

SENATE BILL REPORT

SHB 2102

As Reported by Senate Committee On:
Law & Justice, February 28, 2014

Title: An act relating to civil suits by prisoners against victims.

Brief Description: Requiring a prisoner to seek authorization from a court before commencing a civil action against the victim of the prisoner's crimes.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Sawyer, Muri, Kirby, Zeiger, Fey, Seaquist, Green, Morrell, Jinkins, Liias, Van De Wege, Ryu and Bergquist).

Brief History: Passed House: 2/12/14, 97-0.

Committee Activity: Law & Justice: 2/21/14, 2/28/14 [DPA].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Kline, Ranking Member; Darneille, Pearson, Pedersen and Roach.

Staff: Tim Ford (786-7423)

Background: A serious violent offense is a subcategory of violent offense and means:

- murder in the first or second degree;
- homicide by abuse;
- manslaughter in the first degree;
- assault in the first degree;
- kidnapping in the first degree;
- rape in the first degree;
- assault of a child in the first degree;
- an attempt, criminal solicitation, or criminal conspiracy to commit one of these crimes; or
- any federal or out-of-state conviction that would be classified as a serious violent offense under this state's law.

Sentences for such offenses range from 51 months to life imprisonment. For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, the

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standard sentence range is multiplied by 75 percent.

Inmates may shorten their sentence time if they display good behavior through a program called earned release time. The crime committed, date of conviction, or the offender's risk classification will determine the maximum percentage of time off the sentence an offender may earn. Offenders who are convicted of certain offenses are eligible to be released to community custody in lieu of earned early release. Prison misbehavior may result in the loss of earned early release time credit. Loss of early release time and other privileges are governed by rules adopted by the Department of Corrections (DOC).

Summary of Bill (Recommended Amendments): Prior to commencing any civil legal action in state court against a victim or victim's family, a person convicted and confined for a serious violent offense must obtain an order authorizing the action from the sentencing judge or presiding judge in the county of conviction. Failure to obtain the required authorization results in loss of early release time or other privileges.

The court may refuse to authorize a claim or action if the court finds that it is frivolous or malicious. Factors the court may consider include whether:

- the claim's realistic chance of ultimate success is slight;
- the claim has no arguable basis in law or in fact;
- it is clear that the party cannot prove facts in support of the claim;
- the claim has been brought with the intent to harass the opposing party; or
- the claim is substantially similar to a previous claim filed by the inmate because the claim arises from the same operative facts.

Victim's family is defined to include a victim's spouse, domestic partner, children, parents, and siblings.

DOC is tasked with developing rules with respect to the loss of early release time or other privileges for failing to obtain court authorization prior to filing an action against a victim or victim's family.

Prior authorization is not required for actions brought under Title 26 RCW, which includes a variety of chapters concerning domestic relations such as dissolution, child custody, child support, parentage, and adoption.

Provides DOC discretion to determine an amount of loss of early release time, or other privileges, or some combination thereof.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Amendments): Provides DOC discretion to determine an amount of loss of early release time, or other privileges, or some combination thereof.

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 on Substitute House Bill: PRO: A constituent is a widow; her husband was murdered. She testified in the house but is unable to appear today. She was harassed by an individual who was eventually convicted of her husband's murder. After the murderer was imprisoned, he filed a lawsuit against the widow and continued to harass her through the lawsuit. The anti-strategic law against public participation (SLAPP) is available to penalize persons who file some types of harassing lawsuits, but the anti-SLAPP law may not apply in every situation, and it does not discourage an inmate who has nothing to lose. We are morally obligated to protect victims. This bill is needed to prevent inmates from harassing their victims by requiring them to obtain permission from a court prior to filing a lawsuit against a victim or the victim's family. It gives the court discretion to consider multiple factors and make a determination based on the facts. The bill is narrowly tailored to apply to only felons convicted of serious violent offenses. Victims have a constitutional right to participate in the sentencing process. Inmates who harass victims using lawsuits may create such fear in the victim that the victim decides not to exercise their constitutional right. The Legislature may decide it has a compelling interest, to protect victims, in justifying this narrowly tailored law.

CON: The bill does not create any new remedy that is not already available under Civil Rule 11. A court currently has authority to dismiss frivolous or malicious lawsuits that have no basis in fact or law. An inmate who attempts to comply with this law may be subject to sanctions for seeking the required authority. An inmate has to file some type of action to obtain the court's authority, but the law prohibits a filing of any action before obtaining a court order. It is not good policy for ex parte determinations by the court. The bill does not prohibit service of the action seeking authority from the court. It is not clear whether an inmate, who is a defendant in a civil lawsuit, may file a counter claim against the victim without violating this law. There is an exception for actions brought under title 26, but not under title 13 and that distinction may be an oversight but it does not make sense.

Persons Testifying: PRO: Representative Sawyer, prime sponsor; Tom McBride, WA Prosecutors Assn.

CON: Gregory Link, WA Assn. of Criminal Defense Lawyers, WA Defender Assn.