



HOUSE BILL 641: Modifications to Various DPS Provisions.

2019-2020 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	April 30, 2019
Introduced by:	Reps. Boles, Pierce, Speciale, R. Turner	Prepared by:	Billy R. Godwin Staff Attorney
Analysis of:	Second Edition		

OVERVIEW: *House Bill 641 would do all of the following:*

- *Clarify that a member of the North Carolina National Guard is not required to use accrued vacation or other leave from the member's civilian employment for a period of active service.*
- *Authorize certain employees of the Department of Public Safety (DPS) to perform construction, maintenance, or repair work on State property without needing a license under Chapter 87 of the General Statutes.*
- *Expand the arrest authority of probation officers.*
- *Require parole revocation orders to be entered into North Carolina Statewide Warrant Repository (NCAWARE) database.*
- *Require an active prison sentence for prisoners who knowingly and willfully expose their genitalia to prison employees or for those who possess tools to effect an escape or aid in an assault and require such sentences to run consecutively from any sentences being served.*
- *Limit the value of an inmate's personal property to two hundred fifty dollars (\$250).*
- *Require inmates to exhaust their administrative remedies under DPS's Administrative Remedy Procedure (ARP) prior to taking claims for personal injury to the Industrial Commission.*
- *Tax court costs to indigent inmates who file frivolous lawsuits.*
- *Authorize the Secretary of DPS to settle inmate claims of twenty-five thousand dollars (\$25,000) or less without approval of the Industrial Commission.*
- *Require gross negligence by certain employees DPS before DPS is liable in tort for damages.*
- *Implement the federal Performance and Registration Information Systems Management (PRISM) program in this State.*
- *Make certain communications by emergency personnel privileged communications.*
- *Establish a Green Alert System for missing persons with posttraumatic stress disorder (PTSD).*

CURRENT LAW / BILL ANALYSIS:

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House Bill 641

Page 2

Section 1. Members of the North Carolina National Guard called into service of the State by the Governor have the right to take leave without pay from their civilian employment and cannot be forced to use or exhaust vacation or other accrued leave from their civilian employment for that period of active service.

Section 1, effective when the bill becomes law, would:

- Clarify that a member of the North Carolina National Guard is not required to use accrued vacation or other leave from the member's civilian employment for a period of active service.

Section 2. Chapter 87 of the General Statutes provides for the licensure and regulation of various professional trades such as general contractors (Article 1), plumbing and heating contractors (Article 2), electrical contractors (Article 4), and refrigeration contractors (Article 5) and generally requires persons undertaking those trades to be licensed.

Section 2, effective when the bill becomes law, would:

- Authorize employees on the permanent payroll of DPS to perform construction, maintenance, or repair work valued at less than one hundred thousand dollars (\$100,000) on any State owned building, appliance, or equipment without being licensed under Chapter 87 of the General Statutes.

Section 3. G.S. 15-205 of the General Statutes sets out the duties of probation officers.

Section 3, effective when the bill becomes law, would give probation officers:

- Authority to arrest and to take enforcement action for any criminal offense.
- The same jurisdiction as law enforcement officers on prison property.
- The same jurisdiction as law enforcement officers when responding to active assailant incidents, civil disturbances, or when assigned by the Secretary during disasters.

Section 5. G.S. 143B-720 establishes and sets out the powers and duties of the Post Release Supervision and Parole Commission of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety. The Commission has authority to grant paroles, including both regular and temporary paroles, to persons held by virtue of any final order or judgment of any State court. The Commission also has authority to revoke, terminate, and suspend paroles of such persons. The North Carolina Statewide Warrant Repository (NCAWARE) database is a web-based subsystem of the Court Information System developed and implemented by the North Carolina Administrative Office of the Courts (NCAOC) that contains detailed information about various criminal processes such as warrants, criminal summonses, orders for arrest, release orders, and appearance bonds. The database allows law enforcement officers to view and serve any electronic unserved criminal process in the State.

Section 5, effective when the bill becomes law, would:

- Authorize the Post Release Supervision and Parole Commission to issue temporary or conditional revocations of post-release supervision and subject parolees to arrest.
- Require orders of issue temporary or conditional revocations of post-release supervision to be placed in the NCAWARE database.

Sections 6 and 7. Under current State law, any prisoner who knowingly and willfully exposes genitalia to an employee while the employee is in the performance of the employee's duties is guilty of a Class I felony. The punishment for a Class I felony ranges from an absolute minimum of 3 months community

House Bill 641

Page 3

punishment to an absolute maximum of 24 months active punishment, depending on the defendant's criminal record.

Under current State law, any prisoner who possesses a letter, weapon, tool, good, article of clothing, device, or instrument to effect an escape or aid in an assault is guilty of a Class H felony. The punishment for a Class H felony ranges from an absolute minimum of 4 months community punishment to an absolute maximum of 39 months active punishment, depending on prior record level.

Sections 6 and 7, effective December 1, 2019, would:

- Impose an active sentence of between six and 12 months upon any prisoner convicted of knowingly and willfully exposing genitalia to an employee in the performance of the employee's duties and would make the sentence run consecutive to any sentence the prisoner is then serving.
- Impose an active sentence of between 12 months and 24 months upon any prisoner convicted of possessing a letter, weapon, tool, good, article of clothing, device, or instrument to effect an escape or aid in an assault and would make the sentence run consecutive to any sentence the prisoner is then serving.

Section 8. The State Tort Claims Act (STCA), Article 31 of Chapter 143 of the General Statutes, makes the North Carolina Industrial Commission (NCIC) a court for the purposes of hearing and passing on tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. If the Commission finds that negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of their office, employment, service, agency or authority proximately caused the injury complained of and that there was no contributory negligence on the claimant's part, the NCIC determines the amount of claimant's damages up to one million (\$1,000,000). The STCA authorizes the Attorney General to settle claims under twenty-five thousand dollars (\$25,000) without approval of the NCIC and authorizes the NCIC to tax court costs against the losing party.

G.S. 148-118.2 establishes the Administrative Remedy Procedure 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 have against the State of North Carolina, the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, or its employees. State courts cannot entertain a prisoner's grievance or complaint which falls under the purview of the Administrative Remedy Procedure until the prisoner has exhausted the administrative remedies under that procedure.

Section 8, effective July 1, 2019, and applicable to claims filed on or after that date, would:

- Limit the value of an inmate's personal property to two hundred fifty dollars (\$250).
- Preclude inmates from taking personal property damage claims to the Industrial Commission, would limit inmate personal property reimbursement claims to \$250, and would make DPS's Administrative Remedy Procedure the sole procedure to process and adjudicate personal property claims.
- Require inmates to exhaust their administrative remedies under DPS's Administrative Remedy Procedure prior to taking claims for personal injury to the Industrial Commission.
- Tax court costs to indigent inmates who file frivolous lawsuits when all of the following apply:

House Bill 641

Page 4

- The inmate's claim is dismissed on the grounds that it is frivolous, malicious, not within the statute of limitations, exceeds the exclusive jurisdiction of the Industrial Commission, or fails to state a claim upon which relief may be granted.
- The inmate has, on three or more prior occasions, while incarcerated or detained in any State facility, brought an action or appeal before the Industrial Commission which was dismissed on the grounds that it is frivolous, malicious, not within the statute of limitations, exceeds the exclusive jurisdiction of the Industrial Commission, or fails to state a claim upon which relief may be granted.
- Authorize the Secretary of DPS to settle inmate claims of twenty-five thousand dollars (\$25,000) or less without approval of the Industrial Commission.
- Require gross negligence by DPS employees tasked with the supervision, protection, control, confinement, or custody of the State's inmate population, before DPS is liable in tort to an inmate for personal injury.

Section 9. Currently, motor carriers are regulated by the North Carolina Division of Motor Vehicles (DMV) (for titling and registration purposes), and the North Carolina Department of Public Safety (enforcement of State laws relating to operation of motor carriers) and the Federal Motor Carrier Safety Administration. DMV and DPS have the authority to take certain enforcement actions based on "out-of-service" orders for imminent hazards, and other DMV registration and titling blocks under State law.

Section 9, effective September 1, 2019, would:

- Authorize DMV to collect and maintain motor carrier data for the purposes of the federal Performance and Registration Information Systems Management (PRISM) program.
- Broaden DMV authority to rescind and block registration and titling of motor carrier vehicles based on federal motor carrier blocks and out-of-service orders.
- Broaden the authority of DPS to prohibit operation of motor carriers based on federal out-of-service orders, and to seize cancelled or rescinded registration plates.

Section 10. Recodifies G.S. 14-254.5 to G.S. 14-259.1 and moves it within Chapter 14 from Article 32 to Article 33. This section would be effective when the bill becomes law.

Section 11. G.S. 8-53.10 makes communications between law enforcement peer counselors and their clients privileged and not subject to disclosure except when authorized by the client or ordered by a court. The privilege does not apply (i) where the peer counselor was an initial responding officer, a witness, or a party to the incident that prompted the delivery of peer counseling services; (ii) to communications made while the peer counselor was not acting in an official capacity as a peer counselor; or (iii) to communications related to a violation of criminal law.

Section 11, effective when the bill becomes law, would add emergency personnel officers to those who may be peer counselors and would define an emergency personnel officer as "firefighting, search and rescue, or emergency medical service personnel, or any employee of any duly accredited State or local government agency possessing authority to enforce the criminal laws of the State who (i) is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of

House Bill 641

Page 5

crime or the general enforcement of the criminal laws of the State and (ii) possesses the power of arrest by virtue of an oath administered under the authority of the State."

Section 12. The North Carolina Center for Missing Persons (the Center), located within DPS, is a central repository for information regarding missing persons and missing children, with special emphasis on missing children. Within the Center are the following alert systems:

- A. The State AMBER alert system to assist in locating abducted children.
- B. The State Silver Alert System to assist in locating missing persons or children believed to be suffering from dementia, Alzheimer's disease, or a disability that requires them to be protected from potential abuse or other physical harm, neglect, or exploitation.
- C. The State Blue Alert System is to assist in the apprehension of a suspect who kills or inflicts serious bodily injury on a law enforcement officer.

Section 12, effective when the bill becomes law, would establish the State Green Alert System to provide a statewide system for the rapid dissemination of information regarding a missing person who is believed to be suffering from posttraumatic stress disorder (PTSD) that requires them to be protected from potential abuse or other physical harm, neglect, or exploitation.

EFFECTIVE DATE: The act has various effective dates as set forth above.