

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **for**

4 **H. B. 2806**

5 (By Delegates Perry, Moore, Barill, Campbell,
6 Pino, Staggers, Morgan and Poling, M.)
7

8 [Passed April 12, 2013; in effect ninety days from passage.]
9

10 AN ACT to amend and reenact §25-1A-2 of the Code of West Virginia,
11 1931, as amended; and to amend said code by adding thereto a
12 new section, designated §25-1A-2a, all relating to requiring
13 that a prisoner first exhaust administrative remedies prior to
14 resorting to litigation; defining ordinary administrative
15 remedies; authorizing the Commissioner of Corrections and the
16 Executive Director of the Regional Jail Authority to each
17 establish procedures for ordinary administrative remedies;
18 setting forth when a remedy is considered exhausted; setting
19 and computing time periods for issuance of final decision;
20 providing exceptions for when an agency may not obtain an
21 extension of time to issue a final decision; defining sexual
22 assault and sexual abuse; providing that no staff member who
23 is the subject of the complaint may be involved in reviewing
24 or hearing the grievance; permitting certain third parties to
25 assist inmates in filing requests for administrative remedies;
26 providing time for an initial response and final decision;
27 directing proposal of rules for legislative approval by the

1 commissioner and director relating to an allegation of
2 imminent violence; permitting discipline of inmate if
3 grievance filed in bad faith; permitting inmate to file
4 certain court actions; and providing that inmate pay filing
5 costs if civil or criminal action is dismissed as frivolous.

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

7 That §25-1A-2 of the Code of West Virginia, 1931, as amended,
8 be amended and reenacted; and that said code be amended by adding
9 thereto a new section, designated §25-1A-2a, all to read as
10 follows:

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

12 **§25-1A-2. Exhaustion of ordinary administrative remedies.**

13 (a) As used in this section, an "ordinary administrative
14 remedy" is a formal administrative process by which an inmate
15 submits a grievance seeking redress or presenting concerns
16 regarding any general or particular aspect of prison life which
17 does not involve violence, sexual assault or sexual abuse against
18 an inmate. An ordinary administrative remedy includes, but is not
19 limited to, complaints concerning food quality, health care,
20 appeals of prison discipline, physical plant, classification, staff
21 treatment or some other alleged wrong.

22 (b) The Commissioner of the Division of Corrections and the
23 Executive Director of the Regional Jail Authority are authorized to
24 establish procedures for ordinary administrative remedies according
25 to their respective authority for issuance of policies governing
26 the conduct of inmates.

1 (c) An inmate may not bring a civil action regarding an
2 ordinary administrative remedy until the procedures promulgated by
3 the agency have been exhausted.

4 (d) An ordinary administrative remedy is considered exhausted
5 when the inmate's grievance complies with duly promulgated rules
6 and regulations regarding inmate grievance procedures, has been
7 accepted, fully appealed and has received a final decision from the
8 Commissioner of Corrections or the Commissioner's designee, or the
9 Executive Director of the Regional Jail Authority, or the
10 Director's designee.

11 (e) The agency shall issue a final decision regarding an
12 ordinary administrative remedy no later than sixty days from the
13 date the inmate filed his or her initial grievance. Computation of
14 the sixty-day time period shall not include time consumed by
15 inmates in preparing any administrative appeal. The agency may
16 claim an extension of time to issue a final decision regarding an
17 ordinary administrative remedy of up to thirty days if the sixty
18 day final decision time frame is insufficient to make an
19 appropriate decision, except in cases involving a threat to health,
20 life or safety of the prisoner. The agency shall notify the inmate
21 in writing of any such extension and provide a date by which the
22 final decision regarding an ordinary administrative remedy will be
23 made.

24 **§25-1A-2a. Exhaustion of administrative remedies which address**
25 **sexual assault and sexual abuse.**

26 (a) The agency shall not require an inmate to use any informal

1 grievance process, or to otherwise attempt to resolve with staff,
2 an alleged incident involving sexual assault or sexual abuse
3 against an inmate. For purposes of this article, "sexual assault"
4 or "sexual abuse" means any offense which would constitute a
5 violation of article eight-b, chapter sixty-one of this code. The
6 agency shall ensure that:

7 (1) An inmate who alleges an incident involving sexual assault
8 or sexual abuse may submit a grievance without submitting it to a
9 staff member who is the subject of the complaint; and,

10 (2) Such grievance may not be referred to a staff member who
11 is the subject of the complaint.

12 (b) The agency shall issue a final agency decision on the
13 merits of any portion of a grievance within sixty days of the
14 initial filing of the grievance. Computation of the sixty-day time
15 period shall not include time consumed by inmates in preparing any
16 administrative appeal. The agency may claim an extension of time
17 to respond, of up to thirty days, if the normal time period for
18 response is insufficient to make an appropriate decision, except in
19 cases involving threat to health, life or safety of the prisoner.
20 The agency shall notify the inmate in writing of any such extension
21 and provide a date by which a decision will be made.

22 (c) At any level of the administrative process, including the
23 final level, if the inmate does not receive a response within the
24 time allotted for reply, including any properly noticed extension,
25 the inmate may consider the absence of a response to be a denial at
26 that level.

1 (d) Third parties, including fellow inmates, staff members,
2 family members, attorneys and outside advocates, shall be permitted
3 to assist inmates in filing requests for administrative remedies
4 relating to incidents involving sexual assault or sexual abuse, and
5 shall also be permitted to file such requests on behalf of inmates.
6 If a third party files such a request on behalf of an inmate, the
7 facility may require as a condition of processing the request that
8 the alleged victim agree to have the request filed on his or her
9 behalf, and may also require the alleged victim to personally
10 pursue any subsequent steps in the administrative remedy process.
11 If the inmate declines to have the request processed on his or her
12 behalf, the agency shall document the inmate's decision.

13 (e) After receiving an emergency grievance alleging an inmate
14 is subject to a substantial risk of sexual assault or sexual abuse,
15 the agency shall immediately forward the grievance, or any portion
16 thereof that alleges the substantial risk of sexual assault or
17 sexual abuse, to a level of review at which immediate corrective
18 action may be taken, shall provide an initial response within
19 forty-eight hours, and shall issue a final agency decision within
20 five calendar days. The initial response and final agency decision
21 shall document the agency's determination whether the inmate is in
22 substantial risk of sexual assault or sexual abuse and the action
23 taken in response to the emergency grievance.

24 (f) The agency shall establish procedures for processing an
25 inmate grievance which alleges imminent violence. The commissioner
26 and the executive director shall, by December 31, 2013, propose

1 rules for legislative approval in accordance with the provisions of
2 article three, chapter twenty-nine-a of this code to meet the
3 requirements of this subsection.

4 (g) An administrative remedy for an allegation of violence,
5 sexual assault or sexual abuse against an inmate is considered
6 exhausted when the inmate's grievance has complied with duly
7 promulgated rules and regulations regarding inmate grievance
8 procedures for imminent violence, sexual assault or sexual abuse,
9 has been accepted, fully appealed and has received a final decision
10 from the Commissioner of Corrections or the Commissioner's
11 designee, or the Executive Director of the Regional Jail Authority,
12 or the Director's designee.

13 (h) The agency may discipline an inmate for filing a grievance
14 related to sexual assault or sexual abuse only where the agency
15 demonstrates that the inmate filed the grievance in bad faith.

16 (i) Notwithstanding any other provision of this code, no
17 inmate shall be prevented from filing an appeal of his or her
18 conviction or from bringing a civil or criminal action alleging
19 violence, sexual assault or sexual abuse, after exhaustion of
20 administrative remedies. If such a civil or criminal action is
21 ultimately dismissed by a judge as frivolous, then the inmate shall
22 pay the filing costs associated with the civil or criminal action
23 as provided for in this article.