

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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BILL DRAFT 2017-MSz-159 [v.5]

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title: Enhance Prison Security.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENHANCE PRISON SECURITY AND TO MODIFY THE
3 ADMINISTRATIVE REMEDY PROCEDURE AS RECOMMENDED BY THE JOINT
4 LEGISLATIVE OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 14-258.4(a) reads as rewritten:

7 **"§ 14-258.4. Malicious conduct by prisoner.**

8 (a) Any person in the custody of the Division of Adult Correction and Juvenile Justice
9 of the Department of Public Safety, including the Juvenile Justice Section of the Division of
10 Adult Correction and Juvenile Justice of the Department of Public Safety, any law enforcement
11 officer, or any local confinement facility (as defined in G.S. 153A-217, or G.S. 153A-230.1),
12 including persons pending trial, appellate review, or presentence diagnostic evaluation, who
13 knowingly and willfully exposes genitalia, masturbates, or throws, emits, or causes to be used
14 as a projectile, bodily fluids or excrement fluids, excrement, or unknown substance at a person
15 who is an employee of the State or a local government while the employee is in the
16 performance of the employee's duties is guilty of a Class F felony. The provisions of this
17 section apply to violations committed inside or outside of the prison, jail, detention center, or
18 other confinement facility. Sentences imposed under this Article shall run consecutively to and
19 shall commence at the expiration of any sentence being served by the person sentenced under
20 this Section."

21 **SECTION 2.** G.S. 148-118.2 reads as rewritten:

22 **"§ 148-118.2. Effect.**

23 (a) Upon approval of the Administrative Remedy Procedure by a federal court as
24 authorized and required by 42 U.S.C. 1997(e)(a), and the implementation of the procedure, this
25 procedure shall constitute the administrative remedies available to a prisoner for the purpose of
26 preserving any cause of action under the purview of the Administrative Remedy Procedure,
27 which a prisoner may claim to have against the State of North Carolina, the Division of Adult
28 Correction and Juvenile Justice of the Department of Public Safety, or its employees.

29 (b) No State court shall entertain a prisoner's grievance or complaint which falls under
30 the purview of the Administrative Remedy Procedure unless and until the prisoner shall have
31 exhausted the remedies as provided in said procedure. If the prisoner has failed to pursue
32 administrative remedies through this procedure, any petition or complaint ~~he~~ the prisoner files
33 shall be stayed for 90 days to allow the prisoner to file a grievance and for completion of the
34 procedure. If at the end of 90 days the prisoner has failed to timely file ~~his grievance, a~~



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1 grievance, or if the prisoner's ability to file a grievance is time barred by the Administrative
2 Remedy Procedure, then the petition or complaint shall be dismissed. ~~Provided, however, that~~
3 ~~the court can waive the exhaustion requirement if it finds such waiver to be in the interest of~~
4 ~~justice.~~

5 (c) A prisoner who alleges a claim for damages of less than five hundred dollars
6 (\$500.00) shall follow the Administrative Remedy Procedure as the prisoner's sole remedy."

7 **SECTION 3.** G.S. 148-118.8(b) reads as rewritten:

8 "(b) The inmate grievance examiners shall investigate inmate grievances pursuant to the
9 procedures established by the Administrative Remedy Procedure. Examiners shall attempt to
10 resolve grievances through mediation with all parties. Otherwise, the inmate grievance
11 examiners shall either (i) order such relief as is appropriate; or (ii) deny the grievance. The
12 decision of the grievance examiner shall be binding, unless the Secretary of Public Safety or the
13 Secretary of Public Safety's designee (i) finds that such relief is not appropriate, (ii) gives a
14 written explanation for this finding, and (iii) makes an alternative order of relief or denies the
15 grievance."

16 **SECTION 4.** Section 1 of this Act is effective December 1, 2018, and applies to
17 offenses committed on or after that date. Section 2 of this Act is effective October 1, 2018, and
18 applies to grievances filed on or after that date. The remainder of this Act is effective when it
19 becomes law.