

VETO MESSAGE ON SB 6542-S

March 30, 1996

To the Honorable President and Members,
The Senate of the State of Washington
Ladies and Gentlemen:

I am returning herewith, without my approval, Substitute Senate Bill No. 6542 entitled:

"AN ACT Relating to deterring the unwarranted or abusive use of the offender grievance process;"

Substitute Senate Bill No. 6542 directs the Department of Corrections (DOC) to apply to the United States Attorney General to make certain changes to the department's federally-certified Offender Grievance Program. The mandated changes include: (1) a \$2.00 fee would be assessed for the third and any subsequent grievance that DOC determines was not filed in good faith; (2) fee assessments would be in addition to, rather than in lieu of, any other disciplinary actions taken by DOC in response to abuse of the grievance system; and (3) fees could be collected from offenders' institutional accounts or debts assessed against indigent offenders. DOC is further required to review the Offender Grievance Program Policy with the Department of Justice and to explore options for addressing abuse without compromising certification and the integrity of the grievance process.

The Offender Grievance Program represents to DOC a cost-effective way for offenders to constructively voice their complaints and grievances. This program supports resolution of potential problems prior to them becoming major issues and avoids costly lawsuits being filed. Of the more than 17,500 offenders who had access to the Offender Grievance Program and who were incarcerated by the Department of Corrections in 1995, fewer than 5,000 filed 13,700 formal grievances. Forty-six percent of those were resolved in the offender's favor. Only 20 infractions were issued for abuse of the program during 1995.

Offenders who file malicious or threatening grievances are infracted and subject to disciplinary action. Depending on the circumstances, discipline can include a reprimand, warning, segregation, or the loss of earned early release time or general privileges. Offenders who file more than five grievances within one work week can be restricted to having only a limited number of complaints, formal grievances, or appeals in the system for 90 days from the finding of the abuse. The superintendents of prisons have the authority, and do exercise the right, to hold offenders accountable for these actions.

Further, the Offender Grievance Program reduces costly arbitration by providing administrative remedies to complaints that may otherwise be dealt with by the courts. Indeed, by virtue of program certification the courts can, and do, remand lawsuits back to the offender for exhaustion of DOC's grievance process. The Offender Grievance Program also serves as an early warning function alerting DOC to developing trends and to potential problems among the offender population or with staff.

The imposition of this fee requirement, on top of other penalties already in place, promises to discourage the use of the offender grievance system, thus, interfering with the ability of

DOC to successfully monitor the environment of the offenders. Also, this action may result in more litigation. Today an offender can file a lawsuit in federal court without having to pay a fee. The imposition of this new assessment could result in a greater number of federal lawsuits challenging the constitutionality of such a fee.

Finally, I share the concern that this bill presents the potential for a chilling effect on offenders taking their grievances forward in an orderly and responsible way.

For these reasons, I have vetoed Substitute Senate Bill No. 6542 in its entirety.

Respectfully submitted,
Mike Lowry
Governor