2009 DRAFTING REQUEST

Bill

Received: **02/03/2009**

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Wanted: **As time permits**

Identical to LRB:

For: **Gary Hebl (608) 266-7678**

By/Representing: **Kate**

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Subject: **Courts - civil procedure**

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Pre Topic:

No specific pre topic given

Topic:

Appelate procedure regarding commitments

Instructions:

See attached 09-0059

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	rnelson2 02/03/2009	jdyer 02/04/2009		_____ _____			
/1			jfrantze 02/04/2009	_____ _____	lparisi 02/04/2009	mbarman 02/09/2009	

FE Sent For:

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1926/1

2009 – 2010 LEGISLATURE

LRB-~~0059/2~~
RPN:wljrs

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2009 BILL

Regen

AN ACT ***to amend*** 808.04 (3), 808.04 (4), subchapter III (title) of chapter 809 [precedes 809.30], 809.30 (title), 809.30 (1) (a), 809.30 (1) (b) 4., 809.30 (1) (d), 809.30 (1) (e), 809.30 (2) (a) and 980.038 (4) (a); and ***to create*** 48.465, 938.47 and 971.17 (7m) of the statutes; **relating to:** appellate procedure regarding commitments of persons found not guilty by reason of mental disease or defect and commitments of sexually violent persons.

Analysis by the Legislative Reference Bureau

Current law establishes the appellate procedures applicable to various types of cases. Under current law, appeals in criminal cases and cases involving children, juveniles alleged to be delinquent, protective services, or persons subject to commitment as sexually violent persons or due to mental health or drug abuse must follow a specific set of appeal procedures. Under current law, appeals in cases involving commitments of persons found not guilty by reason of mental disease or defect follow the criminal appeals process, although there is no specific statutory authority for this. This bill establishes one integrated appeal procedure for all of these types of cases.

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

1 **SECTION 1.** 48.465 of the statutes is created to read:

2 **48.465 Motion for postdisposition relief and appeal. (1)** APPEAL BY
3 RESPONDENT. A motion for postdisposition relief from a final order or judgment by a
4 person subject to this chapter shall be made in the time and manner provided in ss.
5 809.30 to 809.32. An appeal from a final order or judgment entered under this
6 chapter or from an order denying a motion for postdisposition relief by a person
7 subject to this chapter shall be taken in the time and manner provided in ss. 808.04
8 (3) and 809.30 to 809.32. The person shall file a motion for postdisposition relief in
9 circuit court before a notice of appeal is filed unless the grounds for seeking relief are
10 sufficiency of the evidence or issues previously raised.

11 **(2)** APPEAL BY STATE. An appeal by the state from a final judgment or order
12 under this chapter may be taken to the court of appeals within the time specified in
13 s. 808.04 (4) and in the manner provided for civil appeals under chs. 808 and 809.

14 **(3)** EXCEPTIONS. This section does not apply to a termination of parental rights
15 case under s. 48.43 or to a parental consent to abortion case under s. 48.375 (7).

16 **SECTION 2.** 808.04 (3) of the statutes is amended to read:

17 808.04 **(3)** Except as provided in subs. (4) and (7), an appeal in a proceeding
18 under s. 971.17, a criminal case, or a case under ch. 48, 51, 55, 938, or 980 shall be
19 initiated within the time period specified in s. 809.30 (2) or 809.32 (2), whichever is
20 applicable.

21 **SECTION 3.** 808.04 (4) of the statutes is amended to read:

22 808.04 **(4)** Except as provided in sub. (7m), an appeal by the state in ~~either~~ a
23 proceeding under s. 971.17, a criminal case under s. 974.05, or a case under ch. 48,
24 938, or 980 shall be initiated within 45 days of entry of the judgment or order
25 appealed from.

1 **SECTION 4.** Subchapter III (title) of chapter 809 [precedes 809.30] of the
2 statutes is amended to read:

3 **CHAPTER 809**

4 SUBCHAPTER III

5 APPEAL PROCEDURE IN COURT OF

6 APPEALS IN S. 971.17

7 PROCEEDINGS AND IN CRIMINAL AND

8 CH. 48, 51, 55, ~~AND~~, 938, AND

9 980 CASES

10 **SECTION 5.** 809.30 (title) of the statutes is amended to read:

11 **809.30** (title) **Rule (Appeals in s. 971.17 proceedings and in criminal, ch.**
12 **48, 51, 55, ~~and~~, 938, and 980 cases).**

13 **SECTION 6.** 809.30 (1) (a) of the statutes is amended to read:

14 809.30 **(1)** (a) "Final adjudication" means the entry of a final judgment or order
15 by the circuit court in a s. 971.17 proceeding, in a criminal case, or in a ch. 48, 51, 55,
16 ~~or~~, 938, or 980 case, other than a termination of parental rights case under s. 48.43
17 or a parental consent to abortion case under s. 48.375 (7).

18 **SECTION 7.** 809.30 (1) (b) 4. of the statutes is amended to read:

19 809.30 **(1)** (b) 4. A subject individual or ward seeking postdisposition relief in
20 a s. 971.17 proceeding or a case under ch. 51 ~~or~~, 55, or 980.

21 **SECTION 8.** 809.30 (1) (d) of the statutes is amended to read:

22 809.30 **(1)** (d) "Postdisposition relief" means an appeal or a motion for
23 ~~postdisposition~~ relief under this subchapter from a circuit court's final adjudication.

24 **SECTION 9.** 809.30 (1) (e) of the statutes is amended to read:

809.30 **(1)** (e) "Prosecutor" means a district attorney, corporation counsel, or other attorney authorized by law to ~~prosecute~~ represent the state in a criminal case, a proceeding under s. 917.17, or a case under ch. 48, 51, 55, ~~or~~, 938, or 980.

SECTION 10. 809.30 (2) (a) of the statutes is amended to read:

809.30 **(2)** (a) *Appeal procedure; counsel to continue.* A person seeking postconviction relief in a criminal case; a person seeking postdisposition relief in a case under ch. 48 other than a termination of parental rights case under s. 48.43 or a parental consent to abortion case under s. 48.375 (7); or a person seeking postdisposition relief in a s. 971.17 proceeding or in a case under ch. 51, 55, ~~or~~ 938, or 980 shall comply with this section. Counsel representing the person at sentencing or at the time of the final adjudication shall continue representation by filing a notice under par. (b) if the person desires to pursue postconviction or postdisposition relief unless counsel is discharged by the person or allowed to withdraw by the circuit court before the notice must be filed.

SECTION 11. 938.47 of the statutes is created to read:

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

1 **(2)** APPEAL BY STATE. An appeal by the state from a final judgment or order
2 under this chapter may be taken to the court of appeals within the time specified in
3 s. 808.04 (4) and in the manner provided for civil appeals under chs. 808 and 809.

4 **SECTION 12.** 971.17 (7m) of the statutes is created to read:

5 971.17 **(7m)** MOTION FOR POSTDISPOSITION RELIEF AND APPEAL. (a) A motion for
6 postdisposition relief from a final order or judgment by a person subject to this
7 section shall be made in the time and manner provided in ss. 809.30 to 809.32. An
8 appeal by a person subject to this section from a final order or judgment under this
9 section or from an order denying a motion for postdisposition relief shall be taken in
10 the time and manner provided in ss. 808.04 (3) and 809.30 to 809.32. The person
11 shall file a motion for postdisposition relief in the circuit court before a notice of
12 appeal is filed unless the grounds for seeking relief are sufficiency of the evidence or
13 issues previously raised.

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

17 **SECTION 13.** 980.038 (4) (a) of the statutes is amended to read:

18 980.038 **(4)** (a) A motion for postcommitment relief by a person committed
19 under s. 980.06 shall be made in the time and manner provided in ~~s.~~ ss. 809.30 to
20 809.32. An appeal by a person who has been committed under s. 980.06 from a final
21 order under s. 980.06, 980.08, or 980.09 or from an order denying a motion for
22 postcommitment relief or from both shall be taken in the time and manner provided
23 in ss. 808.04 (3) and 809.30 to 809.32. If a person is seeking relief from an order of
24 commitment under s. 980.06, the person shall file a motion for postcommitment relief

1 in the trial court prior to an appeal unless the grounds for seeking relief are
2 sufficiency of the evidence or issues previously raised.

3 **SECTION 14. Effective date.**

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

6 **(END)**

Duerst, Christina

From: Battiato, Kate
Sent: Friday, February 06, 2009 4:35 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-1926/1 Topic: Appelate procedure regarding commitments

Please Jacket LRB 09-1926/1 for the ASSEMBLY.