

**Peterson, Susan**

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**From:** McDougall, Regina  
**Sent:** Tuesday, March 08, 2011 4:33 PM  
**To:** Peterson, Susan  
**Subject:** FW: [SCJALEGISLATIVE] AG legislation on inmate claims

Another one for Friday...the bill is already on the agenda for Friday, but we need the comments below from J Warning. Thanks!

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**From:** SCJA Legislative Committee [<mailto:SCJALEGISLATIVE@LISTSERV.COURTS.WA.GOV>] **On Behalf Of** Warning, Steve  
**Sent:** Tuesday, March 08, 2011 7:28 AM  
**To:** [SCJALEGISLATIVE@LISTSERV.COURTS.WA.GOV](mailto:SCJALEGISLATIVE@LISTSERV.COURTS.WA.GOV)  
**Subject:** [SCJALEGISLATIVE] AG legislation on inmate claims

The response from Brian Moran is below.

Please note that, while they don't seem to have any problem with what we are requesting, the AG is leaving it to us to be the laboring oar.

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**From:** Moran, Brian (ATG) [<mailto:BrianM1@ATG.WA.GOV>]  
**Sent:** Monday, March 07, 2011 4:13 PM  
**To:** Warning, Steve  
**Subject:**

Dear Judge Warning,

Thank you for sharing the SCJA's concern over the wording of our inmate "three strikes" bill. As I mentioned when we spoke earlier today, while we do not believe the existing language imposes any duty on the court to conduct an investigation into an inmate's prior litigation history, we understand that you want it to be clear that the court will act upon information provided to it rather than information it must find.

I have shared your proposed amendatory language with attorneys from our Corrections Division and they suggest adding a few words to your suggested change (see below). This language will clarify that the court need not wait for a motion when it is otherwise aware that an inmate litigant has three previous strikes. For example, if a three strike inmate files repeated requests for fee waivers, there will be prior orders denying IFP status and the court could deny the fee waiver request based on its previous orders and knowledge of the litigant (we think that over time, it is very likely that the court will know who they are since there will be a very small universe of three strike litigants). Without the "or other notification" language inserted, the proposed law arguably would require the court to grant the fee waiver for a known three-strike litigant only to have the waiver revoked when the defendant appears and brings the appropriate motion. Of course a court could do that, but the court should also have the option to preempt needless hearings and wasting limited court resources.

We think the language underlined and highlighted below, while not necessary, provides the clarity you are seeking and the flexibility for the court to deny IFP status in situations where information has been provided to the court. If the SCJA chooses to pursue amending the bill, this is the language that we would suggest.

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AN ACT Relating to restrictions on legal claims initiated by  
2 persons serving criminal sentences in correctional facilities; and  
3 adding a new section to chapter 4.24 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 4.24 RCW

6 to read as follows:

7 If a person serving a criminal sentence in a federal, state, local,  
8 or privately operated correctional facility seeks leave to proceed in  
9 state court without payment of filing fees in any civil action or  
10 appeal against the state, a state or local governmental agency or  
11 entity, or a state or local official, employee, or volunteer acting in  
12 such capacity, except an action that, if successful, would affect the  
13 duration of the person's confinement, upon motion or other notification,  
the court shall deny the request

14 for waiver of the court filing fees if the person has, on three or more  
15 occasions while incarcerated or detained in any such facility, brought  
16 an action or appeal that was dismissed by a state or federal court on  
17 grounds that it was frivolous or malicious. One of the three previous  
18 dismissals must have involved an action or appeal commenced after the  
19 effective date of this section. A court may permit the person to  
commence

the action or appeal without payment of filing fees if the  
20 court determines the person is in imminent danger of serious physical....

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Best regards,

BTM

Brian T. Moran

Chief Deputy Attorney General

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