

SENATE BILL REPORT

SHB 1037

As of March 21, 2011

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: Passed House: 3/03/11, 98-0.

Committee Activity: Human Services & Corrections: 3/17/11.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Jennifer Strus (786-7316)

Background: In 1996 the federal Prison Litigation Reform Act became effective. This Act allows a court to dismiss any legal action regarding prison conditions brought by a prisoner confined in a jail, prison, or other correctional facility if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from the relief. A prisoner cannot file an action regarding prison conditions without first exhausting administrative remedies.

A prisoner confined in a jail, prison, or other correctional facility cannot bring a lawsuit for emotional or mental injury suffered while in custody without first showing that a physical injury occurred.

Summary of Bill: The court must deny the request of a person serving a sentence in a federal, state, local, or private correctional facility who seeks to file a civil action or appeal in state court against the state, a state or local governmental agency or entity, or a local official, employee, or volunteer acting in that capacity, without paying the filing fees if the person has, on three or more occasions while incarcerated or detained in a correctional facility, brought an action or appeal that was dismissed by the state or federal court as being frivolous or malicious. One of the three dismissals must have involved an action or appeal that was

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filed after the effective date of this act. An action or appeal that, if successful, would affect the duration of the person's confinement is not subject to this restriction.

The court may, nevertheless, permit the person to commence the action if the court determines that the person is in imminent danger of serious physical or psychological injury.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill would limit the use of public funds for court access for inmates who have abused the court system in the past. Several other states have adopted the three strikes provisions of the PLRA. Currently, inmates can bring claims in state court without paying the filing fee that they are barred from bringing in federal court. I have seen prison litigation rise by 300 percent since PLRA passed. Would like to add back in that having a case dismissed for failure to state a claim upon which relief can be based would be a strike. Failure to state a claim is the lowest threshold a plaintiff must meet in civil litigation, and the court would dismiss under this provision only if the plaintiff could prove no set of facts which would entitle him or her to relief. Courts also typically give plaintiffs a chance to amend their complaints before dismissing for failure to state a claim. The federal government and the other states that have adopted the three strikes provision found that failure to state a claim was an appropriate basis upon which to base a strike.

CON: Failure to state a claim is highly technical, and a plaintiff who is not represented by counsel should not be penalized for not meeting highly technical requirements. A prisoner could have a meritorious claim that would not be allowed because it was not stated in a form that is acceptable to the court. Federal courts have determined that prison rape is not a physical injury which is why psychological injury should be added back in to match the Senate version that was voted out of this committee. This bill should match up to the PLRA and apply the three strikes provision only to lawsuits that have been filed and dismissed as frivolous or malicious and dealt with prison conditions. Without that limitation in this bill, some meritorious lawsuits could be barred. The bill should also include some constitutional claims as an exception to the three strikes rule.

Persons Testifying: PRO: Tim Lang, Attorney General's Office.

CON: Bob Cooper, Washington Association of Criminal Defense Lawyers; Shankar Narayan, ACLU.