WEST VIRGINIA CODE: §25-1A-2A

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

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

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

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

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

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

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

(e) After receiving an emergency grievance alleging an inmate is subject to a substantial risk of sexual assault or sexual abuse, the agency shall immediately forward the grievance, or any portion thereof that alleges the substantial risk of sexual assault or sexual abuse, to a level of review at which immediate corrective action may be taken, shall provide an initial response within forty-eight hours, and shall issue a final agency decision within five calendar

WV Legislature

days. The initial response and final agency decision shall document the agency's determination whether the inmate is in substantial risk of sexual assault or sexual abuse and the action taken in response to the emergency grievance.

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

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

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

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

WV Legislature