

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2806**

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

6  
7 (Originating in the Committee on the Judiciary)

8 [March 29, 2013]

9  
10 A BILL 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 generally to  
13 exhaustion of administrative remedies for prisoners; defining  
14 certain administrative remedies; directing proposal of rules  
15 for legislative approval; complying with federal sexual abuse  
16 provisions; and requiring that a prisoner first exhaust such  
17 remedies prior to resorting to litigation.

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

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

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

24 **§25-1A-2. Exhaustion of ordinary administrative remedies.**

25 (a) As used in this section, an "ordinary administrative remedy"  
26 is a formal administrative process by which an inmate submits a  
27 grievance seeking redress or presenting concerns regarding any

1 general or particular aspect of prison life which does not involve  
2 violence or sexual abuse against an inmate. An ordinary  
3 administrative remedy includes, but is not limited to, complaints  
4 concerning food quality, health care, appeals of prison discipline,  
5 physical plant, classification, staff treatment or some other  
6 alleged wrong.

7 (b) The Commissioner of the Division of Corrections and the  
8 Executive Director of the Regional Jail Authority are authorized to  
9 establish procedures for ordinary administrative remedies according  
10 to their respective authority for issuance of policies governing  
11 the conduct of inmates.

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

15 (d) An ordinary administrative remedy is considered exhausted  
16 when the inmate's grievance complies with duly promulgated rules  
17 and regulations regarding inmate grievance procedures, has been  
18 accepted, fully appealed and has received a final decision from the  
19 Commissioner of Corrections or the Commissioner's designee, or the  
20 Executive Director of the Regional Jail Authority, or the  
21 Director's designee.

22 (e) The agency shall issue a final decision regarding an ordinary  
23 administrative remedy no later than sixty days from the date the  
24 inmate filed his or her initial grievance. Computation of the  
25 sixty-day time period shall not include time consumed by inmates in  
26 preparing any administrative appeal. The agency may claim an

1 extension of time to issue a final decision regarding an ordinary  
2 administrative remedy of up to thirty days if the sixty day final  
3 decision time frame is insufficient to make an appropriate  
4 decision. The agency shall notify the inmate in writing of any  
5 such extension and provide a date by which the final decision  
6 regarding an ordinary administrative remedy will be made.

7 **§25-1A-2a. Exhaustion of administrative remedies which address**  
8 **sexual abuse.**

9 (a) The agency shall not require an inmate to use any informal  
10 grievance process, or to otherwise attempt to resolve with staff,  
11 an alleged incident involving sexual abuse against an inmate. The  
12 agency shall ensure that:

13 (1) An inmate who alleges an incident involving sexual abuse  
14 may submit a grievance without submitting it to a staff member who  
15 is the subject of the complaint; and,

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

18 (b)The agency shall issue a final agency decision on the  
19 merits of any portion of a grievance within 60 days of the initial  
20 filing of the grievance. Computation of the 60 day time period  
21 shall not include time consumed by inmates in preparing any  
22 administrative appeal. The agency may claim an extension of time to  
23 respond, of up to 30 days, if the normal time period for response  
24 is insufficient to make an appropriate decision. The agency shall  
25 notify the inmate in writing of any such extension and provide a  
26 date by which a decision will be made.

1 (c) At any level of the administrative process, including the  
2 final level, if the inmate does not receive a response within the  
3 time allotted for reply, including any properly noticed extension,  
4 the inmate may consider the absence of a response to be a denial at  
5 that level.

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

18 (e) After receiving an emergency grievance alleging an inmate  
19 is subject to a substantial risk of sexual abuse, the agency shall  
20 immediately forward the grievance, or any portion thereof that  
21 alleges the substantial risk of sexual abuse, to a level of review  
22 at which immediate corrective action may be taken, shall provide an  
23 initial response within 48 hours, and shall issue a final agency  
24 decision within 5 calendar days. The initial response and final  
25 agency decision shall document the agency's determination whether  
26 the inmate is in substantial risk of sexual abuse and the action

1 taken in response to the emergency grievance.

2 (f) The agency shall establish procedures for processing an  
3 inmate grievance which alleges imminent violence. The commissioner  
4 and the executive director shall, by December 31, 2013, propose  
5 rules for legislative approval in accordance with the provisions  
6 of article three, chapter twenty-nine-a of this code to meet the  
7 requirements of this subsection.

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

16 (h) The agency may discipline an inmate for filing a grievance  
17 related to sexual abuse only where the agency demonstrates that the  
18 inmate filed the grievance in bad faith.

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