of the program, including information on the number of clients  
12 served, the number of clients who have their probation revoked,  
13 and the number of clients who successfully complete the program  
14 while housed at Summit House."

<< >>

CODE NO. <<90CCPS-H002>>

\_\_\_\_\_  
This provision must be accompanied by an expansion budget  
appropriation of \$190,000.  
\_\_\_\_\_

Requested by:

-----SOUTHERN APPALACHIA MAINSTREAM FUNDS

1           Sec. @. Of the funds appropriated to the Department of  
2 Crime Control and Public Safety for the 1990-91 fiscal year,  
3 \$190,000 shall be used to support a pilot program at Southern  
4 Appalachia Mainstream, Inc., a community-based residential  
5 program for offenders who are leaving the Division of Prisons and  
6 who are in need of residence plans, community service jobs,  
7 and/or social readiness skills. Southern Appalachia Mainstream,  
8 Inc., shall provide a quarterly report to the Joint Legislative  
9 Commission on Governmental Operations on the expenditure of State  
10 funds and the effectiveness of the program, including information  
11 on the number of clients served and the number of clients who  
12 successfully complete the program while residing at Southern  
13 Appalachia Mainstream.

<< >>

CODE NO. <<90CCPS-H003>>

\_\_\_\_\_

\_\_\_\_\_

Requested by:

-----NO REORGANIZATION OF COMMUNITY PENALTIES PROGRAMS

1           Sec. @.   The Department of Crime Control and Public  
2 Safety may not restructure or reorganize the community penalties  
3 programs.

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## APPENDICES





GENERAL ASSEMBLY OF NORTH CAROLINA  
1989 SESSION  
RATIFIED BILL

RESOLUTION 8  
SENATE JOINT RESOLUTION 42

A JOINT RESOLUTION REAUTHORIZING THE SPECIAL COMMITTEE ON  
PRISONS.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The Special Committee on Prisons is reauthorized and shall continue in existence through its final report to the 1989 Session of the 1989 General Assembly or the 1990 Session of the 1989 General Assembly.

Sec. 2. The continued Special Committee on Prisons shall have all the powers and duties of the Special Committee on Prisons as they are necessary to continue its study, to assist in the implementation of the Special Committee recommendations, and to plan further activity on the subject of its study.

Sec. 3. The members of the Special Committee on Prisons shall be eight members of the Senate, appointed by the President Pro Tempore, and eight members of the House of Representatives, appointed by the Speaker of the House. The members shall receive compensation and expenses pursuant to G.S. 120-3.1.

Sec. 4. Nothing in this resolution shall be construed to obligate the General Assembly to make appropriations to implement the provisions of this resolution.

Sec. 5. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of March, 1989.

**JAMES C. GARDNER**

---

James C. Gardner  
President of the Senate

**J. L. MAVRETIC**

---

J. L. Mavretic  
Speaker of the House of Representatives



## SPECIAL COMMITTEE ON PRISONS

Membership - 1989

Rep. Anne Barnes, Cochairman  
313 Severin Street  
Chapel Hill, NC 27514

Sen. David Parnell, Cochairman  
PO Box 100  
Parkton, NC 28731

Rep. James Craven  
PO Box 44  
Pine Bluff, NC 28373

Sen. Howard Bryan  
PO Box 1654  
Statesville, NC 28677

Rep. Milton F. Fitch, Jr.  
615 E. Nash St.  
Wilson, NC 27893

Sen. James C. Johnson, Jr.  
29 Church St., S.  
Concord, NC 28025

Rep. Doris R. Huffman  
Rt. 4, Box 81  
Newton, NC 28658

Sen. William N. Martin  
PO Box 21363  
Greensboro, NC 27420

Rep. William Hurley  
304 Mason St.  
Fayetteville, NC 28301

Sen. Helen Marvin  
119 Ridge Lane  
Gastonia, NC 28054

Rep. John H. Kerr  
232 Ridgewood Dr.  
Goldsboro, NC 27530

Sen. LaFontine Odom  
1100 S. Tryon St.  
Charlotte, NC 28203

Rep. David Redwine  
PO Box 1238  
Shalotte, NC 28459

Sen. Kenneth C. Royall, Jr.  
PO Box 51218  
Durham, NC 27712-1218

Rep. Frank Sizemore, III  
PO Box 1988  
Greensboro, NC 27402

Sen. Robert S. Swain  
612 Northwestern Bank Bldg.  
Asheville, NC 28801

STAFF

H. Alan Pell, Counsel  
General Research

Brenda Carter, Counsel  
General Research

Carolyn Wyland  
Fiscal Research

Michele Nelson  
Fiscal Research

Shirley Phillips  
Committee Clerk



**PERSONS MAKING PRESENTATIONS**

Mark D. Corrigan, Director  
National Institute for Sentencing Alternatives  
Brandeis University

Lucien Capone, Deputy Attorney General  
North Carolina Department of Justice

Buddy Humphrey  
Office of State Budget & Management

Patrice Roesler  
N.C. Association of County Commissioners

Ken Parker  
N.C. Department of Correction

Lao Rubert, Executive Director  
N.C. Prison & Jail Project

Kay Knapp  
Institute for Rational Public Policy

George Barnes, Assistant Director  
Division of Probation & Parole  
N.C. Department of Correction

Lattie Baker, Asst. Secretary for Substance Abuse  
N.C. Department of Correction

Frank Thorwald  
Jim Wordsworth  
Surfside Six Industries

John Kernodle  
The Community Justice Resource Center  
Guilford College  
John Sanders  
Institute of Government

Joe Hamilton, Director  
Division of Prisons  
N.C. Department of Correction

Art Ziedman  
Division of Victim & Justice Services  
N.C. Department of Crime Control & Public Safety

Bill Thurber  
Ron Kronenberger  
Florida Department of Corrections

Rev. Scott Rogers  
Rev. Sam Everett  
Asheville-Buncombe Community Christian Ministry

Ray DeBruhl  
Davidson & Jones Corporation

Allen Ault  
Rosser Fabrap Company

Sheriff Frank McGuirt, Chairman  
N.C. Sheriffs' Association Executive Committee

INFORMATION PRESENTED TO THE COMMITTEE

Summary of Proposed Standards for Jails

Reconvictions and Recidivism (Submitted by N.C. Department of Correction, Office of Research & Planning)

Sentencing and Corrections Policies (Institute for Rational Public Policy)

1989 Probation & Parole Statistics (N.C. Department of Correction)

Substance Abuse Program Status Report (N.C. Department of Correction)

"Corrections Policy for the 90's"

Status of Satellite Jail/Work Release Fund (Office of State Budget & Management)

"North Carolina's Community Penalties Program"

Florida Department of Corrections Five Year Plan for Prison Construction

Prison Exit Program Description (Asheville-Buncombe Community Christian Ministry)

"Development of a Comprehensive Approach to Community Corrections Programs in North Carolina" (Submitted by John Kernodle)

Evaluation of Prison Impact Assessment Models

"Strategic Planning for Corrections" Phase I, and Phase II (National Institute for Sentencing Alternatives)

"Corrections Strategic Planning Project" (Mark D. Corrigan & Associates)





**PROPOSAL TO THE SPECIAL COMMITTEE ON PRISONS**  
February 12, 1988

From: Representative Anne Barnes and Senator David Parnell  
Co-Chairs

Recent Accomplishments in Criminal Justice in North Carolina

Since 1985, approximately \$90,000,000 in expansion operating funds and capital funds have been appropriated to the Department of Correction, Department of Crime Control and Public Safety, and the Judicial Department to improve the criminal justice system. The increased operating funds primarily provided for additional staff at existing prison units, staff for newly constructed facilities, victim and witness assistants, intensive juvenile supervision, and increases in community programs for offenders through additional intensive probation/parole teams, probation officers, parole officers, pre-parole investigators, community penalties programs, and community service workers. The capital funds provided for construction of new beds, replacement of some existing beds, renovation of existing dormitories at all field units, repairs and renovations of support systems (sewage, water, electrical, heating), and construction of vocational, multipurpose, and recreational buildings and chapels.

The appropriation of these new funds for fiscal years 1985-86 through 1988-89 and the progress made in carrying out the intent of the General Assembly for expenditure of them has been valuable in strengthening the State's position in prison litigation. The "cap" placed on the prison population until June 30, 1989, has provided the State with a "window of time" to more thoroughly examine its criminal justice system for long-term solutions and improvements.

Future Direction and Goals

Because of the emergency that brought the Special Committee on Prisons into being, it has been necessary to concentrate on finding immediate relief. The Committee has accomplished its immediate task effectively. Now it is time to develop goals, policies, and programs that address the system itself.

It is time to ensure that North Carolina has a balanced system of justice: 1) that is based on sound, clearly defined goals and policies; 2) that has a full and balanced continuum of sanctions and rehabilitation services from no or little supervision to incarceration and exit alternatives; 3) that addresses the factors contributing to an individual offender's behavior; 4) that teaches competencies to replace offense behavior; and 5) that always requires accountability through restitution, community service, or other methods. The Committee should focus its efforts now on examining the strengths and weaknesses of our existing goals, policies, and programs, on redefining goals and policies where needed, and on developing a more comprehensive

State-Local Interrelationship

There is also a need to define more clearly the State's responsibility versus local responsibility in the delivery of services in the criminal justice system. There is further need, where applicable, to establish an overall continuum of sanctions and rehabilitative services through both state and local effort and investment in the criminal justice system.

The overall continuum for the system could range from payment of fines to incarceration. A more complete continuum for community sanctions could include community work release, house arrest, group home placement, various levels of probation/parole supervision, community service, therapeutic treatment, education and training, restitution, and payment of fines, or any combination(s) of these sanctions.

Responsibility for Developing Comprehensive System

The Legislature must take the lead in shaping law and formulating the underlying policies by which government operates. In order for the State of North Carolina to move forward in this area, your Committee Co-Chairs suggest that the Special Committee on Prisons be the vehicle for examining existing and desired goals, policies, and resources of the criminal justice system, and for developing the plan for a comprehensive system based on those goals and policies.

This includes developing stated policies on 1) the appropriate use of incarceration, 2) the appropriate use of community-based sanctions, 3) the rehabilitation of offenders, 4) the allocation of resources, 5) compensating crime victims and society, 6) fairness to victims of crime. The plan should ensure a unified system for administration of criminal justice programs. It must ensure that safe, humane imprisonment is available for all who should be incarcerated in accordance with stated goals and incarceration policies, and that a full continuum of appropriate alternatives is available and properly utilized.

PROPOSAL:**THAT THE SPECIAL COMMITTEE ON PRISONS**

- 1) ACCEPT THE RESPONSIBILITY OF UNDERTAKING THIS TASK,
- 2) AUTHORIZE ITS CHAIRS AND STAFF TO PROCEED WITH ASSEMBLING A TEAM OF CONSULTANTS TO GUIDE THE COMMITTEE THROUGH THIS PROCESS,
- 3) SEEK NECESSARY FUNDING FROM THE LEGISLATIVE SERVICES COMMISSION.





Joint Legislative Commission On Governmental Operations  
State Legislative Building  
Raleigh, North Carolina 27611

MEMORANDUM

To: Representative Anne Barnes  
Senator David Parnell

From: House Speaker Liston B. Ramsey  
Lieutenant Governor Bob Jordan

*LBK*  
*BJ*

Date: March 10, 1988

Re: Clarification of Charge to the Special Committee on Prisons

The Special Committee on Prisons has worked since 1985 on recommendations to the General Assembly to meet the "prison crisis" facing North Carolina. Many recommendations by the Committee were approved in the 1986 and 1987 Sessions including legislation for a "cap" placed on the prison population until June 30, 1989.

Now the State needs to examine long-term solutions for the criminal justice and corrections systems in North Carolina. A memorandum from Attorney General Lacy Thornburg on March 7, 1988, recommends "that the General Assembly charge a standing or special committee with the task of reviewing North Carolina's current prison, jail, and detention activities and recommending a state policy for incarceration. This policy would ensure a coordinated state administration of all confinement programs and better enable the State to respond to and defend itself from potential liability from prisoners' lawsuits."

Therefore, pursuant to the recommendation of the Co-Chairmen of the Special Committee on Prisons, the charge to the Special Committee on Prisons is clarified to include the proposal adopted by the Special Committee on February 12, 1988. (See attached Proposal.)

The Special Committee on Prisons will present its recommendations to the 1989 General Assembly for approval.

Any additional funds required for consultants must be approved by the Legislative Services Commission.

R&J:dnb

Attachment



SMALL V. MARTIN  
SETTLEMENT AGREEMENT  
IMPLEMENTATION SCHEDULE

July 1, 1989	Jan 1, 1990	July 1, 1990	July 1, 1991	July 1, 1993	July 1, 1994	UNSPECIFIED
<u>¶</u> DESCRIPTION	<u>¶</u> DESCRIPTION	<u>¶</u> DESCRIPTION	<u>¶</u> DESCRIPTION	<u>¶</u> DESCRIPTION	<u>¶</u> DESCRIPTION	<u>¶</u> DESCRIPTION
1(a) Triple Bunks Eliminated	5 Sunday visitation lockdown policy - <u>minimum custody</u>	1(b) interim housing capacities	8 ventilation - <u>minimum custody</u>	2 Dayrooms - <u>medium custody</u>	1(c) 50 Ft - Existing construction capacities	6 Programs
10 Medical Diet policy adopted and implemented	4 Peer review of medical care	3 Dorm Security staff in place			2 Dayrooms - <u>minimum custody</u>	11 Bathroom maintenance
		5 Sunday visitation lock down policy - <u>medium custody</u>			9 50 Ft New construction capacities	13 Locker replacements
		7 Fire safety program				
		8 Ventilation - <u>medium custody</u>				
		12 Clothing				



GENERAL ASSEMBLY OF NORTH CAROLINA  
1989 SESSION  
RATIFIED BILL

CHAPTER 8  
SENATE BILL 38

AN ACT TO MAKE AN EMERGENCY APPROPRIATION FOR  
CORRECTIONAL PROGRAMS AND PROJECTS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 114-2.1, the settlement agreement entered into by the parties on December 20, 1988, in the cases of Small v. Martin, No. 85-987-CRT (E.D.N.C.) and Thorne v. Martin, No. 87-446-CRT (E.D.N.C.), is hereby approved and funds necessary to satisfy the terms and obligations of that agreement will be appropriated.

Sec. 2. (a) There is appropriated from the General Fund to the Department of Correction for current operations the amount of ten million eight hundred ten thousand two hundred seventy dollars (\$10,810,270) in fiscal year 1989-90 and sixteen million one hundred twenty-one thousand five hundred nineteen dollars (\$16,121,519) in fiscal year 1990-91 for the following programs:

	1989-90	1990-91
a. Electronic House Arrest	\$2,333,999	\$1,461,698
b. Intensive Probation/Parole	1,402,820	1,331,184
c. Regular Probation/Parole	5,104,544	9,729,791
d. DWI Program Cherry Hospital	1,460,935	1,571,173
e. IMPACT Program, Cameron Morrison	507,972	611,819
f. Operation of New Facilities	-	1,415,854

(b) There is appropriated from the General Fund to the Department of Crime Control and Public Safety for current operations the amount of five hundred nine thousand two hundred eight dollars (\$509,208) in fiscal year 1989-90 to provide for the following:

- (1) To expand the 12 existing community penalties programs and to provide eighty-five percent (85%) State support of those programs;
- (2) To establish three new community penalties programs at ninety percent (90%) State share, one to be located in Mecklenburg County and two to be located in the First Superior Court Division;
- (3) To provide contractual services to rural counties; and
- (4) To cover additional administrative costs.

(c) There is appropriated from the General Fund to the Department of Crime Control and Public Safety the sum of eight hundred thirty-seven thousand one hundred seventy dollars (\$837,170) for the 1990-91 fiscal year to provide the following:



outlined in subsection (a) of Section 3 of this act. The funds used under this section are replaced by appropriations in Section 3 of this act.

Sec. 5. (a) Of the funds appropriated in Chapter 1086 of the 1987 Session Laws to the Department of Correction for operations for fiscal year 1988-89, an amount up to three million dollars (\$3,000,000) may be expended to implement Section 2(a) of this act in fiscal year 1988-89. Notwithstanding the provisions of G.S. 143-23, the Department of Correction may transfer funds to support expenditures authorized by Section 2(a) of this act through June 30, 1989.

(b) Of the funds appropriated in Chapter 1086 of the 1987 Session Laws to the Department of Crime Control and Public Safety for operations for fiscal year 1988-89, an amount up to two hundred fifty-four thousand six hundred four dollars (\$254,604) may be expended to implement Section 2(b) of this act in fiscal year 1988-89. Notwithstanding the provisions of G.S. 143-23, the Department of Crime Control and Public Safety may transfer funds to support expenditures authorized by Section 2(b) of this act through June 30, 1989.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of March, 1989.

**JAMES C. GARDNER**

---

James C. Gardner  
President of the Senate

**J. L. MAVRETIC**

---

J. L. Mavretic  
Speaker of the House of Representatives



GENERAL ASSEMBLY OF NORTH CAROLINA  
1989 SESSION  
RATIFIED BILL

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 18,000 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 18,000.

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

- (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

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

GENERAL ASSEMBLY OF NORTH CAROLINA  
1989 SESSION  
RATIFIED BILL

CHAPTER 761  
HOUSE BILL 18

AN ACT TO DESIGNATE APPROPRIATED FUNDS FOR THE  
ADMINISTRATION OF THE SATELLITE JAIL/WORK RELEASE UNIT  
FUND AND TO REDUCE PRISON AND JAIL OVERCROWDING.

The General Assembly of North Carolina enacts:

Section 1. From the funds appropriated to the Office of State Budget and Management for the 1989-90 fiscal year and the 1990-91 fiscal year for the County Satellite Jail/Work Release Units, the Office of State Budget and Management may use no more than one percent (1%) of the funds appropriated for costs of administering the Fund. These funds shall not revert at the end of the fiscal year for which they are appropriated but shall remain available until expended for the County Satellite Jail/Work Release Units Fund.

Sec. 2. G. S. 153A-230.2 reads as rewritten:

**"§ 153A-230.2. Creation of Satellite Jail/Work Release Unit Fund.**

(a) There is created in the Office of State Budget and Management the County Satellite Jail/Work Release Unit Fund to provide State grant funds for counties or groups of counties for construction of satellite jail/work release units for certain misdemeanants who receive active sentences. A county or group of counties may apply to the Office for a grant under this section. The application shall be in a form established by the Office. The Office shall:

- (1) Develop application and grant criteria based on the basic requirements listed in this Part,
- (2) Provide all Boards of County Commissioners and Sheriffs with the criteria and appropriate application forms, technical assistance, if requested, and a proposed written agreement,
- (3) Review all applications,
- (4) Select grantees and award grants,
- (5) Award no more than ~~one million five hundred thousand dollars (\$1,500,000)~~ seven hundred fifty thousand dollars (\$750,000) for any one county or group of counties except that if a group of counties agrees to jointly operate one unit for males and one unit for females, the maximum amount may be awarded for each unit,
- (6) Take into consideration the potential number of misdemeanants and the percentage of the county's or counties' misdemeanor population to be diverted from the State prison system,
- (7) Take into consideration the utilization of existing buildings suitable for renovation where appropriate,
- (8) Take into consideration the timeliness with which a county proposes to complete and occupy the unit,

misdemeanant from the local confinement facility to the unit if the misdemeanant meets the eligibility criteria at a later date. The Sheriff may also transfer prisoners who were placed in the unit pursuant to G.S. 148-32.1(b) to the local confinement facility when space becomes available."

Sec. 5. G.S. 153A-230.5(a) reads as rewritten:

"(a) If a county is operating a satellite jail/work release unit prior to the enactment of this act, the county may apply to the Office of State Budget and Management for grant funds to recover any verifiable construction or renovation costs for those units and for improvement funds except that the total for reimbursement and improvement shall not exceed ~~one million five hundred thousand dollars (\$1,500,000)~~ seven hundred fifty thousand dollars (\$750,000). Any county accepting such a grant or any other State monies for county satellite jails must agree to all of the basic requirements listed in G.S. 153A-230.2 and G.S. 153A-230.3."

Sec. 6. G.S. 15A-1352(a) reads as rewritten:

"(a) A person sentenced to imprisonment for a misdemeanor under this Article or for nonpayment of a fine under Article 84 of this Chapter shall be committed for the term designated by the court to the custody of the Department of Correction or to a local confinement facility. If the sentence imposed for a misdemeanor is for a period of 180 days or less, the commitment must be to a facility other than one maintained by the Department of Correction, except as provided in G.S. 148-32.1(b).

If a person is sentenced to imprisonment for a misdemeanor under this Article or for nonpayment of a fine under Article 84 of this Chapter, the sentencing judge shall make a finding of fact as to whether the person would be suitable for placement in a county satellite jail/work release unit operated pursuant to G.S. 153A-230.3. If the sentencing judge makes a finding of fact that the person would be suitable for placement in a county satellite jail/work release unit and the person meets the requirements listed in G.S. 153A-230.3(a)(1), then the judge custodian of the local confinement facility may transfer ~~order~~ the misdemeanant to ~~be placed in~~ a county satellite jail/work release unit."

Sec. 7. G.S. 153A-230.3(a) reads as rewritten:

"(a) Eligibility for Unit. -- The following rules shall govern which misdemeanants are housed in a satellite jail/work release unit:

- (1) Any convicted misdemeanant who:
  - a. Receives an active sentence in the county or group of counties operating the unit,
  - b. Is employed in the area or can otherwise earn his keep by working at the unit on maintenance and other jobs related to upkeep and operation of the unit or by assignment to community service work, and
  - c. Consents to placement in the unit under these conditions, shall not be sent to the State prison system except by written findings of the sentencing judge that the misdemeanant is violent or otherwise a threat to the public and therefore unsuitable for confinement in the unit.
- (2) The County shall offer work release programs to both male and female misdemeanants, through local facilities for both, or through a contractual agreement with another entity for either, provided that such arrangement is in reasonable proximity to the misdemeanant's workplace.
- (3) The sentencing judge shall make a finding of fact as to whether the misdemeanant is qualified for occupancy in the unit pursuant to G.S. 15A-1352(a). If the sentencing judge determines that the misdemeanant is qualified for occupancy in the unit and the

GENERAL ASSEMBLY OF NORTH CAROLINA  
EXTRA SESSION 1990  
RATIFIED BILL

CHAPTER 1  
HOUSE BILL 1

AN ACT TO AMEND THE PRISON POPULATION STABILIZATION ACT TO  
RAISE THE POPULATION CAP AND TO ADJOURN THE 1990 EXTRA  
SESSION OF THE GENERAL ASSEMBLY SINE DIE.

The General Assembly of North Carolina enacts:

Section 1. Effective March 28, 1990, 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 ~~servng a sentence in the State prison system or otherwise housed in the State prison system~~ housed in facilities owned or operated by the State of North Carolina for the Division of Prisons exceeds ninety-eight percent (98%) of ~~18,000~~ 18,525 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 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~~ prison population to ninety-seven percent (97%) of ~~18,000~~ 18,525.

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~~ prison population has been reduced to ninety-seven percent (97%) of ~~18,000~~ 18,525, 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~~ prison population has been reduced to ninety-seven percent (97%) of ~~18,000~~ 18,525, any person imprisoned only for a misdemeanor also shall be eligible for parole and immediate



From the date of the notification until the prison population has been reduced to ninety-seven percent (97%) of ~~48,650~~, 18,715, 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."

Sec. 3.2. Effective June 15, 1990, G.S. 148-4.1(e) as amended by Sections 1 and 2.2 of this act reads as rewritten:

"(e) In addition to those persons otherwise eligible for parole, from the date of notification in subsection (d) until the prison population has been reduced to ninety-seven percent (97%) of ~~48,650~~, 18,715, any person imprisoned only for a misdemeanor also shall be eligible for parole and immediate termination 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."

Sec. 3.3. Effective June 15, 1990, G.S. 148-4.1(f) as amended by Sections 1 and 2.3 of this act reads as rewritten:

"(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 ~~48,650~~, 18,715."

Sec. 4. Funds to implement the provisions of this act shall come from funds already appropriated to the Department of Correction for the 1989-90 fiscal year.

Sec. 5. The House of Representatives and the Senate, constituting the 1990 Extra Session of the General Assembly, do adjourn the 1990 Extra Session **sine die** upon ratification of this act.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of March, 1990.

JAMES C. GARDNER

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James C. Gardner  
President of the Senate

J. L. MAVRETIC

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J. L. Mavretic  
Speaker of the House of Representatives



**Executive Summary:**

The cost of corrections has more than doubled in North Carolina during the last decade.

The current budget of the State Department of Correction approaches \$320 million. The cost of punishing an offender varies widely from \$1.29 to \$62.00 per day.

Settlement of the Small vs. Martin lawsuit ensures that corrections costs will continue to increase in the short term.

A study of the prison and probation populations shows that North Carolina has a major opportunity to improve the system and contain spiraling costs.

Examination of the risk and need profiles of prisoners shows that many offenders who are incarcerated at a cost of \$11,300-\$22,750 per year could be punished safely and more affordably in the community for \$500-\$2,500 per year.

The low risk pool, which includes misdemeanants, non-violent, property offenders and those who have been involved in crimes of theft and stealing, rather than assaultive behavior and harm to people, may include 4,000-5,000 offenders.

They are in prison because existing policies fail to distinguish the purpose of public protection from punishment. While confinement in prison is required to ensure the temporary incapacitation of some offenders, prison is not the only effective way to punish those who are convicted of crime.

Penalties, involving house arrest, restitution, community service, intensive supervision and other community based strategies are safe, sufficiently punitive and far more affordable.

North Carolina appears to be on the right track to long term corrections reform. Legislative investments in recent years are beginning to pay off with the emergence of new effective sanctions.

Three critical steps remain.

The State must define more clearly the purpose of corrections and make distinctions between punishment and public protection goals.

The range of corrections options must be further developed in a manner that reserves expensive prison space for those who need it, and employs community based punishments for lower risk offenders.

Laws governing the system, including sentencing statutes probation and community penalties laws, and policies regulating the state/local corrections relationship need reassessment and revision.

The Legislature should continue its course of limited short term action which supports investment in new corrections options.

Finally, it should extend the mandate of the Special Committee on Prisons to complete the development of longer term statutory reforms by preparing a legislative package for the next session.

§ 143B-261.2 CH. 143B. EXECUTIVE ORGANIZATION § 143B-262

### § 143B-261.2. Repair or replacement of personal property.

(a) The Secretary of Correction may adopt rules governing repair or replacement of personal property items excluding private passenger vehicles that belong to employees of State facilities within the Department of Correction and that are damaged or stolen by inmates of the State facilities provided that the item is determined by the Secretary to be damaged or stolen on or off facility grounds during the performance of employment and necessary for the employee to have in his possession to perform his assigned duty.

(b) Reimbursement for items damaged or stolen shall not be granted in instances in which the employee is determined to be negligent or otherwise at fault for the damage or loss of the property. Negligence shall be determined by the superintendent of the facility.

(c) The superintendent of the facility shall determine if the person seeking reimbursement has made a good faith effort to recover the loss from all other non-State sources and has failed before reimbursement is granted.

(d) Reimbursement shall be limited to the amount specified in the rules and shall not exceed a maximum of two hundred dollars (\$200.00) per incident. No employee shall receive more than five hundred dollars (\$500.00) per year in reimbursement. Reimbursement is subject to the availability of funds.

(e) The Secretary of Correction shall establish by rule an appeals process consistent with Chapter 150B of the General Statutes. (1987, c. 639, s. 1.)

**Editor's Note.** — Session Laws 1987, c. 639, s. 3 makes this section effective upon ratification, and applicable only to acts occurring after that date. The act was ratified July 20, 1987.

Section 3 of Session Laws 1987, c. 639, further provides that the act shall expire July 1, 1989.

Section 2 of Session Laws 1987, c. 639 provides:

"The Secretary of Correction shall

submit a report to the Joint Legislative Commission on Governmental Operations by December 1, 1988, on the implementation of this law. The report shall include all the reported incidents, the total amount of funds expended, the amount expended per incident and the types of property damaged or stolen for which reimbursement was granted. This report shall also include incidents related to private passenger vehicles."

### § 143B-262. Department of Correction — functions.

(a) The functions of the Department of Correction shall comprise except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina all functions of the executive branch of the State in relation to corrections and the rehabilitation of adult offenders and juvenile delinquents including detention, parole, and aftercare supervision, and further including those prescribed powers, duties, and functions enumerated in Article 14 of Chapter 143A of the General Statutes and other laws of this State.

(b) All such functions, powers, duties, and obligations heretofore vested in the Department of Social Rehabilitation and Control and any agency enumerated in Article 14 of Chapter 143A of the General Statutes and laws of this State are hereby transferred to and

§ 143B-262

vested in the Department of Correction provided by the Executive Organization Act, by way of effect.

- (1) The State Department of Correction
- (2) The State Department of Social Rehabilitation and Control
- (3) The State Department of Community Corrections
- (4) The State Department of Juvenile Corrections
- (5) The State Department of Probation and Parole
- (6) The State Department of Prisoners and Parolees

(c) The Department of Correction and Probation and Parole shall provide for the supervision and care of persons who have been sentenced to a community restitution program (80%) of the total number of persons who have been sentenced to a community restitution program. This Program shall be independent, residential, and self-sufficient. (1973, s. 111(a).)

**Editor's Note.** — Session Laws 1987, c. 738, s. 111(g) provides that this section shall be effective upon ratification, except that the act shall begin January 1, 1988. This section further provides that the act shall be ratified by October 1, 1987.

Session Laws 1987, c. 738, s. 111(g) provides: "The Substitution Program established by this section shall be of custody facility, or a day custody facility, or a day custody facility, so that the program space is separate from other programs or inmate housing. It shall be operational by January 1, 1988, and shall be such unit as the Secretary of Correction shall determine."

Section 111(c) of Session Laws 1987, c. 738, also provides, in part:

"Admission priorities shall be established as follows:

- (1) Court recommended
- (2) Evaluation of reception and treatment centers.

§ 143B-262

ART. 6. CORRECTION

§ 143B-262

vested in the Department of Correction except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, the functions of:

- (1) The State Department of Correction and Commission of Correction,
- (2) The State Board of Youth Development,
- (3) The State Probation Commission,
- (4) The State Board of Paroles,
- (5) The Interstate Agreement on Detainers, and
- (6) The Uniform Act for Out-of-State Parolee Supervision

(c) The Department shall establish within the Division of Adult Probation and Parole a program of Intensive Probation. This program shall provide intensive supervision for probationers who require close supervision in order to remain in the community pursuant to a community penalties plan, community work plan, community restitution plan, or other plan of rehabilitation. At least eighty percent (80%) of each intensive probation team's caseload shall be persons who have been convicted of a felony.

(d) The Department shall establish a Substance Abuse Program. This Program shall include an intensive term of inpatient treatment, normally four to six weeks, for alcohol or drug addiction in independent, residential facilities for approximately 100 offenders per facility. (1973, c. 1262, s. 4; 1983, c. 682, s. 1; 1987, c. 479; c. 738, s. 111(a).)

**Editor's Note.** — Session Laws 1987, c. 738, s. 111(g) provides that s. 111 is effective upon ratification (August 7, 1987), except that the inpatient program shall begin January 1, 1988. Section 111 further provides that all positions authorized by that section shall be effective October 1, 1987.

Session Laws 1987, c. 738, s. 111(c) provides: "The Substance Abuse Program established by subsection (a) of this section shall be offered in a medium custody facility, or a portion of a medium custody facility that is self-contained, so that the residential and program space is separate from any other programs or inmate housing, and shall be operational by January 1, 1988, at such unit as the Secretary may designate."

Section 111(c) of Session Laws 1987, c. 738, also provides, inter alia:

"Admission priorities shall be established as follows:

- "(1) Court recommendation.
- "(2) Evaluation and referral from reception and diagnostic centers.

"(3) General staff referral.

"(4) Self-referral.

The Program shall include extensive follow-up after the period of intensive treatment. There will be specific plans for each departing inmate for follow-up, including active involvement with Alcoholics Anonymous, community resources, and personal sponsorship."

Session Laws 1987, c. 738, s. 1.1 provides that c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

Article 14 of Chapter 143A, referred to in this section, was repealed by Session Laws 1973, c. 1262, s. 10. The same 1973 act enacted this Article.

**Effect of Amendments.** — The 1987 amendment, effective June 25, 1987, added the last sentence of subsection (c).

The 1987 amendment, effective August 7, 1987, except that the inpatient program shall begin January 1, 1988, added subsection (d).

§20-177

CH. 20. MOTOR VEHICLES

§20-179

**§ 20-177. Penalty for felony.**

Any person who shall be convicted of a violation of any of the provisions of this Article herein or by the laws of this State declared to constitute a felony shall, unless a different penalty is prescribed herein or by the laws of this State, be punished as a Class I felon. (1937, c. 407, s. 138; 1979, c. 760, s. 5.)

**Cross References.** — For statute providing the maximum punishment for felonies, see § 14-1.1.

**Editor's Note.** — Session Laws 1979, c. 760, s. 6, as amended by Session Laws 1979, 2nd Sess., c. 1316, s. 47; 1981, c.

63, s. 1; and 1981, c. 179, s. 14, provides: "This act shall become effective on July 1, 1981, and shall apply only to offenses committed on or after that date, unless specific language of the act indicates otherwise."

**§ 20-178. Penalty for bad check.**

When any person, firm, or corporation shall tender to the Division any uncertified check for payment of any tax, fee or other obligation due by him under the provisions of this Article, and the bank upon which such check shall be drawn shall refuse to pay it on account of insufficient funds of the drawer on deposit in such bank, and such check shall be returned to the Division, an additional tax shall be imposed by the Division upon such person, firm or corporation, which additional tax shall be equal to ten percent (10%) of the tax or fee in payment of which such check was tendered: Provided, that in no case shall the additional tax be less than ten dollars (\$10.00); provided, further, that no additional tax shall be imposed if, at the time such check was presented for payment, the drawer had on deposit in any bank of this State funds sufficient to pay such check and by inadvertence failed to draw the check upon such bank, or upon the proper account therein. The additional tax imposed by this section shall not be waived or diminished by the Division. (1937, c. 407, s. 139; 1953, c. 1144; 1975, c. 716, s. 5; 1981, c. 690, s. 24.)

**§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.**

(a) Sentencing Hearing Required. — After a conviction for impaired driving under G.S. 20-138.1, the judge must hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed. Before the hearing the prosecutor must make all feasible efforts to secure the defendant's full record of traffic convictions, and must present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor must furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor must present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical

analysis is made of the defendant, the prosecutor must present evidence of the resulting alcohol concentration.

(b) Repealed by Session Laws 1983, c. 435, s. 29.

(c) Determining Existence of Grossly Aggravating Factors. — At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge must first determine whether there are any grossly aggravating factors in the case. If the defendant has been convicted of two or more prior offenses involving impaired driving, if the convictions occurred within seven years before the date of the offense for which he is being sentenced, the judge must impose the Level One punishment under subsection (g). The judge must also impose the Level One punishment if he determines that two or more of the following grossly aggravating factors apply:

- (1) A single conviction for an offense involving impaired driving, if the conviction occurred within seven years before the date of the offense for which the defendant is being sentenced.
- (2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).
- (3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

If the judge determines that only one of the above grossly aggravating factors applies, he must impose the Level Two punishment under subsection (h). In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(d) Aggravating Factors to Be Weighed. — The judge must determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge must weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

- (1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.20 or more within a relevant time after the driving.
- (2) Especially reckless or dangerous driving.
- (3) Negligent driving that led to an accident causing property damage in excess of five hundred dollars (\$500.00) or personal injury.
- (4) Driving by the defendant while his driver's license was revoked.
- (5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.
- (6) Conviction under G.S. 20-141(j) of speeding by the defendant while fleeing or attempting to elude apprehension.



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- (7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.
- (8) Passing a stopped school bus in violation of G.S. 20-217.
- (9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor must occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. — The judge must also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge must weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

- (1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.11 at any relevant time after the driving.
- (2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.
- (3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.
- (4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.
- (5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.
- (6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.
- (7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor must occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. — If the judge in the sentencing hearing determines that there are no grossly aggravating factors, he must weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

- (1) The aggravating factors substantially outweigh any mitigating factors, he must note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).
- (2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, he must note in the judgment any factors found and his finding that the defendant is subject to

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the Level Four punishment and impose a punishment within the limits defined in subsection (j).

- (3) The mitigating factors substantially outweigh any aggravating factors, he must note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level must be imposed.

(f1) Aider and Abettor Punishment. — Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. — Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge must determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. — A defendant subject to Level One punishment may be fined up to two thousand dollars (\$2,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 14 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 14 days. If the defendant is placed on probation, the judge must, if required by subsection (m), impose the conditions relating to assessment, treatment, and education described in that subsection. The judge may impose any other lawful condition of probation. If the judge does not place on probation a defendant who is otherwise subject to the mandatory assessment and treatment provisions of subsection (m), he must include in the record of the case his reasons for not doing so.

(h) Level Two Punishment. — A defendant subject to Level Two punishment may be fined up to one thousand dollars (\$1,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge must, if required by subsection (m), impose the conditions relating to assessment, treatment, and education described in that subsection. The judge may impose any other lawful condition of probation. If the judge does not place on probation a defendant who is otherwise subject to the mandatory assessment and treatment provisions of subsection (m), he must include in the record of the case his reasons for not doing so.

(i) Level Three Punishment. — A defendant subject to Level Three punishment may be fined up to five hundred dollars

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(\$500.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment must be suspended, on the condition that the defendant:

- (1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or
- (2) Perform community service for a term of at least 72 hours; or
- (3) Not operate a motor vehicle for a term of at least 90 days; or
- (4) Any combination of these conditions.

The judge in his discretion may impose any other lawful condition of probation and, if required by subsection (m), must impose the conditions relating to assessment, treatment, and education described in that subsection. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(j) Level Four Punishment. — A defendant subject to Level Four punishment may be fined up to two hundred fifty dollars (\$250.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment must be suspended, on the condition that the defendant:

- (1) Be imprisoned for a term of 48 hours as a condition of special probation; or
- (2) Perform community service for a term of 48 hours; or
- (3) Not operate a motor vehicle for a term of 60 days; or
- (4) Any combination of the conditions.

The judge in his discretion may impose any other lawful condition of probation and, if required by subsection (m), must impose the conditions relating to assessment, treatment, and education described in that subsection. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(k) Level Five Punishment. — A defendant subject to Level Five punishment may be fined up to one hundred dollars (\$100.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment must be suspended, on the condition that the defendant:

- (1) Be imprisoned for a term of 24 hours as a condition of special probation; or
- (2) Perform community service for a term of 24 hours; or
- (3) Not operate a motor vehicle for a term of 30 days; or
- (4) Any combination of these conditions.

The judge may in his discretion impose any other lawful condition of probation and, if required by subsection (m), must impose the conditions relating to assessment, treatment, and education described in that subsection. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(k1) Credit for Inpatient Treatment. — Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as

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an inpatient. The defendant shall bear the expense of any treatment. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. The credit may not be used more than once during the seven-year period immediately preceding the date of the offense. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(l) Repealed by Session Laws 1989, c. 691, s. 3, effective January 1, 1990.

(m) Assessment and Treatment Required in Certain Cases. — If a defendant being sentenced under this section is placed on probation, he shall be required as a condition of that probation to obtain a substance abuse assessment.

The judge shall require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. Unless a different time limit is specified in the court's judgment, the defendant shall schedule the assessment within 30 days from the date of the judgment. Any agency performing assessments shall give written notification of its intention to do so to the area mental health authority in the catchment area in which it is located and to the Department of Human Resources. The Secretary of the Department of Human Resources may adopt rules to implement the provisions of this subsection, and these rules may include provisions to allow defendant to obtain assessments and treatment from agencies not located in North Carolina. The assessing agency shall give the client a standardized test capable of providing uniform research data, including, but not limited to, demographic information, defendant history, assessment results and recommended interventions, approved by the Department of Human Resources to determine chemical dependency. A clinical interview concerning the general status of the defendant with respect to chemical dependency shall be conducted by the assessing agency before making any recommendation for further treatment. A recommendation made by the assessing agency shall be signed by a "Certified Alcoholism, Drug Abuse or Substance Abuse Counselor", as defined by the Department of Human Resources.

If the assessing agency recommends that the defendant participate in a treatment program, the judge may require the defendant to do so, and he shall require the defendant to execute a Release of Information authorizing the treatment agency to report his progress to the court or the Department of Correction. The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation in treatment should be imposed. An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was .15 or greater as indicated by a chemical analysis taken when he

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was charged or this was a second or subsequent offense within five years. At the time of sentencing the judge shall require the defendant to pay one hundred twenty-five dollars (\$125.00). The payment of the fee of one hundred twenty-five dollars (\$125.00) shall be (i) fifty dollars (\$50.00) to the assessing agency and (ii) seventy-five dollars (\$75.00) to either a treatment facility or to an alcohol and drug education traffic school depending upon the recommendation made by the assessing agency. G.S. 20-179(l) shall not apply to defendants sentenced under this section. Fees received by the Area Mental Health, Mental Retardation, and Substance Abuse Authorities under this section shall be administered pursuant to G.S. 20-179.2(e), provided, however that the provisions of G.S. 20-179.2(c) shall not apply to monies received under this section. The operators of the local alcohol and drug education traffic school may change the length of time required to complete the school in accordance with administrative costs, provided, however that the length and the curriculum of the school shall be approved by the Commission for Mental Health, Mental Retardation and Substance Abuse Services and in no event shall the school be less than five hours in length. If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar (\$75.00) fee. If an area mental health facility or its contractor is providing treatment or education services to a defendant pursuant to this subsection, the area facility or its contractor may require that the defendant pay the fees prescribed by law for the services before it certifies that the defendant has completed the recommended treatment or educational program. Any determinations with regard to the defendant's ability to pay the assessment fee shall be made by the judge.

In those cases in which no substance abuse handicap is identified, that finding shall be filed with the court and the defendant shall be required to attend an alcohol and drug education traffic school. When treatment is required, the treatment agency's progress reports shall be filed with the court or the Department of Correction at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate. If the defendant is required to participate in a treatment program and he completes the recommended treatment, he does not have to attend the alcohol and drug education traffic school. Upon the completion of the court-ordered assessment and court-ordered treatment or school, the assessing or treatment agency or school shall give the Division of Motor Vehicles the original of the certificate of completion, shall provide the defendant with a copy of that certificate, and shall retain a copy of the certificate on file for a period of five years. The Division of Motor Vehicles shall not reissue the driver's license of a defendant ordered to obtain assessment, participate in a treatment program or school unless it has received the original certificate of completion from the assessing or treatment agency or school or a certificate of completion sent by the agency subsequent to a court order as hereinafter provided; provided, however that a defendant may be issued a limited driving privilege pursuant to G.S. 20-179.3. Unless the judge has waived the fee, no certificate shall be issued unless the agency or school has received the fifty dollar (\$50.00) fee and the seventy-five dollar (\$75.00) fee as appropriate. A defendant may within 90 days after an agency decision to decline to certify, by

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filing a motion in the criminal case, request that a judge presiding in the court in which he was convicted review the decision of an assessment or treatment agency to decline to certify that the defendant has completed the assessment or treatment. The agency whose decision is being reviewed shall be notified at least 10 days prior to any hearing to review its decision. If the judge determines that the defendant has obtained an assessment, has completed the treatment, or has made an effort to do so that is reasonable under the circumstances, as the case may be, the judge shall order that the agency send a certificate of completion to the Division of Motor Vehicles.

The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program.

(n) Time Limits for Performance of Community Service. — If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service must be completed:

- (1) Within 90 days, if the amount of community service required is 72 hours or more; or
- (2) Within 60 days, if the amount of community service required is 48 hours; or
- (3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions. — In the sentencing hearing, the State must prove any grossly aggravating or aggravating factor by the greater weight of the evidence, and the defendant must prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he must give prima facie effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge must afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. — For active terms of imprisonment imposed under this section:

- (1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

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- (2) The defendant must serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.
- (3) The defendant may not be released on parole unless he is otherwise eligible and has served the mandatory minimum period of imprisonment.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Meaning of "Conviction". — For the purposes of this Article, "conviction" includes a guilty verdict, guilty plea, plea of no contest, or anything that would be treated as a conviction under G.S. 20-24(c).

(r) Supervised Probation Terminated. — Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets two conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced and that the defendant is sentenced under subsections (i), (j), and (k) of this section.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

- (1) Community service; or
- (2) Treatment and education as described in subsection (m); or
- (3) Payment of any fines, court costs, and fees; or
- (4) Any combination of these conditions.

(s) Method of Serving Sentence. — The judge in his discretion may order a term of imprisonment or community service to be served on weekends, even if the sentence cannot be served in consecutive sequence.

(t) Assessment for Convicted Defendants not Placed on Probation. — Any person convicted of impaired driving who is not placed on probation shall obtain a substance abuse assessment as a condition of having his driver's license restored following a revocation ordered pursuant to G.S. 20-17(2). The assessment shall be obtained from an area mental health agency, its designated agency, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. The fee for the assessment shall be as specified in subsection (m) of this section. The assessing agency shall provide to the Department of Human Resources a certificate attesting that the assessment has been performed and indicating its results. The Department shall promptly notify the Division of Motor Vehicles of the receipt of the certificate. The Division shall not reissue a driver's license to the defendant until this notification is received. The Commission for Mental Health, Mental Retardation, and Substance Abuse Services may adopt rules to implement the provisions of this subsection. (1937, c. 407, s. 140; 1947, c. 1067, s.

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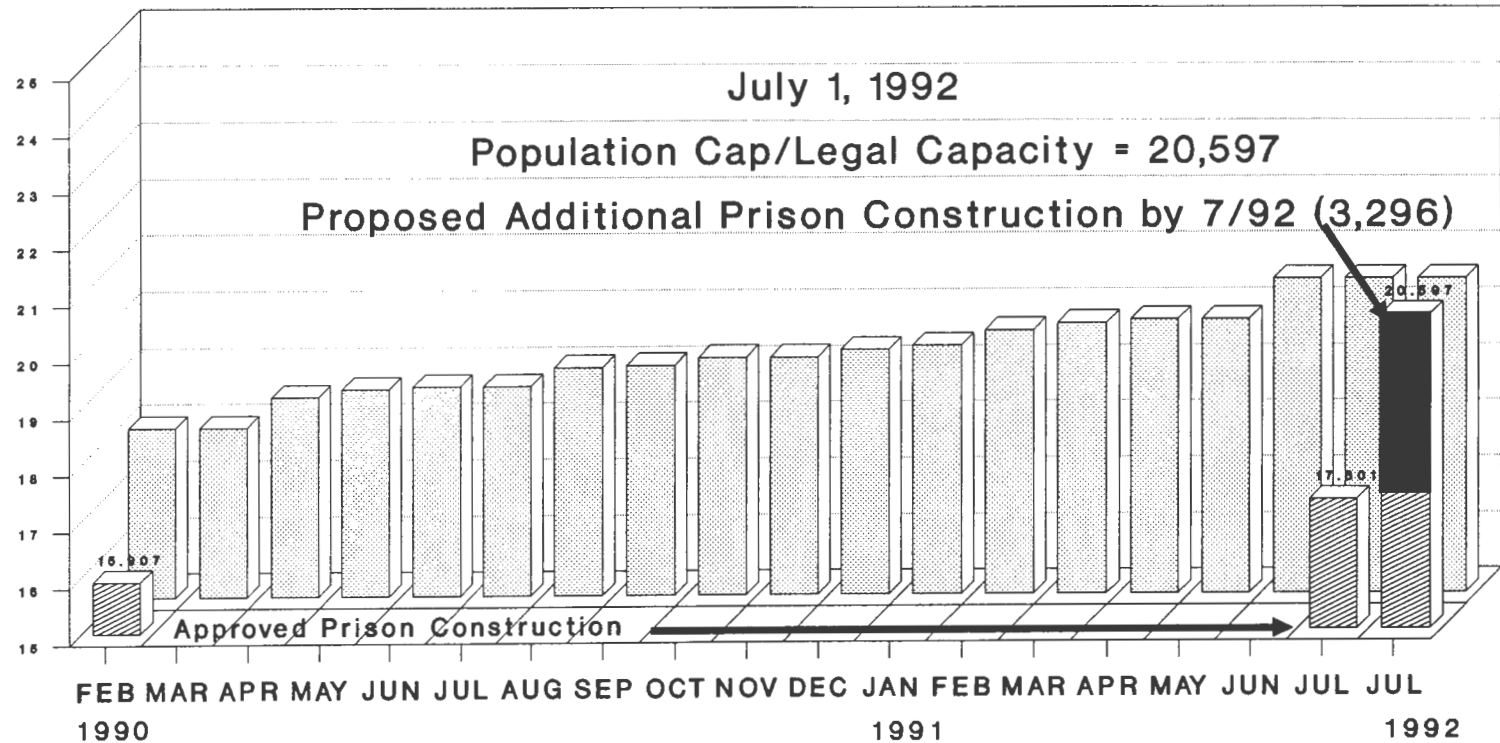
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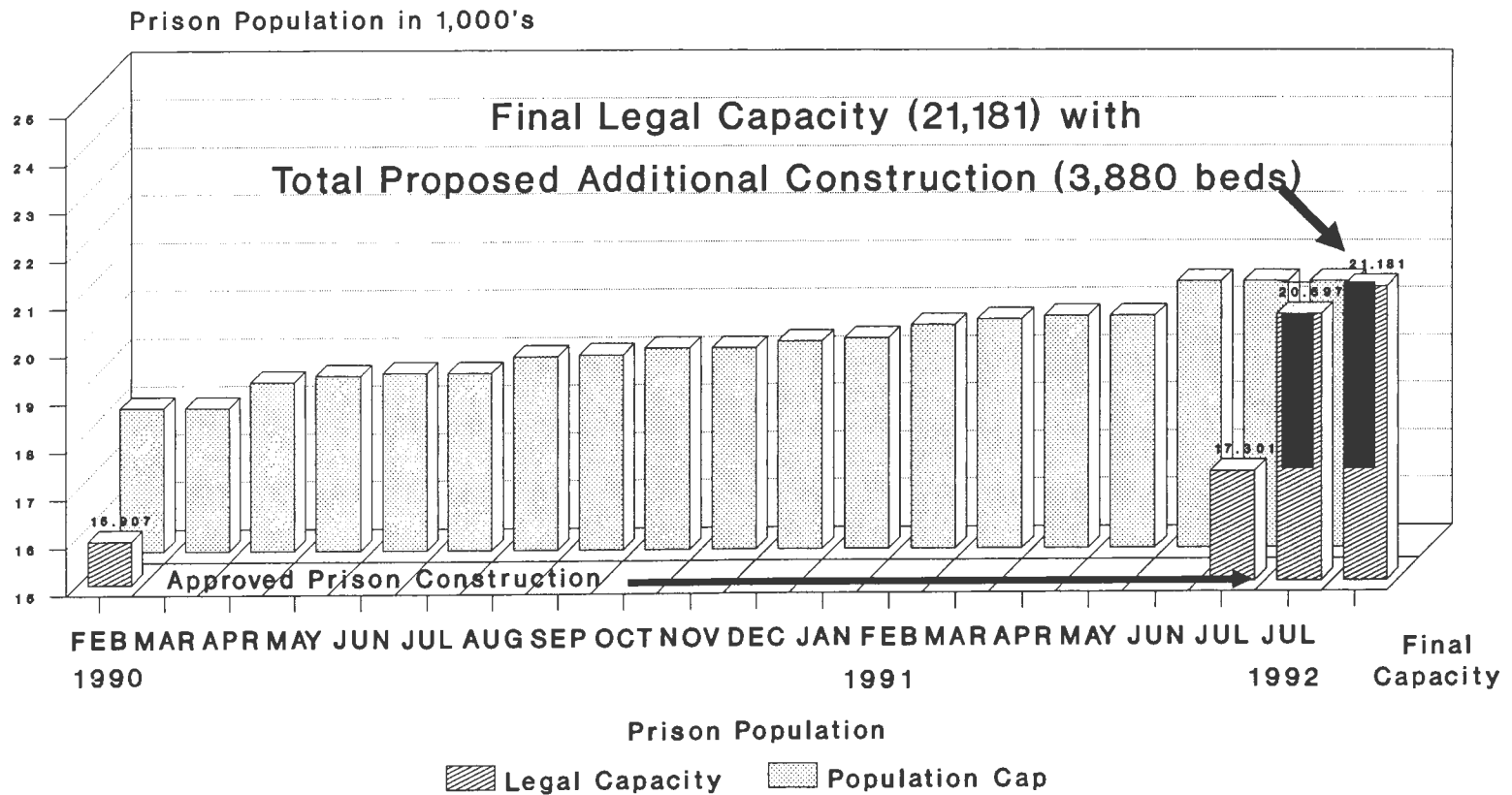


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Legal Capacity: Small v. Martin Standard  
 Population Cap: Limit set by State Law  
 Revised 05/07/90



# North Carolina Prison Capacity Legal Capacity with Proposed Additional Construction



Legal Capacity: Small v. Martin Standard  
Population Cap: Limit set by State Law  
Revised 05/07/90

