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H. B. 2806

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

[Introduced March 4, 2013; referred to the
Committee on the Judiciary.]

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.

(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19 ~~this subsection shall be withdrawn.~~ The commissioner and the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
22 three, chapter twenty-nine a of this code to meet the requirements
23 of this subsection. The public comment period conducted for the
24 proposed legislative rule shall serve as the public comment period

1 ~~required by section five, article three, chapter twenty-nine a of~~
2 ~~this code~~ according to their respective authority for issuance of
3 policies governing the conduct of inmates. All administrative
4 remedies and related procedures shall be in conformity with the
5 National Standards to Prevent, Detect, and Respond to Prison Rape,
6 as may be approved by the United States Attorney General pursuant
7 to the 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 require that a prisoner exhaust administrative remedies prior to bringing a civil action. The bill would further bring the law into compliance with the Prison Rape Elimination Act, 42 U.S.C. § 15601 et seq.

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