

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

History: 1997 a. 133.

The words "on behalf of" in sub. (2) are not restricted to 3rd-party conduct. The time limit applies to actions filed by a prisoner on behalf of himself or herself. State ex rel. Collins v. Cooke, 2000 WI App 101, 235 Wis. 2d 63, 611 N.W.2d 774, 99-1212.

The definition of "prisoner" in s. 801.02 (7) (a) 2. does not include a Wisconsin inmate sent to an out-of-state county jail, and, therefore, the 45-day limit does not apply to the inmate. State ex rel. Frohwirth v. Wisconsin Parole Commission, 2000 WI App 139, 237 Wis. 2d 627, 614 N.W.2d 541, 99-2079.

Persons seeking certiorari review of probation revocation are prisoners subject to the 45-day filing deadline under sub. (2). State ex rel. Cramer v. Wisconsin Court of Appeals, 2000 WI 86, 236 Wis. 2d 473, 613 N.W.2d 591, 99-1089.

When a prison inmate places a certiorari petition in the prison's mailbox for forwarding to the circuit court, the 45-day limit under sub. (2) is tolled. However, other defects in filing may nonetheless result in rejection by the court. State ex rel. Shimkus v. Sondalle, 2000 WI App 262, 240 Wis. 2d 310, 622 N.W.2d 763, 00-0841.

To invoke the tolling of the 45-day limit under sub. (2), an inmate must present an affidavit or some other sufficient evidence of the date on which the petition was deposited in the institution mailbox. State ex rel. Shimkus v. Sondalle, 2000 WI App 262, 240 Wis. 2d 310, 622 N.W.2d 763, 00-0841.

That out-of-state inmates have a longer filing deadline for challenging parole revocation under Frohwirth does not violate the constitutional guarantee of equal protection. State ex rel. Saffold v. Schwarz, 2001 WI App 56, 241 Wis. 2d 253, 625 N.W.2d 333, 99-2945.

A verified petition, being a sworn statement, that was unchallenged by the state was sufficient to establish the number of days between the date of the challenged decision and the prisoner's receipt of it. There were no circumstances justifying not extending the 45-day limit pursuant to sub. (2). State ex rel. Johnson v. Litscher, 2001 WI App 47, 241 Wis. 2d 407, 625 N.W.2d 887, 00-1485.

The statute of limitations is tolled while a prisoner waits for the department of justice to provide the certification required by ss. 801.02 (7) (d) and 802.05 (3) (c). State ex rel. Locklear v. Schwarz, 2001 WI App 74, 242 Wis. 2d 327, 629 N.W.2d 30, 99-3211.

To invoke the tolling of the 45-day limit under sub. (2), a prisoner must submit proper documents and comply with statutory fee or fee-waiver requirements. State ex rel. Tyler v. Bett, 2002 WI App 234, 257 Wis. 2d 606, 652 N.W.2d 800, 01-2808.

Petitioners were entitled to equitable relief when they timely asked counsel to file for certiorari, counsel promised to do so, and due to counsel's failure to timely file they were denied certiorari review. The 45-day time limit for the filing of a writ of certiorari was equitably tolled as of the date that counsel promised to file for certiorari review. Griffin v. Smith, 2004 WI 36, 270 Wis. 2d 235, 677 N.W.2d 259, 01-2345.