

HOUSE BILL REPORT

SSB 6542

As Reported By House Committee On:
Corrections

Title: An act relating to deterring the unwarranted or abusive use of the offender grievance process.

Brief Description: Deterring the unwarranted or abusive use of the offender grievance process.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Schow, Hargrove, Long and Oke).

Brief History:

Committee Activity:

Corrections: 2/16/96, 2/20/96 [DPA].

HOUSE COMMITTEE ON CORRECTIONS

Majority Report: Do pass as amended. Signed by 11 members: Representatives Ballasiotes, Chairman; Blanton, Vice Chairman; Sherstad, Vice Chairman; Quall, Ranking Minority Member; Tokuda, Assistant Ranking Minority Member; Cole; Dickerson; Koster; Radcliff; Schoesler and D. Sommers.

Staff: Diana Canzoneri (786-7156).

Background:

The Department of Corrections (DOC) Offender Grievance Program. DOC's Offender Grievance Program was established as a forum through which inmates can seek administrative remedies and express complaints to the department in a constructive manner. The program is available to all offenders under the department's jurisdiction, including those in prisons and work-release facilities, as well as those under community custody and active community supervision.

The program provides for the conducting of investigations and hearings in facilities and field offices. It provides offenders the opportunity to appeal decisions at several levels, the appropriate division director being responsible for reviewing appeals at the highest level. DOC's program has been certified by the federal government. This allows a federal district court to reject an inmate lawsuit until the offender has

exhausted administrative remedies available through DOC's offender grievance program.

Current Methods Used to Deter Abuse of the Grievance Program. Currently, DOC is using administrative sanctions to discipline offenders who abuse the grievance system and to restrict access to the system by such offenders. Offenders with histories of filing large numbers of grievances are restricted in the number of grievances they can have pending at once. Inmates who file grievances in a malicious manner are subject to loss of earned early release time and other penalties.

Statutes and Standards Concerning Federal Certification of Inmate Grievance Procedures. Federal statutes permit a federal district court to require prisoners to exhaust administrative remedies available through a state prison grievance process before pursuing certain types of litigation, including lawsuits alleging violation of federal constitutional rights. A court can compel a prisoner to complete a state prison grievance process only if the grievance process has been certified by the United States Attorney General or if the process has been certified by the court as meeting certain minimum standards.

Federal certification of inmate grievance programs is designed to reduce the volume of inmate lawsuits, decrease the proportion of frivolous inmate lawsuits, and save state and local jurisdictions costs associated with defending against these lawsuits. Loss of federal certification could increase the number of inmate lawsuits and increase associated costs to the state.

Review Required for Proposed Changes in Inmate Grievance Process. Certification standards require a state or local applicant who is proposing a change in a federally certified offender grievance procedures to submit the proposed change in advance to the United States Attorney General or the federal district courts. The Attorney General or the court is required to review the proposal and to notify the applicant if the proposed change is one that will result in suspension or withdrawal of certification.

Summary of Amended Bill: DOC is directed to apply to the United States Attorney General or the federal district court to make the following changes in the department's inmate grievance procedure. The proposed changes are designed to discourage abuse of the grievance system.

Proposed Changes in DOC's Inmate Grievance Program. Offenders would be assessed a \$5 fee for any grievance that the department determines was not filed in good faith. However, an offender would not be charged for the first grievance that he or she filed in other than good faith.

The fees, if instituted, would supplement rather than replace other disciplinary actions taken by the department in response to abuse of the grievance system. The department would be required to notify inmates of the fee system prior to its implementation.

DOC Required to Apply for Program Changes. The department is required to apply to the federal government for the changes by July 31, 1996. If the federal government determines that these changes would not result in the federal decertification of the grievance process, the department must implement the changes within 120 days. If the federal government responds that any of the changes would result in suspension or withdrawal of federal certification of the grievance process, the department is to explore other alternatives for deterring abuse of the grievance system.

The department is directed to report to the Legislature on the federal government's response to the application and on any program alternatives explored with the federal government.

Amended Bill Compared to Substitute Bill: The amended bill raises the fee for a grievance filed in other than good faith from \$2 to \$5. The amended bill reduces from two to one the number of grievances in other than good faith an offender can file before becoming subject to the fee. The amended bill also makes technical changes regarding references to federal entities and federal legislation.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Some inmates are filing an excessive number of grievances, with some offenders filing as many as 20 grievances in a month. The intent behind the bill is to deter abuse of the inmate grievance process. The bill will not jeopardize federal certification of the Department of Corrections inmate grievance program because the bill merely directs the department to apply to the Attorney General for the changes. The department will be required to implement the changes only if the Attorney General responds that the changes will not result in decertification.

Testimony Against: Although the Department of Corrections supports the intent of the bill, the department is concerned about the potential chilling effect the bill may have on the use of the grievance process. The grievance program decreases security risks by providing inmates an outlet to air their complaints in a nonviolent manner. It is a management tool as well as a cost-effective means for dealing with the

considerable number of legitimate inmate complaints. Information gleaned from the program allows the department to anticipate problems and prevent their escalation. Records connected with grievances have also provided documentation that has facilitated the state Attorney General's defense of the department against inmate lawsuits.

Testified: Senator Schow (prime sponsor); and Victoria Roberts, Department of Corrections (neutral, with concerns).