

# SENATE BILL REPORT

## SB 5024

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As Reported by Senate Committee On:  
Human Services & Corrections, February 17, 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:** Senators Hargrove, Sheldon, Becker, Litzow, Haugen, Carrell, King, Honeyford, Shin, Kilmer, Regala, Pflug, Parlette, Rockefeller and McAuliffe; by request of Attorney General.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 1/13/11, 2/17/11 [DPS].

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 5024 be substituted therefor, and the substitute bill do pass.

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

**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 (Recommended Substitute):** 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

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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 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.

**EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute):** One of the frivolous or malicious lawsuits must be filed after the effective date of the act for the restrictions to apply. Clarifies that an action or appeal filed that would affect the duration of the inmate's confinement is not subject to the restrictions in the act. Clarifies that if the inmate has filed three previous frivolous or malicious lawsuits that the court will not waive the filing fees requirement. The provision allowing the court to deny a waiver of the payment of filing fees for failure to state a claim upon which relief may be granted is removed.

**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 Original Bill:** PRO: This bill is the state version of the federal Prison Litigation Reform Act (PLRA). Washington inmates who are barred from filing cases under the PLRA in federal court file them in state court instead. Federal constitutional claims litigation in state court has tripled in the last ten years. There are currently 50 active lawsuits by inmates. There are two offenders who have brought more than 40 lawsuits since 2009. Even though most of these cases are eventually dismissed, it is not until after the Attorney General's Office (AGO) has devoted a lot of time to defending against the lawsuits. It is not good public policy to put scarce state resources into defending frivolous lawsuits. This bill would significantly reduce the litigation filed by some prisoners. It is good to limit offenders ability to harass the Department of Corrections (DOC) employees by filing lawsuits. There are sufficient resources to assist inmates with legitimate legal claims. Courts are usually very generous in affording an opportunity for offenders to conduct extensive discovery and discovery is extremely time consuming to DOC employees and takes them away from their other jobs. This bill would limit the abuse of DOC employees.

CON: The bill does not distinguish between criminal and civil actions – if this distinction is not added, the bill as written is unconstitutional. The bill does not do much – any inmate who can pay the \$250 filing fee can sue. The courts currently have many tools to deal with

vexatious lawsuits. Since inmates in civil matters are not appointed attorneys at public expense, the true cost to DOC and the AGO is because the courts allow these cases to continue. Lawsuits are important to hold the criminal justice system accountable for respecting prisoner's rights. What constitutes a frivolous lawsuit should be better defined in the bill.

**Persons Testifying:** PRO: Tim Lang, AGO; Scott Blonien, Department of Corrections.

CON: Suzanne Lee Elliott, Washington Association of Criminal Defense Lawyers, Washington Defender's Association; Shankar Narayan, ACLU-WA.