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## Judiciary Committee

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### HB 1037

**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:** Representatives Ross, Johnson, Bailey, Upthegrove, Hurst, Armstrong, Walsh, Hinkle, Angel, Warnick, Schmick, Short, Klippert, Dammeier, McCune, Fagan, Nealey, Blake, Ladenburg, Kristiansen, Pearson, Tharinger and Moeller; by request of Attorney General.

#### Brief Summary of Bill

- Places limitations on a correctional inmate's ability to bring a court action at public expense if the inmate has had three previous actions dismissed on the grounds that the action was frivolous, malicious, or failed to state a claim upon which relief can be granted.

**Hearing Date:** 1/17/11

**Staff:** Edie Adams (786-7180).

#### Background:

In 1996 as one part of the federal Prison Litigation Reform Act (PLRA), Congress enacted limitations on the ability of a prisoner who has brought a number of prior court actions that were found to be frivolous or without basis to bring subsequent actions in forma pauperis. In forma pauperis, a latin phrase meaning "in the form of a pauper," is a designation allowing a person who is indigent to maintain a court action without having to pay fees for filing the action.

Under the PLRA, a prisoner who has had three or more cases dismissed as frivolous, malicious, or failing to state a claim for relief, may not proceed in forma pauperis in a civil action or appeal

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unless the prisoner is under imminent danger of serious physical injury. This provision of the PLRA is often referred to as the "three strikes" provision. "Prisoner" is defined as a person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms of parole, probation, pretrial release, or a diversionary program.

There have been a number of constitutional challenges to the three strikes provision of the PLRA on the grounds the provision denies to a prisoner the recognized constitutional right of access to the courts. Federal appellate courts have upheld the three strikes provision, finding that although there is a recognized right of prisoners to have meaningful access to the courts, a requirement to pay a filing fee does not deny this right. The decisions have been based in part on findings that, in the civil context, the U.S. Constitution only requires waiver of filing fees in a narrow category of cases where the litigant has a fundamental interest at stake. Federal courts have determined that the PLRA three strikes provision does not preclude prisoner access to the courts, it only denies them the ability to do so at public expense, and that this limitation is rationally related to the legitimate governmental interest of deterring frivolous and malicious prisoner lawsuits.

Washington courts have also recognized a state constitutional right of access to the courts arising under Article I, section 10, which provides that "[j]ustice in all cases shall be administered openly, and without unnecessary delay." An individual does not have an absolute and unlimited constitutional right of access to the court system, but rather a reasonable right of access, or a meaningful opportunity to be heard. In the context of persons who bring frivolous or abusive litigation, courts have the authority to enjoin a party from engaging in litigation upon a "specific and detailed showing of a pattern of abusive and frivolous litigation." However, when issuing an injunction, a court must limit the impact of the injunction as narrowly as needed to remedy proven abuses.

With respect to allowing indigent persons to proceed in forma pauperis, the Washington Supreme Court has held that Washington courts have inherent authority to waive the payment of court fees. This authority is part of the court's responsibility for the proper and impartial administration of justice and the duty to see that justice is done in the cases that come before the court.

### **Summary of Bill:**

Limitations are established on the ability of a person serving a criminal sentence in a state, local, or private correctional facility (correctional inmate) to proceed in any state court proceeding at public expense.

A court must deny a request from a correctional inmate to proceed in any state court proceeding at public expense if the court finds that the correctional inmate, while incarcerated, imprisoned, or confined, has had three or more prior appeals, actions, or special proceedings dismissed by a federal or state court on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief may be granted. If the court denies the request on these grounds, the court must dismiss any action, appeal, or special proceeding commenced by the correctional inmate.

A court may permit a correctional inmate to commence an action or special proceeding despite these requirements if the court finds the correctional inmate is in imminent danger of serious physical injury.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on January 14, 2011.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.