

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2284*
Committee Substitute Favorable 7/6/90

Short Title: Sentencing Commission Act.

(Public)

Sponsors:

Referred to:

June 4, 1990

A BILL TO BE ENTITLED
AN ACT TO CREATE A SENTENCING AND POLICY ADVISORY COMMISSION
AND TO ESTABLISH A UNIFORM STANDARD FOR THE DEVELOPMENT
OF CRIMINAL JUSTICE POLICY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 164 of the General Statutes is amended by adding a new
Article to read:

“ARTICLE 4.
“SENTENCING COMMISSION.

“§ 164-35. Commission established.

The North Carolina Sentencing and Policy Advisory Commission is established.
As used in this Article, the term ‘Commission’ means the North Carolina Sentencing
and Policy Advisory Commission.

“§ 164-36. Powers and duties.

Sentences established for violations of the State's criminal laws should be based
on the established purposes of our criminal justice and corrections systems. The
Commission shall evaluate sentencing laws and policies in relationship to both the
stated purposes of the criminal justice and corrections systems and the availability of
sentencing options. The Commission shall make recommendations to the General
Assembly for the modification of sentencing laws and policies, and for the addition,
deletion, or expansion of sentencing options as necessary to achieve policy goals.

“§ 164-37. Membership; chairman; meetings; quorum.

The Commission shall consist of 22 members as follows:

- 1 (1) The Chief Justice of the North Carolina Supreme Court shall
2 appoint a sitting or former Justice or judge of the General Court of
3 Justice, who shall serve as Chairman of the Commission;
4 (2) The Chief Judge of the North Carolina Court of Appeals, or
5 another judge on the Court of Appeals, serving as his designee;
6 (3) The Secretary of Correction or his designee;
7 (4) The Secretary of Crime Control and Public Safety or his designee;
8 (5) The Chairman of the Parole Commission, or another parole
9 commissioner serving as his designee;
10 (6) The President of the Conference of Superior Court Judges or
11 his designee;
12 (7) The President of the District Court Judges Association or his designee;
13 (8) The President of the North Carolina Sheriff's Association or
14 his designee;
15 (9) The President of the North Carolina Association of Chiefs of Police or
16 his designee;
17 (10) One member of the public at large, who is not currently licensed to
18 practice law in North Carolina, to be appointed by the Governor;
19 (11) One member to be appointed by the Lieutenant Governor;
20 (12) One member of the House of Representatives, to be appointed by the
21 Speaker of the House;
22 (13) One member of the Senate, to be appointed by the President Pro
23 Tempore of the Senate;
24 (14) The President Pro Tempore of the Senate shall appoint the
25 representative of the North Carolina Sentencing Alternatives
26 Association that is recommended by the President of that organization;
27 (15) The Speaker of the House of Representatives shall appoint the member
28 of the business community that is recommended by the President of
29 the North Carolina Retail Merchant's Association;
30 (16) The Chief Justice of the North Carolina Supreme Court shall appoint
31 the criminal defense attorney that is recommended by the President of
32 the North Carolina Academy of Trial Lawyers;
33 (17) The President of the Conference of District Attorneys or his
34 designee;
35 (18) The Lieutenant Governor shall appoint the member of the North
36 Carolina Victim Assistance Network that is recommended by the
37 President of that organization;
38 (19) A rehabilitated former prison inmate, to be appointed by the Chairman
39 of the Commission;
40 (20) The President of the North Carolina Association of County
41 Commissioners or his designee;
42 (21) The Governor shall appoint the member of the academic community,
43 with a background in criminal justice or corrections policy, that is
44 recommended by the President of The University of North Carolina;

1 (22) The Attorney General, or a member of his staff, to be appointed by the
2 Attorney General.

3 The Commission shall have its initial meeting no later than September 1, 1990, at
4 the call of the Chairman. The Commission shall meet a minimum of four regular
5 meetings each year. The Commission may also hold special meetings at the call of the
6 Chairman, or by any four members of the Commission, upon such notice and in such
7 manner as may be fixed by the rules of the Commission. A majority of the members of
8 the Commission shall constitute a quorum.

9 **"§ 164-38. Terms of members; compensation; expenses.**

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

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

18 **"§ 164-39. Executive director and other staff.**

19 The Commission shall employ an Executive Director from candidates presented
20 to it by the Chairman and the Director of the Administrative Office of the Courts. The
21 Executive Director shall have appropriate training and experience to assist the
22 Commission in the performance of its duties. The Executive Director shall be
23 responsible for compiling the work of the Commission and drafting suggested
24 legislation incorporating the Commission's findings for submission to the General
25 Assembly.

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

29 The Commission may, with the approval of the Legislative Services
30 Commission, meet in the State Legislative Building or the Legislative Office Building,
31 or may meet in an area provided by the Director of the Administrative Office of the
32 Courts. Commission staff shall use office space provided by the Director of the
33 Administrative Office of the Courts.

34 **"§ 164-40. Correction population simulation model.**

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

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

42 **"§ 164-41. Classification of offenses - ranges of punishment.**

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

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

- 3 (1) The nature and degree of harm likely to be caused by the offense,
4 including whether it involves property, irreplaceable property, a
5 person, number of persons, or a breach of the public trust;
- 6 (2) The deterrent effect a particular classification may have on the
7 commission of the offense by others;
- 8 (3) The current incidence of the offense in the State as a whole;
- 9 (4) The rights of the victim.

10 (c) For each classification of felonies and misdemeanors formulated pursuant to
11 subsection (b), the Commission shall assign a suggested range of punishment. The
12 Commission shall 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 sentencing court in
16 determining the most appropriate sentence to be imposed in a criminal case, including:

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

31 (b) The sentencing structures shall be consistent with the goals, policies, and
32 purposes of the criminal justice and corrections systems, as set forth in Sections 2 and 3
33 of the Sentencing and Policy Advisory Commission Act of 1990. As part of its work,
34 the Commission shall offer recommendations for the incorporation of those sections
35 into the sentencing laws of North Carolina. In formulating structures, the Commission
36 also shall consider:

- 37 (1) The nature and characteristics of the offense;
- 38 (2) The severity of the offense in relation to other offenses;
- 39 (3) The characteristics of the defendant that mitigate or aggravate the
40 seriousness of his criminal conduct and the punishment deserved
41 therefor;
- 42 (4) The defendant's number of prior convictions;

1 (5) The available resources and constitutional capacity of the Department
2 of Correction, local confinement facilities, and community-based
3 sanctions;

4 (6) The rights of the victims;

5 (7) That felony offenders sentenced to an active term of imprisonment, or
6 whose suspended sentence to imprisonment is activated, should serve a
7 designated minimum percentage of their sentences before they are
8 eligible for parole;

9 (8) That misdemeanor offenders sentenced to an active term of
10 imprisonment, or whose suspended sentence to imprisonment is
11 activated, should serve a designated minimum percentage of their
12 sentence before they are eligible for parole.

13 (c) The Commission shall also consider the policy issues set forth in G.S. 164-
14 42.1 in developing its sentencing structures.

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

18 **"§ 164-42.1. Policy recommendations.**

19 Using the studies of the Special Committee on Prisons, the Governor's Crime
20 Commission, and other analyses, including testimony from representatives of the bodies
21 that conducted the analyses, the Commission shall:

22 (1) Determine the long-range needs of the criminal justice and corrections
23 systems and recommend policy priorities for those systems;

24 (2) Determine the long-range information needs of the criminal justice and
25 corrections systems and acquire that information as it becomes
26 available;

27 (3) Identify critical problems in the criminal justice and corrections
28 systems and recommend strategies to solve those problems;

29 (4) Assess the cost-effectiveness of the use of State and local funds in the
30 criminal justice and corrections systems;

31 (5) Recommend the goals, priorities, and standards for the allocation of
32 criminal justice and corrections funds;

33 (6) Recommend means to improve the deterrent and rehabilitative
34 capabilities of the criminal justice and corrections systems;

35 (7) Propose plans, programs, and legislation for improving the
36 effectiveness of the criminal justice and corrections systems;

37 (8) Determine the sentencing structures for parole decisions;

38 (9) Examine the impact of mandatory sentence lengths as opposed to the
39 deterrent effect of minimum mandatory terms of imprisonment;

40 (10) Examine good time and gain time practices;

41 (11) Study the value of presentence reports;

42 (12) Consider the rehabilitative potential of the offender and the appropriate
43 rehabilitative placement;

44 (13) Examine the impact of imprisonment on families of offenders;

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

3 (15) Study the need for an amendment to Article XI, Section 1 of the State
4 Constitution to include restitution, restraints on liberty, work
5 programs, or other punishments to the list of punishments allowed
6 under that section.

7 **"§ 164-42.2. Community corrections.**

8 The Commission shall recommend a comprehensive community corrections strategy
9 and organizational structure for the State based upon the following:

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

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

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

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

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

22 **"§ 164-43. Priority of duties; reports; continuing duties.**

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

27 It is the legislative intent that the Commission attach priority to accomplish the
28 following primary duties:

29 (1) The classification of criminal offenses as described in G.S. 164-41 and
30 the formulation of sentencing structures as described in G.S. 164-42;
31 and

32 (2) The formulation of proposals and recommendations as described in
33 G.S. 164-42.1 and G.S. 164-42.2.

34 (b) The Commission shall report its findings and recommendations to the 1991
35 General Assembly, 1991 Regular Session. The report shall describe the status of the
36 Commission's work, and shall include any completed policy recommendations.

37 (c) The recommendations for the classification and ranges of punishment for
38 felonies and misdemeanors, required by G.S. 164-41, and sentencing structures,
39 established pursuant to G.S. 164-42, shall be submitted prior to the 1991 General
40 Assembly, 1992 Regular Session.

41 (d) Once the primary duties of the Commission have been accomplished, it shall
42 have the continuing duty to monitor and review the criminal justice and corrections
43 systems in this State to ensure that sentencing remains uniform and consistent, and that
44 the goals and policies established by the State are being implemented by sentencing

1 practices, and it shall recommend methods by which this ongoing work may be
2 accomplished and by which the correctional population simulation model developed
3 pursuant to G.S. 164-40 shall continue to be used by the State.

4 (e) Upon adoption of a system for the classification of offenses formulated
5 pursuant to G.S. 164-41, the Commission or its successor shall review all proposed
6 legislation which creates a new criminal offense, changes the classification of an
7 offense, or changes the range of punishment for a particular classification, and shall
8 make recommendations to the General Assembly.

9 (f) In the case of a new criminal offense, the Commission or its successor shall
10 determine whether the proposal places the offense in the correct classification, based
11 upon the considerations and principles set out in G.S. 164-41. If the proposal does not
12 assign the offense to a classification, it shall be the duty of the Commission or its
13 successor to recommend the proper classification placement.

14 (g) In the case of proposed changes in the classification of an offense or changes
15 in the range of punishment for a classification, the Commission or its successor shall
16 determine whether such a proposed change is consistent with the considerations and
17 principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

18 (h) The Commission or its successor shall meet within 10 days after the last day
19 for filing general bills in the General Assembly for the purpose of reviewing bills as
20 described in subsections (e), (f), and (g). The Commission or its successor shall include
21 in its report on a bill an analysis based on an application of the correctional population
22 simulation model to the provisions of the bill.

23 **"§ 164-44. Statistical information; financial or other aid.**

24 (a) The Commission shall have the secondary duty of collecting, developing, and
25 maintaining statistical data relating to sentencing and corrections so that the primary
26 duties of the Commission will be formulated using data that is valid, accurate, and
27 relevant to this State. All State agencies shall provide data as it is requested by the
28 Commission.

29 (b) The Commission shall have the authority to apply for, accept, and use any
30 gifts, grants, or financial or other aid, in any form, from the federal government or any
31 agency or instrumentality thereof, or from the State or from any other source including
32 private associations, foundations, or corporations to accomplish any of the duties set out
33 in this Chapter.

34 **"§ 164-45. Administrative direction and supervision.**

35 The Commission shall be administered under the direction and supervision of the
36 Director of the Administrative Office of the Courts. The Commission shall exercise all
37 of its prescribed statutory powers independently of the head of that Office, except that
38 all management functions shall be performed under the direction and supervision of the
39 Director of the Administrative Office of the Courts. 'Management functions,' as used in
40 this section, means planning, organizing, staffing, directing, coordinating, and
41 budgeting."

42 Sec. 2. It is the constitutional responsibility of the North Carolina judicial
43 system to discover the truth, to the best of its ability, in every case before it and to
44 establish whether the accused is guilty or not guilty. In those cases where the defendant

1 is found guilty, the court shall dispense justice for the public, the victim, and the
2 defendant through the judgment imposed.

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

- 4 (1) Protection of the public. Incarceration should be viewed by the court
5 both as punishment and as a means of protecting the public.
6 Limitations on the freedom of the offender and the appropriate level of
7 custody should be dictated in the first instance by the nature of the
8 offense, the violent character of the offender, the proclivity of the
9 offender to engage in criminal conduct as demonstrated by his criminal
10 record, and the sound judgment of the sentencing court after taking
11 into account all of the relevant aggravating and mitigating factors
12 involved in the offenders' record of criminal conduct.
- 13 (2) Punishment of the offender. After the interests of public protection
14 have been addressed, consideration should be given to restriction of
15 the liberty of the offender in such manner and to such extent as is
16 necessary to demonstrate clearly that the offender's conduct is
17 unacceptable to society and to discourage a repetition of such conduct.
18 In determining the appropriate punishment the court should consider a
19 range of sanctions at the State or community level which may include
20 incarceration, various degrees of restrictions on the offender's liberty
21 including house arrest, various degrees of supervision, community
22 penalties, community service, restitution/reparation, or fines.
- 23 (3) Rehabilitation of the offender. Every sentencing plan should consider
24 treatment/rehabilitative needs of the offender to the extent that it
25 addresses the cause of the criminal behavior and, therefore, might
26 assist in correcting such behavior. The offender should be enrolled in
27 a program of rehabilitation over a definite minimal period of time.
28 The program of rehabilitation should involve work and recreation and
29 may involve education, psychological or psychiatric counseling,
30 treatment for alcohol or drug abuse and sexual aggression either within
31 or without the prison walls as the individual case may indicate. The
32 court may recommend remedies for alcoholism, substance abuse,
33 mental illness, education and employment deficiencies, and may order
34 community-based offenders to pay for such treatment to the extent the
35 offender is able. Public institutions should respond to the court order
36 at no cost to the indigent offender. Where treatment is not available
37 from public institutions, the State should purchase appropriate
38 treatment from the private sector.
- 39 (4) Restitution/Reparation. When appropriate, the sentencing plan should
40 provide for restitution or reparation to the victim or victims, whether
41 they be individual citizens, corporations, or society as a whole, to be
42 paid as soon as practicable. Such restitution or reparation should
43 include repayment for any property stolen or damaged, medical costs
44 and lost wages of the victims, court costs and reasonable costs to cover

1 pretrial detention, and/or restitution to the community through
2 community service. In those cases where the offender can be punished
3 and rehabilitated outside of prison without jeopardizing the security of
4 the society at large in their persons or property, it is appropriate and
5 encouraged that the offender pay his debt to society through a range of
6 punishments which are alternative to incarceration. The court should
7 order such supervision or restrictions as deemed necessary for the
8 offender to comply with the restitution orders. Failure to comply
9 should result in stricter measures.

10 (5) Work policy for offenders. It is the policy of this State that
11 offenders should work when reasonably possible, either at jobs in the
12 private sector to pay restitution and support their dependents, or at
13 community service jobs that benefit the public, or at useful work
14 while in prison or jail, or at educational or treatment endeavors as a
15 part of a rehabilitation program. Offenders should be offered the
16 opportunity to reduce the duration of their sentences by earning
17 "time" credit for work endeavors in achieving vocational or
18 educational skill levels. Prisoners who are able and do not work or
19 who refuse to participate in treatment programs should be prohibited
20 from enjoying privileges which may be provided to inmates beyond
21 those required by law.

22 (6) Responsibility of Department of Correction. It is the goal of the North
23 Carolina Department of Correction to provide adequate prison space to
24 insure that those sentenced to prison will remain incarcerated until
25 such time as they can be safely released, or until their active sentences
26 are completed, and to provide community based supervision for those
27 offenders selected for supervised probation and parole by the courts
28 and the Parole Commission.

29 It is the mission of the Department's Division of Prisons to provide
30 housing, clothing, food, and medical care to its inmates, to maintain a
31 safe and secure prison system, to keep accurate records, to offer job
32 training, education, counseling, work and treatment programs deemed
33 appropriate to monitor and advance the rehabilitative progress of its
34 inmates, to provide a fair and orderly progression through custody
35 levels, and to make data and recommendations regarding parole
36 available to the Parole Commission. As an inmate demonstrates that
37 he/she is no longer a threat to society, that the punishment has been
38 effective and that a program of rehabilitation is showing progress, the
39 inmate's level of custody may be commensurately reduced in an
40 orderly progression through custody levels to parole and release from
41 supervision.

42 It is the mission of the Department's Division of Adult Probation
43 and Parole to receive convicted offenders selected by the courts and
44 the Parole Commission and to protect society through a coordinated

1 program of community supervision which provides realistic
2 opportunities for probationers and parolees to develop skills necessary
3 to adjust to free society. As a probationer/parolee demonstrates that
4 the supervision has been effective and that a community treatment
5 program is showing progress, the level of supervision may be
6 commensurately reduced in an orderly progression to prepare for
7 release from supervision.

8 Sec. 4. The North Carolina Sentencing and Policy Advisory Commission, in
9 performing its duties pursuant to Chapter 164, Article 4 of the General Statutes, shall
10 make recommendations consistent with the purposes and policies stated in Sections 2
11 and 3 of this act. Sections 2 and 3 of this act are only for the purpose of providing
12 policy guidance for the development of comprehensive criminal justice and corrections
13 systems by the Commission.

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

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

28 Sec. 6. Notwithstanding any other provision of law, no State agencies,
29 committees, or commissions may duplicate the statutorily-prescribed responsibilities of
30 the Sentencing and Policy Advisory Commission unless said agency, committee, or
31 commission is acting within functions specifically assigned to it by another act of the
32 1989 Session of the General Assembly.

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

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

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