

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 728*

Short Title: Enhance Prison Security. (Public)

Sponsors: Senators Randleman and Sanderson (Primary Sponsors).

Referred to: Rules and Operations of the Senate

May 23, 2018

A BILL TO BE ENTITLED

AN ACT TO ENHANCE PRISON SECURITY AND TO MODIFY THE ADMINISTRATIVE
REMEDY PROCEDURE, AS RECOMMENDED BY THE JOINT LEGISLATIVE
OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

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

"§ 14-258.4. Malicious conduct by prisoner.

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

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

"§ 148-118.2. Effect.

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

(b) No State court shall entertain a prisoner's grievance or complaint which falls under the purview of the Administrative Remedy Procedure unless and until the prisoner shall have exhausted the remedies as provided in said procedure. If the prisoner has failed to pursue administrative remedies through this procedure, any petition or complaint ~~he~~ the prisoner files shall be stayed for 90 days to allow the prisoner to file a grievance and for completion of the procedure. If at the end of 90 days the prisoner has failed to timely file ~~his grievance,~~ a grievance, or if the prisoner's ability to file a grievance is time barred by the Administrative Remedy Procedure, then the petition or complaint shall be dismissed. ~~Provided, however, that the court can waive the exhaustion requirement if it finds such waiver to be in the interest of justice.~~



1 (c) A prisoner who alleges a claim for damages of less than five hundred dollars
2 (\$500.00) shall follow the Administrative Remedy Procedure as the prisoner's sole remedy."

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

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

11 **SECTION 4.** Section 1 of this act becomes effective December 1, 2018, and applies
12 to offenses committed on or after that date. Section 2 of this act becomes effective October 1,
13 2018, and applies to grievances filed on or after that date. The remainder of this act is effective
14 when it becomes law.