

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
BECKLEY DIVISION**

**THOMAS SHEPPHEARD,  
TYLER RANDALL, and  
ADAM PERRY, next friend and guardian of  
Minor child J.P., on their own behalf  
and on behalf of all others  
similarly situated,**

**Plaintiffs,**

**v.**

**Civil Action No. 5:23-cv-00530  
Judge Irene C. Berger**

**JAMES C. JUSTICE JR., his official capacity  
as Governor of the State of West Virginia, and  
MARK SORSAIA, in his official capacity  
as the Cabinet Secretary of the West Virginia  
Department of Homeland Security,**

**Defendants.**

**DEFENDANT MARK SORSAIA'S MOTION TO DISMISS**

**NOW COMES** the Defendant, Mark Sorsaia, in his official capacity as the Cabinet Secretary of the West Virginia Department of Homeland Security, by counsel, Natalie C. Schaefer, Caleb B. David, Kimberly M. Bandy, and Shuman McCuskey Slicer PLLC, and requests that this action be dismissed pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

Plaintiffs' Complaint seeks declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 for alleged violations of the Eighth and Fourteenth Amendments to the United States Constitution. Compl. ¶1. Specifically, Plaintiffs allege that overcrowding, understaffing, and deferred maintenance at the facilities where they are housed constitute deliberate indifference to Plaintiffs' health and safety as a result of the conditions of confinement in the State's correctional facilities.

Compl. ¶2. They allege that the action is brought on behalf of themselves and on behalf of all others similarly situated. Compl. ¶4.

Plaintiffs bring this action against two Defendants, James C. Justice, Jr., the Governor of West Virginia, and Mark Sorsaia, the Cabinet Secretary for the West Virginia Department of Homeland Security, each in his official capacity. Plaintiffs seek extraordinarily broad-sweeping relief, asking this Court to direct the appropriation of 330 million dollars from West Virginia's budget surplus "in order to make all of the necessary deferred maintenance repairs" and to hire and pay correctional staff. Compl., Prayer for Relief at (e) and (f). Plaintiffs further seek to "compel [Defendants] to implement and enforce policies, procedures, and practices" and to "compel them to make all necessary structural and/or infrastructure repairs, hazard abatements, financial investments, and personnel changes/additions." Compl., Prayer for Relief at (c) and (d).

Defendant Sorsaia is entitled to dismissal pursuant to the Eleventh Amendment to the United States Constitution. Relief is requested in the alternative under Rule 12(b)(1) and/or Rule 12(b)(6). The suit impermissibly seeks to impose a liability which must be paid from public funds in the state treasury. Additionally, *Ex Parte Young* does not apply because Plaintiffs have not demonstrated that Cabinet Secretary Sorsaia has the legal ability to remedy the alleged constitutional violation. "[A] general 'supervisory' role does not permit an individual to sue an officer under *Ex Parte Young*." *Doyle v. Hogan*, 1 F.4th 249, 256 (4th Cir. 2021) (additional citations omitted).

Defendant Sorsaia seeks dismissal pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure because Plaintiffs lack standing. Specifically, Plaintiffs cannot meet the components of traceability and redressability by showing that the injury is fairly traceable to the challenged conduct of the defendant, and the injury is likely to be redressed by a favorable judicial decision.

Defendant Sorsaia moves for dismissal pursuant to Rule 12(b)(1) based upon mootness. Intervening factual events have transpired resulting in the absence of a “case or controversy.” The instant Complaint seeking injunctive appropriations was filed on August 8, 2023. These requests have become moot in light of subsequent legislation and in light of legislation that became effective on or about August 8, 2023.

Venue in the Beckley Division is improper and should be transferred to the Charleston Division pursuant to 28 U.S.C. § 1404 for two reasons. First, neither Defendant resides in the Beckley Division. Second, none of the named Plaintiffs reside in the Beckley Division. Instead, the facilities at which they are incarcerated are located in Fayette, Logan, and Boone Counties, all of which are within the Charleston Division. Therefore, pursuant to the federal venue statute, and for the convenience of the parties and witnesses, venue properly lies in the Charleston Division.

Additionally, Defendant Sorsaia moves for dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted based on multiple grounds. First, pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), Plaintiffs have failed to exhaust their administrative remedies, and their claims are therefore barred. The Supreme Court of the United States has held “[t]here is no question that exhaustion is mandatory under the PLRA and that unexhausted claims cannot be brought in court.” *Jones v. Bock*, 549 U.S. 199, 211, 127 S. Ct. 910, 918-919 (2007) (citing *Porter v. Nussle*, 534 U.S. 516, 524, 122 S. Ct. 983 (2002)). Pursuant to Rule 12(d) of the Federal Rules of Civil Procedure, if matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. Fed. R. Civ. P. 12(d).

Plaintiffs have failed to state plausible claims that Defendant Sorsaia has violated their rights under the Eighth or Fourteenth Amendments. Plaintiffs have not plausibly alleged facts

which could support a finding against Defendant Sorsaia regarding the subjective component of deliberate indifference. There are no plausible allegations that Defendant Sorsaia knew of and disregarded an excessive risk to inmate health or safety. Additionally, Plaintiffs allege only isolated incidents that do not rise to the level of constitutional violations.

A further ground for dismissal pursuant to Rule 12(b)(6) is that the injunctive relief sought by Plaintiffs is inappropriate as it violates the separation of powers and requests that the federal judiciary order State executive officials to take both executive and legislative action.

The Complaint should be dismissed pursuant to Rule 12(b)(6) because it presents a non-justiciable political question. Plaintiffs ask this Court to invade the provinces of the executive and legislative branches of the State government to force policy decisions preserved by the West Virginia Constitution to those coordinate branches. Plaintiffs do not seek redress for specific alleged constitutional harms. Instead, they seek to influence the political process by judicial decree. This Court should abstain from such a request.

Finally, Plaintiffs' claims should be dismissed pursuant to Rule 12(b)(6) because they are barred by the Tenth Amendment to the United States Constitution. West Virginia is a sovereign State with the absolute right to govern consistent with the United States and West Virginia Constitutions. Because of the sovereign status of the states, this Court cannot provide the requested redress under the Tenth Amendment.

**WHEREFORE**, Defendant Sorsaia requests that his Motion to Dismiss be granted, that the Complaint be dismissed against him, and for such other and further relief as the Court may direct. Defendant Sorsaia contemporaneously files a Memorandum of Law in further support of his Motion.

**MARK SORSAIA,**  
**By Counsel,**

/s/ Caleb B. David

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**CERTIFICATE OF SERVICE**

The undersigned, counsel for Defendant Mark Sorsaia, do hereby certify that on the 31<sup>st</sup> day of October 2023, a true and exact copy of “**DEFENDANT MARK SORSAIA’S MOTION TO DISMISS**” was served on counsel via electronic means as follows:

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**GENERAL DISTRIBUTION**

**WEST VIRGINIA  
DIVISION OF CORRECTIONS  
& REHABILITATION**

**NUMBER: 335.00**

**DATE: 15 February 2020**

**SUBJECT: INMATE GRIEVANCE  
PROCEDURE**

# POLICY DIRECTIVE

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**PURPOSE:**

To maintain a mechanism that ensures the promulgation of uniform procedures concerning the formal review of issues relating to any aspect of confinement for inmates that requires all inmates to fully and properly utilize these procedures to the fullest extent required under any forum for which the inmate would otherwise seek judicial redress within.

**REFERENCE:**

42 U.S.C. §1997e(a); Booth v. Churner, 532 U.S. 731 (2001); Porter v. Nussle, 534 U.S. 516 (2002); Woodford v. Ngo, 548 U.S. 81, 93 and 103 (2006); State ex rel. Fields v. McBride, 216 W.Va. 623, 609 S.E.2d 884 (2004); WV Code §§ 25-1A-2 and 25-1A-2A; PREA Standard 115.52

**RESPONSIBILITY:**

Superintendents shall be responsible for enacting Operational Procedures and Post Orders to ensure compliance with this Policy Directive.

**CANCELLATION:**

Any previous written instructions on this subject including DOC Policy Directive 335.00, dated 01 February 2014; DOC Policy Directive 332.21-1, dated 01 August 2013; RJA Policy and Procedure Statement 6003, dated 15 May 1997; and RJA Policy and Procedure Statement 14003, dated 22 July 2014.

**APPLICABILITY:**

All facilities within the Division of Corrections and Rehabilitation that have custody of adult inmates. This Policy is available for general distribution and is to be made available for inmate review.



## **DEFINITIONS:**

**Accept:** The act of formally receiving the grievance for a review of the grievance on the merits.

**Days:** For the purposes of this policy shall mean working days, exclusive of weekends or state holidays.

**Exhaustion:** Submitting an accepted grievance and properly appealing an accepted grievance fully and receiving a final response thereto by the Commissioner. Rejections do not constitute exhaustion. Remands are not final responses unless expressly stated in the decision.

**Grievance Number:** The number assigned to each inmate grievance, for tracking and filing purposes.

**Imminent Violence:** An act of violence which has the potential to cause substantial bodily injury or greater to the inmate and a reasonable possibility of occurring in the immediate or near future.

**Investigate:** A process, whether formal or informal, by which information necessary to compile a response is provided. It can be as simple as a verbal inquiry or can involve a more detailed investigation.

**Reject:** Refusal to review a grievance on the merits due to a failure of the inmate to follow the procedural requirements for filing such grievance.

**Remand:** To return a grievance to a lower level for further action. When a grievance is remanded, unless the decision specifies otherwise, it is expected that a new decision will be issued at the level to which the grievance is remanded, and the process continues at that level in the same manner as if it were originally filed/appealed to that level. Unless other times are specified, action on a remand shall occur within ten (10) days of its receipt.

**Sexual Abuse:** For the purposes of this policy, encompasses (a) inmate-on-inmate sexual abuse, (b) inmate-on-inmate sexual harassment, (c) staff-on-inmate sexual abuse, and (d) staff-on-inmate sexual harassment.

## **POLICY:**

- I. Nothing in this Policy Directive shall be construed to provide an inmate with any additional liberty interest that would not otherwise exist if this Policy Directive did not exist.
  - A. Copies of all inmate grievances, appeals, and responses at Unit Manager/Director of Inmate Services and Superintendent's level shall be maintained at the facility. Once appealed to the Commissioner, the grievance shall be filed within the inmate's central office file. Only the grievance filed within the central office shall be indicative of whether the inmate has exhausted administrative remedies.

- B. Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing request for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such request on behalf of inmates.
  - C. Except for allegations of sexual abuse or substantial risk of imminent sexual abuse, an inmate may not use the Inmate Grievance Procedure to submit a grievance or appeal on behalf of another inmate or for any matter that does not directly affect the inmate filing the grievance.
  - D. Any inmate who fails to fully and properly comply with the provisions set forth in this Policy Directive shall not be considered to have taken full advantage of administrative remedies afforded him/her and therefore has not exhausted administrative remedies.
  - E. The Superintendent shall maintain a searchable record of all grievances. The record shall be searchable in the following manners: name or OID number of inmate; grievance number; type of grievance; and the date of filing.
  - F. This Policy Directive represents the general administrative remedy procedures for the Division of Corrections and Rehabilitation. Staff shall be instructed that this Policy Directive will apply to any issue advanced by an inmate that does not have a specific administrative remedy identified by this policy. Inmates should, as a general guideline, not to be told that an issue is not "grievable." If an issue is not properly presented under this Policy Directive, the inmate should be instructed as to the proper policy and procedure for seeking an administrative remedy. However, being able to grieve an issue does not equate to being entitled to the relief sought.
- II. Inmates may submit grievances in writing by US mail, by depositing in DCR grievance boxes located in each DCR facility, or by handing the grievance to a DCR employee, who is per policy in a position to accept the grievance.
- A. Correctional Officers who are involved in an emergency situation, distributing medication, conducting formal count or transporting another inmate are not required to accept grievances.
  - B. Inmates housed in segregation units will be given the opportunity to hand grievances to a DCR employee once a shift.
  - C. Inmates held in medical or mental health units may submit grievances by notifying medical personnel that they wish to file a grievance, the medical personnel will call for a DCR employee to come to the unit to accept the grievance.
  - D. If an inmate drops a grievance in a lock box, sends it via US mail, or places in a mailbox in a unit manager or counselor's office, the individual responsible for collecting the grievances shall deliver (or cause to be delivered) a copy of the grievance with the

grievance number to that inmate as soon as practicable, but within no more than a twelve hours from receipt of the grievance.

- E. If an inmate requires assistance or does not have the capacity to properly fill out a grievance form, another inmate, DCR staff, an attorney, family member, or other individual the inmate chooses may provide assistance. However, the inmate who is grieving, must affix his/her own signature or mark to the form.
- III. Upon receipt of the grievance form, the Unit Manager/Director of Inmate Services shall log the grievance and assign it a number in conformity with the following procedure. For the purpose of tracking the grievance, the Unit Manager/Director of Inmate Services shall maintain a log of grievances. This grievance log shall conform to Attachment #1.
- A. A two-digit number for the year in which the grievance is filed (ex. 20).
  - B. The facility designation (ex. MOCC&J or TVRJ&CF) and unit name or number (ex. Elm or A3).
  - C. A distinct sequential number from the beginning of each calendar year, which shall be utilized for tracking the grievance and for reference.
  - D. Each shall be separated by a hyphen. For example: 20-MOCC&J-Elm-01 or 20-TVJRJ&CF-A3-01
  - E. For each stage of the grievance, beginning with the initial response from DCR a letter will be added to the Grievance number. If upon receipt of the response the inmate appealed the grievance, that appeal would have the next letter in the alphabet added to the original grievance number. For example: 20-MOCC&J-Elm-01-A, upon appeal 20-MOCC&J-Elm-01-B
- IV. Any inmate may file a grievance utilizing a grievance form within fifteen (15) days of any occurrence that would cause him/her to file a grievance (Attachment #2). These forms shall be made available to members of the inmate population at all facilities. At a minimum, grievance forms shall be available in all inmate housing units and the law libraries.
- A. An inmate may grieve only one (1) issue or complaint per form and, except for grievances alleging sexual abuse or substantial risk of imminent sexual abuse, the issue must directly pertain to the inmate filing the grievance.
  - B. The grievance form shall initially be submitted by the inmate to his/her Unit Manager or the Director of Inmate Services at facilities where Unit Managers are not assigned. Inmates may also submit grievances to a correctional officer, via lock box, or US mail.

- C. Except in allegations of sexual abuse or substantial risk of imminent sexual abuse, prior to responding to the grievance, the Unit Manager/Director of Inmate Services shall inspect the grievance to determine whether the grievance conforms with this policy.
- D. Grounds for rejection shall include but not be limited to failure to file the grievance in a timely manner; filing a grievance on a matter that has been previously submitted in a prior grievance; failure to seek actual relief (filing a grievance that does seek action or ask for an answer to a question); attaching/including excessive pages; submitting writing on multiple sides of the page; and grieving more than one issue or complaint per form. Any presence of a foreign substance shall also be grounds for immediate rejection. If any of these apply, the Unit Manager/Director of Inmate Services shall reject the grievance, providing a brief explanation of the grounds for rejection, in writing and return the grievance to the inmate, noting the rejection on the log. Except for grievances rejected due to having been previously addressed in a grievance or those filed beyond the time limits to file a grievance, the inmate shall have ten (10) days to correct the defect and re-file a new grievance. An inmate may appeal a rejection in the same manner as a decision, but the scope of the appeal is limited only to the propriety of the rejection and not to the merits of the grievance. As such, appealing the rejection to the Commissioner does not exhaust administrative remedies on the issue presented in the defective grievance.
- E. It shall be the responsibility of the Unit Manager/Director of Inmate Services to ensure that an answer to the grievance is provided back to the inmate within five (5) days. The response should be clear, concise, complete, and professional. The Unit Manager/Director of Inmate Services is not required to personally answer the grievance, so long as he/she ensures that the grievance ultimately received is timely addressed and, if accepted, answered. *Provided* that the Unit Manager/Director of Inmate Services shall ensure that the staff member to which the grievance pertains shall not answer the grievance. In the case of accepted grievances addressing questions of health care, the Unit Manager/Director of Inmate Services shall route the grievance to the facility's health care administrator to review and provide the inmate an answer. However, the Unit Manager/Director of Inmate Services, shall ensure that a response has been completed and provided to the inmate, logging the same.
- F. The inmate shall be provided a copy of his/her grievance form prior to submission at each level for the inmate's records. The inmate may attach to the grievance or include only one (1) 8.5 x 11-inch page with writing on a single side. If staples are utilized, only one (1) staple may be used to affix the pages together. The inmate may not tear, fold, or affix tape to the forms, except that the forms may be folded and placed into a number 10 envelope.
- G. If the Unit Manager/Director of Inmate Services fails to answer or reject the grievance within the allowable time frame, the inmate may treat the non-response as a denial of his/her grievance. The inmate shall indicate on the form to the Superintendent that the grievance was previously filed without a response from the Unit Manager/Director of Inmate Services. The Superintendent/designee shall investigate such allegation. If it

is determined that the inmate had submitted a grievance without response, the Superintendent shall require an immediate response from the Unit Manager/Director of Inmate Services. If it is determined by the Superintendent that the inmate had either not filed the form with the Unit Manager/Director of Inmate Services or had been given a timely response, the Superintendent shall initiate appropriate disciplinary action upon the inmate.

- H. In the event an inmate suffers a serious injury or illness; is placed in an outside hospital or facility; is in a coma, feverish, heavily medicated, or other altered mental state; is placed in a restrictive setting, such as suicide watch, restraint chair, or isolation; the period for filing a grievance regarding the incident which led to the injury/illness, hospitalization, altered mental state or restrictive setting will be tolled until the inmate is returned to a DCR facility, is no longer in an altered mental state or restrictive setting and once again has access to writing utensils.
- V. Should the response at the Unit Manager/Director of Inmate Services level not resolve the issue, the inmate may appeal to the Superintendent within five (5) days from delivery of the response to his/her grievance. The inmate shall use the same form as was submitted to the Unit Manager/Director of Inmate Services and sign in the appropriate location. Only the grievance form and Unit Manager/Director of Inmate Services' response shall be submitted. Submission of any additional materials beyond the initial grievance and response shall be grounds to reject the appeal, except in the case of grievances alleging sexual abuse or substantial risk of imminent sexual abuse.
  - A. As with the initial level, the inmate shall be provided a copy of his/her grievance form prior to submission to the Superintendent for his/her records. Only the grievance form [including the one (1) page attachment submitted to the Unit Manager/Director of Inmate Services, if any] and the Unit Manager/Director of Inmate Services' response is to be copied.
  - B. Prior to responding to the appeal, the Superintendent/designee shall review the grievance to determine whether any grounds for rejection exists as described above. If such exists, the grievance shall be rejected in the same manner.
  - C. The Superintendent/designee shall respond to the appeal, using the grievance form, within five (5) days. The Superintendent/designee shall consider the statement of the grievance, as presented at the initial level, together with the Unit Manager/Director of Inmate Services' response to determine whether the response is appropriate. After a review of the grievance, the Superintendent/designee may affirm the Unit Manager/Director of Inmate Services and deny the grievance; deny the grievance for reasons other than that which is addressed by the Unit Manager/Director of Inmate Services; grant the grievance; or remand the grievance back to the Unit Manager/Director of Inmate Services for further action. In reviewing the grievance, the Superintendent/designee should place the expectation upon the Unit Manager/Director of Inmate Services that the grievance will be fully addressed at his/her level such that additional investigation should rarely be necessary and that a



decision can be rendered from a review of the grievance document. If a grievance has not been properly submitted through any level by an inmate, it shall be rejected.

- VI. Should the inmate believe that the Superintendent's response does not resolve his/her grievance, or the Superintendent fails to respond in the time frames set forth above, the inmate may submit an appeal to the Commissioner of the Division of Corrections and Rehabilitation within five (5) days after he/she receives the Superintendent's response or the time for the response has passed. The appeal shall be submitted using the same form as was submitted to the Unit Manager/Director of Inmate Services and signing the appropriate location. Only the grievance form together with the Unit Manager/Director of Inmate Services and Superintendent's response shall be submitted. Each grievance appealed to the Commissioner shall be mailed by the inmate to the Commissioner by first class mail. Only one (1) grievance per envelope shall be permitted. Except for grievances alleging sexual abuse or substantial risk of imminent sexual abuse, submission of multiple grievances or submission of grievances bound with tape or more than one staple or by any other means shall be grounds for rejection of the entire mailing in addition to all other grounds. The inmate may not tear or fold the forms, except that the forms may be folded to place it in a number 10 envelope. The grievances shall be appealed to the Commissioner by mailing only the grievance form and a single 8.5-inch page attachment, together with any response from the Unit Manager/Director of Inmate Services and Superintendent to the Commissioner at the following address:

WV Division of Corrections & Rehabilitation  
Commissioner's Office  
Attention: Inmate Grievance Review  
1409 Greenbrier Street  
Charleston, WV 25311

- A. As with the initial level and Superintendent's level, the inmate shall be provided a copy of his/her grievance form prior to submission to the Commissioner for his/her records. Only the grievance form [including the one (1) page attachment submitted to the Unit Manager/Director of Inmate Services, if any] and responses are to be copied.
- B. Prior to responding to the appeal, the Commissioner/designee shall review the grievance to determine whether any grounds for rejection exists in the same manner as described above; or any other provision of this Policy Directive. If such exists, the grievance shall be rejected in the same manner.
- C. The Commissioner/designee shall respond to the appeal, in writing, within fifteen (15) days. The Commissioner/designee shall consider the statement of the grievance, as presented at the initial level, together with the Superintendent and Unit Manager/Director of Inmate Services' response to determine whether the response is appropriate and in furtherance with the mission of the Division of Corrections and Rehabilitation and with the orderly operation of the facility. Upon review of the grievance, the Commissioner/designee may affirm the Superintendent and deny the grievance; deny the grievance for reasons other than that which is addressed by the

Superintendent and Unit Manager/Director of Inmate Services; grant the grievance; or remand the grievance back to the Superintendent or Unit Manager/Director of Inmate Services for further action. In reviewing the grievance, an expectation is placed upon the Superintendent and Unit Manager/Director of Inmate Services that the grievance will be fully addressed at their levels and additional investigation should rarely be necessary. A decision should be able to be rendered from a review of the grievance document. If a grievance has not been properly submitted through any level by an inmate, it shall be rejected. A rejected grievance does not exhaust the grievance process or that step of the process.

VII. An inmate may file a grievance at any time concerning sexual abuse, and the grievances shall not be rejected at the Unit Manager/Director of Inmate Services level.

- A. In any case where an inmate would be required to submit his/her grievance to a staff member he/she is alleging engaged in the sexual abuse, the inmate shall submit the grievance to the Superintendent (or if the Superintendent is the individual alleged to be the individual sexually abusing the inmate, to the Commissioner). The Superintendent and/or the Commissioner shall assign appropriate staff to respond to the grievance.
- B. The time frames for processing the grievance and for appeals shall be the same as for ordinary grievances which requires completion of the process within ninety (90) days.
- C. Reports and correspondence not initially filed as a grievance.
  1. Whenever a staff member is notified either verbally or in writing of an allegation that an inmate has been sexually abused, including notification from another inmate, the staff member shall transmit a copy of this information to the Superintendent, who shall forthwith transmit the same to the Director of the Corrections Investigation Division and to the Inmate's Unit Manager/Director of Inmate Services. In the event the Superintendent is the one accused of committing the sexual abuse, the copy shall be directly sent to the Director of the Corrections Investigation Division and Unit Manager/Director of Inmate Services by the staff member. The Unit Manager/Director of Inmate Services shall consider such notification as a grievance submitted on behalf of the inmate and shall assign the information a grievance number. The Unit Manager/Director of Inmate Services shall ensure that all verbal reports are reduced to writing. A grievance or an appeal thereof relating to sexual abuse shall not be rejected due to defects in the form of the grievance or for any other reason for rejection as noted above.
  2. The Unit Manager/Director of Inmate Services or assigned staff member shall inform the inmate allegedly sexually abused that a grievance has been submitted on his/her behalf and shall process it under the above-stated procedures. The Unit Manager/Director of Inmate Services shall also request the inmate to complete a grievance form, but the inmate is not required to do so. If the inmate expressly requests that it not be processed, the Unit Manager/Director of Inmate Services shall document any such request and close the grievance. Provided, however, that

the Unit Manager/Director of Inmate Services shall remain responsible for ensuring the information was reported to the Corrections Investigation Division.

3. After the Unit Manager/Director of Inmate Services initial actions, the inmate will be responsible for personally pursuing any subsequent steps in the grievance process through exhaustion.

VIII. An inmate alleging that he/she is subject to a substantial risk of imminent sexual abuse may file a grievance directly to his/her Superintendent who shall in turn cause an immediate review of the inmate's allegations and circumstances to determine whether such substantial risk of imminent sexual abuse exists. Such review can be in conjunction with an application for special management. The scope of the Superintendent's review shall be limited to whether the inmate is at substantial risk of imminent sexual abuse.

A. As soon as possible, but no more than forty-eight (48) hours, the Superintendent shall make an initial response determining whether the inmate's allegations that he/she is at substantial risk of imminent sexual abuse was substantiated; and, if so, the Superintendent shall take all necessary corrective action. Within five (5) calendar days, the Superintendent shall issue a final written response setting forth reasons supporting the decision and any action taken.

B. If no emergency exists, the Superintendent shall return the grievance to the inmate and require the inmate to follow the normal grievance procedures.

C. The Superintendent shall provide a written explanation of why the grievance does not qualify as an emergency.

D. Any inmate found to have intentionally filed an emergency grievance where no emergency exists and in bad faith shall be subject to disciplinary action.

IX. An inmate alleging that he/she is in danger of imminent violence shall file a grievance to any employee. Any staff person receiving a grievance in which an inmate alleges he/she is in danger of imminent violence shall immediately forward the grievance to the Shift Commander.

A. Any employee upon receipt of such grievance shall cause an immediate review to take place of the inmate's allegations and circumstances to determine whether a substantial risk of imminent violence exists. The Shift Commander can refer the review to the designated staff or can have the review processed as an application for special management or processed in conjunction with any other policy directive or operational procedure which is intended to handle such claims of imminent violence.

B. An inmate alleging that he/she is in danger of imminent violence shall in the grievance set forth with specificity the nature of the threat of imminent violence and list any person who the inmate believes may cause him/her bodily injury or greater. An inmate shall receive assistance, if needed, if providing such information in writing.



WVDCR Policy Directive 335.00  
15 February 2020  
GENERAL DISTRIBUTION

- C. As soon as possible, but no more than forty-eight (48) hours, the person conducting the review shall make an initial response determining whether the inmate's allegations that he/she is at substantial risk of imminent violence is substantiated. If the initial review finds that the allegation of imminent violence is substantiated or is unable to find that the allegation of imminent violence is unsubstantiated, the facility shall cause appropriate action, if needed, to protect the safety of the inmate.
- D. Within five (5) calendar days, the Unit Manager/Director of Inmate Services or Shift Commander shall issue a written response to the inmate's grievance. The response to the grievance shall confirm that the inmate's allegations have been reviewed or processed in conjunction with any policy directive or operational procedure which is intended to handle claims of violence, and state whether the review substantiated the inmate's allegations and what, if any, actions have been taken in the matter. The response, however, shall not include information regarding private personnel actions.
- E. An inmate alleging that he/she is subject to violence which is not imminent may file a grievance to his/her Unit Manager/Director of Inmate Services who shall in return cause the allegations to be reviewed. The Unit Manager/Director of Inmate Services can refer the review to designated staff or can have the review processed as an application for special management or processed in conjunction with any other policy directive or operational procedure which is intended to handle claims of violence.
- F. In any case where an inmate would be required to submit his/her grievance to a staff member he/she is alleging has threatened him/her with violence, the inmate shall submit the grievance to the Superintendent (or if the Superintendent is the individual alleged to have threatened him/her with violence, to the Commissioner). The Superintendent and/or the Commissioner shall assign appropriate staff to respond to the grievance.
- G. Except for as set forth in the above special procedures, a grievance alleging violence and or imminent violence shall follow the procedures for ordinary administrative remedies.

**ATTACHMENTS:**

- #1 Grievance Log
- #2 Inmate Grievance Form

**APPROVED SIGNATURE:**

  
Betsy G. Jividen, Commissioner

1-17-20  
Date

[illegible]

WVDCR Inmate Grievance Form                      Grievance No. \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

\_\_\_\_\_  
Inmate Name    OID #    Date of Grievance

State Nature of Grievance / Issue to be addressed (Note: 1 issue per grievance be concise file with Unit Manager or Director of Inmate Services. NO WRITING ON BACK):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Relief Sought (state what you want):

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(The inmate may attach one 8.5 x 11 sheet if necessary, at this level only)

Inmate's Signature  
\*\*\*\*\*

Unit Manager or Director of Inmate Services Response (attach additional sheet if needed)

Accepted \_\_\_\_\_ Rejected \_\_\_\_\_ Reason for rejection: \_\_\_\_\_ Date: \_\_\_\_\_

Response on Merits if accepted:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature  
\*\*\*\*\*

Resolved: \_\_\_\_\_ (if so initial and give copy to Unit Manager or Director of Inmate Services) Appealed to Superintendent \_\_\_\_\_ (initial) Date: \_\_\_\_\_

If no response at initial level is included the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00.

\_\_\_\_\_  
Inmate's Signature    Date  
\*\*\*\*\*

Action by Superintendent:

Accepted \_\_\_\_\_ Rejected \_\_\_\_\_ Reason for rejection: \_\_\_\_\_ Date: \_\_\_\_\_

Response on Merits if accepted:    \_\_\_ Remand to Unit for further action    \_\_\_ Affirm unit and/or deny grievance    \_\_\_ Grant the Grievance as specified

Comments \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Attach additional sheet if necessary)

Superintendent's Signature    Date  
\*\*\*\*\*

Resolved: \_\_\_\_\_ (if so initial and give copy to Unit Manager or Director of Inmate Services) Appealed to Commissioner \_\_\_\_\_ (initial)



If no response at Superintendent's level is included, the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00.

\_\_\_\_\_  
Inmate's Signature    Date  
\*\*\*\*\*

Action by Commissioner:

Accepted \_\_\_\_\_ Rejected \_\_\_\_\_ Reason for rejection: \_\_\_\_\_ Date: \_\_\_\_\_

Response on Merits if accepted:    \_\_\_\_\_ Affirm Superintendent and deny grievance (Affix final stamp)    \_\_\_\_\_ Other, memo attached.

 <p style="text-align: center;"><b>WEST VIRGINIA DIVISION OF JUVENILE SERVICES</b></p>		<b>POLICY NUMBER:</b> 	<b>PAGES:</b> <p style="text-align: center;">5</p>
<b>CHAPTER:</b> <p><b>Institutional Operations</b></p>	<b>REFERENCE AND RELATED STANDARDS:</b> <p><b>WV Code Chapter §§49-2-903 and 49-4-721; ACA 3-JDF-3D-04 thru -08; PbS Standard – Justice #1-3; Prison Rape Elimination Act (PREA), §§115.361 and 115.373</b></p>		
<b>SUBJECT:</b> Resident Rights and Grievance Procedures			
<b>DATE:</b> July 1, 2016			

### PURPOSE

This policy is to ensure the rights of every resident and their right to grieve the actions of staff and conditions and circumstances in the facility and of other residents which violate resident rights and those rights covered under the Prison Rape Elimination Act (PREA).

### CANCELLATION

This policy has been revised and supersedes Policy 334.00 dated July 1, 2015.

### APPLICABILITY

This Policy applies to all Division of Juvenile Services' facilities and centers.

### PROCEDURES

1. The Division of Juvenile Services will ensure that all residents under its jurisdiction receive a copy of the following rights upon intake as provided by West Virginia Code §49-4-721:
  - a. A resident may not be punished by physical force, deprivation of nutritious meals, deprivation of family visits or imposition of solitary confinement;
  - b. A resident shall be afforded an opportunity to participate in physical exercise each day;
  - c. Except for sleeping hours, a resident in a state facility may not be locked alone in a room unless that resident is not amenable to reasonable direction and control;
  - d. A resident shall be provided with his or her own clothing or individualized clothing which is clean and supplied by the facility, and shall also be afforded daily access to showers;



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- e. A resident shall be afforded constant access to writing materials and may send mail without limitation, censorship or prior reading, and may receive mail without prior reading, except that mail may be opened in the resident's presence, without being read, to inspect for contraband;
  - f. A resident may make and receive regular local phone calls without charge and long distance calls to his or her family without charge at least once a week, and receive visitors daily and on a regular basis;
  - g. A resident shall be afforded immediate access to medical care as needed;
  - h. A resident shall be provided access to education, including teaching, educational materials and books;
  - i. A resident shall be afforded reasonable access to an attorney upon request; and
  - j. A resident shall be afforded a grievance procedure, including an appeal mechanism.
2. The Division has also assured the following rights are provided to residents under its jurisdiction:
  - a. Basic hygiene items at no cost;
  - b. To be free from discrimination based on race, religion, national origin, gender, or physical handicap;
  - c. To be adequately protected from personal abuse, personal injury, disease, property damage, and harassment;
  - d. Immediate access to emergency dental care;
  - e. Have access to religious material and service;
  - f. To be provided due process safeguards as outlined in Division Policy 330.00 – Resident Discipline;
3. Each Facility Superintendent/Director is authorized to provide other privileges to all residents in his/her custody based on the purpose, mission and/or program of the facility to ensure that each resident is afforded quality care services.
4. Staff will ensure that residents sign the Residents Rights/Handbook Acknowledgement Form during Intake (Attachment #1). This form will be uploaded into OIS.
5. **Resident Grievance Procedure** – There is a three step grievance procedure available to all residents in the custody of the Division of Juvenile Services. These steps include relevant staff member, Facility Superintendent/Director and the Division Director.

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- a. Residents are informed of the grievance procedure upon intake at the facility. There is no time limit for the filing of a resident grievance. Forms are available to all residents.
- b. Grievance Process
  - i. Any issue that is unresolved by staff to a resident's satisfaction can result in a formalized grievance procedure. Residents shall not be required to discuss any grievance with any staff involved or unit staff prior to filing a grievance.
  - ii. A resident may submit a written and signed grievance form to be placed in a locked Grievance Box located in an easily accessible area. This box can only be opened by the Facility Superintendent/Director or the Grievance Coordinator.
  - iii. Any resident who has difficulty writing shall receive assistance in preparing their grievance.
  - iv. The Facility Superintendent/Director shall assign a staff member, in writing, to be the Grievance Coordinator. In this capacity, the Grievance Coordinator will only report to the Facility Superintendent/Director. This person will not have direct contact with or supervision of residents and/or any interest in the outcome of the grievance. Their duties include:
    - 1) Collect the grievances or grievance appeals a minimum of three times a week.
    - 2) Immediately notifying the Facility Superintendent/Director or Designee of all grievances against staff member(s) regarding staff misconduct or when there is an allegation that a resident is in imminent danger.
      - a) In the event of a grievance alleging that a resident is in imminent danger, the complaint will be acted on immediately and, if the Facility Superintendent/Director determines the necessity, will place the resident in protective custody, per policy 332.00, Specialized Housing.
      - b) An initial response will be forwarded to the resident within 48 hours and shall issue a final decision within five (5) calendar days.
    - 3) In the event that the grievance is of a PREA nature it will be immediately forwarded to the facility's PREA Compliance Manager. This will not be entered into the Grievance database.
    - 4) Uploading the grievance form and enter the resident's grievance verbatim into the Offender Information System (OIS). Complaints or appeals of a PREA nature will be handled by the PREA Compliance Manager or the PREA Counselor for that facility and input information into OIS. See procedures for PREA complaints or appeals in section 5 of Policy 151.00.



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- 5) Notifying the appropriate staff member to respond. (In cases where a staff member is the subject of a grievance, that staff member shall not answer the grievance.) For good cause, this deadline may be extended by the Grievance Coordinator, who will notify the resident, in writing, of the new deadline date and the reason for such extension. That extension information is also entered into OIS.

v. Any staff member answering a grievance have a responsibility to:

- 1) Research the issue
- 2) Meet with resident to hear the issue, if necessary
- 3) Give their response to the Grievance Coordinator to be entered into OIS within seven (7) calendar days. A copy of the response will be given to the resident, regardless of resident's location within the Division. For good cause, the Grievance Coordinator may extend this deadline (once only) for another seven (7) calendar days. The resident will be notified in writing, of the new deadline date and the reason for such extension. That extension information is also entered into OIS.

- vi. At any time, a resident may appeal a decision of the staff member to the Facility Superintendent/Director via grievance box. All appeals to the Facility Superintendent/Director will be reviewed and a decision determined within seven (7) calendar days of receipt of the grievance appeal in OIS. That decision will be printed out and given to the resident. For good cause, this deadline may be extended by the Facility Superintendent/Director, who will notify the resident, in writing, of the new deadline date and the reason for such extension. That extension information is also entered into OIS.

- vii. A resident may appeal at any time a decision of the Facility Superintendent/Director to the Division Director by placing appeal in the grievance box. The Grievance Coordinator will upload the appeal into OIS and complete the process for an appeal by the Division Director.

- viii. All appeals to the Division Director will be reviewed and a decision determined within seven (7) calendar days of receipt of the grievance appeal in OIS. The Grievance Coordinator will print out the Grievance report with the Director's appeal in OIS and give to the resident for their signature and give the resident a copy. The Grievance Coordinator will upload the signed Grievance Report into OIS and shred the original grievance appeal and the original signed copy of the Grievance Report. For good cause, this deadline may be extended by the Division Director, who will notify the resident, in writing, of the new deadline date and the reason for such extension. That extension information is also entered into OIS.

6. Third-Party Grievance Complaints – All complaints filed by a third-party on behalf of residents or former residents will be entered into the OIS System and forwarded to the appropriate Facility Superintendent/Director. All timelines will be based on the above-referenced timeframes for grievance procedures.

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7. Each facility will have in place an operational procedure to ensure the standards and practices of this policy are followed.

**RIGHTS RESERVED**

The Director reserves the right to modify, suspend or cancel any provision herein in part or entirety, without advance notice, unless prohibited by law.

**APPROVED:**

  
\_\_\_\_\_  
**Director**

7/1/16  
\_\_\_\_\_  
**Date**



## **West Virginia Division of Juvenile Services Resident Rights**

BY YOUR ADMISSION INTO A JUVENILE DETENTION OR CORRECTIONAL FACILITY, AS PURSUANT TO WV STATE CODE. 49-4-721, THE FOLLOWING ARE YOUR RIGHTS:

1. A Juvenile may not be punished by physical force, deprivation of nutritious meals, deprivation of family visits or imposition of solitary confinement;
2. A juvenile shall be afforded an opportunity to participate in physical exercise each day;
3. Except for sleeping hours, a juvenile in a state facility may not be locked alone in a room unless that juvenile is not amenable to reasonable direction and control;
4. A juvenile shall be provided with his or her own clothing or individualized clothing, which is clean and supplied by the facility, and shall also be afforded daily access to showers;
5. A juvenile shall be afforded constant access to writing materials and may send mail without limitation, censorship or prior reading, and may receive mail without prior reading, except that mail may be opened in the juveniles presence, without being read, to inspect for contraband;
6. A juvenile may make and receive regular local phone calls without charge and long distance calls to his or her family without charge at least once a week, and receive visitors on Saturday and Sunday, and Holidays;
7. A juvenile shall be afforded immediate access to medical care as needed;
8. A juvenile in a juvenile detention facility or juvenile corrections facility shall be provided access to education, including teaching, educational materials and books;
9. A juvenile shall be afforded reasonable access to an attorney upon request; and
10. A juvenile shall be afforded a grievance procedure, including an appeal mechanism.

By signing below acknowledges you have read/had read to you the above rights. You understand to follow all facility rules to the best of your abilities during your stay with the Division of Juvenile Services.

Resident signature: \_\_\_\_\_

Date: \_\_\_\_\_

Staff signature: \_\_\_\_\_

Date: \_\_\_\_\_

---

## **Resident Handbook**

I, \_\_\_\_\_, do hereby affirm that I received a resident handbook.

Resident signature: \_\_\_\_\_

Date: \_\_\_\_\_

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
BECKLEY DIVISION**

**THOMAS SHEPPHEARD,  
TYLER RANDALL, and  
ADAM PERRY, next friend and guardian of  
Minor child J.P., on their own behalf  
and on behalf of all others  
similarly situated,**

**Plaintiffs,**

**v.**

**Civil Action No. 5:23-cv-00530  
Judge Irene C. Berger**

**JAMES C. JUSTICE JR., his official capacity  
as Governor of the State of West Virginia, and  
MARK SORSAIA, in his official capacity  
as the Cabinet Secretary of the West Virginia  
Department of Homeland Security,**

**Defendants.**

**AFFIDAVIT OF LAWRENCE PETTEY**

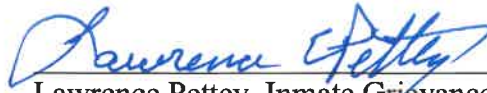
STATE OF WEST VIRGINIA,

COUNTY OF Kanawha

I, Lawrence Pettey, duly sworn, make oath upon my knowledge as follows:

1. I currently serve as Inmate Grievance Coordinator for the West Virginia Division of Corrections and Rehabilitation in its central office in Charleston, Kanawha County, West Virginia.
2. The West Virginia Division of Corrections and Rehabilitation has available administrative remedies for inmates to challenge aspects of their confinement. (Policy Directive 335.00, Inmate Grievance Procedure, dated February 15, 2020).
3. Based on my review of their central office files, neither inmates Thomas Sheppheard (OID No. 3591102) nor Tyler Randall (OID No. 3558952), have ever appealed to the Commissioner, any grievances related to overcrowding, understaffing, or deferred maintenance at any Division of Corrections and Rehabilitation facility.

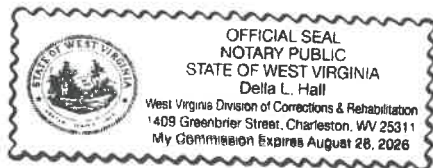
AND FURTHER AFFIANT SAYETH NOT.



Lawrence Pettey, Inmate Grievance Coordinator  
West Virginia Division of Corrections and  
Rehabilitation

Sworn and subscribed to before me this 27<sup>th</sup> day of October, 2023.

My commission expires: August 28, 2026

  
NOTARY PUBLIC

[SEAL]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
BECKLEY DIVISION**

**THOMAS SHEPPHEARD,  
TYLER RANDALL, and  
ADAM PERRY, next friend and guardian of  
Minor child J.P., on their own behalf  
and on behalf of all others  
similarly situated,**

**Plaintiffs,**

**v.**

**Civil Action No. 5:23-cv-00530  
Judge Irene C. Berger**

**JAMES C. JUSTICE JR., his official capacity  
as Governor of the State of West Virginia, and  
MARK SORSAIA, in his official capacity  
as the Cabinet Secretary of the West Virginia  
Department of Homeland Security,**

**Defendants.**

**AFFIDAVIT OF SUPERINTENDENT JEREMY DOLIN**

STATE OF WEST VIRGINIA,

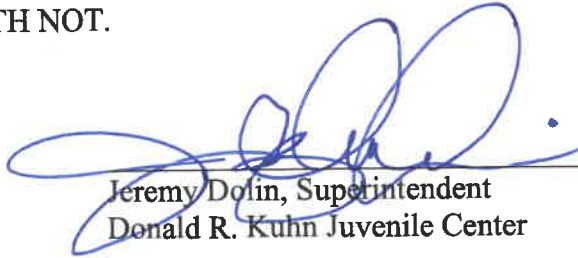
COUNTY OF

Boone

I, Jeremy Dolin, duly sworn, make oath upon my knowledge as follows:

1. I currently serve as Superintendent of the Donald R. Kuhn Juvenile Center in Julian, West Virginia.
2. The West Virginia Division of Juvenile Services has available administrative remedies for minor residents to challenge aspects of their confinement. (Policy Directive 334.00, Resident Rights and Grievance Procedure, dated July 1, 2016).
2. Resident J.P. (OID No. 3672791) was a resident at the Donald R. Kuhn Juvenile Center from May 30, 2023 to October 12, 2023.
3. Based on my review of his resident file, resident J.P. (OID No. 3672791) did not file any grievances related to overcrowding, understaffing, or deferred maintenance while a resident at the Donald R. Kuhn Juvenile Center.

AND FURTHER AFFIANT SAYETH NOT.

  
Jeremy Dolin, Superintendent  
Donald R. Kuhn Juvenile Center

Sworn and subscribed to before me this 30<sup>th</sup> day of October, 2023.

My commission expires: 03/07/2026

  
NOTARY PUBLIC

[SEAL]

