

NORTH CAROLINA GENERAL ASSEMBLY  
1973 SESSION

CHAPTER 1307  
SENATE BILL 1044

AN ACT TO AMEND CHAPTER 148 OF THE GENERAL STATUTES TO ESTABLISH  
AN INMATE GRIEVANCE COMMISSION.

The General Assembly of North Carolina enacts:

**Section 1.** Chapter 148 of the General Statutes is hereby amended by adding a new Article, to be numbered Article 11, which shall read as follows:

"Article 11.

"Inmate Grievance Commission.

**"§ 148-96. Commission established; appointment and terms of members; chairman, vacancies; compensation.** — The Inmate Grievance Commission is established as a separate agency within the Department of Social Rehabilitation and Control. It shall consist of five members appointed by the Governor from a list of 10 persons recommended by the Council of the North Carolina State Bar. Of the five members so appointed, not less than two shall be attorneys admitted to practice law in the State of North Carolina and not less than two of the remaining three members shall be persons of knowledge and experience in one or more of the fields under the jurisdiction of the Secretary of Social Rehabilitation and Control. Of the members initially appointed, two shall be for a term of four years, one shall be for a term of three years, and one shall be for a term of two years and one shall be for a term of one year. Thereafter, all appointments shall be for a term of four years. The Governor shall designate the chairman from time to time. The Governor, with the advice of the Council of the North Carolina State Bar, shall fill any vacancy which occurs before the expiration of a term for the balance of the term so remaining. Each member of the Commission shall receive per diem and travel expenses as authorized for members of State commissions under G.S. 138-5.

**"§ 148-97. Appointment and salary of executive director, hearing examiners, other personnel.** — (a) The Commission, with the approval of the Governor, shall appoint an Executive Director of the Commission who shall serve at the pleasure of the Commission, and who shall be subject to the State Personnel Act.

(b) Upon the request of the Executive Director with the approval of the Commission, the Secretary of the Department of Social Rehabilitation and Control shall authorize the appointment by the Executive Director of hearing examiners in such numbers as may be necessary for the efficient administration of the powers and duties of the Commission. Hearing examiners shall serve at the pleasure of the Commission and shall be subject to the State Personnel Act.

(c) The Secretary of the Department of Social Rehabilitation and Control shall provide the Commission and hearing examiners with such investigative, secretarial and clerical employees as may be necessary for the efficient administration of the powers and duties of the Commission. Said employees shall be subject to the State Personnel Act.

**"§ 148-98. Removal of members.** — The Governor may remove any member of the Commission for one or more of the following reasons:

- (1) Conviction of a crime involving moral turpitude or of any criminal offense the effect of which is to prevent or interfere with the performance of Commission duties.

- (2) Failure to regularly attend meetings of the Commission.
- (3) Failure to carry out duties assigned by the Commission or its chairman.
- (4) Acceptance of another office or the conduct of other business conflicting with or tending to conflict with the performance of Commission duties.
- (5) Any other ground which, under law, necessitates or justifies the removal of a State employee.

**"§ 148-99. Submission of grievance or complaint.** — Any person confined to a facility within the department of the Commissioner of Correction, or otherwise in the custody of the Commissioner of Correction, who has any grievance or complaint against any officials or employees of the Department of Correction, may submit such grievance or complaint to the Inmate Grievance Commission within such time and in such manner as prescribed by regulations promulgated by the Commission. If, and to the extent that, the Department of Correction has a grievance or complaint procedure applicable to an inmate's particular grievance or complaint, and if the Inmate Grievance Commission deems such procedure reasonable and fair, the Commission shall by regulations require that such procedure be exhausted prior to the submission of the grievance or complaint to the Commission.

**"§ 148-100. Preliminary review.** — When a grievance or complaint is submitted to the Inmate Grievance Commission, the Commission, or any member thereof or the Executive Director, if so provided by the Commission's regulations, shall preliminarily review the grievance or complaint. If upon such preliminary review the grievance or complaint is determined to be on its face wholly lacking in merit, it may be dismissed by the reviewing commissioners or commissioner or Executive Director as the case may be, without a hearing or without specific findings of fact. If, after the preliminary review, it is determined that the nature of the grievance or complaint is outside the scope of authority of the Commission, the complaint shall be dismissed with recommendation as to how the inmate should proceed. Such order of dismissal shall be promptly forwarded to the complainant and shall constitute the final decision of the Secretary of the Department of Social Rehabilitation and Control for purposes of any judicial review.

**"§ 148-101. Hearing and disposition by Commission; review by Secretary of Department of Social Rehabilitation and Control.** — Whenever, after the preliminary review provided for in G.S. 148-100, a grievance or complaint is found to be on its face not wholly lacking in merit, the Commission shall hold, as promptly as practicable, a hearing on the grievance or complaint. At least three members of the Commission shall sit at any hearing, and decisions shall be by a majority of those sitting. A record of the testimony presented at the hearing may be kept, according to the rules and regulations promulgated by the Commission. The Commission's decision shall be issued in the form of an order which shall include a statement of the findings of fact, the Commission's conclusions and its disposition of the grievance or complaint. The types of disposition shall be as follows:

- (1) If after the hearing, the Commission finds in its order that the grievance or complaint is wholly lacking in merit and should be dismissed, such an order of dismissal shall be promptly forwarded to the complainant, and for the purpose of any judicial review, shall constitute the final decision of the Secretary of the Department of Social Rehabilitation and Control.
- (2) However, if after the hearing, the Commission in its order finds that the inmate's grievance or complaint was in whole or in part meritorious, such order shall be promptly forwarded to the Secretary of the Department of Social Rehabilitation and Control. Within 15 days of the receipt of such an order, the Secretary, by order, shall affirm the order of the Commission, or shall reverse or modify the order if he disagrees with the findings and conclusions of the Commission. The Secretary shall order that the appropriate official of the facility in question accept, in whole or in part, the

recommendation of the Commission or the Secretary may take whatever action he deems appropriate in light of the Commission's findings. The order of the Secretary shall be promptly forwarded to the complainant, and for the purpose of judicial review, the Secretary's order shall be final.

**"§ 148-102. Hearing by examiner, review, disposition.** — Whenever, after the preliminary review provided for in G.S. 148-100, a grievance or complaint is found to be on its face not wholly lacking in merit, and if hearing examiners are utilized, the Executive Director may designate an examiner to conduct a hearing as promptly as practicable. The examiner shall record the testimony presented at the hearing in accordance with the rules and regulations of the Commission. After the hearing, the examiner shall set forth, in the form of a recommendation, his findings of facts and conclusions. The examiner's recommendation shall be forwarded to the Commission. At least three members of the Commission shall review the record accumulated and assembled by the examiner and shall, within 30 days after the receipt of the recommendation, by majority vote, adopt, modify or reject it. The reviewing Commissioners may also remand the grievance or complaint to the hearing examiner, or another examiner, for further proceedings. Disposition thereafter shall be in accordance with the types of disposition set forth in G.S. 148-101.

**"§ 148-103. Access to documentary evidence; subpoenas; oaths and affirmations.** — The Commission, Executive Director, commissioner or examiner, with the approval of the Secretary of the Department of Social Rehabilitation and Control, shall at all reasonable times have access to, for the purposes of examination, and the right to copy, any documentary evidence of any person or institution being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation. The presiding commissioner or examiner at a hearing may administer oaths and affirmations.

**"§ 148-104. Right of inmate to appear at hearing; opportunity to call witnesses; representation.** — The complaining inmate shall have the right to appear at a hearing before the Commission or examiner and shall have the opportunity to call a witness, or a reasonable number of witnesses, depending upon the circumstances and the nature of the complaint, subject to the discretion of the Commission or examiner as to the relevancy of the testimony, questions and the number of witnesses sought to be called. The inmate shall have a reasonable opportunity to question any witnesses who testify at the hearing. Such rights of the inmate shall not be unreasonably withheld or restricted by the Commission or examiner. The inmate may, if he wishes, be represented by an employee of the Department of Correction. The rules of evidence as applied in the superior and district court divisions of the General Court of Justice need not be followed.

**"§ 148-105. Record of complaints.** — A record shall be kept of all complaints and the dispositions thereof.

**"§ 148-106. Conduct of hearing at institutions.** — For the performance of its duties, the Commission or examiner shall conduct hearings at the facilities under the supervision and control of the Commissioner of Correction.

**"§ 148-107. Rules and regulations.** — The Commission shall have the power to adopt rules and regulations for the conduct of its proceedings as provided for in this Article.

**"§ 148-108. Judicial review.** — No court shall entertain an inmate's grievance or complaint within the jurisdiction of the Inmate Grievance Commission unless and until the complainant has exhausted the remedies provided in this section. Upon the final decision of the Secretary of the Department of Social Rehabilitation and Control, the complainant shall be entitled to judicial review thereof. Proceedings for review shall be instituted in the General Court of Justice of Wake County, Superior Court Division. Review by the court shall be on the record of the proceedings before the Commission and the Secretary's order, if any, pursuant to such proceedings and shall be limited to a determination of whether there was a substantial basis to

support the action or ruling of the Secretary and whether there was a violation of any right of the inmate protected by federal or State constitutional requirements or laws. No judicial review order or judgment provided for in this section shall have the effect of res judicata or collateral estoppel in any action brought by an inmate in a United States District Court."

**Sec. 2.** This act shall become effective July 1, 1974.

In the General Assembly read three times and ratified, this the 12th day of April, 1974.