

SENATE BILL REPORT

SB 5025

As Reported by Senate Committee On:
Human Services & Corrections, February 4, 2011

Title: An act relating to making requests by or on behalf of an inmate under the public records act ineligible for penalties.

Brief Description: Concerning making requests by or on behalf of an inmate under the public records act ineligible for penalties.

Sponsors: Senators Hargrove, Becker, Sheldon, Litzow, Haugen, Carrell, White, King, Honeyford, Shin, Kilmer, Regala, Parlette, Conway, Tom, Rockefeller, Roach and Holmquist Newbry; by request of Attorney General.

Brief History:

Committee Activity: Human Services & Corrections: 1/13/11, 2/04/11 [DPS].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5025 be substituted therefor, and the substitute bill do pass.

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

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 either 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 whose request has been denied, 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 prohibit 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

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in the public interest and would substantially and irreparably damage any person or a vital government function. The court may also prohibit all or part of a public records request, as well as future requests, by a person serving a criminal sentence if the court finds:

- the request was made to harass or intimidate an agency or its employees;
- fulfilling the request would likely threaten the security of correctional facilities;
- fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members of other inmates, or any other person; or
- fulfilling the request may assist criminal activity.

Summary of Bill (Recommended Substitute): Unless the court finds that an agency acted in bad faith in denying a public records request, the court may not award penalties to a person who was serving a criminal sentence in a state, local, or privately operated correctional facility on the date the public records request was made.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute): Provisions limiting penalties for persons with a criminal sentence are moved to the statute addressing injunctions for those persons. The court is prohibited from awarding penalties to a person serving a criminal sentence for an agency's failure to provide records unless the records were denied in bad faith.

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: The biggest growth area in inmate litigation has been inmate public records litigation. Caseloads have quadrupled in the last few years with more than two-thirds of the public record lawsuits being brought by inmates. The Department of Corrections (DOC) has spent over 1400 hours of staff time responding to requests with a fiscal cost of \$500,000 for defense costs. There are limited instances where a good faith request has been made and the agency failed to comply. But, the majority of lawsuits have two motivations, one is strictly monetary. The offender structures the request for the sole purpose of tripping the department up in order to file a successful claim for damages. The second motivation is getting back at the system. This bill eliminates penalties for offenders but does not in any way limit requests or eliminate DOC's obligation to respond. When economic resources are scarce, does it make sense to cut services to needy citizens while subsidizing recreational lawsuits by offenders?

One particular offender has used his campaign and lawsuits to finance mechanisms to harass corrections officers and put their families in fear. Corrections officers are not getting a pay raise, yet money is going to these offenders for frivolous lawsuits. This is a business that the offenders have developed. They flood the system with requests and then get money for late public record requests when the system can't respond.

CON: This appears to be an extension of the bill that you passed last year that allows DOC to go to superior court and have a request from an inmate managed by a judge. Frivolous requests can be thrown out. This process has only been in effect for about six months or so. Let's give that a chance to work.

The current bill would prevent penalties if a request is made by or on behalf of a person who is incarcerated. A newspaper frequently makes requests on behalf of inmates because they have gotten a heads up about a certain issue or potential abuse. Costs and attorney fees will not cover the cost of bringing a lawsuit to require full disclosure. It is extremely rare that the petitioner will get full fees from the court, and the penalty provisions are needed to make up the difference. There should be a better way to winnow out those persons who have a legitimate request and those that are gaming the system. The penalty provision would be better as a subsection of RCW 9.42.56.565. If the public records door is shut, there is also a grave risk that parties will utilize the court discovery process as an alternative, which would be much more costly.

This bill is the broadest attempt to limit public records requests since passage of the Public Records Act (PRA). Families often have difficulties getting records from correctional facilities or agencies. This bill would effectively end all public records requests by prisoners because an agency will face no penalties for not complying. Many prisoners have legitimately used the PRA for legitimate litigation.

Persons Testifying: PRO: Tim Lang, Attorney General's Office; Scott Blonien, Department of Corrections; Greg Bellamy, Corrections Officer, Clallam Bay Corrections Center.

CON: Roland Thompson, Allied Daily Newspapers; Bill Will, Washington Newspaper Publishers and Washington Coalition for Open Government; Beth Colgan, Columbia Legal Services; Shankar Narayan, ACLU.