

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 427**

(By Senators Palumbo, Wells, Wills and Klempa)

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[Originating in the Committee on the Judiciary;  
reported February 3, 2012.]

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A BILL to amend and reenact §25-1A-2 of the Code of West Virginia, 1931, as amended, relating to administrative remedies for prisoners generally; defining administrative remedies; bringing law into federal compliance; and requiring that a prisoner first exhaust such remedies prior to resorting to litigation.

*Be it enacted by the Legislature of West Virginia:*

That §25-1A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1A. WEST VIRGINIA PRISONER LITIGATION REFORM ACT.**

**§25-1A-2. Mandatory exhaustion of administrative remedies.**

1 (a) An inmate may not bring a civil action until the  
2 administrative remedies promulgated by the ~~facility~~ agency  
3 have been exhausted. ~~Provided, That the remedies promul-~~  
4 ~~gated by the facility will be deemed completed within sixty~~  
5 ~~days from the date the inmate filed his or her initial com-~~  
6 ~~plaint if the inmate fully complied with the requirements for~~  
7 ~~filing and appealing the administrative complaint.~~

8 (b) As used in this section an "administrative remedy" is  
9 an administrative process or processes whereby a prisoner  
10 presents concerns relating to all aspects of prison life,  
11 whether it involves general circumstances or particular  
12 episodes including, but not limited to, complaints concerning  
13 food quality, health care, appeals of prison discipline,  
14 physical plant, classification, staff treatment or some other  
15 alleged wrong. The Commissioner of the Division of Correc-  
16 tions and the Executive Director of the Regional Jail Author-  
17 ity are authorized to establish such administrative remedy  
18 ~~procedures for processing inmate complaints concerning food~~  
19 ~~quality, health care, nonviolent or nonsexual conduct of~~  
20 ~~employees or contractors of the Division of Corrections or~~  
21 ~~Regional Jail Authority, loss of privileges and other general~~  
22 ~~complaints about daily living conditions which do not~~

23 directly and seriously concern an inmate's physical health or  
24 security. The proposed joint legislative rule required by the  
25 prior enactment of this subsection shall be withdrawn. The  
26 commissioner and the executive director shall, by January  
27 31, 2001, each file a procedural rule in accordance with the  
28 provisions of article three, chapter twenty-nine-a of this  
29 code to meet the requirements of this subsection. The public  
30 comment period conducted for the proposed legislative rule  
31 shall serve as the public comment period required by section  
32 five, article three, chapter twenty-nine-a of this code  
33 according to their respective authority for issuance of  
34 policies governing the conduct of inmates. All administrative  
35 remedies and related procedures shall be in conformity with  
36 the National Standards to Prevent, Detect, and Respond to  
37 Prison Rape, as may be approved by the United States  
38 Attorney General pursuant to the Prison Rape Elimination  
39 Act, 42, U. S. C. 15601 et seq.

40 (c) Notwithstanding any other provision of this code, no  
41 inmate shall be prevented from filing an appeal of his or her  
42 conviction or bringing a civil or criminal action alleging  
43 past, current or imminent physical or sexual abuse; if such a  
44 civil or criminal action is ultimately dismissed by a judge as

45 ~~frivolous, then the inmate shall pay the filing costs associ-~~  
46 ~~ated with the civil or criminal action as provided for in this~~  
47 ~~article.~~