

# HOUSE BILL REPORT

## SHB 1037

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### As Amended by the Senate

**Title:** An act relating to restrictions on legal claims initiated by persons serving criminal sentences in correctional facilities.

**Brief Description:** Placing restrictions on legal claims initiated by persons serving criminal sentences in correctional facilities.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Ross, Johnson, Bailey, Upthegrove, Hurst, Armstrong, Walsh, Hinkle, Angel, Warnick, Schmick, Short, Klippert, Dammeier, McCune, Fagan, Nealey, Blake, Ladenburg, Kristiansen, Pearson, Tharinger and Moeller; by request of Attorney General).

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 1/17/11, 1/27/11 [DPS];

General Government Appropriations & Oversight: 2/10/11, 2/16/11 [DPS(JUDI)].

##### **Floor Activity:**

Passed House: 3/3/11, 98-0.

Senate Amended.

Passed Senate: 4/4/11, 49-0.

#### **Brief Summary of Substitute Bill**

- Places limitations on a correctional inmate's ability to bring certain court actions without paying filing fees if the inmate has had three previous actions dismissed on the grounds that the actions were frivolous or malicious.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Eddy, Frockt, Kirby, Nealey, Orwall, Rivers and Roberts.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler and Klippert.

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*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.*

**Staff:** Edie Adams (786-7180).

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## HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS & OVERSIGHT

**Majority Report:** The substitute bill by Committee on Judiciary be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Hudgins, Chair; Miloscia, Vice Chair; McCune, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Ahern, Blake, Fitzgibbon, Ladenburg, Moscoso, Pedersen, Van De Wege and Wilcox.

**Staff:** Alex MacBain (786-7288).

### **Background:**

In 1996 as one part of the federal Prison Litigation Reform Act (PLRA), Congress enacted limitations on the ability of a prisoner who has brought a number of prior court actions that were found to be frivolous or without basis to bring subsequent actions in forma pauperis. In forma pauperis, a latin phrase meaning "in the form of a pauper," is a designation allowing a person who is indigent to maintain a court action without having to pay fees for filing the action.

Under the PLRA, a prisoner who has had three or more cases dismissed as frivolous, malicious, or failing to state a claim for relief, may not proceed in forma pauperis in a civil action or appeal unless the prisoner is under imminent danger of serious physical injury. This provision of the PLRA is often referred to as the "three strikes" provision. "Prisoner" is defined as a person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms of parole, probation, pretrial release, or a diversionary program.

There have been a number of constitutional challenges to the three strikes provision of the PLRA on the grounds the provision denies to a prisoner the recognized constitutional right of access to the courts. Federal appellate courts have upheld the three strikes provision, finding that although there is a recognized right of prisoners to have meaningful access to the courts, a requirement to pay a filing fee does not deny this right. The decisions have been based in part on findings that, in the civil context, the United States Constitution only requires a waiver of filing fees in a narrow category of cases where the litigant has a fundamental interest at stake. Federal courts have determined that the PLRA three strikes provision does not preclude prisoner access to the courts, it only denies them the ability to do so at public expense, and that this limitation is rationally related to the legitimate governmental interest of deterring frivolous and malicious prisoner lawsuits.

Washington courts have also recognized a state constitutional right of access to the courts arising under Article I, section 10, which provides that "[j]ustice in all cases shall be administered openly, and without unnecessary delay." An individual does not have an absolute and unlimited constitutional right of access to the court system, but rather a reasonable right of access, or a meaningful opportunity to be heard. In the context of persons who bring frivolous or abusive litigation, courts have the authority to enjoin a party from

engaging in litigation upon a "specific and detailed showing of a pattern of abusive and frivolous litigation." However, when issuing an injunction, a court must limit the impact of the injunction as narrowly as needed to remedy proven abuses.

With respect to allowing indigent persons to proceed in forma pauperis, the Washington Supreme Court has held that Washington courts have inherent authority to waive the payment of court fees. This authority is part of the court's responsibility for the proper and impartial administration of justice and the duty to see that justice is done in the cases that come before the court.

#### **Summary of Substitute Bill:**

Limitations are established on the ability of a person serving a criminal sentence in a federal, state, local, or private correctional facility (correctional inmate) to proceed in certain civil actions or appeals without payment of filing fees.

A court must deny a request from a correctional inmate to proceed without the payment of filing fees in a civil action or appeal against governmental entities or their officers, employees, or volunteers, if the court finds that the correctional inmate, while incarcerated or detained, has had three or more prior civil actions or appeals dismissed by a federal or state court on the grounds that they were frivolous or malicious. One of the three dismissals must have involved an action or appeal commenced on or after the effective date of the act.

This restriction on a correctional inmate's ability to proceed without paying filing fees does not apply to actions or appeals that, if successful, would affect the duration of the person's confinement, or to actions or appeals where the court finds that the correctional inmate is in imminent danger of serious physical injury.

#### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment adds imminent danger of serious *psychological* harm to the reasons a court may permit a case to move forward without the payment of filing fees even though the inmate has had three previous lawsuits dismissed for being malicious or frivolous.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

#### **Staff Summary of Public Testimony (Judiciary):**

(In support) This bill is based on the federal Prison Litigation Reform Act, which was passed to curb the growing tide of inmate litigation flooding into federal courts. That federal law was effective in limiting frivolous inmate litigation by imposing procedural limitations on inmate actions, including a "three strikes" rule. As a result, states have seen a flood of inmate litigation that would otherwise have been brought in federal court. Civil rights suits by

inmates have tripled over last decade and the biggest offenders are those who have struck out under federal law. Many other states have adopted their own laws to address this problem.

This bill is a common sense and fiscally responsible reform measure. At a time when the Legislature is having to cut benefits for law abiding people in need, it is not appropriate to be putting public resources to defending against this abuse of the court system. There have been approximately 50 suits in recent years by prisoners who have struck out under federal law. There are two inmates who have brought over 40 of these actions. The cost to the state of these cases is limited to the loss of the filing fee. There is a more significant cost resulting the time that state attorneys and employees have to spend on these cases until they are dismissed, which can take many months or longer.

There is a constitutional right of meaningful access to the courts, but there needs to be a balance between competing interests to avoid abuse of the system by some inmates who engage in recreational litigation. The Department of Corrections helps ensure access to the courts by providing offenders with fully staffed law libraries, services of attorneys, and other resources to help offenders file their legitimate cases.

(Opposed) This bill is too broad and has the potential of blocking meritorious claims brought by inmates. Inmate litigation serves the important purpose of holding our corrections system accountable. The bill improperly focuses on the identity of the person bringing the claim and not on the merit of the particular claim. The bill is likely unconstitutional under our state constitution, which has different constitutional standards regarding access to the courts.

There is no need for this bill. There is already the authority and a process for the state to seek dismissal of non-meritorious claims. Courts have significant leeway to control these suits or impose sanctions for frivolous claims. The estimated fiscal savings of this bill are questionable because attorneys are not appointed to represent inmates in these cases, so the only savings is the filing fee.

The bill should not include dismissals based on failure to state a claim, which can be based on technical reasons that have nothing to do with frivolousness. The bill should not apply retroactively, and it should be limited to actions concerning prison conditions, and not apply to actions involving the offender's sentence. The bill should include an exception for claims involving psychological injuries, not just physical injuries, and also claims based on enumerated constitutional rights.

**Staff Summary of Public Testimony (General Government Appropriations & Oversight):**

(In support) There are a small number of inmates in the state's correctional system that are engaging in abusive frivolous lawsuits. There is a constitutional right to open unfettered access to the courts but this right needs to be balanced with competing interests to avoid abuse of the system by some inmates who engage in recreational litigation. The ability of inmates to file lawsuits is healthy for the state's correctional system. However, this legislation is not aimed at those inmates filing legitimate claims; rather, it is needed because of the small number of inmates who continuously file malicious and frivolous lawsuits. Court filing fees would not be waived until after the third time that it has been proven that

someone has engaged in malicious or frivolous lawsuits. The goal of the legislation is to achieve some savings.

(In support with concerns) The purpose of this legislation is to limit the use of public funds in the form of court fee waivers that support meritless litigation brought about by inmates that repeatedly file frivolous, meritless, or malicious lawsuits. There is nothing in current state law that limits this behavior. This was originally modeled on the PLRA. As a result of the PLRA, there has been a flight of these meritless cases into state courts. The original bill would have applied all PLRA federal strikes under the state law, so an inmate who currently cannot have the court fees waived in federal court would also not have fees waived in state court. The concern is around the amendment to eliminate "failure to state a claim" as the basis for a strike under the measure. This change is responsible for the dramatic reduction in the savings estimated by the fiscal note. This language effectively means that no federal strikes will apply to the state courts, and that inmates will get three more at-bats in state courts at taxpayer expense.

(Opposed) This bill will prevent some low-income offenders from being able to file lawsuits because they will be unable to get court fee waivers. The bill is unnecessary because judges already have tools for dealing with these types of litigants. There are already monetary sanctions that can be levied against filers who are abusing the process. Also, courts can issue injunctions to prevent vexatious litigants from filing frivolous lawsuits. This is a broad solution to a problem caused by just a few individuals. In addition, there are many inmates with mental illnesses in the Department of Corrections. One fear is that those inmates could file three meritless lawsuits and they would be prevented from filing a fourth legitimate lawsuit. "Failure to state a claim" is a common reason for dismissing lawsuits filed by attorneys with the best intentions, for reasons such as filing after the statute of limitations. Unrepresented litigants will run into this type of ruling because they are unaware of how the legal process works. The exception for physical abuse under the bill does not cover psychological or sexual abuse.

**Persons Testifying (Judiciary):** (In support) Representative Ross, prime sponsor; Tim Lang, Office of the Attorney General; Scott Blonien, Department of Corrections; and Tom Brandt.

(Opposed) John Sinclair, Washington Defenders Association and Washington Association of Criminal Defense Lawyers; and Shankar Narayan, American Civil Liberties Union of Washington.

**Persons Testifying (General Government Appropriations & Oversight):** (In support) Representative Ross, prime sponsor; and Scott Blonien, Department of Corrections.

(In support with concerns) Tim Lang, Office of the Attorney General.

(Opposed) Gavin Thornton, Columbia Legal Services; and Shankar Narayan, American Civil Liberties Union of Washington.

**Persons Signed In To Testify But Not Testifying (Judiciary):** None.

**Persons Signed In To Testify But Not Testifying** (General Government Appropriations & Oversight): None.