

SENATE BILL REPORT

SSB 6542

As Passed Senate, February 8, 1996

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: Human Services & Corrections: 1/25/96, 2/1/96 [DPS].
Passed Senate, 2/8/96, 49-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6542 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Franklin, Vice Chair; Kohl, Long, Moyer, Prentice, Schow, Smith, Strannigan and Zarelli.

Staff: Andrea McNamara (786-7483)

Background: The Department of Corrections Offender Grievance Program was established in 1980 as a forum through which offenders can seek administrative remedies to their complaints against the department. It is available to offenders in department facilities and offenders under supervision by the department in the community.

The program allows for investigations and hearings to be conducted in an offender's facility or field office, and affords them the opportunity to appeal unfavorable decisions to their superintendent or area manager and, ultimately, to the appropriate division directors at department headquarters. The program has been certified by the federal government, which allows the federal court to reject certain inmate lawsuits until the offender can show he or she has completed the administrative grievance process.

Offenders who abuse the grievance program are currently subject to administrative sanctions by the department, including restricted access to the grievance program and/or loss of earned early release time, depending on the nature of their misconduct.

Summary of Bill: The Department of Corrections (DOC) is required to apply to the United States Attorney General for changes to the department's inmate grievance procedure certified by the federal government.

The changes DOC must seek include the following: (1) A \$2 fee assessment for any grievance filed by an offender determined by the department to not have been filed in good

faith; (2) fee assessments are to be in addition to any other disciplinary action taken by the department in response to unwarranted or abusive use of the grievance system; (3) fees may be collected from institutional accounts or debts assessed against indigents.

If the changes are determined by the federal government to comply with the certification requirements, they are to be implemented and notice given to all current and incoming offenders. If not, DOC is to explore with the federal government possible alternatives to accomplish the intent of the act.

DOC must report to the Legislature on its application to and response from the federal government.

Appropriation: None.

Fiscal Note: Requested on January 19, 1996.

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

Testimony For: (original bill) This bill would help deter the frivolous use of the grievance process, which uses up staff time unnecessarily. Many offenders file an unacceptable number of grievances and should be held accountable in the same manner as citizens outside of prisons, by paying for the services they utilize.

Testimony Against: (original bill) Changes to the certified grievance process that are perceived as retaliatory against an offender's right to access the legal system may jeopardize the certification. Certification of the grievance process prevents many lawsuits, which are much more costly to the department, because the federal courts may require offenders to complete the grievance process before filing suit.

Testified: Victoria Roberts, Department of Corrections (con); Mary Fairhurst, Attorney General's office (con); Terry Kohl, WA Defenders Assn./WA Assn. of Criminal Defense Attorneys.

House Amendment(s): A technical amendment replaces an incorrect reference to "the attorney general's designee" with "the appropriate federal district court."

The department is required to seek federal approval to assess a \$5 fee (instead of a \$2 fee provided in the Senate version) and to assess the fee after the first grievance filed not in good faith (rather than after the second as provided in the Senate version).