



## 1997 ASSEMBLY BILL 688

December 30, 1997 - Introduced by Representatives GOETSCH, GREEN, PORTER, DOBYNS, KAUFERT, F. LASEE, ZIEGELBAUER, HARSDF, OWENS, STASKUNAS, BRANDEMUEHL, OTTE, AINSWORTH, SYKORA, OLSEN, OTT, KEDZIE, NASS, GUNDERSON, WALKER, SKINDRUD, JESKEWITZ, MUSSER, ROBSON, HASENOHRL, BAUMGART, HAHN, GRONEMUS, LADWIG, ALBERS, GROTHMAN, SERATTI, POWERS and PLOUFF, cosponsored by Senators MOEN, DRZEWIECKI, HUELSMAN and ROESSLER, by request of Attorney General James Doyle. Referred to Committee on Criminal Justice and Corrections.

1     **AN ACT to repeal** 808.04 (5); **to renumber and amend** 801.02 (7) and 807.04;  
2     **to amend** 19.35 (3) (f), 301.048 (3) (d), 302.11 (1), 302.11 (2) (c), 302.11 (7) (b),  
3     302.43, 303.07 (3), 304.06 (1) (b), 801.09 (2) (a), 802.06 (1), 802.06 (2) (a) (intro.),  
4     804.01 (1), 804.05 (1), 804.06 (1) (a), 804.08 (1) (a), 804.09 (2), 804.11 (1) (a),  
5     814.24, 814.245 (3), 814.29 (1) (a), 814.29 (3) (b), 893.16 (1) and 893.82 (3); and  
6     **to create** 19.35 (3) (g), 301.328, 302.11 (1q), 801.02 (7) (a), (b), (d) and (e), 802.05  
7     (3), 802.06 (1m), 804.015, 806.025, 807.04 (2), 807.15, 809.103, 813.02 (1) (c),  
8     813.40, 814.25, 814.29 (1m), 893.735, 893.82 (3m), 895.45 and 895.76 of the  
9     statutes; **relating to:** litigation by persons incarcerated, imprisoned, confined  
10    or detained in a jail or prison, immunity from civil liability, the time period for  
11    the state to respond to an action and limiting access to public records.

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### *Analysis by the Legislative Reference Bureau*

This bill makes changes in current law relating to litigation brought by prisoners (persons incarcerated, imprisoned, confined or detained in a jail or prison). Among the changes made by the bill are the following:

**ASSEMBLY BILL 688*****Limitations on commencing lawsuits***

Currently, certain persons with a “disability” who are entitled to bring a lawsuit may have the time period extended for commencing the lawsuit until a certain length of time after the person’s disability ceases if the person had the disability at the time the action accrued. The disability applies to persons under the age of 18 years, the insane and prisoners, and allows persons to commence an action within 2 years after they become 18 years of age and within 5 years after they are no longer insane or are no longer in prison. This bill removes being a prisoner as a disability for purposes of delaying the commencement of a lawsuit.

The bill requires a prisoner to commence an action related to prison or jail conditions for which there are administrative remedies available, including a petition for a writ of certiorari, within 30 days after the cause of action accrues or the action is barred.

***Limits on remedies***

The bill provides that a petition for a writ of certiorari is a prisoner’s only method of challenging certain official actions. A petition for a writ of certiorari involves asking a court to review an action taken by an administrative agency or a lower court based on the information used by the agency or lower court and without presenting any additional information to the reviewing court. Under the bill, the decisions that must be challenged using a petition for a writ of certiorari are related to the following: 1) prison discipline; 2) revocation of probation; 3) denial or revocation of parole; and 4) the disposition of a complaint regarding prison or jail conditions.

In addition, under the bill, a prisoner may not recover damages for mental or emotional injury unless the prisoner shows that he or she suffered a physical injury as a result of the same incident that caused the mental or emotional injury.

***Exhaustion of administrative remedies***

Currently, a prisoner is prohibited from commencing a civil action against department of corrections (DOC) personnel until the prisoner has exhausted all administrative remedies promulgated by DOC by rule. This bill expands that prohibition to apply to all civil actions by prisoners related to prison or jail conditions against any person for which there are administrative remedies available.

***Pleading requirements***

The bill requires a prisoner, at the time of filing any action related to prison or jail conditions, to provide all of the following: 1) documentation showing that he or she has exhausted all administrative remedies; 2) copies of all of the written materials that he or she provided to the administrative agency; and 3) copies of all written materials the administrative agency provided to him or her as part of the administrative proceeding.

***Limit on filing of actions by certain persons***

Except when the prisoner is in danger of serious injury, the bill requires a court that receives papers from a prisoner commencing a civil action to dismiss the action if the prisoner has had a court proceeding dismissed on 3 or more prior occasions because the proceeding was frivolous, was used for an improper purpose, such as to

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harass, sought monetary damages from a person immune from such damages, or failed to state a claim upon which relief could be granted.

***Waiver of answer***

Currently, if a person, including a prisoner, commences an action, the defendant in the action has 20 days after service of the complaint to serve an answer in response to the complaint. In certain cases the state has 45 days to answer a complaint. This bill gives a defendant in an action commenced by a prisoner the right to waive any response to the complaint. Under the bill, the failure to respond to an action related to prison or jail conditions is an affirmative defense against all of the allegations made in the complaint. The court is required by the bill to review the pleadings and, if the court determines the plaintiff may prevail on the merits, order the defendant to respond to the pleadings.

***Costs and fees in prisoner actions***

The bill provides that, if a prisoner brings an action related to prison or jail conditions, no costs may be awarded against an employe of the state or a public agency who is acting in his or her official capacity or against the state or a public agency. If the state or public agency prevails in an action brought by a prisoner related to prison or jail conditions, the bill provides that the prisoner must pay the court costs and filing fees. If a prisoner bringing an action requests permission to bring the action without the payment of fees, the bill requires the prisoner to do all of the following:

1. Submit an affidavit that shows that he or she is unable to pay the fees.
2. Submit an affidavit stating that he or she has paid all previously assessed court costs and fees.
3. Provide a certified copy of his or her prison trust fund account statement.

If the court determines that the prisoner has some money in a trust fund account, the court must order the prisoner to pay part of the court fees immediately, based on the amount available in the prisoner trust fund account, and pay the rest over time from the prisoner trust fund account. The bill allows the court to waive the payment of fees and the submission of the required documents if the prisoner is in danger of serious physical harm.

***Payment of judgments***

Under the bill, if a court enters a judgment for a monetary award to a prisoner, the court shall order that the award be paid in the following order:

1. To satisfy any unpaid court order of restitution.
2. To pay any civil judgment in favor of a crime victim.
3. To reimburse the department of justice for any awards made to crime victims.
4. To pay any unpaid court costs or filing fees.
5. To reimburse DOC for any loans made to the prisoner to enable him or her to engage in litigation.
6. To victims of the prisoner's crimes who are notified of the award and petition the court for payments.
7. To the prisoner.

**ASSEMBLY BILL 688*****Change in mandatory release date; loss of good time***

Under current law, with certain exceptions, a person sentenced to prison is entitled to mandatory release on parole after he or she has served two-thirds of his or her prison sentence. A prison inmate's mandatory release date is subject to extension if he or she violates any regulation of the prison or refuses or neglects to perform a required or assigned duty.

In addition, under current law, a person sentenced to jail is eligible to earn "good time" in the amount of one-fourth of his or her term if he or she maintains good behavior. A jail inmate may lose good time if he or she violates any regulation of the jail or refuses or neglects to perform a required duty.

This bill allows a court to order that a prison inmate's mandatory release date be extended or that a jail inmate be deprived of good time if the court finds that the inmate commenced an action or special proceeding for a malicious purpose or solely to harass the other party or that the inmate testified falsely or provided false evidence or information to the court. The court must specify the number of days by which a inmate's mandatory release date is extended or the number of days of good time a jail inmate is to lose.

***Discovery***

Currently, parties to an action may obtain discovery by various methods, including depositions, interrogatories, production of documents and physical examinations. The frequency and use of these methods is not limited unless the court orders otherwise. Under this bill, in an action commenced by a prisoner, the prisoner may not obtain discovery before the court receives a copy of the defendant's responsive pleading, unless the court orders a party to submit to discovery. If the defendant waives his or her answer, or moves to dismiss the action, the prisoner may not obtain discovery until the court determines if the action may continue. Under the bill, any discovery by a prisoner is limited to what is essential to his or her case, and must result in minimal intrusion in the activities of the person subject to discovery. The bill limits the number of requests a prisoner may make for interrogatories, production of documents or admissions to 15, unless good cause is shown for additional requests.

***Injunctive relief***

Currently, as part of an action, a party may seek and receive a temporary injunction to prevent another person from committing some act after giving the other party a chance to comment regarding the injunction. This bill requires a court, before issuing an injunction in an action regarding prison or jail conditions, to give the attorney representing the prison or jail the opportunity for a hearing. Under the bill, any temporary injunction issued regarding prison or jail conditions expires 90 days after it is issued unless the court orders that the injunction be extended. The bill requires that the temporary injunction require only what is necessary to correct the harm, is the least intrusive means necessary to correct the harm and does not require a governmental official or agent to exceed his or her authority or violate state law or a local ordinance except under limited circumstances.

**ASSEMBLY BILL 688*****Appeals***

The bill allows the appellate court to dismiss an appeal without requiring the reply by the respondent if the appeal is frivolous, used for an improper purpose, seeks monetary damages from a person immune from such damages or if there is no ground upon which relief may be granted.

***Public records***

Under current law, a person has the right to inspect and receive a copy of a public record. The custodian of the record may impose a fee for a copy of the record and may require prepayment if the fee imposed is over \$5. This bill allows the custodian of the record to require prepayment of the fee if the copy of the record is requested by a person confined in a local, state or federal prison and that person has failed to pay any fee for a previously requested record. The bill also allows the custodian of the record to deny a request for a record made by a person confined in a local, state or federal prison if the person has not paid any fee imposed for a previously requested record.

***Attorney general opinions***

The bill provides immunity from civil liability for any public official, employee or agent for his or her acts or omissions committed in reliance upon a written opinion of the attorney general.

***Litigation loans to prisoners***

Under current law, DOC may make loans to a prisoner without sufficient funds in his or her general account to pay for paper, photocopying and postage for correspondence with courts, attorneys, parties in litigation, the inmate complaint review system or the parole board. Generally, no inmate may receive more than \$200 in such loans annually, except that any amount of the debt the inmate repays during the year may be advanced to the inmate again and the \$200 loan limit may be exceeded in cases of extraordinary need.

This bill provides that if a prisoner fails to repay a loan made by DOC to pay expenses associated with litigation commenced by the prisoner, the warden of the institution where the prisoner is located may submit, to the circuit court for the county in which the institution is located, a certification of the amount of the loans that are unpaid. The certified amount of the unpaid loans then becomes a judgment against the prisoner unless the prisoner submits a written objection within 20 days after the court receives the warden's certification. If the prisoner submits a written objection, the court must treat the objection as the commencement of a civil action by the prisoner, and the prisoner bears the burden of proving that the certified amount of the unpaid loans is incorrect.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**ASSEMBLY BILL 688****SECTION 1**

1           **SECTION 1.** 19.35 (3) (f) of the statutes is amended to read:

2           19.35 **(3)** (f) An authority may require prepayment by a requester of any fee or  
3 fees imposed under this subsection if the total amount exceeds \$5 or if the requester  
4 is a prisoner, as defined in s. 301.01 (2), or is a person confined in a federal  
5 correctional institution located in this state, and he or she has failed to pay any fee  
6 that was imposed by the authority for a request made previously by that requester.

7           **SECTION 2.** 19.35 (3) (g) of the statutes is created to read:

8           19.35 **(3)** (g) If a prisoner, as defined in s. 301.01 (2), or a person confined in a  
9 federal correctional institution located in this state has failed to pay any fee imposed  
10 by the authority for a previous request, the authority may deny a request by the  
11 prisoner or person.

12           **SECTION 3.** 301.048 (3) (d) of the statutes is amended to read:

13           301.048 **(3)** (d) A person may seek review of a final decision of the department  
14 of corrections, or of the division of hearings and appeals in the department of  
15 administration acting under s. 304.06 (3), relating to denials of eligibility for or  
16 placement in sanctions, or relating to discipline or revocation under or termination  
17 from the intensive sanctions program only by the common law writ of certiorari.

18           **SECTION 4.** 301.328 of the statutes is created to read:

19           **301.328 Judgment for litigation loans to prisoners.** **(1)** In this section,  
20 “litigation loan” means a loan made to a prisoner by the department to pay for paper,  
21 photocopying, postage or other expenses associated with litigation commenced by  
22 the prisoner.

23           **(2)** If a prisoner fails to repay a litigation loan to the department, the warden  
24 of the institution where the prisoner is incarcerated, imprisoned, confined or  
25 detained may submit a certification under oath to the clerk of circuit court in the

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1 county where the institution is located. The certification shall state the amount of  
2 litigation loans unpaid, the name and location of the prisoner and such other  
3 information as the court considers necessary. The court shall order that the amount  
4 certified by the warden be a judgment on behalf of the state and against the prisoner  
5 if the prisoner fails to submit a written objection to the court within 20 days after the  
6 court receives the certification from the warden. If the prisoner timely submits a  
7 written objection to the certification, the court shall consider the objection to be a  
8 complaint in a civil action and proceed under the rules of procedure under ch. 799,  
9 without requiring the service of a summons or the payment of filing fees.

10 (3) At the same time that the warden submits the certification to the court, the  
11 warden shall provide the prisoner with a copy of the certification. The warden shall  
12 attach to the certification provided to the prisoner a notice informing the prisoner of  
13 all of the following:

14 (a) That if the prisoner fails to submit a written objection to the court within  
15 20 days after the court receives the certification from the warden, the court shall  
16 order that the amount certified by the warden be a judgment on behalf of the state  
17 and against the prisoner.

18 (b) The name and address of the circuit court where the certification was  
19 submitted.

20 (c) That if the prisoner timely objects to the certification, the objection will be  
21 considered a complaint for purposes of the commencement of a civil suit under ch.  
22 799.

23 (d) That the prisoner is required to submit a copy of the objection to the warden  
24 at the time he or she submits the objection to the clerk of circuit court.

25 **SECTION 5.** 302.11 (1) of the statutes is amended to read:

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1           302.11 (1) The warden or superintendent shall keep a record of the conduct of  
2 each inmate, specifying each infraction of the rules. Except as provided in subs. (1g),  
3 (1m), (1q), (7) and (10), each inmate is entitled to mandatory release on parole by the  
4 department. The mandatory release date is established at two-thirds of the  
5 sentence. Any calculations under this subsection or sub. (1q) (b) or (2) (b) resulting  
6 in fractions of a day shall be rounded in the inmate's favor to a whole day.

7           **SECTION 6.** 302.11 (1q) of the statutes is created to read:

8           302.11 (1q) (a) An inmate who files an action or special proceeding, including  
9 a petition for a common law writ of certiorari, to which s. 807.15 applies shall have  
10 his or her mandatory release date extended by the number of days specified in the  
11 court order prepared under s. 807.15 (3).

12           (b) Upon receiving a court order issued under s. 807.15, the department shall  
13 recalculate the mandatory release date of the inmate to whom the order applies and  
14 shall inform the inmate of his or her new mandatory release date.

15           **SECTION 7.** 302.11 (2) (c) of the statutes is amended to read:

16           302.11 (2) (c) No extension under this ~~section~~ subsection may require the  
17 inmate to serve more days in prison than provided for under the sentence.

18           **SECTION 8.** 302.11 (7) (b) of the statutes is amended to read:

19           302.11 (7) (b) A parolee returned to prison for violation of the conditions of  
20 parole shall be incarcerated for the entire period of time determined by the  
21 department of corrections in the case of a waiver or the division of hearings and  
22 appeals in the department of administration in the case of a hearing under par. (a),  
23 unless paroled earlier under par. (c). The parolee is not subject to mandatory release  
24 under sub. (1) or presumptive mandatory release under sub. (1g). The period of time

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1 determined under par. (a) may be extended in accordance with ~~sub.~~ subs. (1q) and  
2 (2).

3 **SECTION 9.** 302.43 of the statutes is amended to read:

4 **302.43 Good time.** Every inmate of a county jail is eligible to earn good time  
5 in the amount of one-fourth of his or her term for good behavior if sentenced to at  
6 least 4 days, but fractions of a day shall be ignored. An inmate shall be given credit  
7 for time served prior to sentencing under s. 973.155, including good time under s.  
8 973.155 (4). An inmate who violates any law or any regulation of the jail, or neglects  
9 or refuses to perform any duty lawfully required of him or her, may be deprived by  
10 the sheriff of good time under this section, except that the sheriff shall not deprive  
11 the inmate of more than 2 days good time for any one offense without the approval  
12 of the court. An inmate who files an action or special proceeding, including a petition  
13 for a common law writ of certiorari, to which s. 807.15 applies shall be deprived of  
14 the number of days of good time specified in the court order prepared under s. 807.15  
15 (3).

16 **SECTION 10.** 303.07 (3) of the statutes is amended to read:

17 303.07 (3) Each prisoner serving a sentence under this section who could have  
18 been sentenced to a state prison is subject to s. 302.11 (1), (1g), (1q) and (2). Each  
19 prisoner serving such a sentence may be transferred to a state prison upon  
20 recommendation of the superintendent and approval of the department. The county  
21 board may, pursuant to its regulations approved by the department, extend to all  
22 other prisoners similar pecuniary earnings and rewards, subject to similar  
23 conditions and limitations as those prescribed by s. 302.12 for prisoners in the  
24 Wisconsin state prisons.

25 **SECTION 11.** 304.06 (1) (b) of the statutes is amended to read:

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1           304.06 (1) (b) Except as provided in sub. (1m) or s. 302.045 (3), 961.49 (2) or  
2           973.0135, the parole commission may parole an inmate of the Wisconsin state  
3           prisons or any felon or any person serving at least one year or more in a county house  
4           of correction or a county reforestation camp organized under s. 303.07, when he or  
5           she has served 25% of the sentence imposed for the offense, or 6 months, whichever  
6           is greater. Except as provided in s. 939.62 (2m) or 973.014, the parole commission  
7           may parole an inmate serving a life term when he or she has served 20 years, as  
8           modified by the formula under s. 302.11 (1) and subject to extension ~~using the~~  
9           ~~formulas~~ under s. 302.11 ~~(2)~~ (1q) and (2), if applicable. The person serving the life  
10          term shall be given credit for time served prior to sentencing under s. 973.155,  
11          including good time under s. 973.155 (4). The secretary may grant special action  
12          parole releases under s. 304.02. The department or the parole commission shall not  
13          provide any convicted offender or other person sentenced to the department's custody  
14          any parole eligibility or evaluation until the person has been confined at least 60 days  
15          following sentencing.

16          **SECTION 12.** 801.02 (7) of the statutes is renumbered 801.02 (7) (c) and  
17          amended to read:

18          801.02 (7) (c) No prisoner, ~~as defined in s. 301.01 (2),~~ may commence a civil  
19          action or special proceeding ~~against an officer, employe or agent of the department~~  
20          ~~of corrections in his or her official capacity or as an individual for acts or omissions~~  
21          ~~committed while carrying out his or her duties as an officer, employe or agent or while~~  
22          ~~acting within the scope of his or her office, employment or agency, including a petition~~  
23          for a common law writ of certiorari, with respect to the prison or jail conditions in the  
24          facility in which he or she is or has been incarcerated, imprisoned or detained until  
25          the person has exhausted any all available administrative remedies ~~that the~~

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1 ~~department of corrections has promulgated by rule. Except for petitions for a~~  
2 ~~common law writ of certiorari, a prisoner commencing an action or special proceeding~~  
3 ~~shall first comply with the provisions of s. 893.80 or 893.82.~~

4 **SECTION 13.** 801.02 (7) (a), (b), (d) and (e) of the statutes are created to read:

5 801.02 (7) (a) In this subsection:

6 1. "Correctional institution" means any state or local facility that incarcerates  
7 or detains any adult accused of, charged with, convicted of, or sentenced for any crime  
8 or that incarcerates or detains any juvenile alleged to be delinquent or adjudicated  
9 to be delinquent on the basis of conduct that, if committed by an adult, would be a  
10 crime. A correctional institution includes a Type 1 prison, as defined in s. 301.01 (5),  
11 a Type 2 prison, as defined in s. 301.01 (6), a county jail and a house of correction.

12 2. "Prisoner" means any person who is incarcerated, imprisoned or otherwise  
13 detained in a correctional institution or who is arrested or otherwise detained by a  
14 law enforcement officer.

15 3. "Prison or jail conditions" means any matter related to the conditions of  
16 confinement or to the effects of actions by government officers, employes or agents  
17 on the lives of prisoners, but excluding the fact or duration of the confinement.

18 (b) Review by the common law writ of certiorari is a prisoner's exclusive remedy  
19 for doing any of the following:

20 1. Challenging the validity of a decision relating to prisoner discipline, the  
21 revocation of probation or the denial or revocation of parole.

22 2. Challenging the disposition of a complaint concerning prison or jail  
23 conditions, including a complaint concerning a program assignment, institution  
24 assignment or security classification, for which there is an adequate administrative  
25 remedy.

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1 (d) At the time of filing the initial pleading to commence an action or special  
2 proceeding, including a petition for a common law writ of certiorari, related to prison  
3 or jail conditions, a prisoner shall include, as part of the initial pleading,  
4 documentation showing that he or she has exhausted all available administrative  
5 remedies. The documentation shall include copies of all of the written materials that  
6 he or she provided to the administrative agency as part of the administrative  
7 proceeding and all of the written materials the administrative agency provided to  
8 him or her related to that administrative proceeding. The documentation shall also  
9 include all written materials included as part of any administrative appeal. The  
10 court shall deny a prisoner's request to proceed without the prepayment of fees and  
11 costs under s. 814.29 (1m) if the prisoner fails to comply with this paragraph or if the  
12 prisoner has failed to exhaust all available administrative remedies.

13 (e) The court shall dismiss any action or special proceeding, including a petition  
14 for a common law writ of certiorari, commenced by any prisoner if that prisoner has,  
15 on 3 or more prior occasions, while he or she was incarcerated, imprisoned, confined  
16 or detained in a jail or prison, brought an appeal, writ of error, action or special  
17 proceeding, including a petition for a common law writ of certiorari, that was  
18 dismissed by a state or federal court for any of the reasons listed in s. 802.05 (3) (b)  
19 1. to 4. The court may permit a prisoner to commence the action or special  
20 proceeding, notwithstanding this paragraph, if the court determines that the  
21 prisoner is in imminent danger of serious physical injury.

22 **SECTION 14.** 801.09 (2) (a) of the statutes is amended to read:

23 801.09 (2) (a) Within 20 days, or within 45 days if the defendant is the state  
24 or an officer, agent, employe or agency of the state ~~in an action or special proceeding~~  
25 ~~brought within the purview of s. 893.82 or 895.46~~, exclusive of the day of service, after

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1 the summons has been served personally upon the defendant or served by  
2 substitution personally upon another authorized to accept service of the summons  
3 for the defendant; or

4 **SECTION 15.** 802.05 (3) of the statutes is created to read:

5 802.05 (3) (a) A court shall review the initial pleading as soon as practicable  
6 after the action or special proceeding is filed with the court if the action or special  
7 proceeding is commenced by a prisoner, as defined in s. 801.02 (7) (a) 2.

8 (b) The court may dismiss the action or special proceeding without requiring  
9 the defendant to answer the pleading if the court determines that the action or  
10 special proceeding meets any of the following conditions:

- 11 1. Is frivolous, as determined under s. 814.025 (3).
- 12 2. Is used for any improper purpose, such as to harass, to cause unnecessary  
13 delay or to needlessly increase the cost of litigation.
- 14 3. Seeks monetary damages from a defendant who is immune from such relief.
- 15 4. Fails to state a claim upon which relief may be granted.

16 (c) If a court dismisses an action or special proceeding under par. (b), the court  
17 shall notify the department of justice or the attorney representing the political  
18 subdivision, as appropriate, of the dismissal by a procedure developed by the director  
19 of state courts in cooperation with the department of justice.

20 (d) The dismissal of an action or special proceeding under par. (b) does not  
21 relieve the prisoner from paying the full filing fee related to that action or special  
22 proceeding.

23 **SECTION 16.** 802.06 (1) of the statutes is amended to read:

24 802.06 (1) WHEN PRESENTED. ~~A- Except as provided under sub. (1m) or when~~  
25 a court dismisses an action or special proceeding under s. 802.05 (3), a defendant

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1 shall serve an answer within 20 days after the service of the complaint upon the  
2 defendant. If a guardian ad litem is appointed for a defendant, the guardian ad litem  
3 shall have 20 days after appointment to serve the answer. A party served with a  
4 pleading stating a cross-claim against the party shall serve an answer thereto  
5 within 20 days after the service upon the party. The plaintiff shall serve a reply to  
6 a counterclaim in the answer within 20 days after service of the answer. The Except  
7 as provided under sub. (1m), the state or an agency of the state or an officer, employe  
8 or agent of the state ~~in an action brought within the purview of s. 893.82 or 895.46~~  
9 shall serve an answer to the complaint or to a cross-claim or a reply to a counterclaim  
10 within 45 days after service of the pleading in which the claim is asserted. If any  
11 pleading is ordered by the court, it shall be served within 20 days after service of the  
12 order, unless the order otherwise directs. The service of a motion permitted under  
13 sub. (2) alters these periods of time as follows, unless a different time is fixed by order  
14 of the court: if the court denies the motion or postpones its disposition until the trial  
15 on the merits, the responsive pleading shall be served within 10 days after notice of  
16 the court's action; or if the court grants a motion for a more definite statement, the  
17 responsive pleading shall be served within 10 days after the service of the more  
18 definite statement.

19 **SECTION 17.** 802.06 (1m) of the statutes is created to read:

20 **802.06 (1m) WAIVER OF ANSWER.** (a) A defendant may waive the right to answer  
21 or to submit a responsive pleading to a complaint or other pleading in any action or  
22 special proceeding brought by a prisoner, as defined in s. 801.02 (7) (a) 2. The failure  
23 to respond to an action or special proceeding related to prison or jail conditions shall  
24 act as an affirmative defense against all of the allegations contained in the complaint

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1 or other pleading and shall not be considered as a waiver of any affirmative defense  
2 or of immunity.

3 (b) The court shall review the pleadings submitted under this subsection, grant  
4 relief to the defendant or, if the court determines that the plaintiff has a reasonable  
5 opportunity to prevail on the merits, order the defendant to answer or to submit a  
6 responsive pleading.

7 **SECTION 18.** 802.06 (2) (a) (intro.) of the statutes is amended to read:

8 802.06 (2) (a) (intro.) Every Except as provided under sub. (1m), every defense,  
9 in law or fact, except the defense of improper venue, to a claim for relief in any  
10 pleading, whether a claim, counterclaim, cross-claim, or 3rd-party claim, shall be  
11 asserted in the responsive pleading thereto if one is required, except that the  
12 following defenses may at the option of the pleader be made by motion:

13 **SECTION 19.** 804.01 (1) of the statutes is amended to read:

14 804.01 (1) DISCOVERY METHODS. Parties may obtain discovery by one or more  
15 of the following methods: depositions upon oral examination or written questions;  
16 written interrogatories; production of documents or things or permission to enter  
17 upon land or other property, for inspection and other purposes; physical and mental  
18 examinations; and requests for admission. Unless the court orders otherwise under  
19 sub. (3), and except as provided in s. 804.015, the frequency of use of these methods  
20 is not limited.

21 **SECTION 20.** 804.015 of the statutes is created to read:

22 **804.015 Limits on discovery by prisoners.** (1) In this section, "prisoner"  
23 has the meaning given s. 801.02 (7) (a) 2.

24 (2) Unless ordered by the court, a prisoner in an action or special proceeding  
25 may not obtain discovery before the court receives a copy of the answer or other

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1 responsive pleading in the action commenced by the prisoner. If a defendant waives  
2 his or her answer under s. 802.06 (1m) or submits a motion to dismiss or a motion  
3 for summary judgment, no discovery may be obtained until the court decides that the  
4 prisoner has a reasonable opportunity to prevail on the merits, or until the court  
5 decides the merits of the motion, unless the court orders a party to submit to  
6 discovery.

7 (3) If a court allows a prisoner to obtain discovery under sub. (2) before the court  
8 decides that the prisoner has a reasonable opportunity to prevail on the merits,  
9 receives a copy of the answer or other responsive pleading in the action, or decides  
10 the merits of a motion to dismiss or a motion for summary judgment, the court order  
11 shall be narrowly tailored to limit the discovery to allow only discovery that is  
12 essential to enable the prisoner to obtain the evidence necessary to his or her case.  
13 The court shall limit the discovery so as to provide a minimal intrusion in the  
14 activities of any person subject to discovery under this subsection.

15 (4) If a prisoner commences an action or special proceeding, the court shall  
16 limit the number of requests for interrogatories, production of documents or  
17 admissions to 15, unless good cause is shown for any additional requests. This  
18 number may not be expanded by the use of subparts to the interrogatories.

19 **SECTION 21.** 804.05 (1) of the statutes is amended to read:

20 804.05 (1) **WHEN DEPOSITIONS MAY BE TAKEN.** After commencement of the action,  
21 except as provided in s. 804.015, any party may take the testimony of any person  
22 including a party by deposition upon oral examination. The attendance of witnesses  
23 may be compelled by subpoena as provided in s. 805.07. The attendance of a party  
24 deponent or of an officer, director or managing agent of a party may be compelled by  
25 notice to the named person or attorney meeting the requirements of sub. (2) (a). Such

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1 notice shall have the force of a subpoena addressed to the deponent. The deposition  
2 of a person confined in prison may be taken only by leave of court on such terms as  
3 the court prescribes, except when the party seeking to take the deposition is the state  
4 agency or officer to whose custody the prisoner has been committed.

5 **SECTION 22.** 804.06 (1) (a) of the statutes is amended to read:

6 804.06 (1) (a) After commencement of the action, except as provided in s.  
7 804.015, any party may take the testimony of any person, including a party, by  
8 deposition upon written questions. The attendance of witnesses may be compelled  
9 by subpoena as provided in s. 805.07. The attendance of a party deponent or of an  
10 officer, director, or managing agent of a party may be compelled by notice to the  
11 person to be deposed or his or her attorney meeting the requirements of s. 804.05 (2)  
12 (a). The deposition of a person confined in prison may be taken only by leave of court  
13 on such terms as the court prescribes, except when the person seeking to take the  
14 deposition is the state agency or officer to whose custody the prisoner has been  
15 committed.

16 **SECTION 23.** 804.08 (1) (a) of the statutes is amended to read:

17 804.08 (1) (a) ~~Any~~ Except as provided in s. 804.015, any party may serve upon  
18 any other party written interrogatories to be answered by the party served, or, if the  
19 party served is a public or private corporation or a limited liability company or a  
20 partnership or an association or a governmental agency or a state officer in an action  
21 arising out of the officer's performance of employment, by any officer or agent, who  
22 shall furnish such information as is available to the party. Interrogatories may,  
23 without leave of court, be served upon the plaintiff after commencement of the action  
24 and upon any other party with or after service of the summons and complaint upon  
25 that party.

**ASSEMBLY BILL 688****SECTION 24**

1           **SECTION 24.** 804.09 (2) of the statutes is amended to read:

2           804.09 (2) PROCEDURE. The Except as provided in s. 804.015, the request may,  
3 without leave of court, be served upon the plaintiff after commencement of the action  
4 and upon any other party with or after service of the summons and complaint upon  
5 that party. The request shall specify a reasonable time, place, and manner of making  
6 the inspection and performing the related acts. The party upon whom the request  
7 is served shall serve a written response within 30 days after the service of the  
8 request, except that a defendant may serve a response within 45 days after service  
9 of the summons and complaint upon that defendant. The court may allow a shorter  
10 or longer time. The response shall state, with respect to each item or category, that  
11 inspection and related activities will be permitted as requested, unless the request  
12 is objected to, in which event the reasons for objection shall be stated. If objection  
13 is made to part of an item or category, the part shall be specified. The party  
14 submitting the request may move for an order under s. 804.12 (1) with respect to any  
15 objection to or other failure to respond to the request or any part thereof, or any  
16 failure to permit inspection as requested.

17           **SECTION 25.** 804.11 (1) (a) of the statutes is amended to read:

18           804.11 (1) (a) ~~A~~ Except as provided in s. 804.015, a party may serve upon any  
19 other party a written request for the admission, for purposes of the pending action  
20 only, of the truth of any matters within the scope of s. 804.01 (2) set forth in the  
21 request that relate to statements or opinions of fact or of the application of law to fact,  
22 including the genuineness of any documents described in the request. Copies of  
23 documents shall be served with the request unless they have been or are otherwise  
24 furnished or made available for inspection and copying. The request may, without  
25 leave of court, be served upon the plaintiff after commencement of the action and

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1 upon any other party with or after service of the summons and complaint upon that  
2 party.

3 **SECTION 26.** 806.025 of the statutes is created to read:

4 **806.025 Payment of judgment in cases involving prisoners.** (1) In this  
5 section, "prisoner" has the meaning given in s. 801.02 (7) (a) 2.

6 (2) If a court enters a judgment for a monetary award on behalf of a prisoner,  
7 the court shall do all of the following:

8 (a) Order that the award be used to satisfy any unpaid court order of restitution  
9 against the prisoner and any other civil judgment in favor of a victim of a crime  
10 committed by the prisoner. If the amount of the monetary award is insufficient to  
11 pay all these unpaid orders and judgments, the orders and judgments shall be paid  
12 based on the length of time they have existed, the oldest order being paid first.

13 (am) If money remains after the payment of all the unpaid orders and  
14 judgments under par. (a), the court shall order reimbursement to the department of  
15 justice for an award made under ch. 949 for which the department is subrogated  
16 under s. 949.15.

17 (b) If money remains after the payment of reimbursement under par. (am), the  
18 court shall order the payment of court costs or filing fees previously assessed against  
19 the prisoner by a state court that remain unpaid, with the oldest costs or fees being  
20 paid first.

21 (c) If money remains after the payment of all court costs or filing fees under par.  
22 (b), the court shall order the payment of any unpaid litigation loan, as defined in s.  
23 301.328 (1).

24 (d) If any money remains after the payments under pars. (a) to (c), the court  
25 shall request that the department of corrections make a reasonable effort to notify

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1 any victims of the crime for which the prisoner was convicted and imprisoned,  
2 incarcerated or confined of the pending payment of a monetary award to the prisoner.  
3 The department of corrections shall inform the court of whether any victims were  
4 notified. The court shall withhold any payment to the prisoner under par. (e) for a  
5 reasonable time after the department of corrections notifies the court that a victim  
6 was notified so that the victim may have time to petition the court regarding  
7 payments to that victim from the remaining money.

8 (e) The court shall order that any money remaining after all payments are  
9 made under pars. (a) to (d) be paid to the prisoner.

10 **SECTION 27.** 807.04 of the statutes is renumbered 807.04 (1) and amended to  
11 read:

12 807.04 (1) ~~All~~ Except as provided under sub. (2), all trials, and all hearings at  
13 which oral testimony is to be presented, shall be held in open court. The court may  
14 make any order which a judge or court commissioner has power to make. Court  
15 commissioners shall have the powers provided in ch. 753 or by other statute.

16 **SECTION 28.** 807.04 (2) of the statutes is created to read:

17 807.04 (2) All hearings in which oral testimony is to be presented in an action  
18 or special proceeding that is commenced by a prisoner, as defined in s. 801.02 (7) (a)  
19 2., shall be conducted by telephone, interactive video and audio transmission or other  
20 live interactive communication without removing him or her from the facility or  
21 institution if his or her participation is required or permitted and if the official  
22 having custody of him or her agrees. The court in which the action or special  
23 proceeding is commenced shall, when feasible, also allow counsel, witnesses and  
24 other necessary persons to participate in the hearing by telephone, interactive video

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1 and audio transmission or other live interactive communication. The procedures and  
2 policies under s. 807.13 shall apply to the extent feasible.

3 **SECTION 29.** 807.15 of the statutes is created to read:

4 **807.15 Penalty for certain actions by prisoners.** (1) In this section,  
5 “prisoner” has the meaning given in s. 801.02 (7) (a) 2.

6 (2) In any action or special proceeding, including a petition for a common law  
7 writ of certiorari, brought by a prisoner, the court may, on its own motion or on the  
8 motion of any party, order the department of corrections to extend the prisoner’s  
9 mandatory release date calculated under s. 302.11 (1) or order the sheriff to deprive  
10 the prisoner of good time under s. 302.43 if the court finds that any of the following  
11 applies:

12 (a) The action or special proceeding was filed for a malicious purpose.

13 (b) The action or special proceeding was filed solely to harass the party against  
14 which it was filed.

15 (c) The prisoner testifies falsely or otherwise knowingly offers false evidence  
16 or provides false information to the court.

17 (3) (a) Subject to par. (b), if a court orders the department of corrections to  
18 extend a prisoner’s mandatory release date or orders the sheriff to deprive the  
19 prisoner of good time under sub. (2), the order shall specify the number of days by  
20 which the mandatory release date is to be extended or the good time deprived.

21 (b) An order under sub. (2) to extend a prisoner’s mandatory release date or  
22 deprive a prisoner of good time may not require the prisoner to serve more days than  
23 provided for under the prisoner’s sentence.

24 (4) This section applies to prisoners who committed an offense on or after the  
25 effective date of this subsection .... [revisor inserts date].

**ASSEMBLY BILL 688****SECTION 30**

1           **SECTION 30.** 808.04 (5) of the statutes is repealed.

2           **SECTION 31.** 809.103 of the statutes is created to read:

3           **809.103 Appeals in proceedings related to prisoners. (1)** In this section,  
4           “prisoner” has the meaning given in s. 801.02 (7) (a) 2.

5           **(2) (a)** An appellate court shall review the trial court record as soon as  
6           practicable after the record is filed with the court if the appeal is taken by a prisoner.

7           **(b)** The appellate court may dismiss the appeal without requiring the  
8           respondent to respond to the appeal if the appellate court determines that the appeal  
9           meets any of the following conditions:

10           1. Is frivolous, as determined under s. 814.025 (3).

11           2. Is used for any improper purpose, such as to harass, to cause unnecessary  
12           delay or to needlessly increase the cost of litigation.

13           3. Seeks review of a denial of monetary damages from a defendant who is  
14           immune from such relief.

15           4. There is no ground upon which relief may be granted.

16           **(c)** If a court dismisses an appeal under par. (b), the appellate court shall notify  
17           the department of justice of the dismissal by a procedure developed by the director  
18           of state courts in cooperation with the department of justice.

19           **(d)** The dismissal of an appeal under par. (b) does not relieve the prisoner from  
20           paying the full filing fee related to the appeal.

21           **SECTION 32.** 813.02 (1) (c) of the statutes is created to read:

22           813.02 **(1) (c)** If the court determines that a temporary injunction may be  
23           granted under par. (a) to a prisoner, as defined in s. 801.02 (7) (a) 2., in any action  
24           or special proceeding with respect to prison or jail conditions, as defined in s. 801.02  
25           (7) (a) 3., the following apply:

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1           1. The court may not issue the injunction until giving notice and an opportunity  
2 to be heard on the request for a preliminary injunction to the attorney general, if the  
3 case involves a prisoner in a state correctional institution, as defined in s. 801.02 (7)  
4 (a) 1., or to the attorney representing the local correctional institution involved and  
5 to all other interested parties. Any injunction issued without giving notice and an  
6 opportunity to be heard is void.

7           2. Any temporary injunction issued shall meet the requirements in s. 813.40  
8 (1) (b). When determining what to require in the temporary injunction, the court  
9 shall give substantial weight to any adverse impact on public safety or on the  
10 operation of the facility involved in the action or special proceeding caused by the  
11 temporary injunction.

12           3. Any temporary injunction issued under this paragraph shall expire no later  
13 than 90 days after the day the temporary injunction is issued unless the court makes  
14 a finding that the requirements under s. 813.40 (1) (b) are met and makes the order  
15 final before the expiration of the 90-day period.

16           **SECTION 33.** 813.40 of the statutes is created to read:

17           **813.40 Injunctive relief in prison condition cases.** (1) (a) In this section:

18           1. "Prisoner" has the meaning given in s. 801.02 (7) (a) 2.

19           2. "Prison or jail conditions" has the meaning given in s. 801.02 (7) (a) 3.

20           (b) If a court determines that an injunction may be granted to a prisoner in any  
21 action or special proceeding with respect to prison or jail conditions, any injunction  
22 issued shall meet all of the following criteria:

23           1. Require only what is necessary to correct the harm.

24           2. Is the least intrusive means necessary to correct that harm.

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1           3. Does not require or permit a government official, employe or agent to exceed  
2 his or her authority or to violate a state law or local ordinance unless all of the  
3 following apply:

4           a. Federal law permits that relief.

5           b. The relief is necessary to correct the violation of a federal right.

6           c. No other relief will correct the violation of a federal right.

7           (c) If an injunction is issued that does not meet the requirements in par. (b), a  
8 defendant or intervenor is entitled to immediate termination of any prospective  
9 relief or to a revision of the injunction to meet those requirements. Prospective relief  
10 need not be terminated if the court makes written findings based on the record that  
11 the requirements under par. (b) are met.

12           (d) A court may not enter into or approve a consent decree in an action for  
13 injunctive relief under this section if that consent decree does not meet the  
14 requirements in par. (b). This paragraph does not prevent the parties from entering  
15 into a private settlement agreement that does not comply with the requirements in  
16 par. (b) if the terms of that settlement agreement are not subject to court enforcement  
17 other than the dismissal of the action or special proceeding based on the settlement  
18 agreement.

19           **(2)** When determining the extent of any injunction issued under this section,  
20 the court shall give substantial weight to any adverse impact on public safety or on  
21 the operation of the criminal justice system caused by the injunction.

22           **(3)** Any interested party may, 2 years after the date the court issued an  
23 injunction under this section, or one year after the court has denied a request under  
24 this subsection for modification or termination of the injunction, request that the  
25 court modify or terminate an injunction issued under this section. Any interested

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1 party may, 2 years after the effective date of this subsection .... [revisor inserts date],  
2 request that the court modify or terminate an injunction related to prison or jail  
3 conditions that was issued before the effective date of this subsection .... [revisor  
4 inserts date]. Any prospective relief issued under this section shall be stayed by the  
5 filing of a motion for modification or termination of the injunction for the period  
6 beginning on the 30th day after the motion is filed with the court and ending on the  
7 day the court enters a final order on the motion.

8 (4) This section does not prevent the parties from agreeing to terminate or  
9 modify an injunction issued under this section.

10 (5) This section does not authorize a court to order the construction of prisons,  
11 jails or other places of incarceration or to order the raising of taxes and does not  
12 expand the powers of a court under this chapter.

13 (6) This section does not authorize the court to issue a prisoner release order.  
14 Prisoner release orders may only be issued by habeas corpus or as otherwise required  
15 by the state or federal constitution. In this subsection, "prisoner release order"  
16 means any order that has the purpose or effect of reducing or limiting the prison or  
17 jail population, or that directs the release or nonadmission of prisoners to a prison  
18 or jail.

19 (7) This section may not be used as a substitute for a petition for a common law  
20 writ of certiorari to challenge the disposition of a complaint concerning prison or jail  
21 conditions, to challenge the validity of a probation revocation, parole denial or  
22 revocation, a mandatory release date or to challenge any issue regarding the fact or  
23 duration of confinement.

24 **SECTION 34.** 814.24 of the statutes is amended to read:

**ASSEMBLY BILL 688****SECTION 34**

1           **814.24 Action against city, village or town official, cost.** Costs, if any, in  
2 an action against a city, village or town officer in his or her official capacity, except  
3 an action directly involving the title to the office, and except as provided in s. 814.25,  
4 shall not be awarded against that officer, but may be awarded against the city, village  
5 or town.

6           **SECTION 35.** 814.245 (3) of the statutes is amended to read:

7           814.245 (3) ~~If Except as provided in s. 814.25,~~ if an individual, a small nonprofit  
8 corporation or a small business is the prevailing party in any action by a state agency  
9 or in any proceeding for judicial review under s. 227.485 (6) and submits a motion  
10 for costs under this section, the court shall award costs to the prevailing party, unless  
11 the court finds that the state agency was substantially justified in taking its position  
12 or that special circumstances exist that would make the award unjust.

13           **SECTION 36.** 814.25 of the statutes is created to read:

14           **814.25 Costs in actions by prisoners. (1)** In this section:

15           (a) "Prisoner" has the meaning given in s. 801.02 (7) (a) 2.

16           (b) "Prison or jail conditions" has the meaning given in s. 801.02 (7) (a) 3.

17           **(2)** If a prisoner brings an action or special proceeding related to prison or jail  
18 conditions, no costs may be allowed against the state, a state agency or a county, city,  
19 village or town, or against any individual defendant when sued in an official capacity.

20           **(3)** If the prevailing party is the state, a state agency or a county, city, village  
21 or town or an individual in any action or special proceeding commenced by a prisoner  
22 related to prison or jail conditions, the prisoner shall pay the full costs allowed under  
23 this chapter. The prisoner shall be required to pay the costs out of any trust fund  
24 accounts that he or she holds in the same manner as payment is required for court  
25 fees under s. 814.29 (1m) (e).

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1           **SECTION 37.** 814.29 (1) (a) of the statutes is amended to read:

2           814.29 (1) (a) ~~Any~~ Except as provided in sub. (1m), any person may commence,  
3           prosecute or defend any action or special proceeding in any court, or any writ of error  
4           or appeal therein, without being required to give security for costs or to pay any  
5           service or fee, upon order of the court based on a finding that because of poverty the  
6           person is unable to pay the costs of the action or special proceeding, or any writ of  
7           error or appeal therein, or to give security for those costs.

8           **SECTION 38.** 814.29 (1m) of the statutes is created to read:

9           814.29 (1m) (a) In this subsection:

10           1. "Prisoner" has the meaning given in s. 801.02 (7) (a) 2.

11           2. "Prison or jail conditions" has the meaning given in s. 801.02 (7) (a) 3.

12           (b) If a prisoner makes a request for leave to commence or defend an action,  
13           special proceeding, writ of error or appeal without being required to prepay the fees  
14           or costs or without being required to give security for costs, the prisoner shall submit  
15           all of the following:

16           1. The affidavit required under sub. (1) (b).

17           2. An affidavit stating that the prisoner has paid all of the fees or costs  
18           previously assessed by a court for bringing an action or special proceeding, in state  
19           or federal court, that was dismissed on the grounds that the action or special  
20           proceeding was frivolous, malicious or failed to state a claim upon which relief may  
21           be granted.

22           3. A certified copy of the trust fund account statement for the prisoner for the  
23           6-month period immediately preceding the filing of the request for leave to  
24           commence or defend an action, special proceeding, writ of error or appeal, or for the  
25           period that the prisoner was incarcerated, imprisoned or detained, if that period is

**ASSEMBLY BILL 688****SECTION 38**

1 less than 6 months. The trust fund account statement must be obtained from the  
2 appropriate official at each facility in which the prisoner is or was incarcerated,  
3 imprisoned, confined or detained. "Trust fund account statement" includes accounts  
4 assessable to the prisoner before or upon release.

5 (c) The court shall issue an order permitting the prisoner to commence or  
6 defend an action, special proceeding, writ of error or appeal without the prepayment  
7 of fees or costs or without being required to give security for costs if all of the following  
8 conditions are met:

9 1. The court determines that the prisoner does not have assets or other means  
10 by which to pay the fees or costs or to give security for the costs after reviewing the  
11 information provided under par. (b).

12 2. The prisoner has paid all of the fees or costs previously assessed by a state  
13 or federal court for bringing an action or special proceeding that was dismissed on  
14 the grounds that the action or special proceeding was frivolous, malicious or failed  
15 to state a claim upon which relief may be granted.

16 3. The court orders that the fees or costs not paid are a debt owed the court by  
17 the prisoner.

18 4. The prisoner authorizes in writing the agency having custody of the  
19 prisoner's prison trust fund account to forward payments from the prisoner's account  
20 to the clerk of court each time the amount in the account exceeds \$10 until the fees  
21 or costs are paid in full.

22 (d) If the court determines that the prisoner who made the affidavit does have  
23 assets in an account, whether accessible to the prisoner only upon release or before  
24 release, to pay part of the filing fees or costs, the court shall order the prisoner to pay  
25 an initial filing fee before being allowed to commence or defend an action, special

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1 proceeding, writ of error or appeal. The initial filing fee shall equal 20% of the greater  
2 of the following:

3 1. The average monthly deposits to the prisoner's trust fund account.

4 2. The average monthly balance in the prisoner's trust fund account for the  
5 6-month period immediately preceding the filing of the request for leave to  
6 commence or defend an action, special proceeding, writ of error or appeal, or for the  
7 period that the prisoner was incarcerated, imprisoned or detained, if that period is  
8 less than 6 months.

9 (e) After payment of the initial filing fee, the prisoner shall be required to make  
10 monthly payments of 20% of the preceding month's income that is credited to the  
11 prisoner's prison trust fund account. The agency having custody of the prisoner shall  
12 forward payments from the prisoner's account to the clerk of court each time the  
13 amount in the account exceeds \$10 until the filing fees and costs are paid in full.

14 (f) If the court believes that a prisoner is in imminent danger of serious physical  
15 harm, the court shall issue an order permitting the prisoner to commence or defend  
16 an action, special proceeding, writ of error or appeal without being required to submit  
17 the statement under par. (b) or prepaying the initial filing fee under par. (d).

18 (g) Except as provided under par. (f), if a prisoner files an action, special  
19 proceeding, writ of error or appeal under this subsection without complying with the  
20 requirements under pars. (b) and (d), the court shall dismiss the action, special  
21 proceeding, writ of error or appeal without prejudice.

22 (h) The custodian of the trust fund account of a prisoner shall provide the  
23 prisoner with the certified copy of the trust fund account statement required under  
24 par. (b) if the custodian determines that the prisoner requires that copy for submittal  
25 to a court under this subsection.

**ASSEMBLY BILL 688****SECTION 39**

1           **SECTION 39.** 814.29 (3) (b) of the statutes is amended to read:

2           814.29 **(3)** (b) If the affiant is a prisoner, as defined in s. 46.011-~~(2)~~ 801.02 (7)  
3 (a) 2., or a person confined in a federal correctional institution located in this state,  
4 a request for leave to commence or defend an action, special proceeding, writ of error  
5 or appeal without being required to pay fees or costs or to give security for costs  
6 constitutes consent as provided in par. (a), and, if the judgment is in favor of the  
7 opposing party, constitutes consent for the court to order the institution to deduct the  
8 unpaid fees and costs, including attorney fees listed in par. (a), from the amount in  
9 the inmate's account at the any time the judgment was rendered account has  
10 sufficient money to pay the unpaid fees and costs. This paragraph does not prevent  
11 the collection of the unpaid fees and costs by any other method.

12           **SECTION 40.** 893.16 (1) of the statutes is amended to read:

13           893.16 **(1)** If a person entitled to bring an action is, at the time the cause of  
14 action accrues, either under the age of 18 years, except for actions against health care  
15 providers; or insane, or imprisoned on a criminal charge mentally ill, the action may  
16 be commenced within 2 years after the disability ceases, except that where the  
17 disability is due to insanity or imprisonment mental illness, the period of limitation  
18 prescribed in this chapter may not be extended for more than 5 years.

19           **SECTION 41.** 893.735 of the statutes is created to read:

20           **893.735 Action by prisoner contesting a governmental decision.** **(1)** In  
21 this section, "prisoner" has the meaning given in s. 801.02 (7) (a) 2.

22           **(2)** An action or special proceeding, including a petition for a common law writ  
23 of certiorari, made on behalf of a prisoner is barred unless commenced within 30 days  
24 after the cause of action accrues if that action or special proceeding concerns a  
25 decision or disposition under s. 801.02 (7) (b). The 30-day period shall begin on the

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1 date of the decision or disposition, except that the court may extend the period by as  
2 many days as the prisoner proves have elapsed between the decision or disposition  
3 and the prisoner's actual notice of the decision or disposition.

4 (3) In this section, a petition for a common law writ of certiorari is commenced  
5 at the time the prisoner files a petition for a common law writ of certiorari with a  
6 court.

7 **SECTION 42.** 893.82 (3) of the statutes is amended to read:

8 893.82 (3) Except as provided in sub. (5m), no civil action or civil proceeding  
9 may be brought against any state officer, employe or agent for or on account of any  
10 act growing out of or committed in the course of the discharge of the officer's,  
11 employe's or agent's duties, and no civil action or civil proceeding may be brought  
12 against any nonprofit corporation operating a museum under a lease agreement with  
13 the state historical society, unless within 120 days of the event causing the injury,  
14 damage or death giving rise to the civil action or civil proceeding, the claimant in the  
15 action or proceeding serves upon the attorney general written notice of a claim  
16 stating the time, date, location and the circumstances of the event giving rise to the  
17 claim for the injury, damage or death and the names of persons involved, including  
18 the name of the state officer, employe or agent involved. ~~A- Except as provided under~~  
19 sub. (3m), a specific denial by the attorney general is not a condition precedent to  
20 bringing the civil action or civil proceeding.

21 **SECTION 43.** 893.82 (3m) of the statutes is created to read:

22 893.82 (3m) If the claimant is a prisoner, as defined in s. 801.02 (7) (a) 2., the  
23 prisoner may not commence the civil action or proceeding until the attorney general  
24 denies the claim or until 120 days after the written notice under sub. (3) is served  
25 upon the attorney general, whichever is earlier.

