

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 1500*
Judiciary I Committee Substitute Adopted 6/21/90

Short Title: Sentencing Commission Act.

(Public)

Sponsors:

Referred to: Judiciary I.

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 Supreme Court shall appoint a
2 sitting or former Justice or judge of the General Court of Justice,
3 who shall serve as Chairman of the Commission;
- 4 (2) The Chief Judge of the Court of Appeals, or another Judge
5 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 of the North Carolina Sentencing Alternatives
25 Association or his designee;
- 26 (15) One representative of the business community, to be appointed by the
27 North Carolina Retail Merchant's Association;
- 28 (16) A criminal defense attorney, who shall be the President of the North
29 Carolina Academy of Trial Lawyers or his designee;
- 30 (17) The President of the Conference of District Attorneys or his
31 designee;
- 32 (18) The President of the North Carolina Victim Assistance Network or his
33 designee;
- 34 (19) A rehabilitated former prison inmate, to be appointed by the Chairman
35 of the Commission;
- 36 (20) The President of the North Carolina Association of County
37 Commissioners or his designee;
- 38 (21) A representative of the academic community, with background in
39 criminal justice or corrections policy, to be appointed by the President
40 of The University of North Carolina; and
- 41 (22) A member of the Attorney General's staff, to be appointed by the
42 Attorney General.

43 The Commission shall have its initial meeting no later than September 1, 1990, at
44 the call of the Chairman. The Commission shall meet a minimum of four regular

1 meetings each year. The Commission may also hold special meetings at the call of the
2 Chairman, or by any four members of the Commission, upon such notice and in such
3 manner as may be fixed by the rules of the Commission. A majority of the members of
4 the Commission shall constitute a quorum.

5 **"§ 164-38. Terms of members; compensation; expenses.**

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

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

14 **"§ 164-39. Executive director and other staff.**

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

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

25 The Commission may, with the approval of the Legislative Services
26 Commission, meet in the State Legislative Building or the Legislative Office Building,
27 or may meet in an area provided by the Director of the Administrative Office of the
28 Courts. Commission staff shall use office space provided by the Director of the
29 Administrative Office of the Courts.

30 **"§ 164-40. Correction population simulation model.**

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

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

38 **"§ 164-41. Classification of offenses; ranges of punishment.**

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

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

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

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

12 **"§ 164-42. Sentencing structures.**

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

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

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

- 35 (1) The nature and characteristics of the offense;
- 36 (2) The severity of the offense in relation to other offenses;
- 37 (3) The characteristics of the defendant that mitigate or aggravate the
38 seriousness of his criminal conduct and the punishment deserved;
- 39 (4) The defendant's number of prior convictions;
- 40 (5) The available resources and constitutional capacity of the Department
41 of Correction, local confinement facilities, and community-based
42 sanctions;
- 43 (6) The rights of the victims;

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

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

9 (c) The Commission shall also consider the policy issues set forth in G.S. 164-
10 42.1 in developing its sentencing structures.

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

14 **"§ 164-42.1. Policy recommendations.**

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

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

20 (2) Determine the long-range information needs of the criminal justice and
21 corrections systems and acquire that information as it becomes
22 available;

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

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

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

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

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

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

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

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

37 (11) Study the value of presentence reports;

38 (12) Consider the rehabilitative potential of the offender and the appropriate
39 rehabilitative placement;

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

41 (14) Examine the impact of imprisonment on the ability of the offender to
42 make restitution.

43 **"§ 164-42.2. Community corrections.**

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

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

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

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

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

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

15 **"§ 164-43. Priority of duties; reports; continuing duties.**

16 (a) The Commission shall have two primary duties and other secondary duties
17 essential to accomplishing the primary ones. The Commission may establish
18 subcommittees or advisory committees composed of Commission members to
19 accomplish duties imposed by this Article.

20 It is the legislative intent that the Commission attach priority to accomplish the
21 following primary duties:

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

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

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

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

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

41 (e) Upon adoption of a system for the classification of offenses formulated
42 pursuant to G.S. 164-41, the Commission or its successor shall review all proposed
43 legislation which creates a new criminal offense, changes the classification of an

1 offense, or changes the range of punishment for a particular classification and shall
2 make recommendations to the General Assembly.

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

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

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

17 **"§ 164-44. Statistical information; financial or other aid.**

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

23 (b) The Commission shall have the authority to apply for, accept, and use any
24 gifts, grants, or financial or other aid, in any form, from the federal government or any
25 agency or instrumentality thereof, or from the State or from any other source including
26 private associations, foundations, or corporations to accomplish any of the duties set out
27 in this Article.

28 **"§ 164-45. Administrative direction and supervision.**

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

36 Sec. 2. It is the constitutional responsibility of the North Carolina judicial
37 system to discover the truth, to the best of its ability, in every case before it and to
38 establish whether the accused is guilty or not guilty. In those cases where the defendant
39 is found guilty, the court shall dispense justice for the public, the victim, and the
40 defendant through the judgment imposed.

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

- 42 (1) Protection of the public. Incarceration should be viewed by the court
43 both as punishment and as a means of protecting the public.
44 Limitations on the freedom of the offender and the appropriate level of

1 custody should be dictated in the first instance by the nature of the
2 offense, the violent character of the offender, the proclivity of the
3 offender to engage in criminal conduct as demonstrated by his criminal
4 record, and the sound judgment of the sentencing court after taking
5 into account all of the relevant aggravating and mitigating factors
6 involved in the offender's record of criminal conduct.

7 (2) Punishment of the offender. After the interests of public protection
8 have been addressed, consideration should be given to restriction of
9 the liberty of the offender in such manner and to such extent as is
10 necessary to demonstrate clearly that the offender's conduct is
11 unacceptable to society and to discourage a repetition of such conduct.
12 In determining the appropriate punishment, the court should consider a
13 range of sanctions at the State or community level which may include
14 incarceration, various degrees of restrictions on the offender's liberty,
15 including house arrest, various degrees of supervision, community
16 penalties, community service, restitution, reparation, or fines.

17 (3) Rehabilitation of the offender. Every sentencing plan should consider
18 the treatment and rehabilitative needs of the offender to the extent that
19 it addresses the cause of the criminal behavior and, therefore, might
20 assist in correcting the behavior. The offender should be enrolled in a
21 program of rehabilitation over a definite minimal period of time. The
22 program of rehabilitation should involve work and recreation and may
23 involve education, psychological or psychiatric counseling, treatment
24 for alcohol or drug abuse, and sexual aggression either within or
25 without the prison walls as the individual case may indicate. The court
26 may recommend remedies for alcoholism, substance abuse, mental
27 illness, and education and employment deficiencies and may order
28 community-based offenders to pay for such treatment to the extent the
29 offender is able. Public institutions should respond to the court order
30 at no cost to the indigent offender. Where treatment is not available
31 from public institutions, the State should purchase appropriate
32 treatment from the private sector.

33 (4) Restitution and reparation. When appropriate, the sentencing plan
34 should provide for restitution or reparation to the victim, whether they
35 be individual citizens, corporations, or society as a whole, to be paid as
36 soon as practicable. The restitution or reparation should include
37 repayment for any property stolen or damaged, medical costs and lost
38 wages of the victims, court costs and reasonable costs to cover pretrial
39 detention, and restitution to the community through community
40 service. In those cases where the offender can be punished and
41 rehabilitated outside of prison without jeopardizing the security of the
42 society at large in their persons or property, it is appropriate and
43 encouraged that the offender pay his debt to society through a range of
44 punishments which are alternative to incarceration. The court should

1 order such supervision or restrictions as deemed necessary for the
2 offender to comply with the restitution orders. Failure to comply
3 should result in stricter measures.

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

16 (6) Responsibility of Department of Correction. It is the goal of the
17 Department of Correction to provide adequate prison space to insure
18 that those sentenced to prison will remain incarcerated until such time
19 as they can be safely released, or until their active sentences are
20 completed, and to provide community-based supervision for those
21 offenders selected for supervised probation and parole by the Courts
22 and the Parole Commission.

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

36 It is the mission of the Department's Division of Adult Probation
37 and Parole to receive convicted offenders selected by the Courts and
38 the Parole Commission and to protect society through a coordinated
39 program of community supervision which provides realistic
40 opportunities for probationers and parolees to develop skills necessary
41 to adjust to free society. As a probationer or parolee demonstrates that
42 the supervision has been effective and that a community treatment
43 program is showing progress, the level of supervision may be

1 commensurately reduced in an orderly progression to prepare for
2 release from supervision.

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

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

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

23 Sec. 6. Notwithstanding any other provision of law, no State agencies,
24 committees, or commissions may duplicate the statutorily-prescribed responsibilities of
25 the Sentencing and Policy Advisory Commission.

26 Sec. 7. This act shall be known as the "Sentencing and Policy Advisory
27 Commission Act of 1990."

28 Sec. 8. This act shall become effective July 1, 1990, and shall expire July 1,
29 1992.