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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Sen. Cat.

1 AN ACT *to repeal* 809.40 (1); *to renumber and amend* 808.10 and 809.30 (1)
2 (a); *to amend* 808.04 (3), 808.04 (4), 809.10 (1) (d), subchapter III (title) of
3 chapter 809 [precedes 809.30], 809.30 (title), 809.30 (1) (b), 809.30 (2) (title),
4 809.30 (2) (a), 809.30 (2) (b) (intro.), 809.30 (2) (b) 2., 809.30 (2) (b) 3., 809.30 (2)
5 (b) 4., 809.30 (2) (b) 5., 809.30 (2) (b) 6., 809.30 (2) (c) 1., 809.30 (2) (c) 2., 809.30
6 (2) (d), 809.30 (2) (e), 809.30 (2) (f), 809.30 (2) (g) 1., 809.30 (2) (g) 2., 809.30 (2)
7 (h), 809.30 (2) (i), 809.30 (2) (j), 809.30 (2) (k), 809.30 (3), 809.30 (4), 809.32 (1)
8 (a), 809.32 (1) (b) 1. (intro.), 809.32 (1) (b) 1. c., 809.32 (1) (b) 2., 809.32 (1) (c)
9 (form), 809.32 (1) (d) and (e), 809.32 (1) (f) and (g), 809.32 (2), 809.32 (3), 809.32
10 (4), subchapter IV (title) of chapter 809 [precedes 809.40], 809.40 (title), 809.40
11 (1m), 809.40 (3), 809.62 (1) (intro.), 809.82 (2) (b), 974.02 (1) and 974.02 (2); and
12 *to create* 48.297 (8), 808.03 (3), 808.10 (2), 809.30 (1) (af), 809.30 (1) (am),

1 809.30 (1) (ar), 938.297 (8), 971.17 (7m) and 980.061 of the statutes; **relating**
2 **to:** appellate procedure.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. ~~An analysis will be provided in a later version.~~

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

3 **SECTION 1.** 48.297 (8) of the statutes is created to read:

4 48.297 (8) An order denying a motion to suppress evidence or a motion
5 challenging the admissibility of a statement of a child, an expectant mother, or a
6 parent may be reviewed upon appeal from a final judgment or order notwithstanding
7 the fact that such final judgment or order was entered upon an admission, a consent,
8 or a plea of no contest to the allegations in the petition under s. 48.13 or 48.133 or
9 a petition to terminate parental rights.

10 **SECTION 2.** 808.03 (3) of the statutes is created to read:

11 **808.03 (3) REVIEW OF AN ORDER DENYING SUPPRESSION OR EXCLUSION OF EVIDENCE.**

12 An order denying a motion to suppress evidence or a motion challenging the
13 admissibility of a statement of a defendant, ^{under s. 971.31(10) ✓} a ^{under s. 938.297(8) ✓} juvenile child, expectant mother, or
14 parent ^{under s. 48.297(8) ✓} may be reviewed upon appeal from a final judgment or order notwithstanding
15 the fact that the final judgment or order was entered upon a [✓] plea of guilty or no
16 contest, [✓] an admission, [✓] or a consent to an information, [✓] a criminal complaint, or a
17 petition.

18 **SECTION 3.** 808.04 (3) of the statutes is amended to read:

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1 808.04 (3) Except as provided in subs. (4) and (7), an appeal in a criminal case
2 or a case under s. 971.17 or ch. 48, 51, 55 ~~or~~, 938, or 980 shall be initiated within the
3 time period specified in s. 809.30 (2) or 809.32 (2).

4 **SECTION 4.** 808.04 (4) of the statutes is amended to read:

5 808.04 (4) Except as provided in sub. (7m), an appeal by the state in either a
6 criminal case under s. 974.05, a proceeding under s. 971.17, or a case under ch. 48
7 ~~or~~, 938, or 980 shall be initiated within 45 days of entry of the judgment or order
8 appealed from.

9 **SECTION 5.** 808.10 of the statutes is renumbered 808.10 (1) and amended to
10 read:

11 808.10 (1) PETITION FOR REVIEW; TIME LIMIT. A decision or order of the court of
12 appeals is reviewable by the supreme court only upon a petition for review granted
13 by the supreme court. ~~The Except as provided in sub. (2), the~~ petition for review shall
14 be filed in the supreme court within 30 days of the date of the decision or order of the
15 court of appeals or the date of the decision or order of the court of appeals if amended
16 on reconsideration.

****NOTE: I added the language that you suggested, but that raises the question of whether the language "or order" should be added to the current "decision of the court of appeals." I added that language since you added that language in s. 808.10(2)(a).

17 **SECTION 6.** 808.10 (2) of the statutes is created to read:

18 808.10 (2) TOLLING PENDING COURT OF APPEALS RECONSIDERATION. (a) Filing of a motion
19 for reconsideration in the court of appeals under s. 809.29 ✓ within 20 days after the date of a decision
20 or order of the court of appeals tolls the time for filing a petition for review in the
21 supreme court.

22 (b) If the motion for reconsideration is filed in the court of appeals before any
23 petition for review is filed in the supreme court, the 30-day time period to file the

of appeals

1 petition for review starts on the date on which the court determines the motion for
2 reconsideration by filing an order denying the motion for reconsideration or an
3 amended decision or order.

4 (c) If a motion for reconsideration is filed, no party may file a petition for review
5 in the supreme court until the court of appeals issues an order denying the motion
6 for reconsideration or an amended order or decision.

7 (d) If a motion for reconsideration is denied and a petition for review was filed
8 before the motion for reconsideration was filed, and if the time for filing a
9 supplemental petition pursuant to s. 809.32 (4) had not expired when the motion for
10 reconsideration was filed, the supplemental petition may be filed within 14 days
11 after the filing of the order denying the motion for reconsideration or within the time
12 remaining to file the supplemental petition at the time that the motion for
13 reconsideration was filed, whichever is greater.

14 (e) If the court of appeals files an amended decision or order in response to the
15 motion for reconsideration, any party who filed a petition for review, or a
16 supplemental petition pursuant to s. 809.32 (4), prior to the filing of the motion for
17 reconsideration must file with the clerk of the supreme court a notice affirming the
18 pending petition or supplemental petition, a notice withdrawing the pending
19 petition or supplemental petition, or an amendment to the petition for review or
20 supplemental petition within 14 days after the date of the filing of the court of
21 appeals' amended decision or order.

22 **SECTION 7.** 809.10 (1) (d) of the statutes, as affected by Supreme Court Order
23 00-02, is amended to read:

24 809.10 (1) (d) *Docketing statement.* The person shall send the court of appeals
25 an original and one copy of a completed docketing statement on a form prescribed by

1 the court of appeals. The docketing statement shall accompany the court of appeals'
2 copy of the notice of appeal. The person shall send a copy of the completed docketing
3 statement to the other parties to the appeal. Docketing statements need not be filed
4 in appeals brought under s. 809.105, 809.107, 809.32, or 974.06 (7), or in cases in
5 which a party represents himself or herself. Docketing statements need not be filed
6 in appeals brought under s. 809.30 or 809.40 (1), except that a docketing statement
7 shall be filed in cases arising under chs. 48, 51, 55, or 938.

8 SECTION 8. Subchapter III (title) of chapter 809 [precedes 809.30] of the
9 statutes is amended to read:

10 CHAPTER 809

11 SUBCHAPTER III

12 FELONY APPEAL PROCEDURE IN
13 COURT OF APPEALS IN CRIMINAL,

14 ^sCH. 48, 51, 55, 938, ~~980~~, ^{AND}
15 ~~CASES OR OTHER CASES~~

→ AND

16 SECTION 9. 809.30 (title) of the statutes is amended to read:

17 ~~17~~ 809.30 (title) Rule (Appeals in felony, criminal, ^sch. 48, 51, 55, 938, ~~980~~, ^{and}
18 ~~cases or other cases~~).

19 SECTION 10. 809.30 (1) (a) of the statutes, as affected by 2001 Wisconsin Act 16,
20 is renumbered 809.30 (1) (ah) and amended to read:

21 809.30 (1) (ah) "Postconviction relief" ^{plain text} means, in a felony or misdemeanor
22 criminal case, (an appeal or a motion for postconviction relief other than) does not
23 include a motion under s. 973.19, 974.06, or 974.07 (2). In a ch. 48, 51, 55 or 938 case,
24 other than a termination of parental rights case under s. 48.43, it means an appeal
25 or a motion for reconsideration by the trial court of its final judgment or order; in such

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1 ~~cases a notice of intent to pursue such relief or a motion for such relief need not be~~
2 ~~styled as seeking "postconviction" relief.~~

3 **SECTION 11.** 809.30 (1) (af) of the statutes is created to read:

4 809.30 (1) (af) "Final adjudication" means the entry of a final judgment or order
5 by the circuit court in ~~an~~ *proceeding* s. 971.17 ~~case~~ or in a ch. 48, 51, 55, 938, or 980 case, other
6 than a termination of parental rights case under s. 48.43.

7 **SECTION 12.** 809.30 (1) (am) of the statutes is created to read:

8 809.30 (1) (am) "Postdisposition relief" means, in a ch. 48 case, other than a
9 termination of parental rights under s. 48.43, a ch. 51, 55, 938, or 980 case, or a
10 proceeding under s. 971.17, an appeal or motion for reconsideration of a circuit
11 court's final judgment or order.

12 **SECTION 13.** 809.30 (1) (ar) of the statutes is created to read:

13 809.30 (1) (ar) "Prosecutor" means a district attorney, corporation counsel, or
14 other attorney authorized by law to prosecute a criminal case or a case under ch. 48,
15 51, 55, 938, or 980.

*****NOTE: I used "prosecutor" instead of district attorney because calling a corporation counsel a district attorney is very confusing.*

16 **SECTION 14.** 809.30 (1) (b) of the statutes is amended to read:

17 809.30 (1) (b) "Sentencing" means, in a ~~felony or misdemeanor~~ criminal case,
18 the imposition of a sentence, a fine, or probation. ~~In a ch. 48, 51, 55 or 938 case, other~~
19 ~~than a termination of parental rights case under s. 48.43, it means the entry of the~~
20 ~~trial court's final judgment or order.~~

21 **SECTION 15.** 809.30 (2) (title) of the statutes is amended to read:

22 809.30 (2) (title) APPEAL OR, POSTCONVICTION, OR POSTDISPOSITION MOTION BY
23 DEFENDANT.

1 (e) *Response to no-merit report.* The defendant person may file a response to
2 the no-merit report within 30 days after service of the no-merit report. If the
3 defendant person files a response, the clerk shall, within 5 days after the filing of the
4 response, send a copy of the response to the attorney who filed the no-merit report.

5 **SECTION 42.** 809.32 (1) (f) and (g) of the statutes, as created by Supreme Court
6 Order 00-02, are amended to read:

7 809.32 (1) (f) *Supplemental no-merit report.* If the attorney is aware of facts
8 outside the record that rebut allegations made in the defendant's person's response,
9 the attorney may file, within 30 days after receipt of the defendant's person's
10 response, a supplemental no-merit report and an affidavit or affidavits, including
11 facts outside the record. The supplemental report and affidavit or affidavits shall be
12 served on the defendant person, and the attorney shall file a statement in the court
13 of appeals that service has been made upon the defendant person.

14 (g) *Remand for fact-finding prior to decision.* If the defendant person and the
15 attorney allege disputed facts regarding matters outside the record, and if the court
16 determines that the defendant's person's version of the facts, if true, would make
17 resolution of the appeal under sub. (3) inappropriate, the court shall remand the case
18 to the circuit court for an evidentiary hearing and fact-finding on those disputed
19 facts before proceeding to a decision under sub. (3).

20 **SECTION 43.** 809.32 (2) of the statutes, as affected by Supreme Court Order
21 00-02, is amended to read:

22 809.32 (2) NOTICE OF APPEAL, STATEMENT ON TRANSCRIPT, SERVICE OF COPIES. The
23 attorney also shall file in circuit court a notice of appeal of the judgment of conviction
24 or final adjudication and of any order denying a postconviction or postdisposition
25 motion. The notice of appeal shall be identified as a no-merit notice of appeal and

1 **SECTION 16.** 809.30 (2) (a) of the statutes, as affected by Supreme Court Order
2 00-02, is amended to read:

3 809.30 (2) (a) *Appeal procedures; counsel to continue.* A defendant person
4 seeking postconviction relief in a felony criminal case or a person seeking
5 postdisposition relief in a ch. 48, 51, 55, 938, or 980 case, other than a termination
6 of parental rights case under s. 48.43 or a parental consent to abortion case under
7 s. 48.375 (7), or a person seeking postdisposition relief in ~~an~~ s. 971.17 proceeding
8 shall comply with this section. Counsel representing the defendant person at
9 sentencing or at the time of the final adjudication shall continue representation by
10 filing a notice under par. (b) if the defendant person desires to pursue postconviction
11 or postdisposition relief unless sooner discharged by the defendant person or by the
12 trial circuit court.

13 **SECTION 17.** 809.30 (2) (b) (intro.) of the statutes, as affected by Supreme Court
14 Order 00-02, is amended to read:

15 809.30 (2) (b) *Notice of intent to pursue postconviction or postdisposition relief.*
16 (intro.) Within 20 days after the date of sentencing or final adjudication, the
17 defendant person shall file in circuit court and serve on the ~~district attorney~~
18 prosecutor a notice of intent to pursue postconviction or postdisposition relief. The
19 notice shall include all of the following:

20 **SECTION 18.** 809.30 (2) (b) 2. of the statutes is amended to read:

21 809.30 (2) (b) 2. An identification of the judgment or order from which the
22 defendant person intends to seek postconviction or postdisposition relief and the
23 date on which it was granted or entered.

24 **SECTION 19.** 809.30 (2) (b) 3. of the statutes is amended to read:

1 809.30 (2) (b) 3. The name and address of the defendant person and the
2 defendant's his or her trial counsel.

3 **SECTION 20.** 809.30 (2) (b) 4. of the statutes is amended to read:

4 809.30 (2) (b) 4. Whether ~~defendant's~~ the person's trial counsel was appointed
5 by the state public defender and, if so, whether the ~~defendant's~~ person's financial
6 circumstances have materially improved since the date ~~the defendant's~~ on which his
7 or her indigency was determined.

8 **SECTION 21.** 809.30 (2) (b) 5. of the statutes is amended to read:

9 809.30 (2) (b) 5. Whether the defendant person requests the state public
10 defender to appoint counsel for purposes of postconviction or postdisposition relief.

11 **SECTION 22.** 809.30 (2) (b) 6. of the statutes, as affected by Supreme Court
12 Order 00–02, is amended to read:

13 809.30 (2) (b) 6. Whether a defendant person who does not request the state
14 public defender to appoint counsel will represent himself or herself or will be
15 represented by retained counsel. If the ~~defendant~~ person has retained counsel to
16 pursue postconviction or postdisposition relief, counsel's name and address shall be
17 included.

18 **SECTION 23.** 809.30 (2) (c) 1. of the statutes, as affected by Supreme Court Order
19 00–02, is amended to read:

20 809.30 (2) (c) 1. If the defendant person requests representation by the state
21 public defender for purposes of postconviction or postdisposition relief, send to the
22 state public defender's appellate intake office a copy of the notice that shows the date
23 on which it was filed or entered, a copy of the judgment or order specified in the notice
24 that shows the date on which it was filed or entered, a list of the court reporters for
25 each proceeding in the action in which the judgment or order was entered, and a list

1 of those proceedings in which a transcript has been filed with the clerk of circuit
2 court.

3 **SECTION 24.** 809.30 (2) (c) 2. of the statutes, as affected by Supreme Court Order
4 00-02, is amended to read:

5 809.30 (2) (c) 2. If the ~~defendant~~ person does not request representation by the
6 state public defender, send or furnish to the ~~defendant~~ person, if the ~~defendant~~
7 person is appearing without counsel, or to the ~~defendant's~~ person's attorney if one
8 has been retained, a copy of the judgment or order specified in the notice that shows
9 the date on which it was filed or entered, a list of the court reporters for each
10 proceeding in the action in which the judgment or order was entered, and a list of
11 those proceedings in which a transcript has been filed with the clerk of circuit court.

12 **SECTION 25.** 809.30 (2) (d) of the statutes, as affected by Supreme Court Order
13 00-02, is amended to read:

14 809.30 (2) (d) *Indigency redetermination.* Except as provided in this
15 paragraph, whenever a ~~defendant~~ person whose trial counsel is appointed by the
16 state public defender files a notice under par. (b) requesting public defender
17 representation for purposes of postconviction or postdisposition relief, the ~~district~~
18 attorney prosecutor may, within 5 days after the notice is served and filed, file in the
19 ~~trial~~ circuit court and serve upon the state public defender a request that the
20 defendant's person's indigency be redetermined before counsel is appointed or
21 transcripts are ordered. This paragraph does not apply to a child who is entitled to
22 be represented by counsel under s. 48.23 or 938.23.

23 **SECTION 26.** 809.30 (2) (e) of the statutes, as affected by Supreme Court Order
24 00-02, is amended to read:

1 809.30 (2) (e) *State public defender appointment of counsel; transcript and*
2 *circuit court case record request.* Within 30 days after the state public defender
3 appellate intake office receives the materials from the clerk of circuit court under par.
4 (c), the state public defender shall appoint counsel for the ~~defendant~~ person and
5 request a transcript of the reporter's notes and a copy of the circuit court case record,
6 except that if the ~~defendant's~~ person's indigency must first be determined or
7 redetermined the state public defender shall do so, appoint counsel, and request
8 transcripts and a copy of the circuit court case record within 50 days after the state
9 public defender appellate intake office receives the material from the clerk of circuit
10 court under par. (c).

11 **SECTION 27.** 809.30 (2) (f) of the statutes, as affected by Supreme Court Order
12 00-02, is amended to read:

13 809.30 (2) (f) *Defendant Person not represented by public defender; transcript*
14 *and circuit court case record request.* A ~~defendant~~ person who does not request
15 representation by the state public defender for purposes of postconviction or
16 postdisposition relief shall request a transcript of the reporter's notes, and may
17 request a copy of the circuit court case record, within 30 days after filing a notice
18 under par. (b). A ~~defendant~~ person who is denied representation by the state public
19 defender for purposes of postconviction or postdisposition relief shall request a
20 transcript of the reporter's notes, and may request a copy of the circuit court case
21 record, within 90 days after filing a notice under par. (b).

22 **SECTION 28.** 809.30 (2) (g) 1. of the statutes, as created by Supreme Court Order
23 00-02, is amended to read:

1 809.30 (2) (g) 1. The clerk of circuit court shall serve a copy of the circuit court
2 case record on the defendant person within 60 days after receipt of the request for
3 the circuit court case record.

4 **SECTION 29.** 809.30 (2) (g) 2. of the statutes, as affected by Supreme Court
5 Order 00-02, is amended to read:

6 809.30 (2) (g) 2. The court reporter shall file the transcript with the circuit court
7 and serve a copy of the transcript on the defendant person within 60 days of the
8 request for the transcript. Within 20 days of after the request for a transcript of
9 postconviction proceedings brought under sub. (2) (h), the court reporter shall file the
10 original with the circuit court and serve a copy of that transcript on the defendant
11 person. The reporter may seek an extension under s. 809.11 (7) for filing and serving
12 the transcript.

13 **SECTION 30.** 809.30 (2) (h) of the statutes, as affected by Supreme Court Order
14 00-02, is amended to read:

15 809.30 (2) (h) *Notice of appeal or postconviction or postdisposition motion.* The
16 defendant person shall file in circuit court and serve on the ~~district attorney~~
17 prosecutor a notice of appeal or motion seeking postconviction or postdisposition
18 relief within 60 days after the later of the service of the transcript or circuit court case
19 record. The person shall file a motion for postconviction or postdisposition relief
20 before a notice of appeal is filed unless the grounds for seeking relief are sufficiency
21 of the evidence or of the issues previously and adequately raised. A postconviction
22 or postdisposition motion under this section may not be accompanied by a notice of
23 motion and is made when filed.

***NOTE: I put "of the" before "issues." Does that incorrectly change your intent?

1 **SECTION 31.** 809.30 (2) (i) of the statutes, as affected by Supreme Court Order
2 00–02, is amended to read:

3 809.30 (2) (i) *Order determining postconviction or postdisposition motion.*
4 Unless an extension is requested by the defendant person or circuit court and
5 granted by the court of appeals, the circuit court shall determine by an order the
6 defendant's person's motion for postconviction or postdisposition relief within 60
7 days after the filing of the motion or the motion is considered to be denied and the
8 clerk of circuit court shall immediately enter an order denying the motion.

9 **SECTION 32.** 809.30 (2) (j) of the statutes, as affected by Supreme Court Order
10 00–02, is amended to read:

11 809.30 (2) (j) *Appeal from judgment and order.* The defendant person shall file
12 an appeal from the judgment of conviction and sentence or final adjudication and,
13 if necessary, from the order of the ~~trial~~ circuit court on the motion for postconviction
14 or postdisposition relief within 20 days of the entry of the order on the postconviction
15 motion. Appeals in chs. 48, 51, 55, and 938 cases are subject to the docketing
16 statement requirements of s. 809.10 (1) (d) and may be eligible for the expedited
17 appeals program in the discretion of the court.

18 **SECTION 33.** 809.30 (2) (k) of the statutes, as affected by Supreme Court Order
19 00–02, is amended to read:

20 809.30 (2) (k) *Transmittal of record.* Except as otherwise provided in s. ss.
21 809.14 (3) and 809.15 (4) (b) and (c), the clerk of circuit court shall transmit the record
22 on appeal to the court of appeals as soon as prepared but in no event more than 40
23 days after the filing of the notice of appeal ~~by the defendant~~. Subsequent proceedings
24 in the appeal are governed by the procedures for civil appeals.

1 **SECTION 34.** 809.30 (3) of the statutes, as affected by Supreme Court Order
2 00–02, is amended to read:

3 809.30 (3) **APPEALS BY STATE OR OTHER PARTY; APPOINTMENT OF COUNSEL.** In a case
4 in which the state of Wisconsin, the representative of the public, or any other party
5 appeals and the ~~defendant or subject individual~~ person who is the subject of the case
6 or proceeding is a child or claims or appears to be indigent, the court shall refer the
7 person to the state public defender for the determination of indigency and the
8 appointment of legal counsel under ch. 977.

9 **SECTION 35.** 809.30 (4) of the statutes, as created by Supreme Court Order
10 00–02, is amended to read:

11 809.30 (4) **MOTION TO WITHDRAW AS APPOINTED COUNSEL FOR DEFENDANT PERSON.**

12 (a) If counsel has been appointed for the ~~defendant~~ person under ch. 977 and seeks
13 to withdraw as appointed counsel, counsel shall serve a motion to withdraw upon the
14 ~~defendant~~ person and upon the appellate division intake unit in the Madison
15 appellate office of the state public defender. If the motion is filed before the notice
16 of appeal is filed, the motion shall be filed in circuit court. If the motion is filed after
17 a notice of appeal has been filed, the motion shall be filed in the court of appeals.

18 (b) Within 20 days after receipt of the motion under par. (a), the state public
19 defender shall determine whether successor counsel will be appointed for the
20 ~~defendant~~ person and shall notify the court in which the motion was filed of the state
21 public defender's determination.

22 (c) Before determining the motion to withdraw, the court shall consider the
23 state public defender's response under par. (b) and whether the ~~defendant~~ person
24 waives the right to counsel.

1 (d) When the motion to withdraw is filed in circuit court, appointed counsel
2 shall prepare and serve a copy of the order determining counsel's motion to withdraw
3 upon the defendant person and the appellate division intake unit in the Madison
4 appellate office of the state public defender within 14 days after the court's
5 determination.

6 **SECTION 36.** 809.32 (1) (a) of the statutes, as created by Supreme Court Order
7 00-02, is amended to read:

8 809.32 (1) (a) *No-merit report.* If an attorney appointed under s. 809.30 (2) (e)
9 or ch. 977 concludes that a direct appeal on behalf of the defendant person would be
10 frivolous and without any arguable merit within the meaning of *Anders v. California*,
11 386 U.S. 738 (1967), and the defendant person requests that a no-merit report be
12 filed or declines to consent to have the attorney close the file without further
13 representation by the attorney, the attorney shall file with the court of appeals 3
14 copies of a no-merit report. The no-merit report shall identify anything in the record
15 that might arguably support the appeal and discuss the reasons why each identified
16 issue lacks merit.

17 **SECTION 37.** 809.32 (1) (b) 1. (intro.) of the statutes, as created by Supreme
18 Court Order 00-02, is amended to read:

19 809.32 (1) (b) 1. (intro.) Prior to the filing of a no-merit report, the attorney
20 shall discuss with the defendant person all potential issues identified by the attorney
21 and the defendant person, and the merit of an appeal on these issues. The attorney
22 shall inform the defendant person that the defendant person has 3 options:

23 **SECTION 38.** 809.32 (1) (b) 1. c. of the statutes, as created by Supreme Court
24 Order 00-02, is amended to read:

1 issues, and I have informed the ~~defendant~~ person that the ~~defendant~~ person must
2 choose one of the following 3 options: 1) to have me file a no-merit report; 2) to have
3 me close the file without an appeal; or 3) to have me close the file and to proceed
4 without an attorney or with another attorney retained at the ~~defendant's~~ person's
5 expense. I have informed the ~~defendant~~ person that a no-merit report will be filed
6 if the ~~defendant~~ person either requests a no-merit report or does not consent to have
7 me close the file without further representation. I have informed the ~~defendant~~
8 person that the transcripts and circuit court case record will be forwarded at the
9 ~~defendant's~~ person's request. I have also informed the ~~defendant~~ person that the
10 ~~defendant~~ person may file a response to the no-merit report and that I may file a
11 supplemental no-merit report and affidavit or affidavits containing facts outside the
12 record, possibly including confidential information, to rebut allegations made in the
13 ~~defendant's~~ person's response to the no-merit report.

14 Signed:

15 Signature:

16 **SECTION 41.** 809.32 (1) (d) and (e) of the statutes, as affected by Supreme Court
17 Order 00-02, are amended to read:

18 809.32 (1) (d) *Service of copy of no-merit report, transcript, and circuit court*
19 *case record.* The attorney shall serve a copy of the no-merit report on the ~~defendant~~
20 person and shall file a statement in the court of appeals that service has been made
21 upon the ~~defendant~~ person. The attorney shall also serve upon the ~~defendant~~ person
22 a copy of the transcript and circuit court case record within 14 days after receipt of
23 a request for the transcript and circuit court case record from the ~~defendant~~ person
24 and shall file a statement in the court of appeals that service has been made upon
25 the ~~defendant~~ person.

1 shall state the date on which the no-merit report is due and whether the due date
2 is calculated under par. (a) or (b). The clerk of circuit court shall transmit the record
3 in the case to the court pursuant to s. 809.15. The attorney also shall file a statement
4 on transcript complying with the requirements of s. 809.11 (4), except that copies of
5 the transcript need not be provided to other parties. All papers filed with the court
6 under this subsection, except the transcript, shall be served on the state in
7 accordance with s. 809.80 (2) (b). The no-merit report, notice of appeal, and
8 statement on transcript must be filed within whichever of the following is later:

9 (a) One hundred eighty days after the service upon the defendant person of the
10 transcript and circuit court case record requested under s. 809.30 (2) (e).

11 (b) Sixty days after the entry of the order determining a postconviction or
12 postdisposition motion.

13 **SECTION 44.** 809.32 (3) of the statutes, as affected by Supreme Court Order
14 00-02, is amended to read:

15 809.32 (3) DECISION ON NO-MERIT REPORT. In the event that the court of appeals
16 finds that further appellate proceedings would be frivolous and without any
17 arguable merit, the court of appeals shall affirm the judgment of conviction or final
18 adjudication and the denial of any postconviction or postdisposition motion and
19 relieve the attorney of further responsibility in the case. The attorney shall advise
20 the defendant person of the right to file a petition for review to the supreme court
21 under s. 809.62.

22 **SECTION 45.** 809.32 (4) of the statutes, as affected by Supreme Court Order
23 00-02, is amended to read:

24 809.32 (4) NO-MERIT PETITION FOR REVIEW. If a fully briefed appeal is taken to
25 the court of appeals and the attorney is of the opinion that a petition for review in

1 the supreme court under s. 809.62 would be frivolous and without any arguable
2 merit, the attorney shall advise the ~~defendant~~ person of the reasons for this opinion
3 and that the ~~defendant~~ person has the right to file a petition for review. If requested
4 by the ~~defendant~~ person, the attorney shall file a petition satisfying the
5 requirements of s. 809.62 (2) (d) and (f) and the ~~defendant~~ person shall file a
6 supplemental petition satisfying the requirements of s. 809.62 (2) (a), (b), (c), and (e).
7 ~~The~~ Except as provided in s. 808.10, the petition and supplemental petition shall
8 both be filed within 30 days after the date of the decision or order of the court of
9 appeals. An opposing party may file a response to the petition and supplemental
10 petition within 14 days after the service of the supplemental petition.

11 **SECTION 46.** Subchapter IV (title) of chapter 809 [precedes 809.40] of the
12 statutes is amended to read:

13 **CHAPTER 809**

14 **SUBCHAPTER IV**

15 CHAPTERS APPEAL PROCEDURE IN
16 COURT OF APPEALS IN TERMINATION
17 OF PARENTAL RIGHTS, CHS. 48, 51, 55,
18 AND 799, TRAFFIC REGULATION,
19 MUNICIPAL ORDINANCE VIOLATION,
20 AND MISDEMEANOR PARENTAL
21 CONSENT TO ABORTION CASES APPEAL
22 PROCEDURE IN COURT OF APPEALS

23 **SECTION 47.** 809.40 (title) of the statutes is amended to read:

1 **809.40** (title) **Rule (Applicability Appeals in termination of parental**
2 **rights, ch. 799, traffic regulation, municipal ordinance violation, and**
3 **parental consent to abortion cases).**

4 **SECTION 48.** 809.40 (1) of the statutes is repealed.

5 **SECTION 49.** 809.40 (1m) of the statutes is amended to read:

6 809.40 (1m) ~~Subsection (1) does not apply to an~~ An appeal from an order
7 denying a petition under s. 48.375 (7), ~~which~~ is governed by the procedures specified
8 in s. 809.105, ~~or to~~ and an appeal from an order or judgment under s. 48.43, ~~which~~
9 is governed by the procedures specified in s. 809.107.

10 **SECTION 50.** 809.40 (3) of the statutes, as affected by Supreme Court Order
11 00-02, is amended to read:

12 809.40 (3) Any civil appeal to the court of appeals under sub. ~~(1) or~~ (2) is subject
13 to the docketing statement requirement of s. 809.10 (1) (d) and may be eligible for the
14 expedited appeals program in the discretion of the court.

15 **SECTION 51.** 809.62 (1) (intro.) of the statutes is amended to read:

16 809.62 (1) (intro.) A party may file with the supreme court a petition for review
17 of an adverse decision of the court of appeals pursuant to s. 808.10 ~~within 30 days~~
18 ~~of the date of the decision of the court of appeals.~~ Supreme court review is a matter
19 of judicial discretion, not of right, and will be granted only when special and
20 important reasons are presented. The following, while neither controlling nor fully
21 measuring the court's discretion, indicate criteria that will be considered:

22 **SECTION 52.** 809.82 (2) (b) of the statutes is amended to read:

23 809.82 (2) (b) Notwithstanding the provisions of par. (a), the time for filing a
24 notice of appeal or cross-appeal of a final judgment or order other than in an appeal
25 under s. 809.30 ^{plain} ~~or~~ ^{809.32} 809.40 (1) ~~may~~ not be enlarged.

1 **SECTION 53.** 938.297 (8) of the statutes is created to read:

2 938.297 (8) An order denying a motion to suppress evidence or a motion
3 challenging the admissibility of a statement of a juvenile may be reviewed upon
4 appeal from a final judgment or order notwithstanding the fact that such final
5 judgment or order was entered upon an admission or a plea of no contest to the
6 allegations in the petition.

7 **SECTION 54.** 971.17 (7m) of the statutes is created to read:

8 971.17 (7m) MOTION FOR POSTDISPOSITION RELIEF AND APPEAL. (a) *Appeal by*
9 *respondent.* A motion for postdisposition relief by a person committed under this
10 section shall be made in the time and manner provided in ss. 809.30 to 809.32. An
11 appeal by a person who has been committed under this section from a final order
12 under this section or from an order denying a motion for postdisposition relief shall
13 be taken in the time and manner provided in ss. 808.04 (3) and 809.30 to 809.32. The
14 person shall file a motion for postdisposition relief in the circuit court before ^{a notice of} an
15 appeal ^{is filed} unless the grounds for seeking relief are sufficiency of the evidence or issues
16 previously raised.

17 (b) *Appeal by state.* An appeal by the state from a final judgment or order under
18 this section may be taken to the court of appeals within the time specified in s. 808.04
19 (4) and in the manner provided for civil appeals under chs. 808 and 809.

20 **SECTION 55.** 974.02 (1) of the statutes, as affected by 2001 Wisconsin Act 16,
21 is amended to read:

22 974.02 (1) A motion for postconviction ~~or postdisposition~~ relief other than
23 under s. 974.06 or 974.07 (2) by the defendant in a criminal case shall be made in the
24 time and manner provided in ss. 809.30 and ~~809.40~~ 809.32. An appeal by the
25 defendant in a criminal case from a judgment of conviction or from an order denying

(1) a postconviction ~~or postdisposition~~ motion or from both shall be taken in the time and
 2 manner provided in ss. 808.04 (3), and 809.30 and 809.40 to 809.32. An appeal of an
 3 order or judgment on habeas corpus remanding to custody a prisoner committed for
 4 trial under s. 970.03 shall be taken under ss. 808.03 (2) and 809.50, with notice to
 5 the attorney general and the district attorney and opportunity for them to be heard.

X ****NOTE: I added "postdisposition" to the type of relief. OK? Is "defendant" the current term to use in this subsection?*

6 **SECTION 56.** 974.02 (2) of the statutes is amended to read:

7 974.02 (2) An appellant is not required to file a postconviction motion in the
 8 trial circuit court prior to an appeal if the grounds are sufficiency of the evidence or
 9 issues previously, adequately raised.

10 **SECTION 57.** 980.061 of the statutes is created to read:

11 **980.061 Motion for postdisposition relief and appeal. (1) APPEAL BY**

12 **RESPONDENT.** A motion for postdisposition relief *from a final order or judgment* by a person committed under ~~s.~~
this chapter

13 ~~980.06~~ shall be made in the time and manner provided in ss. 809.30 to 809.32. An

14 appeal *by a person who has been committed under ch. 980 from a final order under* ~~by a person~~ *this chapter*

15 s. 980.06, 980.08, or 980.09 *from a final order or judgment entered under* or from an order denying a motion for postdisposition

16 relief *by a person committed under this chapter* shall be taken in the time and manner provided in ss. 808.04 (3) and 809.30 to

17 809.32. If a person is seeking relief from an order of commitment under s. 980.06,

18 the person shall file a motion for postdisposition relief in circuit court before an *a notice of*

19 appeal *is filed* unless the grounds for seeking relief are sufficiency of the evidence or issues
 20 previously raised.

21 (2) **APPEAL BY STATE.** An appeal by the state from a final judgment or order

22 under this chapter may be taken to the court of appeals within the time specified in

23 s. 808.04 (4) and in the manner provided for civil appeals under chs. 808 and 809.

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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insert anl:

Under current law, a final judgment or order of a circuit court generally may be appealed to the court of appeals as a matter of right. A judgment or order of a circuit court that is not appealable to the court of appeals as a matter of right may be appealed in advance of a final judgment or order if the court determines that the appeal will advance the termination of the litigation, clarify further proceedings in the litigation, protect the petitioner from irreparable injury, or clarify an issue of general importance in the administration of justice. This bill provides that an order denying a motion to suppress evidence or challenging the admissibility of a statement may be reviewed upon appeal from a final judgment or order even if that judgment or order was entered upon an admission, consent, plea of guilty, or a plea of no contest.

Under current law, if a person wants the supreme court to review a decision of the court of appeals, the person must petition the supreme court within 30 days of the court of appeals decision. This bill expands that petition to include the review of orders of the court of appeals, and establishes a procedure for stopping the 30-day time period for filing a petition for supreme court review when a motion is filed for reconsideration of the court of appeals decision or order. If a petition for reconsideration is filed with the court of appeals within 20 days after that court's decision or order, the 30-day time period for filing a petition for supreme court review starts on the day ~~the~~ the court of appeals files an order denying the motion for reconsideration or an amended order or decision.

on which
Current law establishes the appellate procedure that applies to most civil actions and the appellate procedure that applies to other actions, including criminal actions, actions affecting children and juveniles, commitment proceedings involving mental health and protective services, and sexually violent person commitment proceedings. In the latter actions, the terms "defendant," "conviction," and "postconviction" are often used inappropriately when applied to a person in an action or proceeding that is not criminal. This bill changes those terms where appropriate, for example, a child or person in need of protective services in a proceeding is not referred to as a "defendant." In addition, the term "postdisposition" is used when referring to the appellate relief requested in those non-criminal proceedings and actions. A motion for postdisposition relief is generally subject to the same procedures and time limits as is a current motion for postconviction relief.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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↑

That I

This draft is based on notes received from Marla Stephens on behalf of the Judicial Council. I will have a copy of this draft e-mailed to her so she can review the analysis and the changes made in substance of the draft.

the

Robert P. Nelson
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**DRAFTER'S NOTE
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January 7, 2002

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CORRESPONDENCE/MEMORANDUM

State of Wisconsin

Office of the State Public Defender

Date: February 4, 2002

To: Robert P. Nelson, Senior Legislative Attorney
Legislative Reference Bureau

From: Marla Stephens, Appellate Division Director
Wisconsin Public Defender
Chair, Wisconsin Judicial Council
Co-chair Wisconsin Judicial Council Appellate Procedure Committee



Subject: Comments to PDF version of LRB-2910/P3

...are attached.

Let me know if you have any questions.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2910/P3dn
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January 7, 2002

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Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 809.40 (1); *to renumber and amend* 808.10 and 809.30 (1)
2 (a); *to amend* 808.04 (3), 808.04 (4), 809.10 (1) (d), subchapter III (title) of
3 chapter 809 [precedes 809.30], 809.30 (title), 809.30 (1) (b), 809.30 (2) (title),
4 809.30 (2) (a), 809.30 (2) (b) (intro.), 809.30 (2) (b) 2., 809.30 (2) (b) 3., 809.30 (2)
5 (b) 4., 809.30 (2) (b) 5., 809.30 (2) (b) 6., 809.30 (2) (c) 1., 809.30 (2) (c) 2., 809.30
6 (2) (d), 809.30 (2) (e), 809.30 (2) (f), 809.30 (2) (g) 1., 809.30 (2) (g) 2., 809.30 (2)
7 (h), 809.30 (2) (i), 809.30 (2) (j), 809.30 (2) (k), 809.30 (3), 809.30 (4), 809.32 (1)
8 (a), 809.32 (1) (b) 1. (intro.), 809.32 (1) (b) 1. c., 809.32 (1) (b) 2., 809.32 (1) (c)
9 (form), 809.32 (1) (d) and (e), 809.32 (1) (f) and (g), 809.32 (2), 809.32 (3), 809.32
10 (4), subchapter IV (title) of chapter 809 [precedes 809.40], 809.40 (title), 809.40
11 (1m), 809.40 (3), 809.62 (1) (intro.), 809.82 (2) (b), 974.02 (1) and 974.02 (2); and
12 *to create* 48.297 (8), 808.03 (3), 808.10 (2), 809.30 (1) (af), 809.30 (1) (am),

1 809.30 (1) (ar), 938.297 (8), 971.17 (7m) and 980.061 of the statutes; **relating**
2 **to:** appellate procedure.

Analysis by the Legislative Reference Bureau

Under current law, a final judgment or order of a circuit court generally may be appealed to the court of appeals as a matter of right. A judgment or order of a circuit court that is not appealable to the court of appeals as a matter of right may be appealed in advance of a final judgment or order if the court determines that the appeal will advance the termination of the litigation, clarify further proceedings in the litigation, protect the petitioner from irreparable injury, or clarify an issue of general importance in the administration of justice. This bill provides that an order denying a motion to suppress evidence or challenging the admissibility of a statement may be reviewed upon appeal from a final judgment or order even if that judgment or order was entered upon an admission, consent, plea of guilty, or plea of no contest.

Under current law, if a person wants the supreme court to review a decision of the court of appeals, the person must petition the supreme court within 30 days of the court of appeals decision. This bill expands that petition to include the review of orders of the court of appeals, and establishes a procedure for stopping the 30-day time period for filing a petition for supreme court review when a motion is filed for reconsideration of the court of appeals decision or order. If a petition for reconsideration is filed with the court of appeals within 20 days after that court's decision or order, the 30-day time period for filing a petition for supreme court review starts on the day on which the court of appeals files an order denying the motion for reconsideration or an amended order or decision.

Current law establishes the appellate procedure that applies to most civil actions and the appellate procedure that applies to other actions, including criminal actions, actions affecting children and juveniles, commitment proceedings involving mental health and protective services, and sexually violent person commitment proceedings. In the latter actions, the terms "defendant," "conviction," and "postconviction" are often used inappropriately when applied to a person in an action or proceeding that is not criminal. This bill changes those terms where appropriate. For example, a child or person in need of protective services in a proceeding is not referred to as a "defendant." In addition, the term "postdisposition" is used when referring to the appellate relief requested in those noncriminal proceedings and actions. A motion for postdisposition relief is generally subject to the same procedures and time limits as is a current motion for postconviction relief.

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

3 **SECTION 1.** 48.297 (8) of the statutes is created to read:

1 808.10 (1) PETITION FOR REVIEW; TIME LIMIT. A decision ~~or order~~ of the court of
2 appeals is reviewable by the supreme court only upon a petition for review granted
3 by the supreme court. ~~The Except as provided in sub. (2),~~ the petition for review shall
4 be filed in the supreme court within 30 days of the date of the decision ~~or order~~ of the
5 court of appeals.

6 SECTION 6. 808.10 (2) of the statutes is created to read:

7 808.10 (2) TOLLING PENDING COURT OF APPEALS RECONSIDERATION. (a) Filing of a motion
8 for reconsideration in the court of appeals under s. 809.24⁽¹⁾ within 20 days after the
9 date of a decision ~~or order~~ of the court of appeals tolls the time for filing a petition
10 for review in the supreme court.

11 (b) If the motion for reconsideration is filed in the court of appeals before any
12 petition for review is filed in the supreme court, the 30-day time period to file the
13 petition for review starts on the date on which the court of appeals determines the
14 motion for reconsideration by filing an order denying the motion for reconsideration
15 or an amended decision ~~or order~~.

16 (c) If a motion for reconsideration is filed, no party may file a petition for review
17 in the supreme court until the court of appeals issues an order denying the motion
18 for reconsideration or an amended ~~order or~~ decision.

19 (d) If a motion for reconsideration is denied and a petition for review was filed
20 before the motion for reconsideration was filed, and if the time for filing a
21 supplemental petition pursuant to s. 809.32 (4) had not expired when the motion for
22 reconsideration was filed, the supplemental petition may be filed within 14 days
23 after the filing of the order denying the motion for reconsideration or within the time
24 remaining to file the supplemental petition at the time that the motion for
25 reconsideration was filed, whichever is greater.

1 (e) If the court of appeals files an amended decision ~~or order~~ in response to the
2 motion for reconsideration, any party who filed a petition for review, or a
3 supplemental petition pursuant to s. 809.32 (4), prior to the filing of the motion for
4 reconsideration must file with the clerk of the supreme court a notice affirming the
5 pending petition or supplemental petition, a notice withdrawing the pending
6 petition or supplemental petition, or an amendment to the petition for review or
7 supplemental petition within 14 days after the date of the filing of the court of
8 appeals' amended decision ~~or order~~.

9 **SECTION 7.** 809.10 (1) (d) of the statutes, as affected by Supreme Court Order
10 00-02, is amended to read:

11 809.10 (1) (d) *Docketing statement.* The person shall send the court of appeals
12 an original and one copy of a completed docketing statement on a form prescribed by
13 the court of appeals. The docketing statement shall accompany the court of appeals'
14 copy of the notice of appeal. The person shall send a copy of the completed docketing
15 statement to the other parties to the appeal. Docketing statements need not be filed
16 in appeals brought under s. 809.105, 809.107, 809.32, or 974.06 (7), or in cases in
17 which a party represents himself or herself. Docketing statements need not be filed
18 in appeals brought under s. 809.30 or 809.40 (1), except that ~~a~~ docketing statements
19 shall be filed in cases arising under chs. 48, 51, 55, or 938.

20 **SECTION 8.** Subchapter III (title) of chapter 809 [precedes 809.30] of the
21 statutes is amended to read:

22
23 or 974.05, or by the state
24 or defendant in permissive
25 appeals in criminal
cases pursuant to
s. 809.50,

CHAPTER 809
SUBCHAPTER III
FELONY APPEAL PROCEDURE IN
COURT OF APPEALS IN CRIMINAL

CHS. 48, 51, 55, 938, AND 980,

AND OTHER CASES

SECTION 9. 809.30 (title) of the statutes is amended to read:

809.30 (title) Rule (Appeals in felony criminal, chs. 48, 51, 55, 938, and 980, and other cases). See attachment defining "person," as per 809.30(1)(b).

SECTION 10. 809.30 (1) (a) of the statutes, as affected by 2001 Wisconsin Act 16, is renumbered 809.30 (1) (a) and amended to read:

809.30 (1) (a) "Postconviction relief" means, in a felony or misdemeanor criminal case, an appeal or a motion for postconviction relief other than a motion under s. 973.19, 974.06, or 974.07 (2). In a ch. 48, 51, 55 or 938 case, other than a termination of parental rights case under s. 48.43, it means an appeal or a motion for reconsideration by the trial court of its final judgment or order; in such cases a notice of intent to pursue such relief or a motion for such relief need not be styled as seeking "postconviction" relief.

SECTION 11. 809.30 (1) (a) of the statutes is created to read:

809.30 (1) (a) "Final adjudication" means the entry of a final judgment or order by the circuit court in an s. 971.17 proceeding or in a ch. 48, 51, 55, 938, or 980 case, other than a termination of parental rights case under s. 48.43.

SECTION 12. 809.30 (1) (a) of the statutes is created to read: or a parental consent to abortion case under s. 48.375(1)

809.30 (1) (a) "Postdisposition relief" means, in a ch. 48 case, other than a termination of parental rights under s. 48.43, a ch. 51, 55, 938, or 980 case, or a proceeding under s. 971.17, an appeal or a motion for postdisposition relief from reconsideration of a circuit court's final judgment or order.

SECTION 13. 809.30 (1) (a) of the statutes is created to read:

1 809.30 (1) ^e ~~(ar)~~ "Prosecutor" means a district attorney, corporation counsel, or
2 other attorney authorized by law to prosecute a criminal case or a case under ch. 48,
3 51, 55, 938, or 980. ^f or a proceeding under s. 971.17.

4 SECTION 14. 809.30 (1) (b) of the statutes is ^{renumbered and} amended to read:

5 809.30 (1) ^f ~~(b)~~ "Sentencing" means ^e ~~in a felony or misdemeanor~~ criminal case,
6 the imposition of a sentence, a fine, or probation. ^{in a criminal case} ~~In a ch. 48, 51, 55 or 938 case, other~~
7 ~~than a termination of parental rights case under s. 48.43, it means the entry of the~~
8 ~~trial court's final judgment or order.~~

9 SECTION 15. 809.30 (2) (title) of the statutes is amended to read:

10 809.30 (2) (title) APPEAL OR POSTCONVICTION OR POSTDISPOSITION MOTION BY
11 DEFENDANT.

12 SECTION 16. 809.30 (2) (a) of the statutes, as affected by Supreme Court Order
13 00-02, is amended to read:

14 809.30 (2) (a) *Appeal procedures; counsel to continue.* A defendant person
15 seeking postconviction relief in a felony criminal case or a person seeking
16 postdisposition relief in a ch. 48 case, other than a termination of parental rights case
17 under s. 48.43 or a parental consent to abortion case under s. 48.375 (7), or a person
18 seeking postdisposition relief in a ch. 51, 55, 938, or 980 case or an ^e s. 971.17
19 proceeding shall comply with this section. Counsel representing the defendant
20 person at sentencing or at the time of the final adjudication shall continue
21 representation by filing a notice under par. (b) if the defendant person desires to
22 pursue postconviction or postdisposition relief unless ^{sooner} discharged by the
23 defendant person or by the trial circuit court ^{counsel is}

24 SECTION 17. 809.30 (2) (b) (intro.) of the statutes, as affected by Supreme Court
25 Order 00-02, is amended to read:

Order 00-02, is amended to read:

1 809.30 (2) (b) *Notice of intent to pursue postconviction or postdisposition relief.*
2 (intro.) Within 20 days after the date of sentencing or final adjudication, the
3 defendant person shall file in circuit court and serve on the ~~district attorney~~
4 prosecutor ^{and any other party} a notice of intent to pursue postconviction or postdisposition relief. The
5 notice shall include all of the following:

6 **SECTION 18.** 809.30 (2) (b) 2. of the statutes is amended to read:

7 809.30 (2) (b) 2. An identification of the judgment or order from which the
8 defendant person intends to seek postconviction or postdisposition relief and the
9 date on which it was granted or entered.

10 **SECTION 19.** 809.30 (2) (b) 3. of the statutes is amended to read:

11 809.30 (2) (b) 3. The name and address of the defendant person and the
12 defendant's his or her trial counsel.

13 **SECTION 20.** 809.30 (2) (b) 4. of the statutes is amended to read:

14 809.30 (2) (b) 4. Whether ~~defendant's~~ the person's trial counsel was appointed
15 by the state public defender and, if so, whether the defendant's person's financial
16 circumstances have materially improved since the date ~~the defendant's~~ on which his
17 or her indigency was determined.

18 **SECTION 21.** 809.30 (2) (b) 5. of the statutes is amended to read:

19 809.30 (2) (b) 5. Whether the defendant person requests the state public
20 defender to appoint counsel for purposes of postconviction or postdisposition relief.

21 **SECTION 22.** 809.30 (2) (b) 6. of the statutes, as affected by Supreme Court
22 Order 00-02, is amended to read:

23 809.30 (2) (b) 6. Whether a defendant person who does not request the state
24 public defender to appoint counsel will represent himself or herself or will be
25 represented by retained counsel. If the defendant person has retained counsel to

1 pursue postconviction or postdisposition relief, counsel's name and address shall be
2 included.

3 SECTION 23. 809.30 (2) (c) 1. of the statutes, as affected by Supreme Court Order
4 00-02, is amended to read:

5 809.30 (2) (c) 1. If the defendant person requests representation by the state
6 public defender for purposes of postconviction or postdisposition relief, send to the
7 state public defender's appellate intake office a copy of the notice that shows the date
8 on which it was filed or entered, a copy of the judgment or order specified in the notice
9 that shows the date on which it was filed or entered, a list of the court reporters for
10 each proceeding in the action in which the judgment or order was entered, and a list
11 of those proceedings in which a transcript has been filed with the clerk of circuit
12 court.

13 SECTION 24. 809.30 (2) (c) 2. of the statutes, as affected by Supreme Court Order
14 00-02, is amended to read:

15 809.30 (2) (c) 2. If the defendant person does not request representation by the
16 state public defender, send or furnish to the defendant person, if the defendant
17 person is appearing without counsel, or to the defendant's person's attorney if one
18 has been retained, a copy of the judgment or order specified in the notice that shows
19 the date on which it was filed or entered, a list of the court reporters for each
20 proceeding in the action in which the judgment or order was entered, and a list of
21 those proceedings in which a transcript has been filed with the clerk of circuit court.

22 SECTION 25. 809.30 (2) (d) of the statutes, as affected by Supreme Court Order
23 00-02, is amended to read:

24 809.30 (2) (d) *Indigency redetermination.* Except as provided in this
25 paragraph, whenever a defendant person whose trial counsel is appointed by the

1 state public defender files a notice under par. (b) requesting public defender
2 representation for purposes of postconviction or postdisposition relief, the ~~district~~
3 ~~attorney prosecutor~~ may, within 5 days after the notice is served and filed, file in the
4 trial circuit court and serve upon the state public defender a request that the
5 defendant's person's indigency be redetermined before counsel is appointed or
6 transcripts are ^{requested} ~~ordered~~. This paragraph does not apply to a child who is entitled to
7 be represented by counsel under s. 48.23 or 938.23.

8 **SECTION 26.** 809.30 (2) (e) of the statutes, as affected by Supreme Court Order
9 00-02, is amended to read:

10 809.30 (2) (e) *State public defender appointment of counsel; transcript and*
11 *circuit court case record request.* Within 30 days after the state public defender
12 appellate intake office receives the materials from the clerk of circuit court under par.
13 (c), the state public defender shall appoint counsel for the defendant person and
14 request a transcript of the reporter's notes and a copy of the circuit court case record,
15 except that if the defendant's person's indigency must first be determined or
16 redetermined the state public defender shall do so, appoint counsel, and request
17 transcripts and a copy of the circuit court case record within 50 days after the state
18 public defender appellate intake office receives the material from the clerk of circuit
19 court under par. (c).

20 **SECTION 27.** 809.30 (2) (f) of the statutes, as affected by Supreme Court Order
21 00-02, is amended to read:

22 809.30 (2) (f) *Defendant Person not represented by public defender; transcript*
23 *and circuit court case record request.* A ~~defendant~~ person who does not request
24 representation by the state public defender for purposes of postconviction or
25 postdisposition relief shall request a transcript of the reporter's notes, and may

1 request a copy of the circuit court case record, within 30 days after filing a notice
2 under par. (b). A defendant person who is denied representation by the state public
3 defender for purposes of postconviction or postdisposition relief shall request a
4 transcript of the reporter's notes, and may request a copy of the circuit court case
5 record, within 90 days after filing a notice under par. (b).

Insert
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6 SECTION 28. 809.30 (2) (g) 1. of the statutes, as created by Supreme Court Order
7 00-02, is amended to read:

8 809.30 (2) (g) 1. The clerk of circuit court shall serve a copy of the circuit court
9 case record on the defendant person within 60 days after receipt of the request for
10 the circuit court case record.

11 SECTION 29. 809.30 (2) (g) 2. of the statutes, as affected by Supreme Court
12 Order 00-02, is amended to read:

13 809.30 (2) (g) 2. The court reporter shall file the transcript with the circuit court
14 and serve a copy of the transcript on the defendant person within 60 days of the
15 request for the transcript. Within 20 days of after the request for a transcript of
16 postconviction ^{or postdisposition} proceedings brought under sub. (2) (h), the court reporter shall file the
17 original with the circuit court and serve a copy of that transcript on the defendant
18 person. The reporter may seek an extension under s. 809.11 (7) for filing and serving
19 the transcript.

20 SECTION 30. 809.30 (2) (h) of the statutes, as affected by Supreme Court Order
21 00-02, is amended to read:

22 809.30 (2) (h) *Notice of appeal or postconviction or postdisposition motion.* The
23 defendant person shall file in circuit court and serve on the ~~district attorney~~
24 prosecutor ^{and any other party} a notice of appeal or motion seeking postconviction or postdisposition
25 relief within 60 days after the later of the service of the transcript or circuit court case

1 record. The person shall file a motion for postconviction or postdisposition relief
 2 before a notice of appeal is filed unless the grounds for seeking relief are sufficiency
 3 of the evidence or of the issues previously and adequately raised. A postconviction
 4 or postdisposition motion under this section may not be accompanied by a notice of
 5 motion and is made when filed.

A notice of appeal filed under this section shall conform to the requirements set forth in s. 809.10.

6 **SECTION 31** 809.30 (2) (i) of the statutes, as affected by Supreme Court Order
 7 00-02, is amended to read:

8 809.30 (2) (i) Order determining postconviction or postdisposition motion.
 9 Unless an extension is requested by the defendant person or circuit court and
 10 granted by the court of appeals, a party the circuit court shall determine by an order the
 11 defendant's person's motion for postconviction or postdisposition relief within 60
 12 days after the filing of the motion or the motion is considered to be denied and the
 13 clerk of circuit court shall immediately enter an order denying the motion.

14 **SECTION 32.** 809.30 (2) (j) of the statutes, as affected by Supreme Court Order
 15 00-02, is amended to read:

16 809.30 (2) (j) Appeal from judgment and order. The defendant person shall file
 17 an appeal from the judgment of conviction and sentence or final adjudication and,
 18 if necessary, from the order of the trial circuit court on the motion for postconviction
 19 or postdisposition relief within 20 days of the entry of the order on the postconviction
 20 motion. Appeals in chs. 48, 51, 55, and 938 cases are subject to the docketing
 21 or postdisposition statement requirements of s. 809.10 (1) (d) and may be eligible for the expedited
 22 appeals program in the discretion of the court.

in circuit court and serve on the prosecutor and any other party a notice of

23 **SECTION 33.** 809.30 (2) (k) of the statutes, as affected by Supreme Court Order
 24 00-02, is amended to read:

1 809.30 (2) (k) *Transmittal of record*. Except as otherwise provided in s. ss.
2 809.14 (3) ^(b) and 809.15 (4) (b) and (c), the clerk of circuit court shall transmit the record
3 on appeal to the court of appeals as soon as prepared but in no event more than 40
4 days after the filing of the notice of appeal by the defendant. Subsequent proceedings
5 in the appeal are governed by the procedures for civil appeals.

6 SECTION 34. 809.30 (3) of the statutes, as affected by Supreme Court Order
7 00-02, is amended to read: , or any other person who may appeal
under s. 51.13(5), 51.20(15) or 55.06(18)

8 809.30 (3) APPEALS BY STATE OR OTHER PARTY; APPOINTMENT OF COUNSEL. In a case
9 in which the state of Wisconsin, the representative of the public, ^{or} any other party
10 appeals and the ~~defendant or subject individual person who is the subject of the case~~
11 or proceeding is a child or claims or appears to be indigent, the court shall refer the
12 ^{who is the subject of the case} person to the state public defender for the determination of indigency and the
13 appointment of legal counsel under ch. 977.

14 SECTION 35. 809.30 (4) of the statutes, as created by Supreme Court Order
15 00-02, is amended to read:

16 809.30 (4) MOTION TO WITHDRAW AS APPOINTED COUNSEL ^{FOR DEFENDANT PERSON}
17 ^{post conviction, post disposition or appellate} (a) If counsel ^(has been) appointed for the defendant person under ch. 977 ^(and) seeks
18 ^{to withdraw (as) appointed (counsel)} counsel shall serve a motion to withdraw upon the
19 ^{from the} defendant person and upon the appellate division intake unit in the Madison
20 appellate office of the state public defender. If the motion is filed before the notice
21 of appeal is filed, the motion shall be filed in circuit court. If the motion is filed after
22 a notice of appeal has been filed, the motion shall be filed in the court of appeals. ^

23 (b) Within 20 days after receipt of the motion under par. (a), the state public
24 defender shall determine whether successor counsel will be appointed for the

Service of the motion to withdraw on the state public defender is not required when the motion is filed by an assistant state public defender or when a no merit report is filed with the motion.

1 ~~defendant~~ person and shall notify the court in which the motion was filed of the state
2 public defender's determination.

3 (c) Before determining the motion to withdraw, the court shall consider the
4 state public defender's response under par. (b) and whether the ~~defendant~~ person
5 waives the right to counsel.

6 (d) When the motion to withdraw is filed in circuit court, appointed counsel
7 shall prepare and serve a copy of the order determining counsel's motion to withdraw
8 upon the ~~defendant~~ person and the appellate division intake unit in the Madison
9 appellate office of the state public defender within 14 days after the court's
10 determination.

11 **SECTION 36.** 809.32 (1) (a) of the statutes, as created by Supreme Court Order
12 00-02, is amended to read:

13 809.32 (1) (a) *No-merit report.* If an attorney appointed under s. 809.30 (2) (e)
14 or ch. 977 concludes that a direct appeal on behalf of the ~~defendant~~ person would be
15 frivolous and without any arguable merit within the meaning of *Anders v. California*,
16 386 U.S. 738 (1967), and the ~~defendant~~ person requests that a no-merit report be
17 filed or declines to consent to have the attorney close the file without further
18 representation by the attorney, the attorney shall file with the court of appeals 3
19 copies of a no-merit report. The no-merit report shall identify anything in the record
20 that might arguably support the appeal and discuss the reasons why each identified
21 issue lacks merit.

22 **SECTION 37.** 809.32 (1) (b) 1. (intro.) of the statutes, as created by Supreme
23 Court Order 00-02, is amended to read:

24 809.32 (1) (b) 1. (intro.) Prior to the filing of a no-merit report, the attorney
25 shall discuss with the ~~defendant~~ person all potential issues identified by the attorney

1 and the defendant person, and the merit of an appeal on these issues. The attorney
2 shall inform the defendant person that ^{he or she} the defendant person has 3 options:

3 SECTION 38. 809.32 (1) (b) 1. c. of the statutes, as created by Supreme Court
4 Order 00-02, is amended to read:

5 809.32 (1) (b) 1. c. To have the attorney close the file and to proceed without an
6 attorney or with another attorney retained at the defendant's person's expense.

7 SECTION 39. 809.32 (1) (b) 2. of the statutes, as created by Supreme Court Order
8 00 02, is amended to read:

9 809.32 (1) (b) 2. The attorney shall inform the defendant person that a
10 no-merit report will be filed if the defendant person either requests a no-merit
11 report or does not consent to have the attorney close the file without further
12 representation by the attorney. The attorney shall inform the defendant person that
13 if a no-merit report is filed the attorney will serve a copy of the transcripts and the
14 circuit court case record upon the defendant person at the defendant's person's
15 request. The attorney shall inform the defendant person that, if the defendant
16 person chooses to proceed with an appeal or that if the defendant person chooses to
17 have the attorney close the file without an appeal, the attorney will forward the
18 attorney's copies of the transcripts and circuit court case record to the defendant
19 person at the defendant's person's request. The attorney shall also inform the
20 defendant person that the defendant ^{person} may file a response to the no-merit report and
21 that the attorney may file a supplemental no-merit report and affidavit or affidavits
22 containing facts outside the record, possibly including confidential information, to
23 rebut allegations made in the defendant's person's response to the no-merit report.

24 SECTION 40. 809.32 (1) (c) (form) of the statutes, as created by Supreme Court
25 Order 00-02, is amended to read:

my client

he/she

809.32 (1) (c) (form)

CERTIFICATION BY ATTORNEY

I hereby certify that I have discussed with the defendant all potential issues identified by me and by the defendant person and the merit of an appeal on these issues, and I have informed the defendant person that the defendant person must choose one of the following 3 options: 1) to have me file a no-merit report; 2) to have me close the file without an appeal; or 3) to have me close the file and to proceed without an attorney or with another attorney ^{my client's} retained at the defendant's person's expense. I have informed the defendant person that a no-merit report will be filed if the defendant person either requests a no-merit report or does not consent to have me close the file without further representation. I have informed the defendant person that the transcripts and circuit court case record will be forwarded at the defendant's person's ^{his/her} request. I have also informed the defendant person that the defendant person may file a response to the no-merit report and that I may file a supplemental no-merit report and affidavit or affidavits containing [^] facts outside the record, possibly including confidential information, to rebut allegations made in the defendant's person's [^] response to the no-merit report.

Signed:

Signature:

SECTION 41. 809.32 (1) (d) and (e) of the statutes, as affected by Supreme Court Order 00-02, are amended to read:

809.32 (1) (d) *Service of copy of no-merit report, transcript, and circuit court case record.* The attorney shall serve a copy of the no-merit report on the defendant person and shall file a statement in the court of appeals that service has been made upon the defendant person. The attorney shall also serve upon the defendant person

1 a copy of the transcript and circuit court case record within ¹⁴ days after receipt of
2 a request for the transcript and circuit court case record from the defendant person
3 and shall file a statement in the court of appeals that service has been made upon
4 the defendant person.

5 (e) *Response to no-merit report.* The defendant person may file a response to
6 the no-merit report within 30 days after service of the no-merit report. If the
7 defendant person files a response, the clerk shall, within 5 days after the filing of the
8 response, send a copy of the response to the attorney who filed the no-merit report.

9 **SECTION 42.** 809.32 (1) (f) and (g) of the statutes, as created by Supreme Court
10 Order 00-02, are amended to read:

11 809.32 (1) (f) *Supplemental no-merit report.* If the attorney is aware of facts
12 outside the record that rebut allegations made in the defendant's person's response,
13 the attorney may file, within 30 days after receipt of the defendant's person's
14 response, a supplemental no-merit report and an affidavit or affidavits, including
15 [^] facts outside the record. The supplemental report and affidavit or affidavits shall be
16 ^{matters} served on the defendant person, and the attorney shall file a statement in the court
17 of appeals that service has been made upon the defendant person.

18 (g) *Remand for fact-finding prior to decision.* If the defendant person and the
19 attorney allege disputed facts regarding matters outside the record, and if the court
20 determines that the defendant's person's version of the facts, if true, would make
21 resolution of the appeal under sub. (3) inappropriate, the court shall remand the case
22 to the circuit court for an evidentiary hearing and fact-finding on those disputed
23 facts before proceeding to a decision under sub. (3).

24 **SECTION 43.** 809.32 (2) of the statutes, as affected by Supreme Court Order
25 00-02, is amended to read:

1 809.32 (2) NOTICE OF APPEAL, STATEMENT ON TRANSCRIPT, SERVICE OF COPIES. The
2 attorney also shall file in circuit court a notice of appeal of the judgment of conviction
3 or final adjudication and of any order denying a postconviction or postdisposition
4 motion. The notice of appeal shall be identified as a no-merit notice of appeal and
5 shall state the date on which the no-merit report is due and whether the due date
6 is calculated under par. (a) or (b). The clerk of circuit court shall transmit the record
7 in the case to the court pursuant to s. 809.15. The attorney also shall file a statement
8 on transcript complying with the requirements of s. 809.11 (4), except that copies of
9 the transcript need not be provided to other parties. All papers filed with the court
10 under this subsection, except the transcript, shall be served on the state, ^{and any other party}
11 accordance with s. 809.80 (2) (b). The no-merit report, notice of appeal, and
12 statement on transcript must be filed within whichever of the following is later:

13 (a) One hundred eighty days after the service upon the defendant person of the
14 transcript and circuit court case record requested under s. 809.30 (2) (e).

15 (b) Sixty days after the entry of the order determining a postconviction or
16 postdisposition motion.

17 **SECTION 44.** 809.32 (3) of the statutes, as affected by Supreme Court Order
18 00-02, is amended to read:

19 809.32 (3) DECISION ON NO MERIT REPORT. In the event that the court of appeals
20 ~~finds~~^{determines} that further appellate proceedings would be frivolous and without any
21 arguable merit, the court of appeals shall affirm the judgment of conviction or final
22 adjudication and the denial of any postconviction or postdisposition motion and
23 relieve the attorney of further responsibility in the case. The attorney shall advise
24 the defendant person of the right to file a petition for review to the supreme court
25 under s. 809.62.

1 CONSENT TO ABORTION CASES APPEAL

2 PROCEDURE IN COURT OF APPEALS

3 **SECTION 47.** 809.40 (title) of the statutes is amended to read:

4 **809.40 (title) Rule (Applicability) Appeals in termination of parental**
5 **rights, ch. 799, traffic regulation, municipal ordinance violation, and**
6 **parental consent to abortion cases).**

7 **SECTION 48.** 809.40 (1) of the statutes is repealed.

8 **SECTION 49.** 809.40 (1m) of the statutes is amended to read:

9 **809.40 (1m)** ~~Subsection (1) does not apply to an~~ An appeal from an order
10 denying a petition under s. 48.375 (7), ~~which~~ is governed by the procedures specified
11 in s. 809.105, ~~or to~~ and an appeal from an order or judgment under s. 48.43, ~~which~~
12 is governed by the procedures specified in s. 809.107.

13 **SECTION 50.** 809.40 (3) of the statutes, as affected by Supreme Court Order
14 00-02, is amended to read:

15 **809.40 (3)** Any civil appeal to the court of appeals under sub. ~~(1) or~~ (2) is subject
16 to the docketing statement requirement of s. 809.10 (1) (d) and may be eligible for the
17 expedited appeals program in the discretion of the court.

18 **SECTION 51.** 809.62 (1) (intro.) of the statutes is amended to read:

19 **809.62 (1) (intro.)** A party may file with the supreme court a petition for review
20 of an adverse decision of the court of appeals pursuant to s. 808.10 ~~within 30 days~~
21 ~~of the date of the decision of the court of appeals.~~ Supreme court review is a matter
22 of judicial discretion, not of right, and will be granted only when special and
23 important reasons are presented. The following, while neither controlling nor fully
24 measuring the court's discretion, indicate criteria that will be considered:

25 **SECTION 52.** 809.82 (2) (b) of the statutes is amended to read:

1 809.82 (2) (b) Notwithstanding the provisions of par. (a), the time for filing a
2 notice of appeal or cross-appeal of a final judgment or order other than in an appeal
3 under s. 809.30 or ~~809.40 (1)~~ 809.32 may not be enlarged.

4 **SECTION 53.** 938.297 (8) of the statutes is created to read:

5 938.297 (8) An order denying a motion to suppress evidence or a motion
6 challenging the admissibility of a statement of a juvenile may be reviewed upon
7 appeal from a final judgment or order notwithstanding the fact that such final
8 judgment or order was entered upon an admission or a plea of no contest to the
9 allegations in the petition.

10 **SECTION 54.** 971.17 (7m) of the statutes is created to read:

11 971.17 (7m) MOTION FOR POSTDISPOSITION RELIEF AND APPEAL. (a) *Appeal by*
12 *respondent.* A motion for postdisposition relief by a person committed under this
13 section shall be made in the time and manner provided in ss. 809.30 to 809.32. An
14 appeal by a person who has been committed under this section from a final order
15 under this section or from an order denying a motion for postdisposition relief shall
16 be taken in the time and manner provided in ss. 808.04 (3) and 809.30 to 809.32. The
17 person shall file a motion for postdisposition relief in the circuit court before a notice
18 of ^o(an) appeal is filed unless the grounds for seeking relief are sufficiency of the
19 evidence or issues previously raised.

20 (b) *Appeal by state.* An appeal by the state from a final judgment or order under
21 this section may be taken to the court of appeals within the time specified in s. 808.04
22 (4) and in the manner provided for civil appeals under chs. 808 and 809.

23 **SECTION 55.** 974.02 (1) of the statutes, as affected by 2001 Wisconsin Act 16,
24 is amended to read:

1 974.02 (1) A motion for postconviction relief other than under s. 974.06 or
2 974.07 (2) by the defendant in a criminal case shall be made in the time and manner
3 provided in ss. 809.30 ~~and 809.40~~ to 809.32. An appeal by the defendant in a criminal
4 case from a judgment of conviction or from an order denying a postconviction motion
5 or from both shall be taken in the time and manner provided in ss. 808.04 (3), and
6 809.30 ~~and 809.40~~ to 809.32. An appeal of an order or judgment on habeas corpus
7 remanding to custody a prisoner committed for trial under s. 970.03 shall be taken
8 under ss. 808.03 (2) and 809.50, with notice to the attorney general and the district
9 attorney and opportunity for them to be heard.

10 **SECTION 56.** 974.02 (2) of the statutes is amended to read:

11 974.02 (2) An appellant is not required to file a postconviction motion in the
12 trial circuit court prior to an appeal if the grounds are sufficiency of the evidence or
13 issues previously adequately raised.

14 **SECTION 57.** 980.061 of the statutes is created to read:

15 **980.061 Motion for postdisposition relief and appeal.** (1) APPEAL BY
16 RESPONDENT. A motion for postdisposition relief from a final order or judgment by a
17 person committed under this chapter shall be made in the time and manner provided
18 in ss. 809.30 to 809.32. An appeal from a final order or judgment entered under this
19 chapter or from an order denying a motion for postdisposition relief by a person
20 committed under this chapter shall be taken in the time and manner provided in ss.
21 808.04 (3) and 809.30 to 809.32. The person shall file a motion for postdisposition
22 relief in circuit court before a notice of appeal is filed unless the grounds for seeking
23 relief are sufficiency of the evidence or issues previously raised.

