

COMMITTEE SUBSTITUTE

for

H. B. 2806

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

(Originating in the Committee on the Judiciary)
[March 29, 2013]

A BILL 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 generally to exhaustion of administrative remedies for prisoners; defining certain administrative remedies; directing proposal of rules for legislative approval; complying with federal sexual abuse provisions; 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; 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 or sexual abuse against an inmate. An
6 ordinary administrative remedy includes, but is not limited to,
7 complaints concerning food quality, health care, appeals of
8 prison discipline, physical plant, classification, staff treatment or
9 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. The agency shall notify the inmate in
34 writing of any such extension and provide a date by which the

35 final decision regarding an ordinary administrative remedy will
36 be made.

§25-1A-2a. Exhaustion of administrative remedies which address 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 abuse against an
4 inmate. The agency shall ensure that:

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

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

10 (b)The agency shall issue a final agency decision on the
11 merits of any portion of a grievance within 60 days of the initial
12 filing of the grievance. Computation of the 60 day time period
13 shall not include time consumed by inmates in preparing any
14 administrative appeal. The agency may claim an extension of
15 time to respond, of up to 30 days, if the normal time period for
16 response is insufficient to make an appropriate decision. The

17 agency shall notify the inmate in writing of any such extension
18 and provide a date by which a decision will be made.

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

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

37 (e) After receiving an emergency grievance alleging an
38 inmate is subject to a substantial risk of sexual abuse, the agency
39 shall immediately forward the grievance, or any portion thereof
40 that alleges the substantial risk of sexual abuse, to a level of
41 review at which immediate corrective action may be taken, shall
42 provide an initial response within 48 hours, and shall issue a
43 final agency decision within 5 calendar days. The initial
44 response and final agency decision shall document the agency's
45 determination whether the inmate is in substantial risk of sexual
46 abuse and the action taken in response to the emergency
47 grievance.

48 (f) The agency shall establish procedures for processing an
49 inmate grievance which alleges imminent violence. The
50 commissioner and the executive director shall, by December 31,
51 2013, propose rules for legislative approval in accordance with
52 the provisions of article three, chapter twenty-nine-a of this code
53 to meet the requirements of this subsection.

54 (g) An administrative remedy for an allegation of violence
55 or sexual abuse against an inmate is considered exhausted when
56 the inmate's grievance has complied with duly promulgated

57 rules and regulations regarding inmate grievance procedures for
58 imminent violence or sexual abuse, has been accepted, fully
59 appealed and has received a final decision from the
60 Commissioner of Corrections or the Commissioner's designee,
61 or the Executive Director of the Regional Jail Authority, or the
62 Director's designee.

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

66 (i) Notwithstanding any other provision of this code, no
67 inmate shall be prevented from filing an appeal of his or her
68 conviction or from bringing a civil or criminal action alleging
69 violence or sexual abuse, after exhaustion of administrative
70 remedies. If such a civil or criminal action is ultimately
71 dismissed by a judge as frivolous, then the inmate shall pay the
72 filing costs associated with the civil or criminal action as
73 provided for in this article.

