

**Senate Bill No. 427**

(By Senators Palumbo, Wells, Wills and Klempa)

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[Introduced January 25, 2012; referred to the Committee on the  
Judiciary.]

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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 and the requirement 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.**

(a) An inmate may not bring a civil action until the administrative remedies promulgated by the ~~facility~~ agency have been exhausted. ~~Provided, That the remedies promulgated by the facility will be deemed completed within sixty days from the date the inmate filed his or her initial complaint if the inmate fully~~

1 ~~complied with the requirements for filing and appealing the~~  
2 ~~administrative complaint.~~

3       (b) As used in this section an "administrative remedy" is an  
4 administrative process or processes whereby a prisoner presents  
5 concerns relating to all aspects of prison life, whether it  
6 involves general circumstances or particular episodes including,  
7 but not limited to, complaints concerning food quality, health  
8 care, appeals of prison discipline, physical plant, classification,  
9 staff treatment or some other alleged wrong. The Commissioner of  
10 the Division of Corrections and the Executive Director of the  
11 Regional Jail Authority are authorized to establish such  
12 administrative remedy procedures for processing inmate complaints  
13 ~~concerning food quality, health care, nonviolent or nonsexual~~  
14 ~~conduct of employees or contractors of the Division of Corrections~~  
15 ~~or Regional Jail Authority, loss of privileges and other general~~  
16 ~~complaints about daily living conditions which do not directly and~~  
17 ~~seriously concern an inmate's physical health or security.~~ The  
18 ~~proposed joint legislative rule required by the prior enactment of~~  
19 ~~this subsection shall be withdrawn.~~ The commissioner and the  
20 ~~executive director shall, by January 31, 2001, each file a~~  
21 ~~procedural rule in accordance with the provisions of article three,~~  
22 ~~chapter twenty-nine-a of this code to meet the requirements of this~~  
23 ~~subsection.~~ The public comment period conducted for the proposed  
24 ~~legislative rule shall serve as the public comment period required~~

1 ~~by section five, article three, chapter twenty-nine-a of this code~~  
2 according to their respective authority for issuance of policies  
3 governing the conduct of inmates. All administrative remedies and  
4 related procedures shall be in conformity with the National  
5 Standards to Prevent, Detect, and Respond to Prison Rape, as may be  
6 approved by the United States Attorney General pursuant to the  
7 Prison Rape Elimination Act, 42, U.S.C. 15601 et seq.

8 ~~(c) Notwithstanding any other provision of this code, no~~  
9 ~~inmate shall be prevented from filing an appeal of his or her~~  
10 ~~conviction or bringing a civil or criminal action alleging past,~~  
11 ~~current or imminent physical or sexual abuse; if such a civil or~~  
12 ~~criminal action is ultimately dismissed by a judge as frivolous,~~  
13 ~~then the inmate shall pay the filing costs associated with the~~  
14 ~~civil or criminal action as provided for in this article.~~

NOTE: The purpose of this bill is to incorporate language set forth by the United States Supreme Court in Porter v Nussle, 534 U.S. 516 (2002), and by the Supreme Court of Appeals of West Virginia in State ex rel. Fields v McBride, 216 W.Va. 263, 609 S.E.2d 884 (2004). The agencies are directed to prepare all administrative remedies to comply with the Department of Justice Standards under the Prison Rape Elimination Act which recognizes that states need the ability to administratively address allegations of rape and sexual misconduct rapidly. The present statute encourages inmates to withhold reporting while informing other inmates who engage in behaviors that compromise order within facilities. Subsection (c) was eliminated because appeals and challenges to convictions and sentences are exempted from this article in §25-1A-1 and because criminal charges are not within the scope of the article which is defined in §25-1A-1 as limiting civil actions not criminal proceedings.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.