

# State of Wisconsin



1997 Assembly Bill 688

Date of enactment: **April 17, 1998**

Date of publication\*: **May 1, 1998**

## 1997 WISCONSIN ACT 133

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

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

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

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

**SECTION 2.** 301.048 (3) (d) of the statutes is amended to read:

301.048 (3) (d) A person may seek review of a final decision of the department of corrections, or of the division of hearings and appeals in the department of administration acting under s. 304.06 (3), relating to denials of eligibility for or placement in sanctions, or relating to discipline or revocation under or termination from the inten-

sive sanctions program only by the common law writ of certiorari.

**SECTION 3.** 301.328 of the statutes is created to read:

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

(2) If a prisoner fails to repay a litigation loan to the department, the warden of the institution where the prisoner is incarcerated, imprisoned, confined or detained may submit a certification under oath to the clerk of circuit court in the county where the institution is located. The certification shall state the amount of litigation loans unpaid, the name and location of the prisoner and such other information as the court considers necessary. The court shall order that the amount certified by the warden be a judgment on behalf of the state and against the prisoner if the prisoner fails to submit a written objection to the court within 20 days after the court receives the certification from the warden. If the prisoner timely submits a written objection to the certification, the court shall consider the objection to be a complaint in a civil action

\* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

and proceed under the rules of procedure under ch. 799, without requiring the service of a summons or the payment of filing fees.

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

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

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

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

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

**SECTION 4.** 302.11 (1) of the statutes is amended to read:

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

**SECTION 5.** 302.11 (1q) of the statutes is created to read:

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

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

**SECTION 6.** 302.11 (2) (c) of the statutes is amended to read:

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

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

302.11 (7) (b) A parolee returned to prison for violation of the conditions of parole shall be incarcerated for the entire period of time determined by the department of corrections in the case of a waiver or the division of hear-

ings and appeals in the department of administration in the case of a hearing under par. (a), unless paroled earlier under par. (c). The parolee is not subject to mandatory release under sub. (1) or presumptive mandatory release under sub. (1g). The period of time determined under par. (a) may be extended in accordance with ~~sub. subs. (1q) and~~ (2).

**SECTION 8.** 302.43 of the statutes is amended to read:

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

**SECTION 9.** 303.07 (3) of the statutes is amended to read:

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

**SECTION 10.** 304.06 (1) (b) of the statutes is amended to read:

304.06 (1) (b) Except as provided in sub. (1m) or s. 302.045 (3), 961.49 (2) or 973.0135, the parole commission may parole an inmate of the Wisconsin state prisons or any felon or any person serving at least one year or more in a county house of correction or a county reforestation camp organized under s. 303.07, when he or she has served 25% of the sentence imposed for the offense, or 6 months, whichever is greater. Except as provided in s. 939.62 (2m) or 973.014, the parole commission may parole an inmate serving a life term when he or she has served 20 years, as modified by the formula under s. 302.11 (1) and subject to extension ~~using the formulas~~ under s. 302.11 ~~(2) (1q) and (2), if applicable.~~ The person serving the life term shall be given credit for time served prior to sentencing under s. 973.155, including good time under s. 973.155 (4). The secretary may grant special

action parole releases under s. 304.02. The department or the parole commission shall not provide any convicted offender or other person sentenced to the department's custody any parole eligibility or evaluation until the person has been confined at least 60 days following sentencing.

**SECTION 11.** 801.02 (7) of the statutes is renumbered 801.02 (7) (b) and amended to read:

801.02 (7) (b) No prisoner, ~~as defined in s. 301.01 (2), may commence a civil action or special proceeding against an officer, employe or agent of the department of corrections in his or her official capacity or as an individual for acts or omissions committed while carrying out his or her duties as an officer, employe or agent or while acting within the scope of his or her office, employment or agency, 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 ~~any 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.~~

**SECTION 12.** 801.02 (7) (a), (bm), (c) and (d) of the statutes are created to read:

801.02 (7) (a) In this subsection:

1. "Correctional institution" means any state or local facility that incarcerates or detains any adult accused of, charged with, convicted of, or sentenced for any crime. A correctional institution includes a Type 1 prison, as defined in s. 301.01 (5), a Type 2 prison, as defined in s. 301.01 (6), a county jail and a house of correction.

2. "Prisoner" means any person who is incarcerated, imprisoned or otherwise detained in a correctional institution or who is arrested or otherwise detained by a law enforcement officer. "Prisoner" does not include any of the following:

- a. A person committed under ch. 980.
- b. A person bringing an action seeking relief from a judgment terminating parental rights.
- c. A person bringing an action seeking relief from a judgment of conviction or a sentence of a court, including an action for an extraordinary writ or a supervisory writ seeking relief from a judgment of conviction or a sentence of a court or an action under s. 809.30, 809.40, 973.19 or 974.06.
- d. A person bringing an action under s. 809.50 seeking relief from an order or judgment not appealable as of right that was entered in a proceeding under ch. 980 or in a case specified under s. 809.30 or 809.40.
- e. A person who is not serving a sentence for the conviction of a crime but who is detained, admitted or committed under ch. 51 or 55 or s. 971.14 (2) or (5).

3. "Prison or jail conditions" means any matter related to the conditions of confinement or to the effects of actions by government officers, employes or agents on the lives of prisoners.

(bm) A prisoner commencing an action or special proceeding shall first comply with the provisions of s. 893.80 or 893.82 unless one of the following applies:

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

(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.

(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 (3) (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.

**SECTION 13.** 801.09 (2) (a) of the statutes is amended to read:

801.09 (2) (a) Within 20 days, or within 45 days if the defendant is the state or an officer, agent, employe or agency of the state ~~in an action or special proceeding brought within the purview of s. 893.82 or 895.46, exclusive of the day of service, after the summons has been served personally upon the defendant or served by substitution personally upon another authorized to accept service of the summons for the defendant; or~~

**SECTION 14.** 802.05 (3) of the statutes is created to read:

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

(b) The court may dismiss the action or special proceeding under par. (a) without requiring the defendant to answer the pleading if the court determines that the action or special proceeding meets any of the following conditions:

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

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

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

**SECTION 15.** 802.06 (1) of the statutes is amended to read:

802.06 (1) **WHEN PRESENTED.** ~~A~~ Except when a court dismisses an action or special proceeding under s. 802.05 (3), a defendant shall serve an answer within 20 days after the service of the complaint upon the defendant. If a guardian ad litem is appointed for a defendant, the guardian ad litem shall have 20 days after appointment to serve the answer. A party served with a pleading stating a cross-claim against the party shall serve an answer thereto within 20 days after the service upon the party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer. The state or an agency of the state or an officer, employe or agent of the state ~~in an action brought within the purview of s. 893.82 or 895.46~~ shall serve an answer to the complaint or to a cross-claim or a reply to a counterclaim within 45 days after service of the pleading in which the claim is asserted. If any pleading is ordered by the court, it shall be served within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under sub. (2) alters these periods of time as follows, unless a different time is fixed by order of the court: if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action;

or if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

**SECTION 16.** 804.01 (1) of the statutes is amended to read:

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

**SECTION 17.** 804.015 of the statutes is created to read:  
**804.015 Limits on discovery by prisoners.** (1) In this section, "prisoner" has the meaning given s. 801.02 (7) (a) 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.

(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.

(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.

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

**SECTION 18.** 804.05 (1) of the statutes is amended to read:

804.05 (1) **WHEN DEPOSITIONS MAY BE TAKEN.** After commencement of the action, except as provided in s. 804.015, any party may take the testimony of any person including a party by deposition upon oral examination.

The attendance of witnesses may be compelled by subpoena as provided in s. 805.07. The attendance of a party deponent or of an officer, director or managing agent of a party may be compelled by notice to the named person or attorney meeting the requirements of sub. (2) (a). Such notice shall have the force of a subpoena addressed to the deponent. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes, except when the party seeking to take the deposition is the state agency or officer to whose custody the prisoner has been committed.

**SECTION 19.** 804.06 (1) (a) of the statutes is amended to read:

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

**SECTION 20.** 804.08 (1) (a) of the statutes is amended to read:

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

**SECTION 21.** 804.09 (2) of the statutes is amended to read:

804.09 (2) PROCEDURE. ~~The~~ Except as provided in s. 804.015, the request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each

item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under s. 804.12 (1) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

**SECTION 22.** 804.11 (1) (a) of the statutes is amended to read:

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

**SECTION 23.** 806.025 of the statutes is created to read:

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

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

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

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

(at) If money remains after the payment of reimbursement under par. (am), order the payment of any child or family support owed by the prisoner.

(b) If money remains after the payment of child or family support under par. (at), order the payment of court costs or filing fees previously assessed against the prisoner by a state court that remain unpaid, with the oldest costs or fees being paid first.

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

(d) If any money remains after the payments under pars. (a) to (c), request that the department of corrections make a reasonable effort to notify any victims of the crime for which the prisoner was convicted and imprisoned, incarcerated or confined of the pending payment of a monetary award to the prisoner. The department of corrections shall inform the court of whether any victims were notified. The court shall withhold any payment to the prisoner under par. (e) for a reasonable time after the department of corrections notifies the court that a victim was notified so that the victim may have time to petition the court regarding payments to that victim from the remaining money.

(e) Order that any money remaining after all payments are made under pars. (a) to (d) be paid to the prisoner.

**SECTION 24.** 807.04 of the statutes is renumbered 807.04 (1) and amended to read:

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

**SECTION 25.** 807.04 (2) of the statutes is created to read:

807.04 (2) All hearings in which oral testimony is to be presented in an action or special proceeding that is commenced by a prisoner, as defined in s. 801.02 (7) (a) 2., shall be conducted by telephone, interactive video and audio transmission or other live interactive communication without removing him or her from the facility or institution if his or her participation is required or permitted and if the official having custody of him or her agrees. The court in which the action or special proceeding is commenced shall, when feasible, also allow counsel, witnesses and other necessary persons to participate in the hearing by telephone, interactive video and audio transmission or other live interactive communication. The procedures and policies under s. 807.13 shall apply to the extent feasible.

**SECTION 26.** 807.15 of the statutes is created to read:

**807.15 Penalty for certain actions by prisoners.**

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

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

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

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

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

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

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

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

**SECTION 27.** 808.04 (5) of the statutes is repealed.

**SECTION 28.** 809.103 of the statutes is created to read:

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

(2) The appellate court shall notify the department of justice by a procedure developed by the director of state courts in cooperation with the department of justice when the appellate court rules that an appeal or supervisory writ proceeding brought by a prisoner meets any of the following conditions:

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

(b) Is used for any improper purpose, such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.

(c) Seeks review of a denial of monetary damages from a defendant who is immune from such relief.

(d) There is no ground upon which relief may be granted.

(3) A prisoner is not relieved from paying the full filing fee related to an appeal or supervisory writ proceeding if the appellate court dismisses the appeal or supervisory writ proceeding for one of the reasons listed in sub. (2).

**SECTION 29.** 813.02 (1) (c) of the statutes is created to read:

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

1. The court may not issue the injunction until giving notice and an opportunity to be heard on the request for a preliminary injunction to the attorney general, if the case involves a prisoner in a state correctional institution, as defined in s. 801.02 (7) (a) 1., or to the attorney representing the local correctional institution involved and to

all other interested parties. Any injunction issued without giving notice and an opportunity to be heard is void.

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

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

**SECTION 30.** 813.40 of the statutes is created to read:

**813.40 Injunctive relief in prison condition cases.**

(1) (a) In this section:

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

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

1. Require only what is necessary to correct the harm.
2. Is the least intrusive means necessary to correct that harm.
3. Does not require or permit a government official, employe or agent to exceed his or her authority or to violate a state law or local ordinance unless all of the following apply:
  - a. Federal law permits that relief.
  - b. The relief is necessary to correct the violation of a federal right.
  - c. No other relief will correct the violation of a federal right.

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

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

(2) When determining the extent of any injunction issued under this section, the court shall give substantial

weight to any adverse impact on public safety or on the operation of the criminal justice system caused by the injunction.

(3) Any interested party may, 2 years after the date the court issued an injunction under this section, or one year after the court has denied a request under this subsection for modification or termination of the injunction, request that the court modify or terminate an injunction issued under this section. Any interested party may, 2 years after the effective date of this subsection .... [revisor inserts date], request that the court modify or terminate an injunction related to prison or jail conditions that was issued before the effective date of this subsection .... [revisor inserts date]. Any prospective relief issued under this section shall be stayed by the filing of a motion for modification or termination of the injunction for the period beginning on the 90th day after the motion is filed with the court and ending on the day the court enters a final order on the motion.

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

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

(6) Except for writs of habeas corpus or as otherwise required by the state or federal constitution, this section does not authorize the court to issue a prisoner release order. In this subsection, "prisoner release order" means any order that has the purpose or effect of reducing or limiting the prison or jail population, or that directs the release or nonadmission of prisoners to a prison or jail.

**SECTION 31.** 814.24 of the statutes is amended to read:

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

**SECTION 32.** 814.245 (3) of the statutes is amended to read:

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

**SECTION 33.** 814.25 of the statutes is created to read:

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

(a) “Prisoner” has the meaning given in s. 801.02 (7) (a) 2.

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

(2) (a) Except as provided in par. (b), if a prisoner brings an action or special proceeding related to prison or jail conditions, no costs may be allowed against the state, a state agency or a county, city, village or town, or against any individual defendant when sued in an official capacity.

(b) Costs are allowable to a prisoner who obtains prospective injunctive relief against an individual defendant when that defendant is sued in an official capacity and to a prisoner who obtains a judgment against a defendant when that defendant is sued in his or her personal capacity. This paragraph does not apply to actions or special proceedings related to prison or jail conditions that seek a remedy available by certiorari.

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

**SECTION 34.** 814.29 (1) (a) of the statutes is amended to read:

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

**SECTION 35.** 814.29 (1m) of the statutes is created to read:

814.29 (1m) (a) In this subsection, “prisoner” has the meaning given in s. 801.02 (7) (a) 2.

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

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

2. A certified copy of the trust fund account statement for the prisoner for the 6-month period immediately preceding the filing of the request for leave to commence or defend an action, special proceeding, writ of error or appeal, or for the period that the prisoner was incarcerated, imprisoned or detained, if that period is less than 6 months. The trust fund account statement must be obtained from the appropriate official at each facility in which the prisoner is or was incarcerated, imprisoned,

confined or detained. “Trust fund account statement” includes accounts accessible to the prisoner before or upon release.

(c) Except when dismissal is required under s. 801.02 (7) (d), the court shall issue an order permitting the prisoner to commence or defend an action, special proceeding, writ of error or appeal without the prepayment of fees or costs or without being required to give security for costs if all of the following conditions are met:

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

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

(d) If the court determines that the prisoner who made the affidavit does have assets in a trust fund account, whether accessible to the prisoner only upon release or before release, the court shall order an initial partial filing fee to be paid from that trust fund account before allowing the prisoner to commence or defend an action, special proceeding, writ of error or appeal. The initial filing fee shall be the current balance of the prisoner’s trust fund account or the required filing fee, whichever is less.

(e) The agency having custody of the prisoner shall freeze the prisoner’s trust fund account until the deposits in that account are sufficient to pay the balance owed for the costs and fees. When the deposits in that account are sufficient to pay the balance owed for the court costs and fees, the agency shall forward that amount to the court. This paragraph does not prohibit the payment from the prisoner’s trust fund account of court-ordered payments for child or family support, restitution or federal court fees or for the payments of debts owed to the department of corrections.

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

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

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



**SECTION 36.** 814.29 (3) (b) of the statutes is amended to read:

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

**SECTION 37.** 893.16 (1) of the statutes is amended to read:

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

**SECTION 38.** 893.735 of the statutes is created to read:

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

(2) An action seeking a remedy available by certiorari made on behalf of a prisoner is barred unless commenced within 45 days after the cause of action accrues. The 45-day period shall begin on the date of the decision or disposition, except that the court may extend the period by as many days as the prisoner proves have elapsed between the decision or disposition and the prisoner's actual notice of the decision or disposition. Subject to no contact requirements of a court or the department of corrections, a prisoner in administrative confinement, program segregation or adjustment segregation may communicate by 1st class mail, in accordance with department of corrections' rules or with written policies of the custodian of the prisoner, with a 3rd party outside the institution regarding the action or special proceeding.

(3) In this section, an action seeking a remedy available by certiorari is commenced at the time that the pris-

oner files a petition seeking a writ of certiorari with a court.

**SECTION 39.** 893.82 (3) of the statutes is amended to read:

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

**SECTION 40.** 893.82 (3m) of the statutes is created to read:

893.82 (3m) If the claimant is a prisoner, as defined in s. 801.02 (7) (a) 2., the prisoner may not commence the civil action or proceeding until the attorney general denies the claim or until 120 days after the written notice under sub. (3) is served upon the attorney general, whichever is earlier. This subsection does not apply to a prisoner who commences an action seeking injunctive relief if the court finds that there is a substantial risk to the prisoner's health or safety.

**SECTION 42.** 895.76 of the statutes is created to read:

**895.76 Limits on recovery by prisoners.** A prisoner, as defined in s. 801.02 (7) (a) 2., may not recover damages for mental or emotional injury unless the prisoner shows that he or she has suffered a physical injury as a result of the same incident that caused the mental or emotional injury.

**SECTION 43. Initial applicability.**

(1) This act first applies to civil actions, special proceedings, injunctions and petitions for a common law writ of certiorari pending on the effective date of this subsection.

**SECTION 44. Effective date.**

(1) This act takes effect on the first day of the 4th month beginning after publication.