

2011 DRAFTING REQUEST

Senate Amendment (SA-SB117)

Received: **06/09/2011**

Received By: **tkuczens**

Wanted: **As time permits**

Companion to LRB:

For: **Leah Vukmir (608) 266-2512**

By/Representing: **Dean Cady**

May Contact:

Drafter: **tkuczens**

Subject: **Courts - civil procedure**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Vukmir@legis.wisconsin.gov**

Carbon copy (CC:) to: **tracy.kuczenski@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Retain current law for prisoner litigation involving state as sole defendant

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1	tkuczens 06/09/2011	jdyer 06/16/2011	rschluet 06/17/2011	_____	lparisi 06/17/2011	lparisi 06/17/2011	

FE Sent For:

<END>

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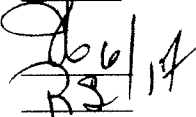
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/?	tkuczens	1/6/11 jld					

FE Sent For:

<END>

Kuczenski, Tracy

From: Cady, Dean
Sent: Wednesday, June 08, 2011 4:49 PM
To: Kuczenski, Tracy
Subject: RE: SB 117

Hey Tracy, you understand correctly: regarding prisoners, original cases and appeals stay in Dane County, as it is presently.

Thank you so much.

☺

From: Kuczenski, Tracy
Sent: Wednesday, June 08, 2011 4:23 PM
To: Cady, Dean
Cc: David, Curt; Sholty, Cameron
Subject: SB 117

Hi Dean –

I just want to clarify that SB 117 doesn't create any new cause of action; it just changes the location (or venue) in which a law suit is filed. With that clarification in mind, I want to be sure that I understand what you are requesting.

Is it Senator Vukmir's intent that prisoner litigation in which the sole defendant is the state, any state board or commission, or state officer, employee, or agent in an official capacity be located (venued) in Dane County courts as it is under current law)? If that is not the intent, then I'm not entirely clear about the instructions. Can you please clarify?

Also, if prisoner litigation must be venued in Dane County as under current law, should the provisions of s. 752.21 (1) of the statutes (as renumbered and amended in SB 117) apply to prisoners? That is, should appeals of prisoner litigation take place in the court of appeals district which contains the court from which the judgment or order is appealed?

Thanks,
Tracy

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
tracy.kuczenski@legis.wisconsin.gov
(608) 266-9867

From: Cady, Dean
Sent: Friday, June 03, 2011 2:05 PM
To: Kuczenski, Tracy
Cc: David, Curt; Sholty, Cameron
Subject: FW: prisoner ques.

Hey Tracy, deano here.

As we discussed earlier, this is the Email that Anne sent over to me regarding "prisoners." The amendment that Rep. Kramer and Senator Vukmir need drafted for SB 117, would exclude or prohibit incarcerated persons from filing suits as the legislation would permit. DOJ expressed concerns that prisoners could then wind up filing suits, multiple, and as a result unnecessarily tying up the municipal courts.

Anne's Email lists examples of language involving prisoners and limitations on their ability to file suits, as a guidepost. I hope this makes sense Tracy. Senator Zipperer did not include SB 117 on the Exec Hearing so I guess there's no rush. Give me a holler on Monday if you have any questions.

Thank you so much! ☺
deano

Kuczenski, Tracy

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Sent: Friday, June 03, 2011 2:05 PM
To: Kuczenski, Tracy
Cc: David, Curt; Sholty, Cameron
Subject: FW: prisoner ques.

Follow Up Flag: Follow up
Flag Status: Red

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Thank you so much! ☺
deano

AB156

From: Sappenfield, Anne
Sent: Thursday, June 02, 2011 3:26 PM
To: Cady, Dean
Subject: prisoner ques.

"prisoner" defined @ 801.02(7)(a) 2.

Hi Dean,

I'm attaching (way too much) of WI law relating to prisoner litigation limitations. I can't find anything like what you are describing, but there is precedent for limiting prisoner litigation in the statutes below, and the open records law provides limits as to what an incarcerated person can receive under that law.

Sorry this isn't what you're looking for. Let me know if you think of something else that might be helpful.

Anne

801.02(7)(b)

(b) No prisoner may commence a civil action or special proceeding, including a petition for a common law writ of certiorari, with respect to the prison or jail conditions in the facility in which he or she is or has been incarcerated, imprisoned or detained until the person has exhausted all available administrative remedies that the department of corrections has promulgated by rule or, in the case of prisoners not in the custody of the department of corrections, that the sheriff, superintendent or other keeper of a jail or house of correction has reduced to writing and provided reasonable notice of to the prisoners.

801.02(7)(bm)1.

1. The prisoner is filing a petition for a common law writ of certiorari.

801.02(7)(bm)2.

2. The prisoner is commencing an action seeking injunctive relief and the court finds that there is a substantial risk to the prisoner's health or safety.

801.02(7)(c)

(c) At the time of filing the initial pleading to commence an action or special proceeding, including a petition for a common law writ of certiorari, related to prison or jail conditions, a prisoner shall include, as part of the initial pleading, documentation showing that he or she has exhausted all available administrative remedies. The documentation shall include copies of all of the written materials that he or she provided to the administrative agency as part of the administrative proceeding and all of the written materials the administrative agency provided to him or her related to that administrative proceeding. The documentation shall also include all written materials included as part of any administrative appeal. The court shall deny a prisoner's request to proceed without the prepayment of fees and costs

under s. 814.29 (1m) if the prisoner fails to comply with this paragraph or if the prisoner has failed to exhaust all available administrative remedies.

801.02(7)(d)

(d) If the prisoner seeks leave to proceed without giving security for costs or without the payment of any service or fee under s. 814.29, the court shall dismiss any action or special proceeding, including a petition for a common law writ of certiorari, commenced by any prisoner if that prisoner has, on 3 or more prior occasions, while he or she was incarcerated, imprisoned, confined or detained in a jail or prison, brought an appeal, writ of error, action or special proceeding, including a petition for a common law writ of certiorari, that was dismissed by a state or federal court for any of the reasons listed in s. 802.05 (4) (b) 1. to 4. The court may permit a prisoner to commence the action or special proceeding, notwithstanding this paragraph, if the court determines that the prisoner is in imminent danger of serious physical injury.

804.015 Limits on discovery by prisoners.

804.015(1)

(1) In this section, "prisoner" has the meaning given s. 801.02 (7) (a) 2.

804.015(2)

(2) Unless ordered by the court, a prisoner in an action or special proceeding may not obtain discovery before the court receives a copy of the answer or other responsive pleading in the action commenced by the prisoner. If a defendant submits a motion to dismiss or a motion for summary judgment, no discovery may be obtained until the court decides that the prisoner has a reasonable opportunity to prevail on the merits, or until the court decides the merits of the motion, unless the court orders a party to submit to discovery.

804.015(3)

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

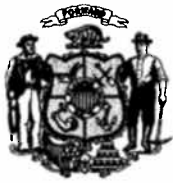
804.015(4)

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

804.015(5)

(5) This section does not apply when the prisoner appears by an attorney who is licensed to practice law in this state.

Anne Sappenfield
Senior Staff Attorney
WI Legislative Council
(608) 267-9485



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBa1219

TKK:.....

RMR Jlc

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

SENATE AMENDMENT,
TO 2011 SENATE BILL 117

5007

6/9/11

companion to LRBa1220

as affected by 2011 Wisconsin Act 21,

1 At the locations indicated, amend the bill as follows:

2 1. Page 2, line 8: after "(3)" insert "(a)".

3 2. Page 2, line 12: delete lines 12 to 16 and substitute:

4 "SECTION 3g. 801.50 (3) of the statutes is renumbered 801.50 (3) (a) and
5 amended to read:

6 801.50 (3) (a) All Except as provided in ~~plain~~ all actions ~~in~~ in which the sole
7 defendant is the state, any state board or commission, or any state officer, employee,
8 or agent in an official capacity shall be venued in Dane County ~~the county designated~~
9 by the plaintiff unless another venue is specifically authorized by law. ~~All~~ delete

History: 1983 a. 204, 228, 389, 538; 1985 a. 234, 291; 1987 a. 208; 1993 a. 318, 319; 1997 a. 283; 1999 a. 150 s. 672; 2001 a. 30 s. 108; 2001 a. 109; 2007 a. 1; 2009 a. 28, 42, 261.

10 SECTION 3r. 801.50 (3) (b) of the statutes is created to read:

move
scored letter
plain
All actions relating to the validity or invalidity of a rule shall be venued as provided in s. 227(4)(1).
plain period

(c)
(c)

1 801.50 (3) (b) An action commenced by a prisoner, as defined under s. 801.02
2 (7) (a) 2., in which the sole defendant is the state, any state board or commission, or
3 any state officer, employee, or agent in an official capacity shall be venued in Dane
4 County unless another venue is specifically authorized by law.”

(END)