

SENATE BILL REPORT

SB 5130

As Reported by Senate Committee On:
Human Services & Corrections, February 10, 2009

Title: An act relating to access to public records by persons serving criminal sentences in correctional facilities.

Brief Description: Regarding prisoner access to public records.

Sponsors: Senators Carrell, Hargrove, Swecker, Hatfield, Holmquist, Brandland, Sheldon, Tom, King, Hobbs, McCaslin, Stevens and Marr; by request of Attorney General.

Brief History:

Committee Activity: Human Services & Corrections: 1/29/09, 2/10/09 [DPS].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5130 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell and Kauffman.

Staff: Shani Bauer (786-7468)

Background: Upon request, an agency must make its public records available for public inspection and copying unless the records fall within a specific statutory exemption. Within five business days of receiving a request, the agency must provide the record, acknowledge receipt of the request and provide a reasonable time estimate of the time required to respond, or deny the request. A person who has been denied access, may petition the court to determine whether the agency was correct in its denial. If the court determines that the agency was not correct, the person requesting the record must be awarded all costs, including reasonable attorney fees, incurred in bringing the court action. The court may also award the petitioner a penalty award of not less than \$5 and not more than \$100 for each day the petitioner was denied the right to inspect or copy the public records requested.

The court may enjoin the examination of a specific public record if, upon motion by the agency or agency representative, the court finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person or a vital government function.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill (Recommended Substitute): The court may enjoin the examination of any nonexempt public record requested by a person serving a criminal sentence if, upon motion by the agency or agency representative, the court finds:

- The request was made to harass or intimidate the agency, its employees, or any person; or
- Disclosure of the record would likely threaten the security of correctional facilities, the safety and security of staff or other persons, or the deterrence of criminal activity.

Factors to be considered by the court in making its determination are prescribed. Upon a showing by a preponderance of the evidence, the court may enjoin all or part of the request, as well as future requests, by the same requestor or an entity owned in whole or in part by the same requestor. An agency is not liable for penalties during the time period for which a court injunction is in effect even if that order is later appealed and overturned.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute): Instead of "undermining a legitimate penological interest," a person may enjoin an inmate from requesting public records if the request(s) threatens the security of a correctional facility. In order to obtain an injunction, the moving party must meet its statutory burden by a preponderance of the evidence. The ability to enjoin requests by a third party is removed. The court may, however, enjoin future requests by an entity owned or controlled in whole or in part by the inmate. An emergency clause is added.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Original Bill: PRO: Inmate requests for public records have increased exponentially in the last few years. Out of a total of 11,133 requests last year, 74 percent of those were from inmates. Not all inmate requests are abusive. There are legitimate reasons that inmates need access to records that pertain to their conviction and incarceration. However, there is a small group of offenders who are abusing the system. One offender has submitted a total of 830 requests. The Attorney General's office has spent over 4,000 hours responding to those requests at a substantial cost to the agency. This particular inmate has requested numerous personnel files and personal information for the sole purpose of harassing those employees he comes across in the corrections system. Some are using the system for financial gain and make outrageous public records requests in order to sue the department for not providing records. Last year, 87 lawsuits were filed against the state for the failure to provide public records. Sixty-eight of these were filed by inmates. This bill does not categorically prevent inmates from making a public records request but is narrowly tailored to allow the Department of Corrections (DOC) to address those few who are abusing the system.

The Attorney General's office has worked with the Allied Daily Newspapers for adjustments to language. An emergency clause would also be a good idea to stop this abuse as soon as possible. This is a top priority for corrections employees. Employees of 25 years have quit because they cannot handle the requests for information regarding their background, children, and home life.

CON: Ideally this legislation should focus on the contents of the request and not the identity of the individual. Third parties also should not be enjoined unless there is some showing that they are involved. HB 1316 is an alternative solution to this and should be explored.

OTHER: There needs to be some way to ensure that a victim of custodial misconduct can expose the abuse without being labeled a harasser.

Persons Testifying: PRO: Tim Lang, Hunter Goodman, Attorney General's Office; Mike Rynerd, Teamsters; Scott Blonien, Denise Vaughn, DOC; Rowland Thompson, Allied Daily Newspapers.

CON: Melissa Lee, Columbia Legal Services, Institutions Project.

OTHER: Martha Woods, Stop The Bullies.