

# **E N R O L L E D**

COMMITTEE SUBSTITUTE

for

## **H. B. 2806**

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(BY DELEGATE(S) PERRY, MOORE, BARILL, CAMPBELL,  
PINO, STAGGERS, MORGAN AND POLING, M.)

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

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AN ACT to amend and reenact §25-1A-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §25-1A-2a, all relating to requiring that a prisoner first exhaust administrative remedies prior to resorting to litigation; defining ordinary administrative remedies; authorizing the Commissioner of Corrections and the Executive Director of the Regional Jail Authority to each establish procedures for ordinary administrative remedies; setting forth when a remedy is considered exhausted; setting and computing time periods for issuance of final decision; providing exceptions for when an agency may not obtain an extension of time to issue

a final decision; defining sexual assault and sexual abuse; providing that no staff member who is the subject of the complaint may be involved in reviewing or hearing the grievance; permitting certain third parties to assist inmates in filing requests for administrative remedies; providing time for an initial response and final decision; directing proposal of rules for legislative approval by the commissioner and director relating to an allegation of imminent violence; permitting discipline of inmate if grievance filed in bad faith; permitting inmate to file certain court actions; and providing that inmate pay filing costs if civil or criminal action is dismissed as frivolous.

*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; and that said code be amended by adding thereto a new section, designated §25-1A-2a, all to read as follows:

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

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

1       (a) As used in this section, an “ordinary administrative  
2 remedy” is a formal administrative process by which an inmate  
3 submits a grievance seeking redress or presenting concerns  
4 regarding any general or particular aspect of prison life which  
5 does not involve violence, sexual assault or sexual abuse against  
6 an inmate. An ordinary administrative remedy includes, but is  
7 not limited to, complaints concerning food quality, health care,  
8 appeals of prison discipline, physical plant, classification, staff  
9 treatment or some other alleged wrong.

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

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

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

25 (e) The agency shall issue a final decision regarding an  
26 ordinary administrative remedy no later than sixty days from the  
27 date the inmate filed his or her initial grievance. Computation of  
28 the sixty-day time period shall not include time consumed by  
29 inmates in preparing any administrative appeal. The agency may  
30 claim an extension of time to issue a final decision regarding an  
31 ordinary administrative remedy of up to thirty days if the sixty  
32 day final decision time frame is insufficient to make an  
33 appropriate decision, except in cases involving a threat to health,  
34 life or safety of the prisoner. The agency shall notify the inmate  
35 in writing of any such extension and provide a date by which the  
36 final decision regarding an ordinary administrative remedy will  
37 be made.

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

1 (a) The agency shall not require an inmate to use any  
2 informal grievance process, or to otherwise attempt to resolve  
3 with staff, an alleged incident involving sexual assault or sexual  
4 abuse against an inmate. For purposes of this article, "sexual  
5 assault" or "sexual abuse" means any offense which would  
6 constitute a violation of article eight-b, chapter sixty-one of this  
7 code. The agency shall ensure that:

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

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

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

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

30           (d) Third parties, including fellow inmates, staff members,  
31 family members, attorneys and outside advocates, shall be  
32 permitted to assist inmates in filing requests for administrative  
33 remedies relating to incidents involving sexual assault or sexual  
34 abuse, and shall also be permitted to file such requests on behalf  
35 of inmates. If a third party files such a request on behalf of an  
36 inmate, the facility may require as a condition of processing the  
37 request that the alleged victim agree to have the request filed on  
38 his or her behalf, and may also require the alleged victim to  
39 personally pursue any subsequent steps in the administrative  
40 remedy process. If the inmate declines to have the request

41 processed on his or her behalf, the agency shall document the  
42 inmate's decision.

43 (e) After receiving an emergency grievance alleging an  
44 inmate is subject to a substantial risk of sexual assault or sexual  
45 abuse, the agency shall immediately forward the grievance, or  
46 any portion thereof that alleges the substantial risk of sexual  
47 assault or sexual abuse, to a level of review at which immediate  
48 corrective action may be taken, shall provide an initial response  
49 within forty-eight hours, and shall issue a final agency decision  
50 within five calendar days. The initial response and final agency  
51 decision shall document the agency's determination whether the  
52 inmate is in substantial risk of sexual assault or sexual abuse and  
53 the action taken in response to the emergency grievance.

54 (f) The agency shall establish procedures for processing an  
55 inmate grievance which alleges imminent violence. The  
56 commissioner and the executive director shall, by December 31,  
57 2013, propose rules for legislative approval in accordance with  
58 the provisions of article three, chapter twenty-nine-a of this code  
59 to meet the requirements of this subsection.

60 (g) An administrative remedy for an allegation of violence,  
61 sexual assault or sexual abuse against an inmate is considered  
62 exhausted when the inmate's grievance has complied with duly  
63 promulgated rules and regulations regarding inmate grievance  
64 procedures for imminent violence, sexual assault or sexual  
65 abuse, has been accepted, fully appealed and has received a final  
66 decision from the Commissioner of Corrections or the  
67 Commissioner's designee, or the Executive Director of the  
68 Regional Jail Authority, or the Director's designee.

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

73 (i) Notwithstanding any other provision of this code, no  
74 inmate shall be prevented from filing an appeal of his or her  
75 conviction or from bringing a civil or criminal action alleging  
76 violence, sexual assault or sexual abuse, after exhaustion of  
77 administrative remedies. If such a civil or criminal action is  
78 ultimately dismissed by a judge as frivolous, then the inmate  
79 shall pay the filing costs associated with the civil or criminal  
80 action as provided for in this article.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2013.

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*Governor*

