



## GOVERNMENT ACCOUNTABILITY: CORRECTIONS SAVINGS

### LEGISLATION:

#### ELIMINATE PUBLIC RECORDS ACT PENALTY AWARDS FOR INMATES

Our proposal removes the financial incentive that drives inmates to abuse the PRA but preserves their ability to access public records and obtain counsel for meritorious requests and claims. An inmate who prevails in an action under the PRA would be entitled to the records at issue, and to recover attorney's fees and costs. But the court would not be authorized to award "per diem" penalties. In this way, the proposal removes a powerful incentive for costly abuses of the system – penalty awards – while continuing to provide inmate access to public records.

#### THREE STRIKES FOR FRIVOLOUS INMATE LITIGATION

We propose to restrict inmates from filing suit in state court at public expense if they previously brought three or more cases determined by a court to be frivolous or malicious or to have failed to state a claim for relief. This "three strike" provision would not prevent inmates from bringing claims at their own expense, or proceeding at public expense if they are at imminent risk of serious physical harm.

### THE PROBLEM:

Washington State faces crushing budget shortfalls. When it comes to public safety – one of the primary duties of the state – we must identify budget savings while not creating additional risk.

### BACKGROUND:

Roughly two-thirds of all PRA litigation against the state involves inmates (65 of 105 open cases). The financial burden of defending these lawsuits is significant and falls on taxpayers. The Public Records Act (PRA) requires the award of penalties of \$5-\$100 per day to requestors who prevail in actions to seeking access to public records. The prospect of these awards is a strong incentive for incarcerated criminals to submit strategic requests intended to force a mistake. Then inmates claim denial of records and sue for penalties.

- The AGO Corrections Division has seen a substantial increase in the volume of inmate PRA litigation over the last several years, previously averaging 10-15 new cases per year and now handling 40 to 50.
- One inmate alone has 11 PRA lawsuits currently pending against the state (nine in superior court and two on appeal), and has submitted 161 records requests to the Department of Corrections since April 2008.
- Another inmate also has brought 11 PRA lawsuits against the state, and has submitted 124 records requests to DOC, requiring more than 1,400 staff hours to respond. That's 35 40-hour work weeks for one employee.
- This misuse of the PRA by incarcerated felons diverts taxpayer resources away from more important functions of state government
  - The AGO spent more than 2,000 attorney/paralegal hours during FY 2010 defending inmate PRA litigation That's 50 40-hour work weeks for one employee and roughly \$237,000.
  - Since 2008, DOC has paid out \$392,718 in judgments and settlements of inmate PRA litigation.
- Inmate public records litigation also drives costs to the court system associated with resolving these claims, and to agencies in staff resources spent responding to records requests submitted for illegitimate purposes.
- Approximately 70 percent of all PRA requests DOC receives are from offenders – 7,023 offender requests in 2009.

Washington law also allows litigants to proceed at public expense when payment of court fees would be a financial hardship. In fact, most inmates who file lawsuits against the state do so at public expense. This includes those who have "struck out" under the Federal Prison Litigation Reform Act (PLRA) for filing three or more frivolous or malicious actions in federal court. Under the PLRA, when an inmate has three strikes, he cannot file another lawsuit in federal court at public expense unless he is in imminent danger of serious physical harm. But because Washington does not have a state version of the PLRA, inmates barred from filing in federal court for repeatedly filing frivolous claims are free to continue their abusive litigation in state courts, at public expense.

The Attorney General's Office is currently defending against 48 active cases brought by offenders who have "struck out" under the three-strike provision of the federal Prison Litigation Reform Act (PLRA). Of those, 30 active cases originate from two offenders. Since Jan. 1, 2009, these two offenders have brought 44 legal actions where they seek and are almost always granted a filing fee waiver.